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

**THE CHALLENGES AND ASPIRATIONS OF THE DIGITAL  
TRANSFORMATION OF THE STATE COUNCIL OF EGYPT**

**A Thesis Submitted to  
The Department of Law**

**In partial fulfillment of the requirement for  
LL.M. Degree in International and Comparative Law**

**By**

**Moustafa Ahmad Kamal Mahmoud Ahmad**

**Spring 2021**

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

THE CHALLENGES AND ASPIRATIONS OF THE DIGITAL TRANSFORMATION  
OF THE STATE COUNCIL OF EGYPT

A Thesis Submitted by  
*Moustafa Ahmad Kamal Mahmoud Ahmad*  
to the Department of Law  
Spring 2021

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The American University in Cairo  
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THE CHALLENGES AND ASPIRATIONS OF THE DIGITAL TRANSFORMATION  
OF THE STATE COUNCIL OF EGYPT

*Moustafa Ahmad Kamal Mahmoud Ahmad*

Supervised by Professor Nesrine Badawi

ABSTRACT

The use of modern technology to support the transformation of governmental public operations and services including judicial ones, with the aim of increasing efficiency, efficacy, and transparency, has spread all over the world, especially in the last four decades. This trend has existed in Egypt since the 1980s but without substantive efforts until the middle of the first decade of the current millennium. Since then, there have been several discussions, plans, and promises regarding the use of modern technology to enhance the effectiveness of the judicial operations and services, especially in light of the increasing severe criticism directed towards the Egyptian judiciary. In recent decades, judicial operations in Egypt have suffered from severe defects resulting in, among others, a notorious delay of justice, limited enforcement of judicial orders and decisions, and a widespread lack of trust in the overall performance of the judiciary. During the last two decades, there were several attempts to introduce the use of modern technology within the Egyptian justice sector. These efforts were accompanied by frequent announcements from the Ministry of Justice and the chairs of judicial councils concerning the full automation of judicial operations and services. However, these efforts have resulted in very limited results seen in scattered and minor automation of some operations and services without the introduction of any genuine fully automated or digitally transformed operations and/or services. These poor results raise several questions about the feasibility of the automation and digital transformation of the judicial processes and services themselves. This study, which focuses primarily on the Council of State as a case study, tries to respond to these questions and other associated questions about how courts might be transformed after incorporating modern technology. It offers a view on the aspiration of the desired and long awaited automation and digitalization; it also offers an analysis and discussion of the practical impediments that that were and still are affecting the progress of the efforts of the adoption, incorporation, and implementation of modern technology and techniques of the judicial processes and services in Egypt.

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## Introduction:

The emergence of Information and Communication Technology (hereinafter ICT) in the last few decades has resulted in several changes to the nature and formation of transactions among people. The emergence of personal computers, the internet, laptops, mobile phones, and tablets have facilitated and transformed these transactions to new levels in terms of their ease, accessibility, rapidity, and effectiveness. Such a technological revolution has also transformed the transactions between governments and their citizens, as currently seen in digital and smart transactions.

Almost all countries worldwide have adopted to some degree the use of modern ICT into their governmental services; however, such degree depends on the circumstances of each country such as the infrastructure, availability of human and financial resources necessary to implement such technological transformation.

Since the beginning of the second millennium, Egypt has realized the importance of using ICT and the necessity of spreading its use to cover all aspects of societal transactions, whether private or governmental.<sup>1</sup> However, some efforts already started earlier i.e. in 1980s with the creation of the Information and decision Support Center (hereinafter, IDSC) at the Cabinet in 1985. In 1993, the internet services were first introduced in Egypt; they were used for academic purposes by the IDSC at the Cabinet and the Supreme Council for Universities.<sup>2</sup> In 1999, the Egyptian President Mubarak declared the foundation of a national program for developing information and communications technology in Egypt; the core of this program was the creation of the Ministry of Communications and Information Technology (hereinafter, MCIT) in October 1999. In February 2001, the MCIT issued “Egypt Goes Smart” which was the ICT official strategy for Egypt.<sup>3</sup> In July 2001, the electronic management of government service program was officially initiated; its first results appeared in the launch of the Egyptian Government portal on the

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<sup>1</sup> See Tarek Gebba & Mohamed Zakaria, *E-Government in Egypt: An Analysis of Practices and Challenges*, 4, INTERNATIONAL JOURNAL OF BUSINESS RESEARCH AND DEVELOPMENT, 11–25 (2015).

<sup>2</sup> See Hazem Abdullah, *The Conclusion of Administrative Contracts Via the Internet: A Comparative Study*, 44, (2013).

<sup>3</sup> Available at [https://www.mcit.gov.eg/Upcont/Documents/egypt\\_goes\\_smart.pdf](https://www.mcit.gov.eg/Upcont/Documents/egypt_goes_smart.pdf) (last visited April 12, 2021).



internet in 2004.<sup>4</sup> To support the implementation of this strategy, the MCIT announced, in October 2003, the initiative “PC for Every Home”.<sup>5</sup> At the same date, it also announced the initiative “Free Internet”.<sup>6</sup> In December 2003, the MCIT announced the “Egypt’s Vision of the Information Society”.<sup>7</sup> These efforts were the first official steps towards the adoption and use of ICT in Egypt.<sup>8</sup>

The efforts of the use of modern technology to modernize judicial processes and services started worldwide, almost at the same time, considering that judicial services constitute a vital part of the governmental services. Judicial automation efforts started in USA in mid-1970s with the issuance of the Speedy Trial Act, which was followed by the COURTRAN project in 1975 that was introduced by the Federal Judicial Center.<sup>9</sup> In south Korea, similar efforts started almost in 1979.<sup>10</sup>

In Egypt, the efforts of automating the judicial processes and services started more than 35 years ago with the creation of the information technology and documentation center at the Egyptian Ministry of Justice (hereinafter, MOJ) by virtue of the Minister of Justice (hereinafter, MJ) decree no. 613 for the year 1982.

In the first two decades after creating this center, several limited projects have been executed. Those projects resulted in very few practical, tangible, and significant results such as the use of document imaging and microfilming equipment to ease the store and recall of case documents. This usage was authorized by the MJ in 1984 based on the request of Giza First Instance Court; however, this usage was interrupted by virtue of the decision of the Supreme Administrative Court (hereinafter, SAC) on appeal no.2748 for the judicial year 32, decision of January 19, 1991, which was later confirmed by the decision of the Circuit for the Unification of Judicial

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<sup>4</sup> See, Hesham Badr-eldin, The Egyptian Administrative Judiciary and the Modern Technology, JIL MAGAZINE OF LEGAL DEPTH RESEARCH 60–62 (2017).

<sup>5</sup> Available at <https://mcit.gov.eg/Upcont/Documents/Pc-for-every-home.pdf> (last visited April 12, 2021).

<sup>6</sup> Available at <http://www.mcit.gov.eg/Upcont/Documents/Free-Internet.pdf> (last visited April 12, 2021).

<sup>7</sup> Available at [https://mcit.gov.eg/Upcont/Documents/BuildingBridges\\_all.pdf](https://mcit.gov.eg/Upcont/Documents/BuildingBridges_all.pdf) (last visited April 12, 2021).

<sup>8</sup> Further steps can be explored at <http://www.mcit.gov.eg/Publications/0/0/0/0> (last visited April 1, 2021).

<sup>9</sup> See Forrester, J. Owen. "History of the Federal Judiciary's Automation Program, The L. Ralph Mecham & Federal Courts Administration: A Decade of Innovation and Progress." *American University Law Review* 44, no. 5 (June 1995): 1483-1490.

<sup>10</sup> See Improving court efficiency: the Republic of Korea's e-court experience, (2013), [https://elibrary.worldbank.org/doi/abs/10.1596/978-0-8213-9984-2\\_Case\\_studies\\_6](https://elibrary.worldbank.org/doi/abs/10.1596/978-0-8213-9984-2_Case_studies_6) (last visited November 1, 2020).

Principles at the same court on appeal no.7402 for the judicial year 44, decision of July 3, 2003. The court based its decision on the illegality to impose judicial fees except for those provided, explicitly, by virtue of the law. The use of microfilming technologies in the National Center for Judicial Studies was introduced by virtue of the MJ decree number 3014 for the year 1989 dated 11 May 1989 and is still applicable. Another example was the use of computers to copy judicial decisions and orders instead of the usage of the traditional typewriters.<sup>11</sup>

From 2004/2005 to 2010/2011, there was a second wave of projects, which benefited from the government efforts towards the use of modern technology in the public administration, e.g., the creation of the MCIT in 1999 and the issuance of the Digital Signature law in 2004. However, those projects resulted in complete failure shortly after its completion and the start to provide limited automated services, e.g., automated filing system, automated docketing system, automated case allocation system, automated court records system, and automated calendaring system.<sup>12</sup>

After the political tensions during the period from 2011 to 2013, a new wave of projects was launched, and they are still in progress. This wave was limited to the Supreme Constitutional Court (hereinafter, SCC), the Ordinary Courts (hereinafter, OCs) and the State Council (hereinafter, SC); it did not include other judicial institutions. However, there are still few concrete achievements and tangible benefits resulting from these projects. There is no fully automated court yet and the electronic services provided to the litigants are very limited. The MOJ portal provides limited services such as online tracking for some lawsuits within some courts and the making of online inquiries regarding the number of lawsuits in the agenda of a judicial sessions or the existence of an appeal to the first instance court decision.<sup>13</sup>

During the entire period from the start of the automation efforts until now, huge expenditures were incurred, enormous efforts were exerted, and a long period of time was lost. Despite the repeated several announcements from the MOJ and the chairpersons of the judicial institutions

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<sup>11</sup> Interview (2) with a working judge at the State Council – senior judge – March 20, 2021 – on the file with the author.

<sup>12</sup> *Id.*

<sup>13</sup> See, <http://www.jp.gov.eg/ar/Default.aspx> (last visited January 10, 2021).

regarding the impressive progress and even the full completion of the different projects,<sup>14</sup> there are no concrete achievements nor tangible benefits resulting from these projects, i.e., no full automation of a single court nor the provision of remote or electronic judicial services.

Changing the current situation of the judicial processes and services is not a luxury, but it is required, urgently, to comply with the constitutional obligations of easy access to prompt justice, to increase the trust in the rule of law and judiciary in Egypt, and to increase the competitiveness of investment environment in Egypt. These issues, among other issues, culminate the significance of the issue in question, i.e., the digital transformation of the judiciary.

This study focuses on examining the challenges that hindered the efforts of the digital transformation of the SC, as being one of the judicial institutions within the Egyptian judiciary, during the period from 2005 until 2021.

This study aims to verify two assumptions. First assumption is that the use of modern technology can effectively lead to enhancing the judicial processes and services within the SC. Second assumption is that the obstacles hindering the efforts of the use of modern technology within the SC, which lasted for almost two decades and are still lasting, can be resolved after performing a due analysis, exerting efforts to identify of the weakness points, and drawing a roadmap to reform the efforts of the digital transformation.

There are some limitations to this study. First, there are very limited publicly available statistics, documents and/or official resources that provide the necessary information to enable researchers to tackle the issue in question; this is not limited to this particular issue, but it extends to several aspects of the judicial affairs in Egypt. Second, there are very limited legislative texts, judicial legal opinions, and court decisions associated with the issue in question.

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<sup>14</sup> See, for example, a number of media statements from the ministers of justice in Egypt from the period of 2009 to 2019, all of them claim that a great progress was already achieved and that the complete digital transformation is expected very soon and that many automated and online services are already available, available at, <https://www.alraimedia.com/Home/Details?Id=f66b69da-6675-4e48-9b73-2931ac5a6ff5> (last visited October 30, 2020); <https://www.almasryalyoum.com/news/details/93909> (last visited October 30, 2020); <http://gate.ahram.org.eg/News/578696.aspx> (last visited October 30, 2020); <https://www.elwatannews.com/news/details/3670522> (last visited October 30, 2020); <https://www.elwatannews.com/news/details/59798> (last visited October 30, 2020).

Third, and most importantly, there are very limited academic resources on the issue in question. Some scholars admit, in their writings, the limitation of research in the issue in question due to the lack of academic resources that cover the topic appropriately and from the different perspectives.<sup>15</sup> Other scholars admit the limitation of research in light of the novelty of the issue in question in Egypt and the limited available academic sources that deals with the issue in question appropriately.<sup>16</sup>

This lack of academic resources regarding the issue in question can be attributed to several reasons, most important are the following. First, the novelty of the issue of legal and court technology in Egypt. Second, the fact that the issue of legal and court technology is not yet part of the study curriculum at almost all undergraduate and postgraduate programs at law schools within Egyptian universities. Furthermore, a large part of the available academic resources tends to focus on the use of technology in the OCs i.e. criminal, civil, and personal affairs courts not administrative courts; there is a considerable difference between Ordinary and Administrative courts because there is a different judicial organization, mechanism for decision making, and applicable procedural rules.

In addition to the above, the majority of the available academic resources focus on the pure theoretical analysis of the issue in question and take the traditional pattern of procedural law literature in Egypt i.e. focusing on attempts to identify terminologies of court technology, to identify the benefits of court automation, to describe the possibility of enforcing e-litigation or court technology according to the current set of applicable legislation, to describe the general requirements of court automation, and the probative force of e-signature according the e-signature law in Egypt, which is limitedly applicable in Egypt.

The majority of the available academic resources does not provide a due regard and/or effective engagement with the practicalities of the issue in question. That is to say, it does not offer an analysis of the practical efforts of court digital transformation, an identification of the associated practical challenges faced by those who are engaged in those efforts and the reasons for the long-term failure to achieve full or even partial automation or digital transformation, and a conception

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<sup>15</sup>See, Mohamed Eltersawy, Settling Judicial Lawsuits Before Electronic Courts 7 (2013).

<sup>16</sup> See, Ashraf Mahmoud, Electronic courts in light of contemporary procedural reality, 35 Journal of Sharia and Law 15 (2020).

of the practical aspirations of those who might effectively be benefiting from the desired digital transformation.

The lack of practical engagement can be partially attributed to the following. On one hand, as to university professors and scholars, they are divided into two groups. The first group is composed of professors who are actively engaged in litigations before courts and aware of the practicalities of the litigation process but they are relatively aged and not able to cope the technological developments so they tend to write theoretical academic literature without practical engagement. The second group is composed of young teaching staff who are not engaged in practicing litigation before courts<sup>17</sup> so they do not provide actual practical engagement in their writing. It should be noted that there is a demonstrated age gap between the different generations of faculty members at public law schools because the majority of top graduates do not continue in their academic career and join judicial institutions.<sup>18</sup> Furthermore, several young faculty members tend to travel for working abroad after getting their doctorate degrees in order to enhance their financial income. All this leads to a serious age gap between the different generations of faculty members at public law schools.<sup>19</sup>

On the other hand, as to judges, they are divided also into two groups. The first group are those judges who are engaged in writing academic publications but they were not actively engaged in the digital transformation activities within their judicial institutions so they do not provide a practical engagement due to their lack of knowledge of the practical challenges of the digital transformation. The second group of judges are those judges who were engaged in both academic writing and the digital transformation efforts but they are unwilling to engage in critical engagement with the practicalities to avoid any criticism to the performance of the judiciary and the potential disciplinary measures that might be taken against them for providing such criticism

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<sup>17</sup> According to article 14 of the law no. 17 of 1983 on Lawyers, members of the teaching staff are not allowed to be registered at the Egyptian bar and practice litigation before courts until they are ranked as professors.

<sup>18</sup> Interview (4) with a faculty member at one of the law schools at Egyptian Public Universities – assistant professor – March 22, 2021 – on the file with the author.

<sup>19</sup> The author was a teaching assistant at the civil law department at the school of law Alexandria University, at that time the department was composed of TAs and professors who were all above the age of fifty-five, with a gap of almost thirty years between the young and experienced generations of the faculty members.

even for mere scientific purposes, so they tend to focus only on writing about the current achievements.

The main sources of information for conducting this study are interviews with the stakeholders of the judicial process, the personal experience, observation and knowledge of the researcher,<sup>20</sup> and the limited available literature.

Interviews were conducted with ten working judges from the different ranks (junior judges, mid-level judges, and senior judges) at the SC, including judges with prior engagement with the digital transformation efforts and other judges without such experience. Interviews were conducted also with four employees from the SC court staff, with four judges from other judicial institutions that work closely with the SC i.e. the State lawsuits Authority (hereinafter, SLA) and the Administrative Prosecution Authority (hereinafter, APA) and with four practicing lawyers before the SC. Finally, interviews were conducted with four faculty members; however, there was no opportunity to interview faculty members specialized in legal and court technology due to the lack of members who are specialized in this field in Egyptian Public Universities.<sup>21</sup>

This research serves a theoretical objective, which is to add to the current limited existing academic literature on the issue in question and assist in filling in the gap. This research serves also a practical objective, which is to reflect the practicalities of the Egyptian case on the issue in question, with the aim of raising awareness and motivating those in charge of the digital

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<sup>20</sup> The researcher might rely to his personal expertise and observation as being a judge at the SC and one of the team responsible for the automation and digitalization of Administrative Courts in Egypt from 2015 to 2019. The researcher also served as a government fellow, for three months, at the United Nations University Operating Unit on Policy-Driven Electronic Governance (UNU-EGOV) where he had an opportunity to conduct comparative research regarding the obstacles of the digital transformation of the judiciary.

<sup>21</sup> The interviews were supposed to be personal; however, due to the movement restrictions resulting from the spread of Coronavirus, during the time of conducting this study, and due to the requirements of the AUC policy change in response to the spread of the Coronavirus, all interviews were conducted virtually via phone calls and/or zoom meetings. Due to the unavailability of personal interviews, the author was not able to conduct interviews with litigants, because the author has no personal knowledge of litigants to interview unlike the case of judges, lawyers, and courts staff, which are known to the author through his personal experience from working as a judge at the SC. The interviews were anonymized as per the request of some of the interviewed persons and as per the university policy. Interviews shall be cited in this research according to the affiliation and rank of the interviewed person and the date of the interview.

transformation issues and the decision makers at the SC to take appropriate actions towards solving the challenges mentioned in this study and achieve the long-awaited transformation.

This paper proposes the creation of entirely new policies and strategies of the digital transformation efforts. It also suggests a radical change in the methodology of designing and implementing the long-awaited automation and digitalization of the judicial processes and services in Egypt.

Analytical and critical methodologies are adopted, in examining, describing, analyzing and commenting on the efforts of digital transformation within the SC to identify weaknesses, highlight strengths and provide recommendations. The comparative methodology was not applied within this research due to the particularity of the reality of the Egyptian SC situation in terms of, *inter alia*, the judicial structure and organization and methods for judicial administration. Furthermore, since this research focuses on practicalities not the theoretical aspects of the issue in question, gaining sufficient knowledge of such practicalities may require the existence of personal knowledge of the researcher and/or conducting personal interviews with practitioners from other jurisdictions, which is not currently available to the researcher.

Chapter one of this study provides a short overview of the digital transformation in the Egyptian judiciary. It explores the critical need for the digital transformation within the judiciary in Egypt. It also examines the expected benefits resulting from the digital transformation with the judiciary. Finally, it scrutinizes the history and current status of the digital transformation efforts in the SC. Chapter two identifies, analyzes, and critically engages with the practical challenges that were and still affecting, negatively, the digital transformation of the judicial process and services in the SC. It first examines the challenges that fall within the domain of SC. Then it examines the challenges that are not in the domain of the SC. Chapter three provides an outline for the proposed practical results from the efforts of the digital transformation. It first examines the desired outputs for the judicial department. Then it covers the other two departments of the SC i.e. the advisory department and the legislative department. Finally, the conclusion provides a summary of the study.

## **I. Efforts of the digital transformation of judicial processes and services in the SC:**

The objective of using modern technology to enhance the quality of the judicial processes and services within the SC is a long-standing objective, not a recently developed one. However, its importance became much clearer with the expansion of the SC whether in terms of the creation of branches in the majority of governorates of Egypt or in terms of the increasing jurisdiction attributed to the SC.<sup>22</sup>

There are several terminologies associated with the process of using ICT to enhance the operations, processes, and services within an institution e.g. digitization, digitalization, and digital transformation.<sup>23</sup> Many frequently use these terminologies interchangeably; however, they do not practically have the same meaning. There are, still, some debates and controversies among academics and practitioners regarding the accurate definition of each terminology and its exact use.<sup>24</sup> The examination of such controversies is beyond the scope of this research. Some other terminologies are used within different sectors. In the governmental sector, the terminologies e-government, digital government, and online government are used, almost, interchangeably to mean “the use of internet technology as a platform for exchanging information, providing services and transacting with citizens, businesses, and other arms of government”.<sup>25</sup>

In the judicial sector, the terminology “e-court” is used to reflect “A secure, interactive, it organization available on the world web, which enables the litigants to file lawsuits, submit documents, and track the procedures of lawsuits; and which enables judges and their subordinates to settle lawsuits, through modern technology applications”.<sup>26</sup> This should be

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<sup>22</sup> During the last decade, the SCC issued several decisions by virtue of which the jurisdiction to rule on several types of litigations was granted to the SC instead of Courts of General Jurisdiction.

<sup>23</sup> See, Digitization, digitalization and digital transformation: the differences, <https://www.i-scoop.eu/digital-transformation/digitization-digitalization-digital-transformation-disruption/> (last visited October 30, 2020).

<sup>24</sup> See Schallmo D.R.A., Williams C.A. History of Digital Transformation. In: Digital Transformation Now! 4 (2018).

<sup>25</sup> See, What is Electronic Government (e-Government), <https://www.igi-global.com/dictionary/investigating-enterprise-application-integration-adoption/9385> (last visited April 12, 2021).

<sup>26</sup> See, Abd Aulaziz EL-Ghanem, The Electronic Court 15 (2017).



differentiated from the terminology “digital court”, which might be used to refer to a specific type of specialized courts that are tasked to settle digital crimes and crimes committed through modern ICT.<sup>27</sup>

This chapter introduces, briefly, the digital transformation within the SC. It starts with a brief examination of the current status of the judicial processes and services. Then it scrutinizes the benefits from the digital transformation. After that, it explores the relationship between the digital transformation and the judicial reform. Finally, it examines the history and current status of the digital transformation.

#### A. The current status of the judicial processes and services:

In the following paragraphs, a glimpse of the current status of judicial processes and services in Egypt is presented, in order to identify the need for the digital transformation as being one of the aspects of the judicial reform.

The current Egyptian Constitution guarantees the right of litigation to everyone and the state’s obligations to guarantee the accessibility of judicature to litigants and to work to expedite the adjudication of cases.<sup>28</sup> This is not new, and the same provision is repeated in each constitution, starting from the constitution of 1923.

Despite the repeated and periodical public speech from the government and the judicial institutions confirming the commitment to prompt justice and the resulting increasing trust in the judiciary and the rule of law in Egypt from both the Egyptian citizens and the international community, the practical reality reflects a quite different situation.

Once you enter the majority of courts’ buildings in Egypt, the traditional scenes include the following:<sup>29</sup>

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<sup>27</sup> See, Mohamed Eltersawy, *Electronism of the judiciary between theory and practice in light of the experience of the Egyptian and Emirati legislators* 84-85 (2019).

<sup>28</sup> See, Constitution of the Arab Republic of Egypt (Dustur Jumhuriyat Misr al-Arabbiyah) [Egy const.] of January 18, 2014, sec. 4, art. 97. In *Egy OG* of January 18, 2014, vol no.3 bis (a), 2.

<sup>29</sup> See *generally*, Safaa Sedky, *Obstacles to Judicial Justice in Egypt* (2010). This book is based on a doctoral thesis to the same author titled “The impact of institutional and organizational reform on the efficiency of public services provided to the public in the judiciary”. This thesis includes a theoretical part and a field part, where several interviews with litigants, court employees, and judges were conducted.

1-A large number of queues everywhere in the court building. A queue in front of the front office of filling cases (in the courts where a front office exists, the situation is much worse in the majority of courts which does not have front offices yet). Another queue in front of the cashier is waiting to pay the judicial and other fees. A third queue in front of the walls next to the halls where the judicial sessions are held so lawyers and litigants can read the papers posted on the walls, including the registry of each hearing. A number of queues in front of the desks of judicial secretaries and officials so lawyers and litigants can submit applications to, among others, inquire about the status of cases, view the documents of cases, and get copies of documents. According to some studies, around 52% of the interviewed litigants mentioned that court timings are inappropriate; litigants mentioned that they had to wait for a very long periods due to the continuous non-respect for work timings from court staff and judges, the limited number of court staff, the limited working hours per day, and the non-existence of replacement in case of an employee absence.<sup>30</sup>

2-A large number of papers stacks everywhere in the court building, especially next to judges' offices and judicial secretaries offices. These papers stacks belong to the pending cases, which are currently being settled.<sup>31</sup> There is no place to secure them securely and with quick access

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<sup>30</sup> *Id.* at 87-88 & 99-100. Interview (1) with a working employee at the SC – mid-level – March 27, 2021. Interview (2) with a working employee at the SC – mid-level – February 28, 2021 – on the file with the author.

*See*

*also,*

<https://www.youm7.com/story/2020/4/1/%D8%A7%D9%84%D8%AA%D8%AC%D9%85%D8%B9%D8%A7%D8%AA-%D9%85%D8%B3%D8%AA%D9%85%D8%B1%D8%A9-%D9%81%D9%89-%D8%B2%D9%85%D9%86-%D9%83%D9%88%D8%B1%D9%88%D9%86%D8%A7-%D8%A7%D8%B2%D8%AF%D8%AD%D8%A7%D9%85-%D8%B4%D8%AF%D9%8A%D8%AF-%D8%A3%D9%85%D8%A7%D9%85-%D9%85%D8%AD%D9%83%D9%85%D8%A9-%D8%A7%D9%84%D8%AC%D9%8A%D8%B2%D8%A9/4700150> (last visited April 12, 2021). That is why a member of parliament raised this issue officially in the parliament and asked the MOJ for clarifications about the crowdedness at courts' buildings, *see* <https://egypls.com/%D8%A8%D8%B3%D8%A8%D8%A8-%D8%AA%D9%83%D8%AF%D8%B3-%D8%A7%D9%84%D9%85%D8%AD%D8%A7%D9%83%D9%85-%D9%88%D8%B5%D8%B9%D9%88%D8%A8%D8%A9-%D8%AA%D9%86%D9%81%D9%8A%D8%B0-%D8%A7%D9%84%D8%A7%D8%AC%D8%B1%D8%A7/> (last visited April 12, 2021).

<sup>31</sup> There are no accurate statistics regarding the number of lawsuits before the SC. Some claims that there were more than two million lawsuits before the SC on 2003, *see*, Mahmoud Mokhtar, Using information technology to facilitate civil litigation procedures (2013). According to an official statement from the Chairman of the SC, the SC issued judgments on 1954965 lawsuits during the 2019/2020 judicial year out of a targeted number of 2003506 lawsuits. The official statement is *available at*, <http://gate.ahram.org.eg/News/2537130.aspx> (last visited April 12, 2021). This reflects only the number of lawsuits that was settled during one judicial year not the entire number of lawsuits existing before the SC.

when needed; therefore, they are stored in the corridors of court buildings.<sup>32</sup> The loss of case files happens periodically due to the inappropriate storage places and techniques of the case files.<sup>33</sup> Some scholars found out that 78% of court staff complain about the inappropriate work places and that some of the interviewed court staff mentioned that several lawsuits files were burnt down several times due to the widespread unauthorized smoking in courts' corridors.<sup>34</sup>

3-A large number of litigants who look exhausted and tired while there are no waiting areas for litigants available, especially those litigants coming from far or remote areas to finish some procedures before courts. Some courts exist only in Cairo as being the capital of Egypt i.e. SCC, the Court of Cassation (hereinafter, CC), and the SAC. According to some studies, 61% of the interviewed litigants mentioned that there are no waiting areas for litigants at all or there are limited and inappropriate waiting areas in terms of lighting, ventilation, level of cleanliness; among the key other findings of the same study, is that the majority of courts does not have a one stop shop i.e. front office that gathers employees doing several connected tasks; therefore, litigants are required to deal with several employees in different floors and sometimes in different buildings to get their transactions done.<sup>35</sup>

Furthermore, the headquarters of the majority of state institutions and authorities exist in Cairo; serving the judicial documents to these institutions takes a considerable period. Therefore, it is customary that after filling the case before a court in Alexandria, for example, that the claimant to take the notice of claim and deliver it in person in the public institution/authority headquarter in Cairo. In addition, the SC courts were not available in the majority of governorates until after

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<sup>32</sup> Interview (3) with a working employee at the SC – mid-level – March 27, 2021– on the file with the author. Interview (4) with a working employee at the SC – mid-level – February 15, 2021– on the file with the author. Some scholars admits the practical reality within the majority of Egyptian courts where paper stacks of the lawsuits files and official records that are much more beyond the capacity of storage places and the offices of the court staff are left in court buildings' corridors and other areas of public nature which render them very exposed to several risks, *see*, Mahmoud, *supra* note 16, at 51.

<sup>33</sup> Interview (1) with a working judge at the SC – mid-level – February 1, 2021 – on the file with the author. Interview (6) with a working judge at the SC – senior judge – February 6, 2021– on the file with the author. Interview (1) with a practicing lawyer before the SC – mid-level – March 1, 2021– on the file with the author. *See also*, <https://www.almasryalyoum.com/news/details/1100555> (last visited April 12, 2021).

<sup>34</sup> Sedky, *supra* note 29, at 185-189.

<sup>35</sup> *Id*, at 83. *See also*, <https://www.youm7.com/story/2015/6/2/%D9%87%D9%85%D9%88%D9%85-%D8%B1%D8%AC%D8%A7%D9%84-%D8%A7%D9%84%D8%B9%D8%AF%D8%A7%D9%84%D8%A9-10-%D9%85%D8%B4%D8%A7%D9%83%D9%84-%D8%AA%D8%B9%D8%B7%D9%84-%D8%AA%D8%AD%D9%82%D9%8A%D9%82-%D8%A7%D9%84%D8%B9%D8%AF%D9%84-%D9%81%D9%89-%D9%85%D8%B5%D8%B1/2207476> (last visited April 12, 2021).

the 2011 revolution where several decisions from the SC courts obliged the state to transfer building that were affiliated with the dissolved National Party and the Ministry of Interiors to become branches for SC courts.<sup>36</sup>

These above-mentioned scenes are the traditional ones in court buildings; however, recently, the situation is much worse since the riots during the revolution of 2011. Many court buildings were burnt down and were not yet replaced,<sup>37</sup> so the judicial sessions are held in inappropriate places, which were and still the only available,<sup>38</sup> a large number of cases files and original copies of documents were burnt in the riots, thus leading to the loss of litigants rights and almost without a possibility to continue litigation due to the incapability of getting copies from the burnt documents.<sup>39</sup> These scenes are not only in courts' buildings but also in almost all associated judicial services, e.g., the Real Estate Registration and Notarization Agency.

There are no official national data and/or statistics available regarding measuring the public trust in the judiciary, the average time of settling cases, access to justice, and other relevant data and/or statistics that can be used in order to clarify the different aspects of the issue in question. There is also a severe lack of the unofficial statistics i.e. statistics by civil society organizations and/or statistics resulting from academic research/studies. However, some scholars provides some statistics based on filed research that they have done, for example, some scholars provide that around 41% of the litigants do not trust the judiciary, while 59% of them accept the

<sup>36</sup> See, for example, <https://gate.ahram.org.eg/News/100295.aspx>, <https://gate.ahram.org.eg/News/584713.aspx>, <https://gate.ahram.org.eg/News/1252791.aspx>, <https://gate.ahram.org.eg/News/360151.aspx>, and <https://gate.ahram.org.eg/News/2237319.aspx> (last visited April 12, 2021). Currently, the SC courts are not available in only a limited number of governorates.

<sup>37</sup> According to a statement from the chairman of the Courts' Buildings Agency at the MOJ the number of burnt courts' buildings exceeds fifty building, available at <https://akhbarelyom.com/news/newdetails/2742374/1/-%D8%A7%D9%84%D8%B9%D8%AF%D9%84--57-%D9%85%D9%82%D8%B1%D8%A7-%D9%84%D9%84%D9%85%D8%AD%D8%A7%D9%83%D9%85-%D9%88%D8%A7%D9%84%D9%86%D9%8A%D8%A7%D8%A8%D8%A7%D8%AA-%D8%AA%D8%B9%D8%B1%D8%B6%D8%AA-> (last visited April 12, 2021).

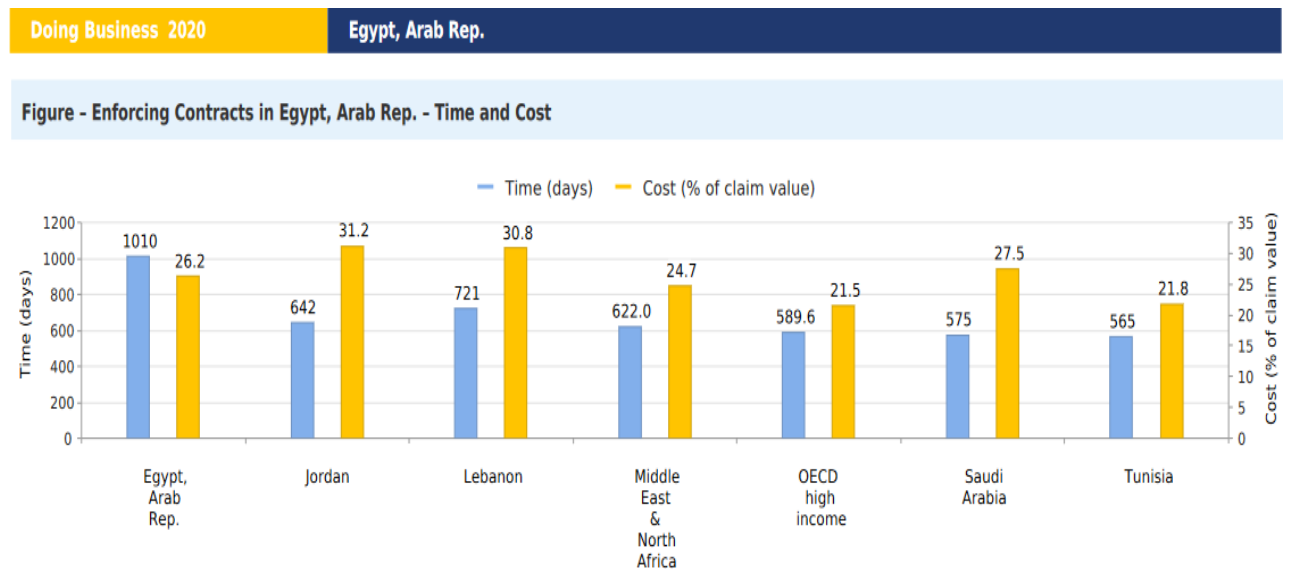
<sup>38</sup> Interview (3) with a working prosecutor at the PP – mid-level – February 23, 2021 – on the file with the author. Interview (2) with a practicing lawyer before the SC – mid-level – February 9, 2021 – on the file with the author. Interview (1) with a practicing lawyer before the SC – mid-level – March 1, 2021 – on the file with the author. See also, <https://www.youm7.com/story/2015/6/2/%D9%87%D9%85%D9%88%D9%85-%D8%B1%D8%AC%D8%A7%D9%84-%D8%A7%D9%84%D8%B9%D8%AF%D8%A7%D9%84%D8%A9-10-%D9%85%D8%B4%D8%A7%D9%83%D9%84-%D8%AA%D8%B9%D8%B7%D9%84-%D8%AA%D8%AD%D9%82%D9%8A%D9%82-%D8%A7%D9%84%D8%B9%D8%AF%D9%84-%D9%81%D9%89-%D9%85%D8%B5%D8%B1/2207476> (last visited April 12, 2021!).

<sup>39</sup> *Id.*

privatization of some judicial services like the service of official notices.<sup>40</sup> Other scholars are satisfied with providing their personal opinion based on their personal observation rather than interviewing the different stakeholders of the litigation process, for example, some scholars clearly state that the slow and ineffective litigation procedures becomes a phenomena and a distinct feature of the Egyptian judiciary.<sup>41</sup>

There are a few of data/statistics that are published internationally and can be cited in order to illustrate/reflect the current situation of judicial process and services in Egypt. The data/statistics retrieved from the World Bank doing business report<sup>42</sup>, as one example of the internationally published data/statistics on the current status of judicial process and services in Egypt, clearly reflects the inappropriate status of the outcomes of the judicial process, especially in terms of the length of the proceedings and the quality of the processes. It should be noted that the statistics focus, only, on enforcing contracts and that these disputes are settled by specialized courts, i.e., commercial and economic Courts, which enjoy access to considerable resources. The actual situation is worse for other types of litigations, i.e., civil, family, and administrative disputes.

Figure 1: Doing Business Report 2020 - Enforcing Contracts in Egypt - Time and Cost.

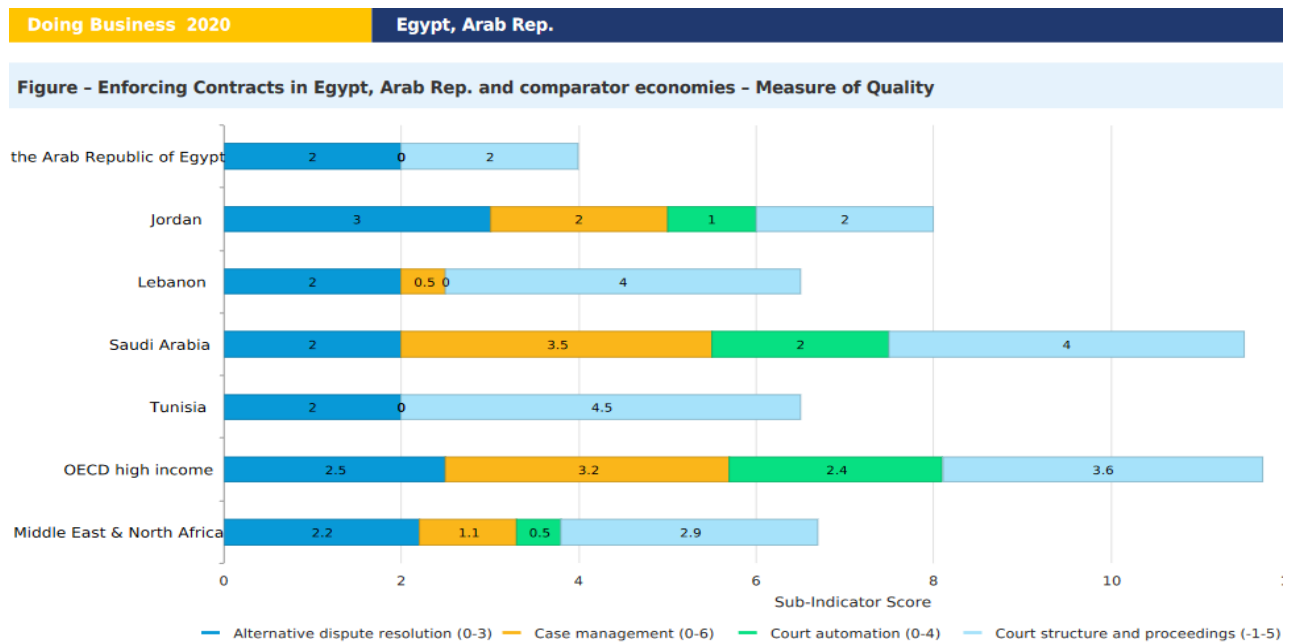


<sup>40</sup> Sedky, *supra* note 29, at 108-111.

<sup>41</sup> See generally, Ahmed Hendy, Electronic litigation: Towards the Use of Electronic Means in Litigation 8-11 (2014). See also, Sedky, *supra* note 29, at 11-12.

<sup>42</sup> Doing Business Report 2020: Economy profile-Arab Republic of Egypt, 2020, <https://www.doingbusiness.org/content/dam/doingBusiness/country/e/egypt/EGY.pdf> (last visited October 29, 2020).

Figure 2: Doing Business Report 202 - Enforcing Contracts in Egypt- Measure of Quality.



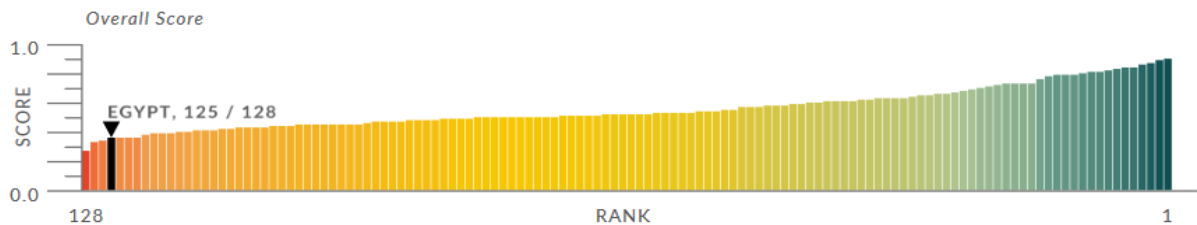
The data retrieved from the World Justice Project- Rule of Law Index also reflect the inappropriate status of the rule of law in Egypt as being ranked to be 125 out of 128 countries that were covered by the index a.<sup>43</sup> Eight factors contribute to the index’s overall score. Three of them are closely connected to the work of the judiciary, i.e., regulatory enforcement, civil justice, and criminal justice. The scores of these factors reflect the judiciary’s inappropriate status.

Figure 3: World Justice Project- Rule of Law Index - Egypt Overall Rank.

### Egypt Ranked 125th Across 128 Countries, 2020

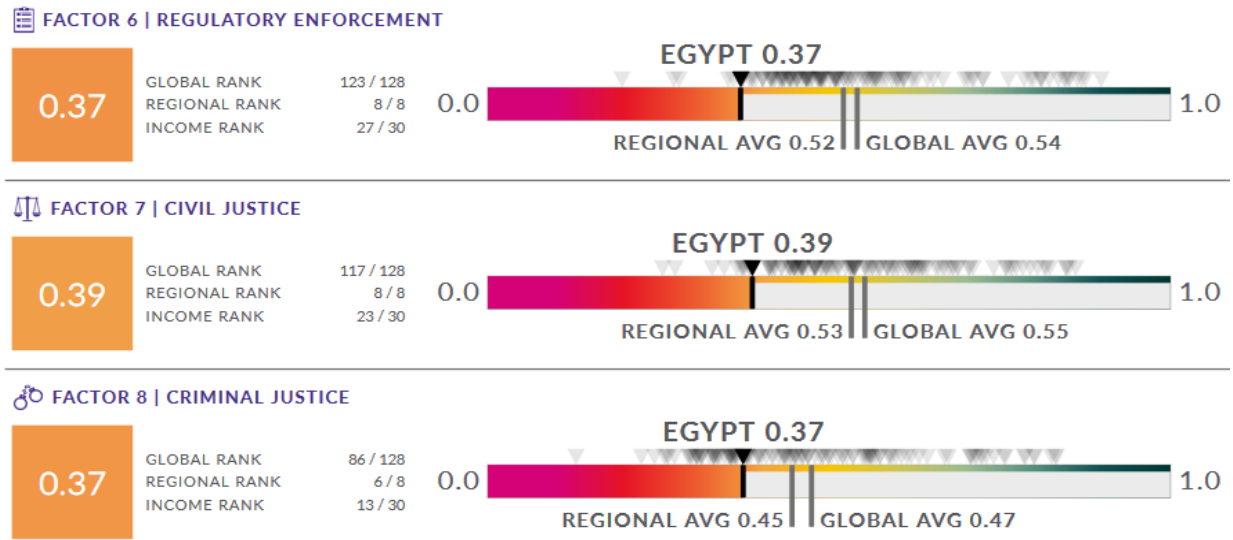
Compare 2020 score rankings for Egypt by toggling between global, Middle East & North Africa regional peers, and Lower Middle income peers.

GLOBAL REGION INCOME GROUP



<sup>43</sup> World Justice Project - Rule of Law Index: Country profile- Egypt, 2020, <https://worldjusticeproject.org/rule-of-law-index/pdfs/2020-Egypt.pdf> (last visited October 25, 2020).

Figure 4: World Justice Project- Rule of Law Index - Egypt Civil and Criminal Justice Rank.



The above-mentioned two reports i.e. Doing Business Report and Rule of Law Index are mentioned in the Sustainable Development Strategy- Egypt vision 2030 as being credible measures for the success of the efforts of the development efforts in Egypt; therefore, the author preferred to use reports that are already officially recognized by Egypt.

It appears from the above-mentioned scenes at Egyptian courts and the low ranking of the performance of the Egyptian judiciary in international rankings and reports that the judicial processes and services in Egypt are not in optimal condition. It appears also that there is an urgent need for judicial reform in order to remove the barriers that hinder the delivery of effective judicial protection.

Examining the issue of judicial reform is a matter of a great importance while writing on almost all judicial affairs; however, it is beyond the scope of this research. This research tends to focus on only one aspect of this judicial reform, which is the digital transformation as a tool for enhancing the quality of the judicial processes and services within the SC.

The use of modern ICT to enhance the quality of the judicial processes and services was and still a matter of focus during the last few decades<sup>44</sup> as a result to the benefits of this use of the ICT to

<sup>44</sup> Interview (1) with a working judge at the SC – mid-level – February 1, 2021– on the file with the author.  
Interview (2) with a working judge at the SC – senior judge – March 20, 2021– on the file with the author.

transform the processes and services of the judiciary. Judicial services are part of the wide public and governmental services that are provided by the government to individuals. The Egyptian government is trying to use digital transformation to transform public services, increase their efficiency, and easing their access.<sup>45</sup> It is sufficient to mention, on this part of the research, that many countries have included digital transformation in their agenda for judicial reform or for judicial modernization<sup>46</sup> and that Egypt is one of those countries.<sup>47</sup>

After examining the current status of the judicial processes and services in the above-mentioned paragraphs, we will scrutinize whether the digital transformation entails benefits to the judiciary, before we explore the relationship between the digital transformation and the judicial reform in the following two sections of this chapter.

#### B. The benefits of the digital transformation:

Many scholars recognize that the use of modern technology is a core aspect in increasing the effectiveness of the judicial performance and thus leading to prompt justice.<sup>48</sup> There is no doubt that many benefits can be achieved from the use of modern ICT technology in the judicial sector.<sup>49</sup>

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<sup>45</sup> See, media statements from top officials concerning the Egyptian government reliance on digital transformation to enhance the quality and delivery of public services, *available at*, <https://gate.ahram.org.eg/News/2614226.aspx> and <https://gate.ahram.org.eg/News/2143149.aspx> (last visited April 4, 2021).

<sup>46</sup> See, for example, efforts regarding the digital transformation as a mean of judicial reform in some countries, *available at*, <https://www.gouvernement.fr/en/the-five-justice-system-projects>, <https://rm.coe.int/european-judicial-systems-efficiency-and-quality-of-justice-cepej-stud/1680786b57>, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/761376/NEW\\_SOUTH\\_WALES.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/761376/NEW_SOUTH_WALES.pdf), <https://saudigazette.com.sa/article/602112>, <https://www.courts.ca.gov/documents/jctc-Court-Technology-Strategic-Plan.pdf>, and [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_2246](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2246) (last visited April 4, 2021).

<sup>47</sup> Egypt places great emphasis on the digital transformation to enhance the judicial service, especially in the last few months due to Covid-19 and the resulting interruptions in the delivery of judicial services, *see*, <https://www.elwatannews.com/news/details/4721190>, <https://gate.ahram.org.eg/News/2569928.aspx>, <https://gate.ahram.org.eg/News/2411674.aspx> (last visited April 4, 2021). *See also*, regarding the effect of Covid-19 on the Egyptian judiciary Sahar Emam, *Corona pandemic and its repercussions on the judicial system*, 6 JOURNAL OF LEGAL AND ECONOMIC STUDIES 1–146 (2020), *available at*, [https://jdl.journals.ekb.eg/article\\_105088\\_6e59649aee02133eb9a0f07067effc9e.pdf](https://jdl.journals.ekb.eg/article_105088_6e59649aee02133eb9a0f07067effc9e.pdf) (last visited April 5, 2021).

<sup>48</sup> Hendy, *Supra* note 39, at 11-12.

<sup>49</sup> *Id.* at 21.



Almost all of the stakeholders of the justice services make benefit from the digital transformation in the justice sector; even more, the benefits extend to those who are not directly in contact with the justice services. This will be illustrated in the following paragraphs.

1. As for the litigants and lawyers:

They will benefit from the possibility of gaining easier access to court services, e.g., filing new lawsuits,<sup>50</sup> tracking existing lawsuits, examining the documents submitted by the other party, submitting motions and documents, and paying fees remotely and 24/7.<sup>51</sup> This means that litigants and lawyers do not have to bear the difficulties of being physically existing in the court premises to access the court services<sup>52</sup> and that they can access such services without being restricted to official work hours.

This is of special importance considering that the working hours are limited for many court transactions to almost three or maximum four hours per day, because many court transactions require the payment of fees and the cashier, in most courts, usually closes by noon in order to be able to deposit the collected money in the court bank account. This means also that they do not have to waste time to finish their transactions, which can be submitted electronically in a few minutes required to fill in the required forms and pay the required fees.<sup>53</sup> In March 2021, the MOJ launched a trial service to enable litigants to request and receive some court's certificates from machines that are available in different location instead of going to courts to do so; however, this service is limited to the OCs and does not include the SC.<sup>54</sup>

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<sup>50</sup> In practice, lawyers file almost all cases; however, the law does not require so but only requires the signature of a lawyer, who should be accepted before the court according to the degree of the court, on the petition/complaint. Therefore, a litigant can file a lawsuit once he/she secures such signature. In addition, some lawsuits do not require such signature and can be initiated directly by the litigant.

<sup>51</sup> Furthermore, the direct and timeless access to the procedures of the lawsuit and the procedures and decisions taken by the court represents a tool for keeping an eye on the judicial performance, which increases the trust of the litigants on the judiciary. See, Mokhtar, *Supra* note 31, at 24.

<sup>52</sup> ELtersawy, *Supra* note 27, at 175. Interview (3) with a practicing lawyer before the SC – mid-level – March 8, 2021 – on the file with the author.

<sup>53</sup> Hendy, *Supra* note 39, at 17.

<sup>54</sup> See, <https://gate.ahram.org.eg/News/2646355.aspx> (Last visited April 12, 2021).

This results in easing the access to justice and saving time, money, and effort for the litigants and lawyers.<sup>55</sup> For example, litigants may save the financial costs of commuting to courts' buildings, thus reducing litigation costs to them; they can also benefit from accessing online informative and interactive resources/materials that provide information regarding the procedures and the entire judicial process.<sup>56</sup> Another example is the photocopying a lawsuit file, which may take up to two hours according to the current traditional system, but once there is a full digital transformation, it may take few second required to request the procedure and online payment of the required fees.<sup>57</sup>

This remote access to court services provides the opportunity to overcome the distance barrier and achieve the procedural justice among litigants.<sup>58</sup> This is of special importance in Egypt, considering the following facts. First, some courts exist only in Cairo, e.g., the SCC, The CC, and the SAC; therefore, litigants from all over the country do not have to travel to Cairo to enjoy such services.<sup>59</sup> Second, some courts, such as the economic courts and the commercial courts, do not exist in all governorates. Third, the SC courts do not only exist in some governorates, but courts premises are located only at the capital of those governorates.<sup>60</sup> Fourth, even for district courts, which should be available in different districts, they are usually gathered and located in one big building.

In addition, many litigants and lawyers find themselves required to revisit the court on specific days to be able to process their transactions because court staff, due to the increasing number of

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<sup>55</sup> Interview (4) with a practicing lawyer before the SC – mid-level – February 12, 2021 – on the file with the author. Interview (1) with a practicing lawyer before the SC – mid-level – March 1, 2021 – on the file with the author.

<sup>56</sup> See, Mokhtar, *Supra* note 31, at 34-36.

<sup>57</sup> *Id.* at 22-23.

<sup>58</sup> Mahmoud, *supra* note 16, at 46.

<sup>59</sup> Interview (1) with a practicing lawyer before the SC – mid-level – March 1, 2021 – on the file with the author. Interview (3) with a practicing lawyer before the SC – mid-level – March 8, 2021 – on the file with the author.

<sup>60</sup> Interview (2) with a practicing lawyer before the SC – mid-level – February 9, 2021 – on the file with the author. Interview (3) with a practicing lawyer before the SC – mid-level – March 8, 2021 – on the file with the author.

lawsuits, usually dedicate some specific days within the week to perform some transaction,<sup>61</sup> e.g., examining and copying the documents presented by the other party of the lawsuit.

Moreover, the fact that litigants and lawyers do not need to interact directly with court staff to process their transactions results in limiting the possibilities of corruption from the court staff.<sup>62</sup> The corruption of the court staff and the need to pay small bribes to finish the transactions was and still a traditional complaint by the litigants and lawyers. According to some studies, 63% of the interviewed litigants complained about the inappropriate treatment from the court staff and the need to pay bribes to get any transaction done; at the same time, many of the interviewed court staff complained about the pressure resulting from dealing with a huge number of litigants and lawyers every day;<sup>63</sup> therefore, separating the service providers from the service receivers might achieve their mutual convenience.

Finally, using electronic systems for creating, processing, circulating, and archiving the documents of the lawsuits files, ensures securing the data of the litigants, maintaining the privacy of the data contained in documents, and the easiness of the retrieval of electronically stored and processed data.<sup>64</sup> In addition, the documentation of parties defense electronically and without the intervention from the court staff tasked to write the defense of the litigants during the court session, eliminates the risks of the modification or non-writing of some of the defense and eliminates the hardships of reading the bad handwriting of the court staff, which are usually not qualified for managing speed, accurate, and appropriate writing tasks.<sup>65</sup>

## 2. As for the court staff:

The digital transformation requires and entails updating the workflow to suit the computer-based approach instead of the current paper-based approach, unifying the workflow, and removing any inconsistencies and/or duplication of efforts and/or tasks. Therefore, court staff will enjoy

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<sup>61</sup> Interview (1) with a practicing lawyer before the SC – mid-level – March 1, 2021 – on the file with the author. Interview (2) with a practicing lawyer before the SC – mid-level – February 9, 2021 – on the file with the author.

<sup>62</sup> ELtersawy, *Supra* note 27, at 97.

<sup>63</sup> Sedky, *supra* note 29, at 95-98 & 190-193.

<sup>64</sup> Mokhtar, *Supra* note 31, at 42.

<sup>65</sup> ELtersawy, *Supra* note 27, at 178.

working in a supportive environment, with relatively easier tasks, instead of the current work environment with an outdated, complicated workflow.

According to some studies, the majority of interviewed court staff complained about the inappropriate outdated work environment and the lack of use of modern ICT despite the fact that ICT knowledge is a requirement for being appointed in their jobs at different courts.<sup>66</sup>

One example of facilitating court staff tasks is the secretary of the circuit who is responsible for delivering and receiving lawsuits, monthly, to and from judges of the circuit. This employee will not be required to hold a register for each judge and write, manually or electronically, the details of every single lawsuit, because the electronic system will do so once the employee just marks the cases and attach them to the account of one of the judges or scan the bar code/ QR attached to the printed file.<sup>67</sup>

Furthermore, moving from a paper-based to an electronic-based environment will be an advantage to the court staff who are responsible for the circulation, processing, and storage of case files because lawsuits' files are stored in open paper files; therefore, such files may be lost or damaged. According to some studies, the majority of interviewed court staff complained about their responsibility for keeping a huge amount of lawsuits files and work records, which are circulated and kept in inappropriate conditions resulting to their responsibility for things that are beyond their control.<sup>68</sup>

Electronic storage, processing, and archiving will help in limiting the responsibility of many court staff, which are usually held responsible for incidents of loss or damage of case files.<sup>69</sup> This responsibility, which cannot, in many times, be attributed to specific court staff, was and still a matter of continuous complaint by many court staff.

Moreover, some court staff will be able to dedicate more time to finish their tasks; this quite important considering that, according to some studies, the majority of interviewed court staff

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<sup>66</sup> Sedky, *supra* note 29, at 188-189.

<sup>67</sup> Interview (1) with a working employee at the SC – mid-level – March 27, 2021– on the file with the author. Interview (2) with a working employee at the SC – mid-level – February 28, 2021– on the file with the author.

<sup>68</sup> Sedky, *supra* note 29, at 187-190. Interview (2) with a working employee at the SC – mid-level – February 28, 2021– on the file with the author.

<sup>69</sup> Mokhtar, *Supra* note 31, at 44. Interview (2) with a working employee at the SC – mid-level – February 28, 2021 – on the file with the author.

complain about the increasing amount of work, the need to stay for several hours after the end of official work hours, and the resulting pressure on them while doing their tasks.<sup>70</sup>

For example, the cashier will not be required to finish by noon, go to the bank, and bear the responsibility of carrying a huge amount of money because of the modern payment solutions, e.g., paying with credit cards and/or online payment will save all this time and effort.<sup>71</sup>

Finally, allowing litigants and lawyers to file lawsuits, track existing lawsuits, and perform a variety of transactions remotely and without heading to the court premise, entails saving effort and time of court staff; this is important because current court staff is suffering from work pressure resulting from the State plan to limit the size of the administrative apparatus.<sup>72</sup>

### 3. As for judges:

The current judicial work regulations poses huge administrative burdens on judges while performing their main tasks i.e. settling disputes.<sup>73</sup> These burdens include, *inter alia*, the need to travel from place of residence to court premises which is usually located in another governorate,<sup>74</sup> the need to carry a large number of lawsuits files each time of commuting to and from court premises,<sup>75</sup> the burden of preparing and writing the judicial decision for each lawsuit without the ability to write one decision for similar lawsuits,<sup>76</sup> the burden to physically attend judicial hearing sessions which might take up to eight or more hours per session due to the large number of lawsuits examined each session,<sup>77</sup> the burden of writing a monthly exhaustive list of

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<sup>70</sup> Sedky, *supra* note 29, at 187-190.

<sup>71</sup> Interview (1) with a working employee at the SC – mid-level – March 27, 2021– on the file with the author.

Interview (3) with a working employee at the SC – mid-level – March 27, 2021– on the file with the author.

<sup>72</sup> Interview (3) with a working employee at the SC – mid-level – March 27, 2021– on the file with the author.

Interview (4) with a working employee at the SC – mid-level – February 15, 2021– on the file with the author.

<sup>73</sup> Interview (7) with a working judge at the SC – mid-level – March 20, 2021 – on the file with the author.

Interview (9) with a working judge at the SC – mid-level – February 20, 2021 – on the file with the author.

Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

<sup>74</sup> The current judicial regulations require judges to work in other governorates other than the governorates of their habitual residence. Furthermore, they are relocated to work around the country for almost every judicial year (starting from October 1 until September 30) or a couple of years. This is to overcome the shortage of judges and to ensure a high degree of impartiality of judges.

<sup>75</sup> Interview (6) with a working judge at the SC – senior judge – February 6, 2021– on the file with the author.

<sup>76</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

Interview (4) with a working judge at the SC –junior judge – March 10, 2021 – on the file with the author.

<sup>77</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

all judicial decisions he/she has made,<sup>78</sup> printing all those decisions and attaching each decision to the concerned lawsuit, and the burden of reviewing the manually written judicial records with the judicial secretary of the circuit to verify their correctness.<sup>79</sup>

The possibility of performing almost all judicial tasks, e.g., receiving and delivering court files, signing lawsuits records, attending hearing sessions, and signing a variety of administrative documents remotely and the possibility of making use from some automated decisions, means saving money, time, and efforts for judges<sup>80</sup> who are required to travel almost weekly<sup>81</sup> to and from their courts to their residences.<sup>82</sup> It will also limit the responsibility to keep the paper case files from loss or damage during the frequent trips to and from courts.<sup>83</sup>

Judges will also make many benefits from the digital transformation while performing their main task, i.e., settling disputes. In Egypt, there are no official data and/or statistics regarding the numbers of effective laws; however, some resources mention that they are more than fifty thousand law.<sup>84</sup> This number does not include the other legislative instruments, e.g., statutes and decrees by the president, the cabinet, ministers, and governors. According to some studies, 100% of the interviewed judges complained about the widespread and increasing legislative inflation phenomena in Egypt and their inability to cope up with the rapidly increasing legislation.<sup>85</sup>

Judges do not have effective access to the legislation and courts decisions, i.e., judicial precedents, despite the fact that lower courts should comply with the principles stated by higher

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<sup>78</sup> Interview (1) with a working judge at the SC – mid-level – February 1, 2021 – on the file with the author.

<sup>79</sup> Interview (3) with a working judge at the SC – senior judge – February 15, 2021 – on the file with the author.

<sup>80</sup> Mahmoud, *supra* note 16, at 49.

<sup>81</sup> Some judges travel to their courts weekly while others travel biweekly. In limited circumstances, some judges travel monthly. It depends on the distance of travel and the work pressure at the court. Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author. Interview (6) with a working judge at the SC – senior judge – February 6, 2021 – on the file with the author.

<sup>82</sup> Interview (6) with a working judge at the SC – senior judge – February 6, 2021 – on the file with the author. Interview (8) with a working judge at the SC – mid-level – April 10, 2021 – on the file with the author. Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

<sup>83</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author. Interview (4) with a working judge at the SC – junior judge – March 10, 2021 – on the file with the author. Interview (9) with a working judge at the SC – mid-level – February 20, 2021 – on the file with the author.

<sup>84</sup> This number was mentioned in a memorandum submitted to the Egyptian parliament from the High Committee for Legislative Reformation during the preparations for the adoption of a new civil, commercial, and administrative code of procedures. Some scholars estimate the number of legislation in Egypt as of January 2004 to be around 232849 legislation, *see*, Sedky, *supra* note 29, at 82.

<sup>85</sup> *See*, Sedky, *supra* note 29, at 142-146.

courts, e.g., the CC, the SCC, and the SAC.<sup>86</sup> The official basic source of knowledge is printed summaries issued by technical bureaus.<sup>87</sup> The making of such summaries consumes time so for example the summary printed and distributed in 2020 usually contain decision that were issued during the period from 2010 to 2015;<sup>88</sup> therefore, this is not a working strategy to keep judges updated of recent supreme courts principles. The MOJ tried to provide judges with CDs that contain the recent and latest judicial precedents from supreme courts; however, these CDs were defective, incomplete, and unreliable.<sup>89</sup>

According to some studies, the majority of interviewed judges complained about the lack of effective access to legislation and judicial precedents, the limited role played by the MOJ and the judicial institutions on this regard, and the need to pay money to get the services of the databases of private companies.<sup>90</sup>

The current situation is that judges resort to some databases developed by private companies,<sup>91</sup> which depend on getting judicial decisions through paying court staff to get photocopies of those decisions, then using data entry clerks to enter and update data into the database, and finally link those judicial decisions to the relevant legislative instruments.<sup>92</sup>

However, those private databases are not very reliable because they are not comprehensive i.e. contain all judicial decisions and legislative instruments, they also may contain several typos and unverified information, and they are paid services which are not available for free for judges so judges have to pay to use such services.<sup>93</sup>

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<sup>86</sup> Interview (6) with a working judge at the SC – senior judge – February 6, 2021– on the file with the author.

Interview (4) with a working judge at the SC –junior judge – March 10, 2021– on the file with the author.

<sup>87</sup> See, Sedky, *supra* note 29, at 145.

<sup>88</sup> *Id.* Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*, at 119-122.

<sup>91</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

Interview (6) with a working judge at the SC – senior judge – February 6, 2021 – on the file with the author.

<sup>92</sup> See, for example, <https://www.eastlaws.com/>, <http://www.laweg.net/Default.aspx?action=HP>, and <https://www.laa-eg.com/Sections/Users/home>. (last visited March 25, 2021)

<sup>93</sup> Interview (1) with a working judge at the SC – mid-level – February 1, 2021 – on the file with the author.

Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

There are some current legislative and judicial databases developed by official public institutions in Egypt. This includes the following databases. The MOJ database,<sup>94</sup> the CC database,<sup>95</sup> the Public Prosecution database,<sup>96</sup> the IDSC at the Egyptian Cabinet database,<sup>97</sup> and the official State Printing Services database.<sup>98</sup>

However, all those databases are not very reliable because, despite being comprehensive, they do not offer the history of the legislative amendments of legislative texts which is important to judges who apply the legislative text as it was at the time of its application to the merits of the case, furthermore, they offer limited link between legislative instruments and the judicial decisions so the possibility of effective customized research using results filters is not very effective, and finally, they suffer from a very high frequency of technical errors so the service is not stable.<sup>99</sup>

The digital transformation allows the creation of a comprehensive database, which contains all the laws, decrees, statutes, ministerial decisions, and all other instruments with regulatory and/or legislative impact<sup>100</sup> in addition to all the decisions of the different courts, especially supreme courts. The digital transformation also allows incorporating all the existing and future decisions from the court system directly to a unified judicial database while minimizing the human intervention by using automated detection of relevant legislative texts in judicial decisions, automated linkage between them, and immediate update of the database once new decisions are uploaded into the court system; furthermore, valuable academic research, commenting on judicial principles or jurisprudence, can also be added to this database.<sup>101</sup> This provides judges with an effective solution to access courts and judicial precedents as being a core tool for judges to settle disputes.<sup>102</sup>

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<sup>94</sup> Available at, <https://emj-eg.com>. (last visited March 25, 2021)

<sup>95</sup> Available at, <https://www.cc.gov.eg/judgments>. (last visited March 25, 2021)

<sup>96</sup> Available at, <https://www.eg-pp.com>. (last visited March 25, 2021)

<sup>97</sup> Available at, <https://elpai.idsc.gov.eg>. (last visited March 25, 2021)

<sup>98</sup> Available at, <http://alamiria.laa-eg.com/ETash/TashSrch>. (last visited March 25, 2021)

<sup>99</sup> Interview (1) with a working judge at the SC – mid-level – February 1, 2021 – on the file with the author.

Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

<sup>100</sup> Hendy, *Supra* note 39, at 18.

<sup>101</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

<sup>102</sup> Mokhtar, *Supra* note 31, at 32.



The digital transformation will also enable judges to deliberate more effectively, through GroupWare technology, e.g., an online platform for judges, instead of requiring judges to travel to meet each other to conduct the required deliberations. These solutions will allow all the judges in the same circuit to access lawsuits files and interact with each other virtually to exchange views and reach a decision. It might also allow all the judges to share views and opinions on wider judicial and legal principles instead of using social media tools, e.g., Facebook, to create closed or even secret groups to make group discussions, which judges used to do extensively before the closure of the majority of groups containing SC judges.<sup>103</sup> In recognition to the need of conducting deliberations without the necessity of gathering judges in one place, the SC issued regulation no.1 dated December 14, 2020, to regulate the work process in Administrative and Disciplinary courts during the Corona Virus pandemic. That regulation asked judges, among other things, to conduct deliberations using technological applications that allow virtual deliberations such as Skype, Zoom Meetings, and Google Meet. However, this is not an effective nor sustainable method for conducting judicial deliberations for many reasons including the limited number of the attendees of such online meetings, the need to be online at the same time, and the relative difficulty for using such platform.<sup>104</sup>

Finally, the digital transformation will enable judges to save efforts and time and reduce the number of material errors while writing judgments<sup>105</sup> through the electronic retrieval of pre-entered information e.g. names and information of litigants and their legal representatives, merits and procedures of the lawsuit, so judges do not need to rewrite those information.<sup>106</sup> This is of special importance in writing decisions on appeals because judges are required to write the merits of the lawsuit including the reasoning and conclusion of the decision of the first instance court, thus wasting effort and time in writing lengthy pieces of writing. In addition, the digital transformation allows judges to avoid issuing contradicting decisions, because the system may

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<sup>103</sup> The Chairman of the SC issued a decision to force all judges to close any groups on social media platforms, except for those groups, which are strictly closed to judges and related to the judicial work. See, <https://www.almasryalyoum.com/news/details/1984495> (last visited December 31, 2020). In practice almost all groups created by judges for the aim of group discussion and judicial deliberations were closed.

<sup>104</sup> Interview (1) with a working judge at the SC – mid-level – February 1, 2021 – on the file with the author. Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

<sup>105</sup> Hendy, *Supra* note 39, at 18. Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

<sup>106</sup> *Id.* at 33.

alarm judges of the existence of another ongoing litigation between the same parties and regarding the same object.<sup>107</sup>

#### 4. As for the good administration of justice:

There are many benefits for the good administration of justice that may be driven from the digital transformation, which can be summarized in the following:

-Secure storage of court files:

Each judicial year, many lawsuits files are completely or partially lost or damaged. This happens, in most cases, unintentionally due to the excessive increase in the number of lawsuits, their storage in open paper files, not sealed envelopes or wrappers, and their circulation among several court staff and judges.<sup>108</sup> In some other cases, the loss or damage of cases is caused intentionally as a result of the corruption of court staff, i.e., the court staff does him/herself the damage or loss or neglect in securing the files in a way that allow other to damage the files.<sup>109</sup> In some other cases, the damage or loss happens due to *force majeure*, such as fire or damage caused during riots, e.g., the riots during the 25<sup>th</sup> of January revolution and during the events of 2013 resulted in burning thousands of lawsuits' files, which included original documents that cannot be replaced or reissued.<sup>110</sup>

The electronic filing, submission, processing, circulation, storage, and archiving of lawsuits files limits, significantly, the possibilities of such partial or full damage or loss of lawsuits files, court records, and other important administrative and judicial documents.<sup>111</sup> This is not applicable

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<sup>107</sup> See, Hendy, *Supra* note 39, at 18. Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

<sup>108</sup> Interview (1) with a working employee at the SC – mid-level – March 27, 2021– on the file with the author. Interview (2) with a working employee at the SC – mid-level – February 28, 2021– on the file with the author.

<sup>109</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021. Interview (1) with a working judge at the SC – mid-level – February 1, 2021.

<sup>110</sup> ELtersawy, *Supra* note 27, at 82. Interview (3) with a working prosecutor at the PP – mid-level – February 23, 2021 – on the file with the author. Interview (2) with a working prosecutor at the APA – mid-level – March 15, 2021 – on the file with the author.

<sup>111</sup> See, Mahmoud, *supra* note 16, at 51. See also, Mokhtar, *Supra* note 31, at 77. Interview (1) with a working judge at the SC – mid-level – February 1, 2021 – on the file with the author. Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author. Interview (1) with a working employee at the SC – mid-level – March 27, 2021 – on the file with the author.

only to circulating lawsuits<sup>112</sup> but also extends to the files of already processed case files, which are already archived, especially in light of the current bad status of archiving centers, which do not store closed lawsuits appropriately.<sup>113</sup>

-Securing continues provision of judicial services:

In times emergencies such as epidemic outbreaks, or riots, or any other emergencies, the provision of court services only through courts' premises results in a complete suspension of judicial services. This happened before during the riots that accompanied the 25<sup>th</sup> of January revolution which, resulted in complete closure of courts and suspension of court, prosecution, and other associated services.

This happened again due to the outbreak of the novel coronavirus. This outbreak resulted in the issuance of decisions by, among other, the Chairman of the SC, the Chairman of the Supreme Judicial Council, and the Public Prosecutor to halt judicial sessions and the majority of court services.<sup>114</sup> Those decisions made exceptions for necessary services, e.g., deciding on urgent family issues such as alimony and deciding on the continuity of precautionary detention for suspected persons. However, this does not mean that court services were regularly available to such necessary services.

Despite halting judicial decisions and the majority of court services during the period of partial public disclosure in Egypt, judges did not stop settling disputes and issuing judgments. However, the facts that there were almost no lawsuits before some judicial circuits<sup>115</sup> while others have a tremendous caseload and that several judges were relocated from working in other governorates

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<sup>112</sup> Lawsuits that are still in process and which are not closed by virtue of a final court decision.

<sup>113</sup> The electronic archiving will also assist in saving huge expenditures required for the traditional archive. See, Mokhtar, *Supra* note 31, at 77. See also, ELtersawy, *Supra* note 27, at 176-177.

<sup>114</sup> That is why; the Prime Minister issued the decree no. 1295 for the year 2020 to declare that the entire period from March 18, 2020 to June 27, 2020 as a suspension period for procedural deadlines provided by the different procedural laws. See, <https://www.lexology.com/library/detail.aspx?g=914f5f52-b05d-4559-b48e-f2dfb8e77637> (last visited April 12, 2021).

<sup>115</sup> Especially with the limited number of newly registered lawsuits at that time due to the partial public disclosure. Interview (2) with a working judge at the SC – senior judge – March 20, 2021– on the file with the author. Interview (5) with a working judge at the SC – mid-level – March 16, 2021– on the file with the author.

to work in their home governorates resulted in transferring a huge number of lawsuits among different governorates to allow judges to continue work on settling disputes.<sup>116</sup>

The possibility for the stakeholders of judicial services, e.g., court staff, judges, and lawyers, to enjoy online services, will allow the continuity of the provision of judicial services during the times of emergencies or at least secure the provision of the urgent judicial services.<sup>117</sup> Furthermore, digital transformation shall allow judges to work remotely, enjoy full access to lawsuits' files, and the electronic distribution of caseload according to a specific set of criteria. This shall save the time, effort, and risk of damage associated with the frequent transfer of paper lawsuits files during times of emergencies and ensures the fair distribution of caseload and the good administration of justice during such times.

-Maintaining the health of court staff and judges:

Court staff and judges deal with tons of paper lawsuits' files; a considerable amount of such papers are too old and capable of carrying causes for diseases. This is of special importance in times of outbreak of diseases like what happens now regarding the coronavirus outbreak because studies clarified that the virus could survive on a variety of surfaces, including paper.<sup>118</sup>

The elimination of paper use and the dependence on electronically created, processed, and stored documents can help in maintaining the health of the court staff and judges.

-Expediting the process of settling disputes:

There are considerable periods of time required by the law to allow court registry enough time for registering lawsuits, allow court staff to notify defendants of the lawsuit, and allow court registry to set the date for the first hearing session. The digital transformation allows shortening

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<sup>116</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author. Interview (8) with a working judge at the SC – mid-level – April 10, 2021 – on the file with the author.

<sup>117</sup> The SC employees were complaining about being forced to work as normal during the second and third waves of Covid-19 in Egypt, despite the fact that all other administrative institutions and even the OCs divided employees into groups to allow better working circumstances, see, <https://www.almasyalyoum.com/news/details/2224698> (last visited April 12, 2021). The digital transformation would provide the opportunity to mitigate or prevent such complaints due to the possibility of working remotely.

<sup>118</sup> Here's how long the coronavirus will last on surfaces, and how to disinfect those surfaces, (2020), <https://www.livescience.com/how-long-coronavirus-last-surfaces.html> (last visited November 1, 2020).

these periods, through the introduction of the online submission of petitions, motions, and requests, the electronic notification system, and the automated setting of the date of the first hearing.<sup>119</sup>

Judges usually adjourn lawsuits during hearing sessions to allow lawyers and litigants enough time to track lawsuits, examine the documents submitted before the court, and get knowledge of the court decisions.<sup>120</sup> This takes considerable time due to many reasons, including the excessive caseload and limited numbers of court staff. Allowing online and instant access to these services to lawyers and litigants will enable judges to shorten the delays in the procedures and expedite the process of settling disputes.<sup>121</sup>

Judges, especially administrative judges, usually order the litigants to submit documents that are issued by the government. The possibility of the exchange of documents online through a secured network that connects all governmental entities will result in saving time, effort, and money of litigants and lawyers, securing documents and limiting the possibilities of forging official documents, and expediting the settlement process by limiting the number and duration of the adjournment of the lawsuits by judges.<sup>122</sup>

The secured network among governmental institutions, the government-to-government connection, will also allow sending/receiving lawsuits files to/from other associated entities to the judiciary, i.e., the Forensic Agency, the Technical Experts Agency, the Public Documentation and Notarization Agency. Allowing an instant and secure transfer of lawsuits' files will result in expediting the time of settling the disputes. Furthermore, the judiciary can send the court orders and judgments directly to the state authorities for enforcement without requiring lawyers and litigants to follow the very long and complicated procedures of gaining an

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<sup>119</sup> The electronic notification system and the automated setting of the date of the first hearing helps also in fighting corruption on this regard. *See, Mokhtar, Supra* note 31, at 39-40.

<sup>120</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author. Interview (6) with a working judge at the SC – senior judge – February 6, 2021 – on the file with the author.

<sup>121</sup> Hedy, *Supra* note 39, at 17. Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author. Interview (9) with a working judge at the SC – mid-level – February 20, 2021 – on the file with the author. Interview (1) with a practicing lawyer before the SC – mid-level – March 1, 2021 – on the file with the author.

<sup>122</sup> *Id*, at 32. Interview (2) with a working judge at the SC – senior judge – March 20, 2021– on the file with the author. Interview (1) with a working judge at the SC – mid-level – February 1, 2021– on the file with the author. Interview (8) with a working judge at the SC – mid-level – April 10, 2021– on the file with the author.

enforceable copy of the order and/or judgment or requiring the litigant who is benefiting from an order/judgment to file a separate new lawsuit to ask for the issuance of a second copy if the original enforceable copy of that order/judgment is lost or damaged for any reason.<sup>123</sup>

Connecting the different departments and different courts among the same judicial institution<sup>124</sup> allows the transfer of lawsuits files within the same judicial institutions. This is of quite an importance because there are several delays in deciding on appeals due to the fact that lawsuits files are not transferred to the court of appeal or higher courts unless after a considerable time due to the lack of internal communications between the different courts in the same judicial institutions.<sup>125</sup> Furthermore, the instant remote access to the files of different lawsuits enables the departments that are tasked with periodical review of judges performance and the examination of litigants and lawyers complaints i.e. inspection department and technical bureaus, to do their tasks without requiring the original files to be transferred from one place to another, thus it eliminates the need to adjourn the settlement of lawsuits until the review or examination is done.<sup>126</sup>

That is why, for example, the SC formed a committee to expedite and scrutinize the transfer of files from the Administrative and Disciplinary courts (hereinafter, ADCs) to the Court of Administrative Ruling (hereinafter, CAR) and from all those courts to the SAC.<sup>127</sup> The objective of this committee is to ensure that the appellate court, whether the CAR or the SAC, receives the lawsuit file from the lower court so it can start the process of settling the appeal.

Finally, the provision of Decision Support Systems to judges to allow them access to a variety of pre-prepared and interactive templates of court reports, orders, judgments to assist judges in settling similar cases or cases that are frequently brought before courts; this will effectively assist

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<sup>123</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021. Interview (3) with a working judge at the SC – senior judge – February 15, 2021 – on the file with the author.

<sup>124</sup> Egyptian judiciary is composed of a number of institutions; this will be further explained in the next chapter.

<sup>125</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author. Mokhtar, *Supra* note 31, at 33.

<sup>126</sup> See, ELtersawy, *Supra* note 27, at 178; see also, Hendy, *Supra* note 39, at 18.

<sup>127</sup> A journal interview with the Secretary-General of the SC, available at, <https://www.elwatannews.com/news/details/3420103> (last visited April 12, 2021).

in expediting the process of settling disputes.<sup>128</sup> A similar approach is currently enforced, but through individual efforts of the majority of the judges, so they can rationalize their efforts in similar and repeated lawsuits, especially in administrative disputes related to public civil servants;<sup>129</sup> thus, replacing individual efforts with organizational efforts. The use of decision support systems based on the use of artificial intelligence applications, will lead to better results.<sup>130</sup>

#### -Enhancement of judicial administration:

The statistics, information, and data were and still prepared manually by collecting information from written reports gathered from the different courts.<sup>131</sup> This usually resulted in several errors and inaccurate data and statistics.<sup>132</sup> Even the simple statistics such as the number of lawsuits and the clearance rate of lawsuits were not accurate. This entailed misguiding judicial leadership while making decisions related to the administration of justice.<sup>133</sup> That is why, for example, the Chairman of the SC created a committee to prepare an accurate statistics regarding the number of open cases and the monthly clearance rate of lawsuits; because of the inaccuracy of the existing statistics prepared by court staff and judges working in technical bureaus. However, the new committee was also adopting traditional methods due to the lack of the use of modern technology in the SC.<sup>134</sup>

The digital transformation entails the creation, processing, and making use of a variety of accurate statistics, information, and data such as the number of lawsuits filed in one judicial year, the number of pending lawsuits, the number of settled lawsuits, and the number of lawsuits

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<sup>128</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author. Interview (1) with a working judge at the SC – mid-level – February 1, 2021 – on the file with the author. Interview (4) with a working judge at the SC – junior judge – March 10, 2021 – on the file with the author. Mokhtar, *Supra* note 31, at 33.

<sup>129</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author. Interview (6) with a working judge at the SC – senior judge – February 6, 2021 – on the file with the author. Interview (7) with a working judge at the SC – mid-level – March 20, 2021 – on the file with the author.

<sup>130</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

<sup>131</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author. Interview (1) with a working judge at the SC – mid-level – February 1, 2021 – on the file with the author.

<sup>132</sup> Mokhtar, *Supra* note 31, at 28. Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

<sup>133</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

<sup>134</sup> See, The Chairman of the SC forms a committee for counting lawsuits and expedite their settlement, (2017), <https://www.elwatannews.com/news/details/2448633> (last visited April 12, 2021)

before each court.<sup>135</sup> In addition to the statistics of the judicial performance, the digital transformation allows for the creation of accurate statistics of the performance of the court staff, thus allowing for a more accurate control over the administrative processes.<sup>136</sup> This can be used, combined with Decision Support Systems, to issue the necessary decisions to administer judicial affairs.

Furthermore, these statistics can be used in order to prepare periodical reports to be issued by the judiciary to the executive authority, the legislative authority, and even to the public in order to clarify the occasional causes that interrupt justice. This can be of quite an importance to the SC, where tens of thousands of administrative litigations are brought to courts without justification, e.g., litigations regarding monetary incentives that should be paid to civil servants in which the administrative entities usually refuse making such payments unless there is a judicial decision issued for the sake of each civil servant despite the fact that the applicable law is clear and the judicial jurisprudence is clear about settling those disputes.<sup>137</sup> Such insistence from the administrative entities to refer the matter to the SC or force the concerned person to resort to the SC causes interruptions in the judicial services because judges are overwhelmed by disputes that should not have ever reached the court.

-Saving court resources:

Courts buildings resources are limited and not appropriate to the numbers of lawyers and litigants who request judicial services. Therefore, providing online services will reduce, significantly, the number of persons who visit the courts' premises every day,<sup>138</sup> thus assisting in preserving court resources and enabling the reallocation of the limited available financial resources to other aspects such as appointing additional judges and court staff or supporting the limitedly applicable judicial fees exemption system.<sup>139</sup>

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<sup>135</sup> Mokhtar, *Supra* note 31, at 46-49.

<sup>136</sup> ELtersawy, *Supra* note 27, at 229-231.

<sup>137</sup> Article 69 of the Law No. 47 of 1972 (Law of the SC), *Al-Jarida Al-Rasmiyya*, 05 October 1973 (Egypt), allows the Chairman of the SC to make an annual report to be presented to the Prime Minister to clarify the results of the court decision and/or studies and research regarding gaps and/or ambiguity in the existing legislation and the misuse of power from a State entity.

<sup>138</sup> Mokhtar, *Supra* note 31, at 34. See also, Hendy, *Supra* note 39, at 17.

<sup>139</sup> Mahmoud, *supra* note 16, at 48.



-Contributing to the development of the judiciary:

Judicial decisions are not published online and not available to lawyers, academic researchers, and those who are interested in legal and judicial practices. The same goes for the statistics, information, and data related to the performance of the judiciary, which are not available online nor even upon request at the court premise. This affects, negatively, the development of the legal and judicial professions due to the limited academic engagement with the principles mentioned in the judicial decisions and with the performance of the judiciary in general.<sup>140</sup> Furthermore, it affects the lawyers' ability to understand and cope up with the judicial practices and jurisprudence, thus affecting lawyers' ability of effective defense of their clients' interests.<sup>141</sup>

Publishing statistics, information, and data related to the performance of the judiciary, in addition, to allow access, even with a simple fee, to the judicial database, that aims primarily to serve judges, which contains includes laws, decrees, statutes, and judicial decisions will assist lawyers, academic researchers, and those who are interested in the legal and judicial practices to engage and issue reports, studies, academic papers.<sup>142</sup> This, in turn, enriches the legal and judicial discussions and result in continuous development. Furthermore, publishing courts' decisions contribute to raising the legal awareness of the average citizens. For some comparative experiences.<sup>143</sup>

##### 5. As for the state:

The average citizen will benefit from the increased transparency resulting from the publishing of performance indicator and activity statistics, information, and data related to the work of the judiciary. The average citizen's trust in the judiciary will increase due to such increasing transparency. The average citizen's trust in the judiciary may also increase due to the higher rate of the enforcement of judicial decisions, because allowing instant connection between the

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<sup>140</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author. Interview (1) with a practicing lawyer before the SC – mid-level – March 1, 2021 – on the file with the author.

<sup>141</sup> Interview (4) with a practicing lawyer before the SC – mid-level – February 12, 2021– on the file with the author.

<sup>142</sup> Gramckow, Heike; Ebeid, Omnia; Bosio, Erica; Silva Mendez, Jorge Luis, Good Practices for Courts : Helpful Elements for Good Court Performance and the World Bank's Quality of Judicial Process Indicators, 89 (2016), available at, <https://openknowledge.worldbank.org/handle/10986/25101> (last visited April 12, 2021).

<sup>143</sup> Mokhtar, *Supra* note 31, at 61-68.

judicial authorities and other administrative institution in Egypt will paralyze those who are sentenced from conducting civil, commercial, and other transactions without settling their disputes first.<sup>144</sup>

Furthermore, the judiciary may dedicate simplified informative and interactive materials to educate the average citizens about the formation and role of the judiciary, the judicial procedures, summaries of recent important judicial decisions, the free legal aid services, and other services provided to citizens.<sup>145</sup> Thus, assist in providing a minimum limit of the legal and judicial awareness to citizens, especially with the lack of such awareness in Egypt.

Thousands of lawyers, litigants, and others commute to courts' premises every day in order to get the judicial services. These trips to and from courts' premises cost money, efforts, and time. The state can save thousands of working hours of court staff and of those who are absent from their original jobs to go to the courts' premises by guaranteeing to access justice services online. In the same way, online justice services may enable the state to save the costs of subsidizing the huge amount of gas burnt during such trips to and from courts' premises.

Furthermore, the digital transformation may enable the state to better protect the environment, and save wasted resources, e.g., paper and ink. The current paper-based procedures result in using a huge amount of paper and leaves behind a tremendous amount of paper stacks. For example, article 65 of the Civil and Commercial Procedures Code requires the submission of a number of copies of the original petition; however, court practices tend to require a higher number than stipulated by the law; generally, around nine copies are attached to the original petition in average. Such concern shall eliminated or at least significantly reduces once the use of modern ICT is adopted.<sup>146</sup>

In addition, the state will not bear the difficulties and costs of securing courts' premises during trials of special importance. It is well known that the headquarter of the SC was surrounded by protesters several times while deciding on important cases such as the privatization cases and

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<sup>144</sup> ELtersawy, *Supra* note 27, at 230-231.

<sup>145</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.  
Interview (1) with a practicing lawyer before the SC – mid-level – March 1, 2021 – on the file with the author.

<sup>146</sup> Mokhtar, *Supra* note 31, at 28.

some cases regarding the elections such as the case of deciding on the dual nationality of one of the previous potential candidates for presidency.

Finally, the digital transformation of the judiciary has a good impact on the ranking of Egypt in the international rankings, e.g., doing business report and the rule of law index. This is due to the increasing efficiency of settling disputes and enforcing contracts as well as increasing the certainty in the judicial system as a result of the publicity of the judicial decisions, thus supporting the business environment, which is a main objective for the state.<sup>147</sup>

In the previous paragraphs, the benefits of the digital transformation of judicial processes and services were examined; however, it should be noted that the degree of making use of such benefits depends on the degree of progress of the digital transformation efforts and the degree of integration with other aspects of the judicial reform.

It should be noted that the MOJ has managed to successfully achieve some progress in the digital transformation efforts with the OCs.<sup>148</sup> Some services such as electronic lawsuit filling in civil lawsuits is currently available in some courts; an integrated electronic system to allow almost fully electronic litigation is also available within the Economic Courts.<sup>149</sup>

However, there are no publicly available statistics or information regarding the actual use of such automated or electronic services yet, so it is hard to measure the degree of making benefit from the prospected benefits of digital transformation that is adopted partially in some aspects of the judicial processes and services within the OCs.

### C. The digital transformation and the judicial reform:

Judicial reform is a very wide topic. It has many facets such as, among other, the mechanisms of appointment of judges, the training of judges, the good administration of justice, effectiveness of the judicial procedures, the independence of the judiciary, and accountability of the judiciary.

The digital transformation is only a part of the efforts that should be exerted to enhance the efficiency and efficacy of the Egyptian judiciary. Judicial reform extends to other several issues

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<sup>147</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

<sup>148</sup> See, <http://gate.ahram.org.eg/News/2534172.aspx> (last visited April 12, 2021).

<sup>149</sup> *Id.*

as mentioned-above. Therefore, it should be clearly stated that the digital transformation is one aspect of the different aspects of the judicial reform; this aspect integrates with other aspects, but it is not capable of itself to change, significantly, the quality of the judicial processes and services in a sustainable way.

Some scholars consider the digital transformation as a new mechanism to overcome traditional obstacles to litigation and prompt justice.<sup>150</sup> Almost all other aspects of the judicial reform are traditional and are already being handled in different ways according to the outcomes of the interaction of many variables affecting the policy of the state towards the judiciary and the degree of influence of judges and civil society in affecting the governmental policies towards the judiciary.

The digital transformation does not raise, to some extent, the frequent social and political questions and debates that are usually associated with other aspects of judicial reform such as judicial independence and judicial accountability; nonetheless, the digital transformation can effectively integrate and enhance the other aspects of judicial reform. Therefore, the digital transformation might be considered as a top priority aspect of the different aspects of the judicial reform.

In the few following paragraphs, we will identify what is meant by the judicial reform. Then clarify the objectives of this reform. Finally, we will scrutinize the contribution of the digital transformation to the judicial reform through assisting in achieving the objective of such reform.

There is no single definition of judicial reform that is unanimously agreed upon by scholars. Some scholars define judicial reform as being “the reform of the justice system as a more comprehensive concept that includes all aspects related to the legal and judicial system that contribute to achieving justice”<sup>151</sup>. Other scholars define judicial reform as being a specific kind of policy focused on the institutional redesign of the courts’ operation”.<sup>152</sup> A third group of scholars approached the issue of judicial reform through focusing directly on the different

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<sup>150</sup> See, Mokhtar, *Supra* note 31, at 4-5.

<sup>151</sup> Mohamed Lamzoughi, Judicial reform and its relationship to the field of business and investment, 102 Moroccan Journal of Local Administration and Development 23, 25-26 (2012).

<sup>152</sup> Oyanedel J.C. (2019) The Effects of Judicial Reform on Confidence and Trust in the Courts. In: Assessing Judicial Reforms in Developing Countries. Springer, Cham. [https://doi.org/10.1007/978-3-030-14249-0\\_8](https://doi.org/10.1007/978-3-030-14249-0_8).

aspects of the judicial reform without looking for a definition of what judicial reform means<sup>153</sup> or defining such reform with consideration to its objectives.<sup>154</sup>

In fact, the judicial reform cannot be identified without recourse to the essence of the role of the judiciary in the society. The modern state includes three authorities i.e. the executive, the legislative, and the judicial authority. The judicial authority is responsible for supporting the rule of law, as being one of the core and basic pillars of the modern state, through providing the judicial protection, which guarantees rights of the individuals against other individuals and against the state authorities. The judicial protection is considered as a core human right, which allows individuals a last resort against all types of aggression to their human, constitutional, and legal rights. The judicial protection should be available to all equally, equitably, and adequately. This, in turn, entails certain safeguards that should be attached to the judicial protection in order to make it an effective protection such as access to justice, fair trial, and prompt justice. Furthermore, the judicial activity should be characterized by certain characteristics to ensure an adequate environment for providing an effective judicial protection such as independence of the judiciary and transparency and accountability of the judiciary. Therefore, the judicial reform can be simply defined as being all the reforms that aim to enhance the judicial protection available to individuals.

The judicial reform, despite being continues efforts to ensure appropriate response to the constantly evolving changes and variables in the society and the judicial activity, is not an end in itself but it is a means to an end. This end is ensuring an effective judicial protection to all individuals. Therefore, the judicial reform has certain objectives that it aims to in order to attain the general goal of delivering effective judicial protection. The objectives of the judicial reform are frequent and different. The easiest way to identify those objectives is to look at the safeguards of the judicial protection as stipulated by the constitution.

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<sup>153</sup> See, for example, Mohamed Darwish, Towards Reforming the Egyptian Judicial System: A Future Vision, The Second Annual Conference - Managing Transformation in Egypt: Political and Economic Visions, 169, 227 (2013).

<sup>154</sup> See, for example, Legal and Judicial Reform: Strategic Directions, Legal Vice Presidency – The World Bank, 26 (2003), available at <http://documents1.worldbank.org/curated/en/218071468779992785/pdf/269160Legal0101e0also0250780SCODE09.pdf> (last visited May 16, 2021).

The Egyptian constitution provides for several safeguards for the judicial protection and characteristics that should be attached to the judicial activity, so the judicial institutions can sufficiently perform its main task/duty of delivering effective judicial protection. The basic guarantees mentioned in the current Egyptian Constitution of 2014 are, summarized, as follows.

The non-discrimination among citizens, for any reason, and the equality in public rights and duties;<sup>155</sup> this means that people are equal in enjoying the right to access judicial services as being public services. The right to access to information, data, statistics, and official documents;<sup>156</sup> this general right includes individuals rights to access judicial information, data, statistics, and official documents as being public ones.<sup>157</sup> The prevalence of the rule of law and the independence, immunity and impartiality of the judiciary as being essential guarantees for the protection of rights and freedoms i.e. essential guarantees for the judicial protection.<sup>158</sup>

The due process (requirements of fair trial such as the principle of confrontation) before courts of law.<sup>159</sup> The right to litigate to all individuals, the obligation of the state to guarantee the accessibility of judicature to litigants and to expedite the settlement of disputes.<sup>160</sup> The rights of defense, with legal support to those who are financially able to afford the costs associated with resort to justice and hire lawyers to defend their rights.<sup>161</sup> The obligation of state to enforce the effective implementation to courts' orders and judgements.<sup>162</sup>

In the above-mentioned paragraphs, we tried to examine the issues of defining the judicial reform and identifying its basic objectives. In the following paragraphs, we shall try to clarify the

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<sup>155</sup> Article 53 of the current Egyptian Constitution of 2014.

<sup>156</sup> Article 68 of the current Egyptian Constitution of 2014.

<sup>157</sup> It should be noted that the enforcing legislation was not yet issued by the parliament. However, the SC has already issued several judgments to enforce this constitutional right, even in the absence of a legislation that provides the details required for the application of this constitutional right. See, for example, CAR decision on lawsuit no.63089 for the judicial year 66, decision of June 24, 2014 to allow public electronic access to the official State journal (official gazette) that includes the legislation and decrees issued by the parliament and the top executives. See also, CAR decision on lawsuit no.59439 for the judicial year 67, decision of November 17, 2015 to oblige the government to disclose the information related to the details of the settlements that are made with investors regarding administrative/state contracts that is funded by public funds.

<sup>158</sup> Articles 94 & 184 of the current Egyptian Constitution of 2014.

<sup>159</sup> Article 96 of the current Egyptian Constitution of 2014.

<sup>160</sup> Article 97 of the current Egyptian Constitution of 2014.

<sup>161</sup> Article 98 of the current Egyptian Constitution of 2014.

<sup>162</sup> Article 100 of the current Egyptian Constitution of 2014.

relationship between the digital transformation of the judicial processes and services and the judicial reform. In the previous sections of this chapter, we already examined the reasons behind the need for judicial reform in Egypt, and then we scrutinized the frequent several benefits resulting from the digital transformation of the judicial processes and services to the different stakeholders of the entire litigation process and even for the society and the state in general.

In the following paragraphs, we shall provide the necessary clarification on how these benefits resulting from the digital transformation shall assist in achieving the objectives of the judicial reform.<sup>163</sup> That is to say, after examining the benefits of the digital transformation as classified according to the beneficiaries from those benefits, we shall now classify them according to a different criterion, which is the type of objective of judicial reform they achieve.

First: The objective of promoting access to the judiciary.

Access to the judiciary require the court buildings should be close to the litigants, so it is easy to them to access courts seeking judicial protection. The SC courts are not available in all governorates and in those governorates that they exist; they exist only in the capital of the governorate. Furthermore, the SAC exists only in Cairo; therefore, all lawyers/litigants are required to travel to Cairo to file their appeal before this court.

In addition to that, actual service period in courts are three or four hours because the cashier is closed by noon as mentioned before; thus leading to limit the time available for litigants/lawyers to acquire the judicial services. Moreover, due to the limited number of court staff and the overwhelming increasing number of lawsuits and appeals, some services such as getting copies from the documents of the lawsuits are available for each judicial circuit only one or two days per week. Finally, due to the complicated procedures, the majority of judicial services require more than one visit to the court building in order to get the transaction done.

The digital transformation allows providing judicial services remotely/online, thus it will enable litigants/lawyers to avoid the hardships associated with frequent commuting to and from courts'

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<sup>163</sup> Some judicial reform initiatives by official institutions responsible for judicial affairs goes much further and consider the digitalization of the judicial processes and services as being an integral part to of the judicial protection guarantees such as the right to access to justice. See, for example, the recommendations of the 2012/2013 report on judicial reform issues by of the European Network of Councils for the Judiciary, *available at*, <https://www.encj.eu/node/268> (last visited May 16, 2021).

buildings e.g. effort, time, and money and guarantees an easy access to judicial services. Furthermore, the digital transformation allows the possibility to acquire judicial services 24/7, thus it will enable litigants/lawyers to avoid the limited time window available for them to acquire such services and avoid the need for litigants to take days off to go to courts' buildings to follow the progress of their lawsuits or acquire other judicial services. In addition to that, the digital transformation allows the possibility of providing judicial services through other government service providers such as post offices, which are available everywhere, thus enabling those who are disadvantaged geographically i.e. residing in remote areas and those who suffer from digital illiteracy to make use of the online judicial services. Moreover, the digital transformation allows litigants/lawyers to avoid being in the courts' buildings that are almost characterized by being not comfortable e.g. no appropriate waiting rooms and always crowded and noisy.

Finally, the access to judicial services requires the existence and continuation of those services all times. In times of emergencies such as riots, revolutions, and epidemics, the judicial services are interrupted. This happened before in Egypt, during 2011, 2013, and is currently happening due to Covid-19. The digital transformation allows the continuation of judicial services during such critical periods and even more, it allows the safe storage of lawsuits files and documents from sabotage such as what happened to several courts' building during 2011 and 2013.

Second: The objective of expediting the settlement of disputes and guaranteeing the due process and procedural justice.

Prompt justice cannot be fulfilled only through expediting the settlement process of disputes. Due consideration should be given also to the due process i.e. the respect of basic litigation principles. There are several reasons for prolonging the time required for settling the disputes before the SC. This includes, *inter alia*, the corruption related to the process of notifying defendants of the filing of lawsuits against them,<sup>164</sup> the frequent absence of lawyers from attending hearing sessions,<sup>165</sup> the abstention from state authorities to submitting required documents, and the need

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<sup>164</sup> It is a well-recognized widespread phenomenon that defendants bribe those in charge of the notification delivery, so they can evade attending before the court, thus allowing them to challenge the court's decision later on or at least prolonging the time needed to settle disputes.

<sup>165</sup> This is due to the current attitude from the SAC to prohibit striking off lawsuits and appeals due to the absence of lawyers/litigants from attending hearing sessions, see, the Circuit for the Unification of Judicial



to adjourn hearing sessions for considerable periods to allow the delivery of courts' orders and to allow litigants/lawyers of getting copies and provide comment on the defense of the other party. Furthermore, there is some kind of procedural injustice among litigants across the nation due to the fact that a wide category of procedures including the judicial fees differ according to the prevailing interpretation of laws, decrees, and periodical books among the court staff in each court;<sup>166</sup> therefore, some litigants/lawyers incur the burden of additional unnecessary set of procedures and judicial fees.

The digital transformation allows instant notification of the filing of the lawsuits, the court orders, and court decisions to the parties of the litigation;<sup>167</sup> therefore, there will be no need for wasting considerable periods waiting for the fulfillment of the notification duly, whether at start of the proceeding or during the proceedings. The digital transformation also allows an instant access to the documents of lawsuits, instant access to the courts orders, and the ability to provide defense and submit motions and/or administrative requests 24/7; this entails effectively shortening the time breaks between hearing sessions because all parties will enjoy instant access and possibility to provide defense; this entails also avoiding the complications resulting from the frequent absence from hearing sessions.<sup>168</sup> The digital transformation also allows procedural justice to all litigants because this transformation requires the modernization, simplification, and unification of the entire set of judicial proceedings;<sup>169</sup> thus ensuring that all litigants enjoy unified simple procedures apart from the prevailing attitudes of the court staff in each court. Finally, the digital transformation allows connecting courts to the other units of the state administrative apparatus, thus facilitating the process of delivery of courts' orders to these units and allows facilitated communication of the required documents to courts, so courts do not have to adjourn hearing sessions several times waiting for the retrieval of documents form these units.

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Principles at SAC decision on appeal no.8032 for the judicial year 49, decision of February 02, 2013. This is contrary to what happens in the OCs.

<sup>166</sup> This is explained in details in a subsequent part of this study.

<sup>167</sup> The proposed system for electronic notification is detailed in a subsequent part of this study.

<sup>168</sup> The pleadings before the SC is written not oral, *see*, the SAC decision on case no. 1172 of the judicial year 35, session of March 25, 1989. Therefore, hearing sessions play only an informative role, which is informing the parties of the defense submitted by each of them and of the court's orders. This can be satisfied through the online access. Thus, the confrontation principle is respected, while allowing more expedited justice.

<sup>169</sup> This is explained in details in a subsequent part of this study.

It is apparent from the above-mentioned that the digital transformation allows avoiding all several obstacles, thus assisting in providing a prompt justice without unnecessary delays and with full respect to the required due process.

Third: The objective of promoting the independence of the judiciary.

The independence of the judiciary is a very wide topic. This independence includes several aspects including, *inter alia*, the administrative independence in their entire administrative issues e.g. selection, appointment, retention, disciplining, circulation among courts, and assigning non-judicial tasks within or outside the judiciary. It includes also the financial independence of judges, which requires appropriate level of salaries and remuneration. Some scholars extend the scope of judicial independence to cover such issues of providing an appropriate environment to allow judges to work properly e.g. adequate courts' buildings.<sup>170</sup>

The examination of the judicial independence is beyond the scope of this research. However, it is within the scope of this research to examine whether the digital transformation has a role to play in contributing to supporting the judicial independence. It appears at the first glimpse that the digital transformation has nothing to do with judicial independence. However, the digital transformation has actually a role, even limited one, to play on this regard.

As to the administrative independence, there is a widespread concern among judges regarding the increasing intervention from the executive authority in the affairs of the judiciary,<sup>171</sup> this is accompanied by the lack of effective participation of judges in the decision making process of their affairs. The main reason for the lack of this effective participation is the tendency of judges not to attend the general assembly of judges, which is the competent authority that delegates some of its power to the chairs of courts. This attitude, within the SC, results from the need to travel from all over the country to attend the general assembly of judges and the then travel at a different time to attend the general assembly of judges of each type of courts i.e. the SCA, CAR, and ADCs; this entails incurring effort, time, and money.<sup>172</sup> Therefore, it is very usual that the

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<sup>170</sup> See, Ziad Bahha-Eldin, on the independence and impartiality of the judiciary (2020), available at <https://www.almasyalyoum.com/news/details/2051533> (last visited May 16, 2021).

<sup>171</sup> This is more apparent in OCs, where the judicial inspection department falls within the MOJ jurisdiction and the appointment of the courts' chairs is done by virtue of decision from the MJ. However, recently, the MOJ has an increasing role in interfering with the administrative affairs of SC judges.

<sup>172</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021– on the file with the author.

general assembly is adjourned then it is convened with a very limited number of judges. The digital transformation allows the effective online participation of all judges in the general assemblies and allows them to vote remotely/online.<sup>173</sup> The effective participation of the majority of judges in the general assemblies and the effective possible control on the use of delegated power to the chairs of courts entails further independence and control of judges over their affairs and a decreasing effect for the intervention from the executive authority.<sup>174</sup>

As to the financial independence, the digital transformation results in savings from the fund dedicated to the judiciary. These savings can be used to appoint more judges and further support the financial remuneration of judges. This is of special importance, especially in light of the increasing concerns regarding the limited number of judges compared to the number of lawsuits and the tendency of delegation of judges, on part-time basis and against competitive remuneration, to perform non-judicial tasks in some administrative unit and outside the judiciary.<sup>175</sup>

Finally, the digital transformation can support the judicial independence indirectly. The contributions of the digital transformation in the other aspects of the judicial reform entail the enhancement of the judicial processes and services, thus increasing the effectiveness of the judicial protection. This, in turn, increases the public confidence/trust in the judiciary. Such increasing public trust in the judiciary constitutes a pillar to support the judicial struggle to limit

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<sup>173</sup> *Id.*

<sup>174</sup> It should be noted that such effective control over the delegated powers happened only once. In 2010, the SC general assembly convened and forced the Supreme Council for Administrative Affairs to suspend the appointment of women in the SC. Later on, the assembly convened again and threatened to withdraw all powers from the chair of the SC, following his rejection to the decision of the general assembly and his decision to proceed in the appointment of women in the SC. Apart from the issue that was in question at that time i.e. women appointment as SC judges, this was the first time that the general assembly performed its role in supervising the delegated powers to the Chair of the SC. This control can assist in limiting the increasing concern regarding the selection of the SC chair by the president following the recent constitutional amendments.

<sup>175</sup> Article 186 of the current Egyptian Constitution provides for the necessity to preserve the independence and impartiality of judges and the avoidance of the conflict of interests while delegating judges to other works apart from their judicial tasks. However, some scholars heavily criticize this entire issue and consider this delegation as a serious threat to the independence of judges because it affects their impartiality in light of the competitive remuneration that is given to some judges only, not all judges; therefore, entailing the fear of motivating some judges to abandon their impartiality to get rewarded by these monetary incentives. See, for example, Mohamed Selim EL-Awa, Judiciary to where? Delegating judges outside their courts is a portal for state intervention in the judicial authority, a reading in the judicial authority project (2006), available at, <https://www.almasryalyoum.com/news/details/2172276> (last visited May 16, 2021).

the interventions from both the executive and legislative authorities. Thus, increasing the judicial independence, resulting in further support for the judiciary while performing its task. This is an important role, despite being somehow an indirect role of the digital transformation in supporting the judicial independence.

Fourth: The objective of the transparency and accountability of the judiciary.

As to the transparency, there almost currently no transparency at all regarding the activities of the SC. The SC administration does not provide information, on the website or at request, on the different statistics regarding the performance of the SC. As mentioned-above in the previous section of this chapter, the digital transformation allows overcoming the currently existing obstacle of the non-existence of several types of statistics. Once these statistics are available due to their automatic preparation through processing the data in the electronic system, they can be available to the public through the SC portal. Furthermore, there are currently several practical limitations, which effectively undermine the principle of the publicity of court hearings and sessions,<sup>176</sup> especially during the spread of Covid-19, which forced courts to prohibit entrance except for lawyers and concerned litigants only. The digital transformation allows overcoming this through providing the ability of the live broadcasting of court sessions online on the portal of the SC.<sup>177</sup>

Finally, the digital transformation allows the effective collection and extraction of the data necessary to write the annual report<sup>178</sup> containing the results of the court decision and/or studies and research regarding gaps and/or ambiguity in the existing legislation and the misuse of power from a State entity. This report was issued only once at the beginning of work of the SC and was not provided again due to the increasing jurisdiction of the SC and the limited ability to extract the necessary data. This report, when published, increases the transparency and allows the opportunity of concerned individuals to access to information.

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<sup>176</sup> The publicity of courts' sessions is a constitutional, *see*, article 187 of the current Egyptian constitution.

<sup>177</sup> *See*, Court sessions in the time of corona (2020), available at <https://www.elwatannews.com/news/details/4809254> (last visited May 16, 2021). It should be noted that such live broadcasting does not contradict with the privacy of litigants because the court panel can stop such broadcasting if it believe that there is a need for secrecy.

<sup>178</sup> Article 69 of the SC law no. 47 of 1972.

As to the accountability, the internal accountability of individual judges as to their technical errors while settling disputes and their personal conduct and any abuse of the judicial immunities is a matter of internal affairs, which is handled by judges to maintain their independence, with allowing individuals to file formal complaints regarding these issues.<sup>179</sup> The focus here is the accountability of the SC as an institution to the public. This accountability is closely connected with the transparency because the public and the civil society shall not be able to scrutinize the work and performance of the SC without being able to get the necessary information through annual reports and performance statistics, which shall be easily made and be available to the public thanks to the digital transformation.

Fifth: The objective of supporting the enforcement of the judicial orders and decisions.

There are currently several hardships regarding the enforcement of judicial decisions. There are no official information, data, and/or statistics regarding the percentage of non-enforced judicial decisions. However, the non-enforcement of judgments is a well-recognized issue, which undermines the trust in the effectiveness of the judicial protection, despite the fact that the judicial task is limited to the issuance of judgments and does not extend to implement them.<sup>180</sup>

The majority of the SC judgments are issued against administrative units within the state administrative apparatus; however, the process of enforcement is not an easy task for the beneficiaries of judgments. The process of obtaining an executory wording i.e. an enforceable copy of the judgement is very lengthy and complicated process. After obtaining such executory wording, it is very common that the administrative unit refuses the implementation of judgements through different techniques, these techniques includes the following ones. Withdrawing the annulled decision and reissuing a similar one again to force the individual to go through the lengthy and costly litigation process. Enforcing only part of the judgement without the full enforcement of the results of the judicial decision based on claiming the ambiguity of the results of the decision. Adjourning the enforcement based on the lack of

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<sup>179</sup> See, report on the accountability of the Judiciary, issued by the judiciary of England and Wales (2007), available at, <https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Consultations/accountability.pdf> (last visited May 16, 2021).

<sup>180</sup> That is why; several journalists and writers raised the issue in some newspapers. See, for example, <https://www.almasryalyoum.com/news/details/1330729> (last visited May 16, 2021). Some national public newspaper estimated the number of non-enforced judgments in 2016 to be around 10 million, see, <https://gate.ahram.org.eg/News/846960.aspx> (last visited May 16, 2021).

financial funds necessary to implement the financial results of the decision. The digital transformation assists in overcoming these obstacles through the direct electronic communication of the judicial orders and decisions directly via the secured governmental intranet from the court to the administrative unit and through allowing a direct interaction with the court in case of any ambiguity without requiring the beneficiary of the judgement to file a new lawsuit to provide an explanation of the decision. Furthermore, the SC can include the position of the different administrative units, which circumvent and try not to enforce the judicial order and decisions<sup>181</sup> in the annual report that will be directed to the Prime Minister and be available to the public. Thus, allowing the public to know the reasons for the non-enforcement of the judicial orders and decisions. Finally, concerning the SC judgments issued against individuals not administrative units, the digital transformation allows instant connection between the judicial authorities and other administrative institution in Egypt, thus it will paralyze those who are sentenced from conducting civil, commercial, and other transactions without settling their disputes first.<sup>182</sup>

Sixth: The objective of increasing the competence of those engaged in the settlement process.

Judges are the primary responsible for settling disputes; however, they are not alone because there are several other associates such as lawyers, experts, and other related professions. The lawyer is the only associate that is required to have a sufficient legal knowledge.<sup>183</sup>

The digital transformation allows increasing the legal knowledge of judges and lawyers in different ways. First, it allows them to get rid of the unnecessary administrative burdens as discussed in the previous section of this chapter, thus giving them more time and effort to exert

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<sup>181</sup> The SC will gain knowledge of the position of these administrative units in two situations. First, when the other litigation party informs the court, during the proceedings, that there is an abstention from the administrative unit to enforce the court order to deliver that party the document he/she requires from the administrative unit. Second, when the beneficiary of the judgment files a new lawsuits to issue a new judgement to overcome circumvent from enforcing the judgment. The digital transformation shall allow preparing statistics regarding the number of lawsuits/appeals that fall under one of the above-mentioned two situations, so this number and other details regarding the abstaining administrative units can be inserted in the annual report.

<sup>182</sup> ELtersawy, *Supra* note 27, at 230-231.

<sup>183</sup> Article 198 of the current Egyptian constitution provides as follows, "The legal profession is an independent profession. It participates with the judiciary in achieving justice and the rule of law, and ensuring the right to defense. It is practiced independently by lawyers, and lawyers of public sector and public business sector agencies and companies .....".

in updating their legal knowledge. Second, as discussed in the previous section of this chapter, the digital transformation allows the creation of a comprehensive database, which contains all the laws, decrees, statutes, ministerial decisions, and all other instruments with regulatory and/or legislative impact in addition to all the decisions of the different courts, especially supreme courts. The information and data provided by such database, is a core pillar in enabling judges and lawyers to conduct legal research and get up to date with the recent judicial trends. Third, as discussed in the previous section of this chapter, the digital transformation allows the creation of effective tools for deliberations, which can be used for judicial deliberations among judges and for consultations among lawyers.<sup>184</sup>

It becomes apparent, from the above-mentioned, that the digital transformation of the judicial processes and services is an important and integral aspect of the judicial reform and that it assists in achieving a plenty of the objectives of the judicial reform.<sup>185</sup>

#### D. The history and status of the efforts of the digital transformation.

In the following few paragraphs, a very brief examination of the history and an overview of the current results of the automation and digital transformation of the SC will be provided.

There are almost no officially announced statements, data, information, and/or documents regarding the efforts of the automation and digital transformation of the SC.<sup>186</sup> However, there are some scattered statements and news available on the website of the SC, the websites of some

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<sup>184</sup> The digital transformation of the judiciary itself does not provide the possibility for consultations among lawyers, but the lawyers syndicate can make use of digital transformation to provide mechanisms for consultations among lawyers. This may increase the competence of lawyers, resulting in better representation of the interest of their clients before courts and entailing supporting the overall objective of better delivery of judicial protection.

<sup>185</sup> Therefore, the digital transformation as an aspect of the judicial reform avoids the traditional pitfall of the judicial reform efforts, which is focusing on the desire to expedite the settlement of lawsuits without due regard to the other aspects of needed judicial reform. *See*, Fathy Radwan, Judicial reform as an entry point for reforming government administration in Egypt, 6 Journal of Administration studies 11, 12 (1974), available at <http://search.mandumah.com/Record/309412> (last visited May 16, 2021).

<sup>186</sup> This is partially due to the lack of any mechanism for institutional memory at the SC; this will be discussed in detail in the following chapter of this research.

governmental and private institutions, and the websites of national public and private newspapers.<sup>187</sup>

In 1982, the Chairman of the SC issued the decree number 247 for the year 1982 to create the State Council Information Center (hereinafter, SCIC), as a quick application of the presidential decree number 627 for the year 1981 regarding the creation and organization of information and archiving centers at the administrative entities.<sup>188</sup>

Several difficulties hindered the implementation of this decree, such as the lack of awareness regarding the use of modern ICT and the lack of qualified personnel to work in the center because the organizational chart did not include a department for Information Technology.<sup>189</sup>

In the late 1980s, the SC of France offered a grant to the SC of Egypt in order to be used for the introduction of the use of modern ICT.<sup>190</sup> However, there were negotiations to use the amount of the grant in other aspects, which constituted a priority at that time, such as providing the SC premises the basic maintenance; these negotiations failed, and the SC of Egypt refused the grant.<sup>191</sup>

In the late 1990s, the use of microfilm was introduced in the SC. A new administrative unit called “Microfilm Administration” was created. The work continued in this administration for a couple of years then it stopped.<sup>192</sup> In 1999, an advisory opinion was issued from the Advisory Department at the SC to prohibit the use of computers in writing the drafts of judicial decisions. This opinion was based on reasons of the necessity of compliance with judicial traditions, the

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<sup>187</sup> The basic source of information for this part is interviews with the employees and judges responsible for the automation efforts in the SC to cover the lack of documented sources of information. Furthermore, the researcher relied, partially, on his own knowledge regarding digital transformation efforts due to his work as a judge at the SC and his direct involvement in the automation efforts from 2015 to 2019. This historical part is mentioned to increase the knowledge of the reader; this part is not significantly related to the core of this research, which is the difficulties that faced the digital transformation efforts and the aspirations of the awaited digital transformation.

<sup>188</sup> Published in the Official Gazette on 04 November 1981.

<sup>189</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

<sup>190</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

<sup>191</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

<sup>192</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.  
Interview (1) with a working employee at the SC – mid-level – March 27, 2021 – on the file with the author.



necessity to keep the security of judicial deliberations, and the necessity of deep thinking in the subject matter of the merits of the lawsuit.<sup>193</sup>

In March 2002, the MOJ and the MCIT signed a cooperation protocol.<sup>194</sup> The aim of this protocol was to introduce the use of modern ICT in all judicial institutions.<sup>195</sup> In 2004, a new administrative unit called “Computer Administration” was created. During the same year, this administration worked to replace paper records of the SAC with computer-based records. Computers were used also to write the copies of judicial decisions and judgements.<sup>196</sup> In mid-2004, the information center of the MOJ contracted, on behalf of the SC who was financially dependent on the Ministry, with two private companies to provide the headquarter of the SC with equipment and the development of an automated system.<sup>197</sup>

The business analysis was conducted in 2004-2005 and the proposal of the automated system was presented to the Special Council for Administrative Affairs<sup>198</sup> for approval; however, the proposal included many changes to the current workflow.<sup>199</sup> In the late 2005, the automated system was fully developed and was deployed in specific courts for testing purposes. At the same time, the Ministry of Administrative Development (hereinafter, MAD) financed several pieces of training to the employees working at the computer administration to enable them to deal with the newly developed system.<sup>200</sup>

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<sup>193</sup> Advisory Opinion number 317 for the year 1999 dated 10 March 1999.

<sup>194</sup> MCIT and MOJ Sign a Cooperation Protocol, 2002, [https://mcit.gov.eg/en/Media\\_Center/Press\\_Room/Press\\_Releases/2201](https://mcit.gov.eg/en/Media_Center/Press_Room/Press_Releases/2201) (last visited April 12, 2021).

<sup>195</sup> The information center at the MOJ was responsible for the automation and digital transformation for all the judicial institutions and entities until 2007 when the law authorized each judicial institution to maintain its own budget. Since then, the center becomes responsible, only, for the automation and digital transformation of the OCs.

<sup>196</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author. Interview (1) with a working employee at the SC – mid-level – March 27, 2021 – on the file with the author.

<sup>197</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author. Interview (1) with a working employee at the SC – mid-level – March 27, 2021 – on the file with the author. Raya Company to provide equipment and infrastructure. Legislation & Development Information Systems Company to develop the software.

<sup>198</sup> The highest administrative authority in the SC; it is the equivalent of the Supreme Judicial Council in the OCs.

<sup>199</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author. Interview (1) with a working employee at the SC – mid-level – March 27, 2021 – on the file with the author.

<sup>200</sup> *Id.*

In September 2006, the Chairman of the SC issued the decree number 37 for the year 2006 to enforce the first phase of the automated system i.e. automated filing, while keeping the existing paper-based system for one year. Shortly after the deployment of the automated system, many bugs were discovered and the system was frequently crashed leading to repeated interruptions of the workflow, especially in light of the lengthy and costly process of fixing the system.<sup>201</sup> Therefore, the paper-based workflow survived and the trial to use the automated system failed. However, the use of computers continued for purposes of writing judicial decisions and orders.<sup>202</sup>

From 2009 to 2012, two working groups on infrastructure and software development were created, in order to revive the use of the automated system.<sup>203</sup> A slightly modified version from the automated system was created in order to overcome the existing bugs and flaws. A first version for the program of automating the workflow of the advisory department was created.<sup>204</sup> In 2012, the Chairman of the SC issued the decree number 526 for the year 2012 to create and organize the SCIC. In the same year, a protocol was signed between the SC and the MAD regarding the development of the information structure and institutional development of the departments of the SC at the main headquarter and all the other premises in the governorates.<sup>205</sup>

As an application to this protocol, the premises of the SC in Sharkia and Menoufia governorates were equipped and the modified version of the automated system was deployed, during 2013-

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<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

<sup>203</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author. Interview (1) with a working judge at the SC – mid-level – February 1, 2021 – on the file with the author.

<sup>204</sup> *Id.*

<sup>205</sup> The SC and MAD Sign a Cooperation Protocol to develop litigation procedures, 2012, <https://www.youm7.com/story/2012/6/20/%D8%A8%D8%B1%D9%88%D8%AA%D9%88%D9%83%D9%88%D9%84-%D8%AA%D8%B9%D8%A7%D9%88%D9%86-%D8%A8%D9%8A%D9%86-%D8%A7%D9%84%D8%AA%D9%86%D9%85%D9%8A%D8%A9-%D8%A7%D9%84%D8%A5%D8%AF%D8%A7%D8%B1%D9%8A%D8%A9-%D9%88%D9%85%D8%AC%D9%84%D8%B3-%D8%A7%D9%84%D8%AF%D9%88%D9%84%D8%A9-%D9%84%D8%AA%D8%B7%D9%88%D9%8A%D8%B1-%D8%A5%D8%AC%D8%B1%D8%A7%D8%A1%D8%A7%D8%AA-%D8%A7%D9%84%D8%AA%D9%82%D8%A7%D8%B6%D9%89/711272> (last visited April 12, 2021).

2014.<sup>206</sup> The trail to enforce the automated system failed in Sharkia governorate shortly after the deployment.<sup>207</sup> The automated system i.e. automated filing in Menoufia governorate survived.<sup>208</sup>

In March 2014, the Chairman of the SC issued the decree no. 127 of 2014 to reorganize the SCIC. This decree created a new unit for the creation and development of software. It also gave the SCIC the jurisdiction to supervise the work of this newly created unit. Furthermore, this decree also gave the SCIC the jurisdiction to supervise the work of the computer administration and the unit of archiving.

In April 2014, another protocol was signed between the SC and the MAD. The objectives were to develop and automate the mechanisms used to create statistical data to obtain accurate data on the status of lawsuits and the clearance rate, to create a central archiving system to preserve and protect litigation databases, and to provide access to the SC courts' services through the Egyptian government web portal.<sup>209</sup>

In 2015-2016, an updated version for the program of automating the workflow of the advisory department was created by the unit for the creation and development of software and deployed to few premises.<sup>210</sup> In March 2017, the SC concluded a cooperation protocol with the Swiss Embassy in Cairo, in order to finance the efforts of the automation and digital transformation.<sup>211</sup> In an application to this protocol, the Embassy financed a study conducted by a private consultancy company in order to identify the status of automation efforts and draw a plan for the continuation of such efforts.<sup>212</sup> The study was finished in in September 2017 and delivered to

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<sup>206</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

<sup>207</sup> *Id.*

<sup>208</sup> *Id.*

<sup>209</sup> Cooperation Protocol Between the MAD and the SC, 2014, <https://akhbarelyom.com/news/newdetails/212086/1/%D8%A8%D8%B1%D9%88%D8%AA%D9%88%D9%83%D9%88%D9%84-%D8%AA%D8%B9%D8%A7%D9%88%D9%86-%D8%A8%D9%8A%D9%86-%D9%88%D8%B2%D8%A7%D8%B1%D8%A9-%D8%A7%D9%84%D8%AA%D9%86%D9%85%D9%8A%D8%A9-%D8%A7%D9%84%D9%85%D8%AD%D9%84%D9%8A%D8%A9-%D9%88%D9%85%D8%AC%D9%84%D8%B3-%D8%A7%D9%84%D8%AF%D9%88%D9%84%D8%A9> (last visited April 12, 2021).

<sup>210</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

<sup>211</sup> Cooperation Protocol between the SC and the Swiss Embassy, 2017, <https://www.shorouknews.com/news/view.aspx?cdate=29032017&id=095f98eb-ba84-4887-aecf-bfe1d46494a6> (last visited April 12, 2021).

<sup>212</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

the SC in October 2017. In November 2017, the Chairman of the SC issued the decree number 810 for the year 2017 to replace the SCIC with a committee on Information Technology Systems.

In March 2018, a protocol was signed between the SC and the Arab Academy for Science, Technology, and Maritime Transport (hereinafter, AASTMT), by virtue of which the Academy provides consultation services to the SC regarding the automation efforts.<sup>213</sup> In December 2018, a contract was signed between the SC and the Integrated Solutions for Ports (hereinafter, ISFP) Company in order to implement a mega project for the full automation and digital transformation of the SC.<sup>214</sup>

In 2019, an administration for information technology was created to replace the committee on Information Technology Systems. In 2020, few committees, with each conducting specific task related to the implementation of the current project of automation, replaced the administration for information technology.

In December 2020, the SC contracted with a company specialized in providing electronic payment solutions such as payment through electronic wallets and payment through points of sale (POS), to allow electronic payment for the litigation and other fees provided by the SC. According to the contract, the electronic payment should be shortly available for fees of applicants to the yearly national competition to join the judicial positions at the SC; while the electronic payment of litigation fees should be available upon achieving the required progress in the efforts of digital transformation.<sup>215</sup>

In January 2021, the SC contracted with Egypt Bank to allow electronic payment for the litigation and other fees provided by the SC through the online/electronic payment solutions such as payment through credit and debit cards via the SC website, payment through electronic wallets, and payment through points of sale (POS).

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<sup>213</sup> Cooperation protocol between the SC and the AASTMT to automate work within the departments of the SC, 2018, <http://news.ecs.eg/archives/1801> (last visited October 27, 2020).

<sup>214</sup> ISFP signs contracts for the implementation of the Egyptian SC automation project <https://www.shorouknews.com/news/view.aspx?cdate=05122018&id=98670c32-0c13-4434-acef-b51e9b65bbb3> (last visited April 12, 2021).

<sup>215</sup> See, <https://www.almasryalyoum.com/news/details/2193837> (last visited April 12, 2021).

In February 2021, the SC utilized, for the first time, an electronic system to receive applications for appointment at available judicial vacancies. However, the process is not fully automated. The candidate can access the online form after the online payment of the required fees, then fill in the form and print it to be personally submitted later on at the headquarter of the SC along with official copies from the required documents. This means that only part of the procedures were automated not all of the procedures.<sup>216</sup> This system was received as a gift from AASTMT as part of the cooperation protocol between the SC and the Academy.<sup>217</sup>

Currently, the automation efforts in the judicial department<sup>218</sup> of the SC resulted in the application of some aspects of the automated system in a few of the premises. The automated filing application, the automated agenda for judicial sessions' application, and the automated judicial sessions' management application are applicable in the headquarter<sup>219</sup> and the Abbasiya premise.<sup>220</sup> The automated filing application, only, is applicable in Alexandria premise<sup>221</sup> and Menoufia premise;<sup>222</sup> however, Menoufia premise is based on a separate server, which is not connected to the intranet of the SC. It is to be noted also that an application to calculate the judicial fees is applicable Tanta and Ismailia premises, and an application to archive closed lawsuits is applicable in the headquarter; however, those simple application were developed by individual efforts of some employees and they are not connected to the intranet of the SC.<sup>223</sup> Finally, as for the website of the SC, it is merely informative and do not provide services to litigants, lawyers, and/or judges. There are many broken links on the website; however, the news sections on the website is regularly updated.<sup>224</sup>

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<sup>216</sup> The system can be accessed online at <https://ecs-eg.aast.edu/dawla/> (last visited April 5, 2020).

<sup>217</sup> See, a statement available on the SC official website, *available at*, <https://www.ecs.eg/archives/3019> (last visited April 5, 2020).

<sup>218</sup> The SC is composed of three main departments. The judicial department which has the jurisdiction to settle all public law disputes e.g. disputes between the state and private persons whether natural or legal persons. The advisory department, which provides the legal advice to the governmental entities on the accurate application of law. The legislation department, which has the jurisdiction to review the drafts of legislation before final vote at the parliament.

<sup>219</sup> Since 01 October 2013 until now.

<sup>220</sup> Since 01 October 2016 until now.

<sup>221</sup> Since 01 October 2017 until now.

<sup>222</sup> Since 01 August 2015 until now.

<sup>223</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

<sup>224</sup> The website of the SC of Egypt, <http://www.ecs.eg/> (last visited April 12, 2021).

In conclusion, in this chapter, we tried to give a glimpse of the current unpleasant situation of the judicial processes and services within the SC. Then we explained a few of the benefits that can be achieved from using modern technology, which render the digital transformation as probably the optimal solution to handle several facets of the current failure in the judicial processes and services. Finally, we browsed the subsequent efforts exerted over decades to achieve the long-awaited objective of use the technological advancements to modernize the judicial processes and services within the SC. The next chapter analyzes the main challenges that resulted in the continuous failure to successfully achieve this objective.

## II. The challenges facing the digital transformation of the State Council

Despite the large sums of money that were spent, the huge efforts that were exerted, and the long period from the start of the automation and digital transformation efforts until now, the SC stills far from achieving the long awaited objective of automation and digital transformation. There is a severe lack of studies and research trying to track the failure reasons, analysis these reasons, and critically engage with them; therefore, this study is trying to cover this gap while trying, at the same time, to focus on the practicalities instead of theoretical aspects.

This chapter examines the different challenges that encountered the efforts of the automation and digital transformation of the SC. There are two types of challenges on this regard. First, the internal challenges, which means the challenges that are attributable to the SC. Second, external challenges, which means challenges that are attributable to the SC. It is to be noted that, there are no clear lines between the two types of challenges, that is to say that some of the challenges are of mixed nature i.e. internal and external.

### A. Internal challenges:

Those challenges are, largely, within the control of the SC and they are negatively affecting and critically hindering the efforts of the automation and digital transformation in it. In the following paragraphs, an examination, analysis, and engagement with the different aspects of those challenges i.e. the description and dimension of each challenge, the consequences of each challenge, and the reasons of each challenge shall be provided. Furthermore, recommendations to either adapt or overcome those challenges shall be provided.

1. The lack/absence of a vision on digital transformation of judicial processes and services:

In simple terms, a vision can be considered as a broad goal, which can be achieved through the formulation of policies that include a number of strategies that delineate the practical methods of reaching this goal within a specific period and set out the wide implementation plan that is divided into smaller plans composed of a variety of programs and projects.

In general, the SC does not have a vision, a mission or even a slogan that is clear and regularly communicated and/or advertised to the people in the society. This applies to other judicial

institutions and entities in Egypt as well. Other public institutions in Egypt have a clear slogan like the Ministry of Interior's slogan "Police is at the service of the people". Judiciary in other countries has a clear vision, mission, and a strategy.<sup>225</sup>

In particular, with regards to the digital transformation, the SC does not have an integrated and publicly available vision, mission, policy, and/or strategy<sup>226</sup> that sets out the objectives and delineates the specific steps to be taken to achieve these objectives.<sup>227</sup> This resulted in dealing with the digital transformation, as a broad goal, in a non-scientific method such as the try and error approach or the reactionary approach<sup>228</sup> i.e. to just start the efforts and respond to the emerging difficulties as the case may be. Following these approaches has costed the SC a lot in terms of money, efforts, and time.<sup>229</sup>

Four overlapping reasons resulted in this lack/absence of a vision on digital transformation of judicial processes and services.

First reason: the methodology of assuming the highest leadership positions in the SC.

The SC, like other judicial institutions/entities in Egypt, has a Supreme Council,<sup>230</sup> which is responsible for managing its affairs. The membership of this council is based on the seniority principle i.e. the Supreme Council is composed of the oldest seven judges.<sup>231</sup> The retirement age for judges in Egypt is seventy; therefore, the age of any member of the Supreme Council of the

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<sup>225</sup> See, for example, the vision, mission, and strategy of Dubai Courts in the United Arab Emirates, *available at*, <https://www.dc.gov.ae/PublicServices/CMSPage.aspx?PageName=Strategy> (last visited April 12, 2021).

<sup>226</sup> Despite the existence of publicly available digital transformation strategies for many other sectors in Egypt; see, for example, the e-Commerce strategy, *available at*, [https://www.mcit.gov.eg/Upcont/Documents/Publications\\_1532018000\\_e-Commerce-Strategy-March2018.pdf](https://www.mcit.gov.eg/Upcont/Documents/Publications_1532018000_e-Commerce-Strategy-March2018.pdf) (last visited April 12, 2021); the National cybersecurity strategy, *available at*, [https://www.mcit.gov.eg/Upcont/Documents/Publications\\_12122018000\\_EN\\_National\\_Cybersecurity\\_Strategy\\_2017\\_2021.pdf](https://www.mcit.gov.eg/Upcont/Documents/Publications_12122018000_EN_National_Cybersecurity_Strategy_2017_2021.pdf) (last visited April 14, 2021).

<sup>227</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author. Interview (1) with a working judge at the SC – mid-level – February 1, 2021 – on the file with the author. Interview (1) with a working employee at the SC – mid-level – March 27, 2021 – on the file with the author. Interview (4) with a working employee at the SC – mid-level – February 15, 2021 – on the file with the author.

<sup>228</sup> *Id.*

<sup>229</sup> *Id.*

<sup>230</sup> The Supreme Council of the SC is called the Private Council for Administrative Affairs; however, it is not responsible only for managing the administrative affairs but all of the affairs of the SC.

<sup>231</sup> The seniority is not based on age but on the length of the term of service starting from the date of appointment in the SC; however, the oldest seven judges in terms of length of the term of the service are usually also the oldest in terms of age.



SC usually ranges from sixty-eight up to seventy. Accordingly, each year a few members of the Supreme Council retire and new members join. Therefore, there is no stability in the leadership positions of the SC for more than one judicial year (beginning in October and ending in June). The only position in the Supreme Council with some sort of stability is the position of the Chairman of the council i.e. the Chairman of the SC. Starting 2017, this position is no longer filled based on the seniority principle i.e. the oldest judge but on the discretionary power of President of Egypt to select from the oldest seven judges. The President usually choose a judge who has more than one year left in service. This was followed with the selection of the previous and current chairs of the SC. There is also one more leadership position that is not based on the seniority principle and usually enjoy a degree of stability, which is the position of the Secretary-general of the SC. The Secretary-general, despite not being a member in the Supreme Council but he/she enjoys considerable powers, which certainly affect the efforts of the digital transformation.

The constant change of holders of the leadership positions entails the inability of drawing up a long-term vision or policy, especially that judicial customs and traditions obliges each leadership to act within its duration and not to bind the subsequent leadership.<sup>232</sup> Therefore, the council usually plans for each judicial year individually without trying to set a multi-year policy, strategy, and/or plan.<sup>233</sup>

The periodical and continues turnover of leadership positions is not limited to membership of the Supreme Council level but it extends to the rest of leadership positions i.e. second row of leaders and the middle management leaders. It is customary that each judicial year the new members of each Supreme Council replaces some or all of the lower-ranking leaders in order to bring those who are considered as trustworthy and capable of performing the activities planned by those new members of the Supreme Council.<sup>234</sup> As a result, the problem of the inability to

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<sup>232</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

<sup>233</sup> *Id.*

<sup>234</sup> Interview (6) with a working judge at the SC – senior judge – February 6, 2021– on the file with the author. Interview (2) with a working judge at the SC – senior judge – March 20, 2021– on the file with the author. Interview (3) with a working judge at the SC – senior judge – February 15, 2021– on the file with the author.

formulate a long or even mid-range vision or policy is exacerbated, due to the high frequency of turnover of top and middle management leaders in the SC.

Second reason: the absence of cadres/personnel capable of policy planning.

There are no specialists in policy formulation, strategy development, and/or project management within the SC. All these tasks are either not done at all or done by judges who might not possess the theoretical and/or practical experience to do them. There is no awareness of the importance of building the capacity of a cadre of judges and equipping them with the necessary skills to combine legal and judicial expertise with the technical skills required for policy formulation, strategic planning, and the development of visions and strategies and the technical skills of dealing with the digital transformation.<sup>235</sup> It should be noted that the SC sends annually a number of young judges to the National School for Administration in France (École nationale d'administration) to learn about the public management and related studies.<sup>236</sup> However, the graduates of these program are rarely selected as second row leaders or middle-management leaders according to the opinions of the majority of interviewed judges at this study.<sup>237</sup>

Even those judges who are doing the above-mentioned tasks, without receiving training, depending on their accumulative practical and professional experiences are subject to periodical change due to the high frequency of turnover of top and middle management leaders in the SC as mentioned earlier.

Furthermore, there is no awareness of the importance of using consultation services to compensate the lack of capabilities within the SC or even to support these capabilities, if they do exist in a later stage.<sup>238</sup> Policy formulation and strategy development, especially regarding complicated technical issue like the digital transformation, which is rapidly evolving, definitely require the use of consultation services. These consultation services can be governmental such

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<sup>235</sup> *Id.*

<sup>236</sup> *See*, <https://gate.ahram.org.eg/News/1828894.aspx> (last visited April 14, 2021).

<sup>237</sup> Interview (6) with a working judge at the SC – senior judge – February 6, 2021– on the file with the author. Interview (2) with a working judge at the SC – senior judge – March 20, 2021– on the file with the author. Interview (3) with a working judge at the SC – senior judge – February 15, 2021– on the file with the author

<sup>238</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

as the use of the consultation services provided by the MCIT<sup>239</sup> or private services provided through private companies or through contracting with experienced individual consultants to provide consultation services.<sup>240</sup>

The SC made benefit from the consultation services in the planning phase only twice. The first time was in 2017 with the support of the Swiss Embassy. The Embassy contracted with a private consultation company for the benefit of the SC, in order to identify the status of automation efforts and draw a plan for the continuation of such efforts. However, this attempt failed to achieve its objectives due to high resistance the company faced from the SC staff and the false information the company received.<sup>241</sup>

The second time was in 2018, when the SC concluded a protocol with the AASTMT to use its consultation services. This attempt is already in progress so it is not possible to evaluate it. However, due to time constraints and the desire of the SC leadership in 2018 to start new efforts of digital transformation and the achievement of partial success within a very limited time window,<sup>242</sup> the implementation efforts started in the same year with the development of digital

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<sup>239</sup> The majority of other judicial institutions/entities made use of the consultation services provides by the MCIT. See, for example, the signature of a cooperation protocol between the MCIT and the SCC to automate and develop the court's work systems, 2013, <https://gate.ahram.org.eg/News/362707.aspx> (last visited April 12, 2021), cooperation Protocol between MCIT and the CC to Automate Work Cycle, 2020, <https://gate.ahram.org.eg/News/2536928.aspx> (last visited April 12, 2021), the Minister of Communication Welcomes the Chairman of the Administrative Prosecution to Automate the Workflow in the Prosecution, 2017, <http://gate.ahram.org.eg/News/1525326.aspx> (last visited April 12, 2021), The Attorney General and the Minister of Communications sign a protocol to develop the work system for the Public Prosecution, 2016, [https://mcit.gov.eg/Ar/Media\\_Center/Press\\_Room/Press\\_Releases/4306](https://mcit.gov.eg/Ar/Media_Center/Press_Room/Press_Releases/4306) (last visited April 12, 2021). The protocol between the SC and the MAD of 2014 included the provision of technical consultations; however, this was not activated and such consultation services were limited to the implementation not the planning phase. Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

<sup>240</sup> The Public prosecution resorted to contracting with an individual consultant, which is at the same time a governmental employee with considerable experience in the field of digital transformation of public services and at the same time possess the required legal and judicial knowledge that allows him/her to know the details of the workflow within the prosecution departments. See, <http://gate.ahram.org.eg/News/2527477.aspx> (last visited April 14, 2021).

<sup>241</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author. Interview (1) with a working judge at the SC – mid-level – February 1, 2021 – on the file with the author. Interview (10) with a working judge at the SC – mid-level – February 28, 2021 – on the file with the author. This failure resulted in a decision by the SC leadership to start new efforts for an entirely new project for the digital transformation without making benefit from the already existing limited efforts.

<sup>242</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

transformation software and applications. No due regard was given to draw a vision, policy, and/or strategy for digital transformation.<sup>243</sup>

Third reason: the non-existence of a permanent and adequately organized unit responsible for planning the digital transformation within the SC.

The automation efforts of the SC started in 1982 and still in progress. During the period from 1982 to 2012, the jurisdiction to plan for the automation efforts in the SC was given to a variety of temporary working groups and the SCIC.<sup>244</sup> In 2012, the SCIC was reorganized entirely and its tasks were updated. During the period from 2012 to 2017, the SCIC was responsible for the planning task. In 2017, a committee on Information Technology Systems was created to replace the SCIC; however, the jurisdiction of this committee did not include the planning task.<sup>245</sup> In 2019, an administration for information technology was created to replace the committee on

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<sup>243</sup> It is noted also that the Academy does not have an experience at all in providing consultations regarding the automation and digital transformation of judicial institutions and entities. The MCIT was and still a more viable option because of its extended experience in supporting other judicial institutions/entities in Egypt with its automation efforts. The MCIT was responsible for planning and implementation of the entire automation efforts of the SCC, which is the most similar judicial institution to the SC in terms of the judicial procedures and workflow. However, the researcher argues that the SC should follow the leads of the Public Prosecution in contracting with individual consultant with both a governmental experience and with a considerable legal knowledge. This allows the SC to avoid the complexities surrounding resorting to institutional governmental consultation, which is usually provided by MCIT. During interviews with working judges from the SC who were engaged in the digital transformation efforts of the SC, they argued that these complexities resulted in the practical non-activation or limited effectiveness of several protocols signed between the SC and MCIT to make use of its consultation services. This solution also allows the SC to avoid resorting to private institutions with limited experience in court technology or digital transformation of courts. During the same interviews, the SC judges argued that the lack of experience in projects of automating and/or digital transformation of public services and the lack of legal knowledge and the basic knowledge of the workflow within the judiciary on the part of the consultants of the AASTMT resulted in consuming time and effort while discussing with those issues with those consultants. Indeed, IT consultants might not need to have knowledge on the workflow of the institutions where they tend to provide their services, considering that those consultants provide consultancy services in IT fields; however, it would be a considerable asset if those IT consultants enjoy an experience in dealing with digital transformation of public services and also a good knowledge of the practicalities of the field of work of the institution that requires the consultation services; therefore they are able to provide consultancy advices that consider all the practicalities of the Egyptian administrative apparatus and the workflow within Egyptian judiciary, which is quite complicated.

<sup>244</sup> Despite the creation of the information center in the SC since 1982, until 2012 it rarely actually existed. Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

<sup>245</sup> The committee jurisdiction was limited to the implementation of the cooperation protocol with the Swiss Embassy and the cooperation with the relevant local institutions to support the automation efforts in the SC. Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author. The researcher was one of the members of this committee.

Information Technology Systems; the jurisdiction of this administration included the planning tasks. In 2020, few committees, with each conducting specific task related to the implementation of the current project of automation and digital transformation replaced the administration for information technology; therefore, currently there is no entity entitled with the planning task.

During the entire period from 1982 until now, none of the above-mentioned units drew a vision, mission, policy, strategy, or even an integrated plan for the automation efforts in the SC.<sup>246</sup> This resulted from the following reasons. First, there were and still no definite criteria for choosing the judges who join these units. These units are considered as prestigious units; therefore, many judges sought after joining these units, even if they are not qualified, for the mere reason of the desire to be in a prestigious unit not for the sake of providing assistance to the automation efforts.<sup>247</sup> Second, working in these units was and still in addition to the original tasks of the judges not their primarily work. Third, there were no incentives for working in these units despite being additional work. Fourth, there was no capacity building at all to judges working in these units.<sup>248</sup> All these reasons affected the quality of the work process and they resulted in the inability to effectively plan for the automation efforts.

It should be noted that the SC is far way behind other judicial institutions/entities on this regard. The information centers of these institutions are stable and not subject to frequent reorganization and/or replacement by other entities.<sup>249</sup> These information centers have the jurisdiction and the supporting environment to effectively plan for the automation efforts e.g. judges working on these information centers do not have other judicial tasks.<sup>250</sup>

Furthermore, some of these judicial institutions responded to the Prime Minister Decree no.1146 of 2018 concerning the creation of new administrative units within the governmental entities and

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<sup>246</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

<sup>247</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

Interview (1) with a working judge at the SC – mid-level – February 1, 2021 – on the file with the author.

<sup>248</sup> Some training opportunities in relevant topics such as the case management was offered to the SC during the period from 2016 to 2018, as part of a cooperation between the American Bar Association Rule of Law Initiative in Egypt and the National Center for Judicial Studies at the MOJ. However, these training seats were not dedicated to judges working in the SCIC, due to the lack of effective internal communication within the SC. Interview (1) with a working judge at the SC – mid-level – February 1, 2021– on the file with the author.

<sup>249</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

Interview (1) with a working judge at the SC – mid-level – February 1, 2021 – on the file with the author.

<sup>250</sup> *Id.*

the Decree of the Chairman of the Central Agency for Organization and Administration no. 87 of 2019 concerning the “Information Technology and Digital Transformation Unit” by the creation of digital transformation units to handle all issues related to the drawing of policies and strategies while their information centers are now dedicated to the implementation efforts only.<sup>251</sup> The SC did not yet take similar steps.

Fourth reason: the lack and/or non-availability of information.

In order to formulate and design a vision, mission, policy or strategy properly and accurately, there should be a minimum information available. Existing work systems do not allow the collection of accurate information that might be used for the sake of creating databases in order to make the basic statistics needed not only for policy formulation but also for a basic good administration of justice.<sup>252</sup>

All of the four aforementioned causes result in the inability to formulate a vision, public policy, and/or strategy in accordance with the sound scientific methodology. The absence of a vision and/or public policy is one of the most important obstacles to the process of digital transformation of the SC. It ruins the possibility of gathering the scattered efforts under the umbrella of one unified vision, which appropriately utilizes the available resources to achieve the best results.

There are few recommendations that the SC should follow to this lack/absence of a vision on digital transformation of judicial processes and services. First recommendation, the SC should follow the Public and Administrative Prosecutions and create a specialized unit for the planning purposes. Despite the fact that these units were recently created so it is not possible yet to

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<sup>251</sup> The MJ issued the decree number 2303 of 2020 to create the “Digital Transformation Unit”. The Public Prosecutor issued the decree number 346 of 2020 to create an administration called “Digital Transformation for the Enforcement of Law Administration”. The Chair of the APA issued the decree number 121 of 2020 to create the “Digital Transformation Unit”. All these units were created very recently to be responsible for drawing policies and strategies, defining priorities, coordinating with local, regional, and international relevant institutions for the sake of exchanging knowledge and experiences, and prepare recommendations regarding the issuance of new legislative and the modification of the existing ones to allow the full digital transformation. Furthermore, the Public Prosecutor issued the decree number 349 of 2020 to organize the information center of the public prosecution; by virtue of this decree, the information center enjoys a full jurisdiction to implement the policies and strategies of the digital transformation.

<sup>252</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.  
Interview (1) with a working judge at the SC – mid-level – February 1, 2021 – on the file with the author.

evaluate their degree of success but at least their creation reflects an attitude towards the creation of a permanent unit not temporary cross function teams/ commissions as the case used to be in the SC. At the same time, the newly created unit enjoys full jurisdiction not limited and varying jurisdiction and administrative powers for the temporary cross function teams/ commissions at the SC. This unit should have at least the following jurisdictions. First, drawing a vision, mission, policy, strategy, and tentative plans for the digital transformation efforts. Second, reviewing current protocols with the relevant governmental or non-governmental entities and propose their activation methods.<sup>253</sup> Third, coordinating with local, regional, and international relevant institutions for the sake of exchanging knowledge and experiences.<sup>254</sup> Fourth, preparing recommendations regarding the issuance of new legislative and the modification of the existing ones to allow the full digital transformation.<sup>255</sup> Fifth, identifying training needs, preparing plans for the training of all court staff including judges, and coordinating with the concerned governmental and/or non-governmental entities to provide the required training.

Second recommendation, there should be efforts to convince the leadership of the importance of the institutional concept in dealing with the issue of the digital transformation. There should be appropriate stability conferred upon the planning unit. The working environment for judges attached to this unit should be supportive e.g. judges should be working exclusively in this unit without additional tasks and their capacities should be regularly built. This does not mean, as some might say, to deviate judges from their core task, which is the settlement of disputes, because what is meant here is to allow qualified judges some time to work on a very relevant issue to the judicial activity. Furthermore, several judges in the SC were and still working for several consecutive years in other judicial aspects that the settlement of disputes such as the center for judicial studies, technical bureaus, general secretary, the legislation department, and the advisory department.

Third recommendation, this unit should formulate a policy for the digital transformation of the SC according to sound scientific approaches and following the stages of public policy formulation i.e. examining, analyzing reality, strategic thinking, conceptualizing future

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<sup>253</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

<sup>254</sup> Interview (1) with a working judge at the SC – mid-level – February 1, 2021 – on the file with the author.

<sup>255</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

scenarios, reviewing available policies and anticipate the impact of each policy, surveying coordination options with stakeholders, and building consensus. The policy is then adopted and issued as a document to be made available to stakeholders. The policy should, first, cover the various basic elements such as policy statement, legislative framework, institutional framework, financial framework, and procedural framework; second, provide for definite goals, precise strategies, and effective implementation mechanisms, which are not affected by the periodical change of leadership.<sup>256</sup> The current available data might be inaccurate or insufficient to allow a formulation of an accurate policy; however, the planning unit can seek consultation services, examine the efforts of other judicial institutions, and update the policy according to newly available information.

Fourth recommendation, the SC should allow the involvement/ participation of the different stakeholders of the judicial activity in the formulation of the digital transformation policy, in particular, judges' associations and think tanks concerned with the judiciary and the legal professions should be allowed to participate.<sup>257</sup> Such involvement/participation entails making benefit from the input, point of views, and suggestions of those stakeholders because the ultimate goal is to provide effective judicial services in the shortest possible time, with the least material cost, effort.

## 2. The need for institutional development / administrative restructuring:

One of the most important obstacles to the previous and ongoing efforts towards the digital transformation of the judicial processes and services in the SC is the severe need for institutional development and administrative restructuring. Institutional development and/or administrative restructuring is usually overlooked due to the ignorance of the seriousness of the results of not satisfying such needs. In the next few paragraphs, the different dimensions of the need for institutional development and the impact of not satisfying them on the efforts of digital transformation will be clarified.

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<sup>256</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author. Interview (1) with a working judge at the SC – mid-level – February 1, 2021 – on the file with the author.

<sup>257</sup> Interview (6) with a working judge at the SC – senior judge – February 6, 2021– on the file with the author. Interview (2) with a working judge at the SC – senior judge – March 20, 2021– on the file with the author. Interview (10) with a working judge at the SC – mid-level – February 28, 2021– on the file with the author.



The current institutional regulation and organization within the SC result in two categories of results, as follows:

The first category: the results for the court staff.

As for the appointment of IT specialized/skilled labor, the SC is a governmental entity, the court staff are civil servants so the civil service laws and regulations are applicable to them.<sup>258</sup> The financial regulations of the civil service limit the ability to appoint highly skilled and professional computer engineers and IT technicians who are needed to deal with the different aspects of the digital transformation e.g. software development, infrastructure, security systems, and the web portal.<sup>259</sup>

The financial limitations to the salaries of court staff discourage experienced engineers and technicians from accepting appointment as court staff because the level of wages and other monetary incentives in the private sector is much higher.<sup>260</sup> That is why the majority of the IT teams in the SC, since the formulation of the two working groups on infrastructure and software development during the period 2009-2012 until now, are not specialized and/or skilled IT labors but they were court staff who were appointed to occupy some administrative positions. Only a few of the fresh graduates of computer engineering and other relevant majors accept to join the civil service at the SC in order to gain practical experience because the labor market of workers in the digital transformation services is very competitive.<sup>261</sup> After getting such experience, they prefer to resign and work for the private sector due to the greater monetary incentives.<sup>262</sup> This

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<sup>258</sup> The structure of the Egyptian administrative apparatus is very complicated. The first component is the governmental entities such as ministries, governorates, their subordinates, and some independent entities such as the SC (as to the courts staff only because the administrative and financial affairs of judges are organized through the SC law). The second component is the public service and economic institutions; those institutions can apply their own laws and regulations.

<sup>259</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author. Interview (1) with a working judge at the SC – mid-level – February 1, 2021 – on the file with the author. Interview (10) with a working judge at the SC – mid-level – February 28, 2021 – on the file with the author.

<sup>260</sup> It should be noted that the level of salaries and other financial incentives in the public institutions, especially economic ones, is much higher than the governmental entities despite both being under the wide umbrella of being civil servants. This allows the public institutions, especially economic ones a wider range of competitiveness to attract highly skilled labor.

<sup>261</sup> *Id.*

<sup>262</sup> *Id.*

result in a high turnover rate due to the inability to provide financial incentives to retain skilled labor.

In order to overcome the shortage of specialize and/or skilled IT personnel, the judges who were working in the working groups and then the SCIC searched for court staff who were graduates of appropriate majors or who have some IT training, in order to form the working groups necessary to work on the efforts of automation. This situation started in 2009 until now. It should be noted also that the financial challenges were not the only reason for the non-appointment of specialized and skilled labor because the other main challenge was the non-activation of the “entire general administration for computer”. This non-activation entailed the non-existence of computer engineering, and other related majors, substantive occupational group in the SC; therefore, there was no administrative possibility to appoint court staff under the title “computer engineers” and similar titles. This substantive occupational group was not created despite the creation of the unit for the creation and development of software in 2014 based on the request of the information center. During 2016-2017, the information center tried to proceed with the lengthy and complicated process of adding this occupation group to the SC structure but this attempt failed.<sup>263</sup>

The SC tried to solve this issue through providing some financial incentives to retain the members of the existing teams but such attempt failed due to the limited amount of the incentives compared to those incentives provided by the private sector.

The MOJ and the OCs tried to overcome this obstacle through delegating the authority to run the automation and digital transformation projects to some economic public institutions for their sake according to article 78 of the Law No. 182 of 2018 Regulating Contracts Entered by Public Entitles. This allows the economic public institution to contract with IT teams and pay them appropriate salaries because the financial framework for public economic institutions is different from the one of the governmental entities such as the judiciary. Those IT teams are

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<sup>263</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.  
Interview (1) with a working judge at the SC – mid-level – February 1, 2021 – on the file with the author.  
Interview (10) with a working judge at the SC – mid-level – February 28, 2021 – on the file with the author.

theoretically/legally working for the public economic institution but practically working under the supervision of the MOJ and the OCs.<sup>264</sup>

The inability to appoint skilled labor and the high turnover rate negatively affects the performance of the administrative units responsible for the digital transformation at the SC.

As to the provision of financial incentives to support the digital transformation, the current administrative and financial regulations limits the ability to provide financial incentives to encourage employees, lawyers, and/or litigants to provide their input i.e. submit proposals that contribute to the development and shortening of the work cycle.<sup>265</sup> They also limit the ability to provide financial incentives to encourage employees to apply the newly adopted automated system and not to resist such systems.<sup>266</sup> Article 42 of the Law No. 81 of 2016 promulgating the Civil Service Law allows the provision of monetary encouragement rewards to the employee, who provides excellent services, works, research, or suggestions that help to improve work methods, raise performance efficiency, or save expenses; however, there is no real activation for that due to the administrative complications.<sup>267</sup>

As to the capacity building of IT teams, the current institutional regulation and organization do not allow proper attention to the capacity building of court staff. The situation is worse for the IT teams because the continuous capacity building is necessary to develop the staff technical abilities and to keep up with the continuous development in the technical fields. The main reasons for this obstacle are the lack of the awareness of the importance of the capacity building, the lack of financial allocations to fund the costly specialized IT training programs, and the administrative practices that discourage IT teams from engaging in capacity building activities. The training is usually provided after the official work hours, without considering the training periods as work times. Therefore, there is no monetary compensation and/or leave of absence for periods equivalent to the periods of the training. This resulted in resistance from the IT teams because they consider the training as part of their jobs and since it occurs after the official work hours then they deserve compensation. Furthermore, the majority of the personnel of the IT

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<sup>264</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

<sup>265</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

Interview (10) with a working judge at the SC – mid-level – February 28, 2021 – on the file with the author.

<sup>266</sup> *Id.*

<sup>267</sup> *Id.*

teams work as freelancers after the official work hours; therefore, they resist receiving training after the official work hours because this affects their monetary income.<sup>268</sup>

The non-existence of such capacity building entails depending only on the level of expertise and skills enjoyed by staff at the time of appointing them. In fact, this is the current situation from the creation of IT teams in the SC during 2009-2012 until now. This resulted in the inability of the IT teams to further develop or even continue to operate the current limited automated systems in very few numbers of the SC premises. One of the major technical challenges that faced the IT teams in the SC was dealing with the big data, because with the passage of time the recorded data grew and became big data, which requires specific methods for handling. This required specialized training that was not provided to those IT teams; therefore, they became unable to deal with the issue.<sup>269</sup> This resulted, in turn, in several interruptions of the service and was one of the main reasons that motivated the SC leadership to start new entirely automation efforts in 2018 through contracting with a private company to develop the software and applications, operate those applications, and update them. However, this is a mere shifting of the problem and not a solution to it because there will always be a need for in-house IT teams due to several reasons such as the security of data and the limited availability of funds to conclude the costly operation, maintenance, and update contracts.<sup>270</sup>

As to the administrative supervision over the IT teams and court staff trained to operate the automated systems, there is no principle of specialization applied to court staff and they are expected to move among the different administrative units according to the needs of the work.<sup>271</sup> This is of critical importance for the IT teams and the court staff who were trained to operate the currently used automated systems. Those personnel operates under the supervision of the SCIC or the working group(s) that administer the digital transformation efforts; however, this supervision is limited to the technical competence without administrative competence or power,

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<sup>268</sup> Interview (1) with a working judge at the SC – mid-level – February 1, 2021 – on the file with the author.  
Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

<sup>269</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.  
Interview (10) with a working judge at the SC – mid-level – February 28, 2021 – on the file with the author.

<sup>270</sup> *Id.*

<sup>271</sup> *Id.*

which always resides with judges who are responsible for court staff affairs or judges who occupy leadership positions in the general secretary of the SC.<sup>272</sup>

This results, many times, in a conflict regarding some administrative issues. The typical scenario that was repeated several times is the transfer of those personnel who have appropriate qualifications and/or practical experience and/or received training from units engaged in digital transformation activities to other administrative units such as copying department. This leads to the loss of time, effort, and money spent to train those staff and another cost to train new other staff.<sup>273</sup> This problem does not exist in other judicial institutions and entities. The examination of the structure and decrees regulating the information centers in other judicial institutions/entities e.g. the MOJ, the CC, and the Public Prosecution reveals that those centers enjoy both the technical and administrative supervision and powers over the employees attached to them.<sup>274</sup>

The second category: the results for the organizational structure and workflow.

As to the flexibility of amending the organization structure, the current institutional regulation and organization limit the ability to modify the organizational structure flexibly and easily, taking into consideration that the introduction of the automated system would entail the need to create new positions, modify titles and job descriptions of some others, and cancel some of the existing ones. Therefore, the procedures to amend the organizational structure should be facilitated. This problem already exists in the premises where the automated systems are deployed, but it was fixed through temporary solutions.<sup>275</sup>

This problem is not very pressing yet because the current automation efforts resulted in the automation of a small part of the workflow in a very limited number of SC premises. However, with the expansion of the automation deployment, the problem will be much bigger and will

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<sup>272</sup> Interview (1) with a working judge at the SC – mid-level – February 1, 2021 – on the file with the author.

<sup>273</sup> Interview (1) with a working prosecutor at the APA – mid-level – March 19, 2021– on the file with the author. Interview (3) with a working prosecutor at the PP – mid-level – February 23, 2021 – on the file with the author.

<sup>274</sup> *Id.*

<sup>275</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author. Interview (1) with a working judge at the SC – mid-level – February 1, 2021 – on the file with the author.

require solutions because the modified and new positions will have their own required qualifications and job descriptions.

As to the clarity and certainty of the workflow and business process, the current institutional regulation and organization limit the ability to identify and draw a clear work cycle that is consistent at all times and in different courts.<sup>276</sup> The different understanding of the complicated current procedural and work regulations results in the differences in working practices within the same court and among other courts.<sup>277</sup> This is also, partially, due to the fact that administrative courts tend to apply some of the provisions of the Code of Civil and Commercial Procedures and to organize other aspects of the procedures through courts' decisions, regulatory decrees and/or in accordance with the prevailing customs.<sup>278</sup>

A clear example is the differences in number and types of the judicial records and the data registered in them in each court according to the prevailing custom in that court.<sup>279</sup> This results in a serious problem because the work cycle is not the same in all courts; at the same time, the analysis that is required to develop automated court systems is based on one single model and cannot accommodate such differences in the work cycle and procedures.<sup>280</sup> The efforts of the to introduce the e-filing system in Alexandria court in 2017, as a second pilot project, were faced by severe resistance due to that problem. There were many differences between the working cycle in Cairo courts, which was the model that the system was based on, and Alexandria courts. Therefore, court staff and judges in Alexandria court considered the automated e-filing system to be imposing new procedures instead of automating the existing ones, thus they showed a degree of resistance to the automated system.<sup>281</sup>

As to corruption fighting, the current institutional regulation and organization limit the ability to fight corruption due to several reasons, such as the complicated work process and the lack of

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<sup>276</sup> Interview (10) with a working judge at the SC – mid-level – February 28, 2021– on the file with the author.

Interview (2) with a working judge at the SC – senior judge – March 20, 2021– on the file with the author.

<sup>277</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

Interview (6) with a working judge at the SC – senior judge – February 6, 2021 – on the file with the author.

<sup>278</sup> *Id.*

<sup>279</sup> *Id.*

<sup>280</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

Interview (1) with a working judge at the SC – mid-level – February 1, 2021 – on the file with the author.

Interview (10) with a working judge at the SC – mid-level – February 28, 2021 – on the file with the author.

<sup>281</sup> *Id.*

supervision. There is a well-known and widespread corruption among court staff,<sup>282</sup> which causes severe resistance to attempts to develop and implement automated systems because such automated systems would curtail the court staff's ability to require unlawful monetary gains from litigants.<sup>283</sup> Some automation efforts e.g. the analytical study of the current situation of automation efforts in 2017 failed due to the wrong information given by the court staff during the analysis period. Other efforts failed due to the deliberate sabotage from the court staff to the infrastructure or the software. Therefore, it is quite important to provide monetary remuneration to court staff to motivate them to use the automated systems.<sup>284</sup> There should be a genuine administrative restructuring and institutional development to allow a comprehensive fight against corruption in order to pave the way for the creation and implementation of automated systems.

The only recommendation that the SC should follow to overcome the difficulties resulting from the current institutional regulation and organization is the comprehensive and precise institutional development and administrative restructuring to ensure that all the negative aspects mentioned above are taken into account.

This institutional development and administrative restructuring should include, in particular, the appointing/hiring of highly skilled and experienced IT staff and their continuous capacity building.<sup>285</sup> This institutional development and administrative restructuring should result in, in particular, an updated set of procedures and work cycle to ensure a simple, easy, and standardized work cycle which is applicable to all courts and which helps in fighting corruption through the complete segregation of service providers, i.e., court staff and services recipients, i.e., litigants.

### 3. Ineffective management of the digital transformation efforts:

The core problem that hinders the achievement of tangible, practical results for the various projects that have been carried out in order to achieve the long-awaited automation and digital

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<sup>282</sup> This was discussed earlier in some detail in the previous chapter of this research.

<sup>283</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021– on the file with the author.

Interview (1) with a working judge at the SC – mid-level – February 1, 2021– on the file with the author.

Interview (10) with a working judge at the SC – mid-level – February 28, 2021– on the file with the author.

<sup>284</sup> *Id.*

<sup>285</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021– on the file with the author.

transformation of judicial processes and services in the SC is the mismanagement of such projects. Several overlapping reasons resulted in this mismanagement, as follows.

First reason: The Lack of continuous support from the top judicial leadership:

As noted above, there is a periodical and regular change within the top judicial leadership/administration (Supreme Council) almost every year. Each new leadership/administration might have new perspectives and might not even support the concept of digital transformation or do not consider it as a priority during their term of serving as members of the Supreme Council.<sup>286</sup> Consequently, the new administration might decide to review the existing projects and suspend any other planned projects. This happened several times, and the process of re-persuading each new leadership of the project, its feasibility, and its importance consumes a considerable time and effort and hinders the management of the projects of digital transformation.<sup>287</sup>

This situation has a very serious result. The chair and members of the Supreme Council might agree to approve and provide support for the efforts of digital transformation on condition that the implementation of the entire project or at least considerable and important stages of it during their term of serving in the Supreme Council.<sup>288</sup> This usually happens because of the desire to make a personal achievement. Consequently, the implementation of some stages of the project is pressured or even relinquished in order to make an achievement that can be accomplished during the short term of service of each top judicial administration (Supreme Council).<sup>289</sup>

The lack of support or the availability of conditional support lead to failed efforts that have not completed its impact, entrench the inability and difficulty of effectively achieving the awaited digital transformation, and reinforce resistance to the change to the automated and digitized court systems.

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<sup>286</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.  
Interview (1) with a working judge at the SC – mid-level – February 1, 2021 – on the file with the author.  
Interview (10) with a working judge at the SC – mid-level – February 28, 2021 – on the file with the author.

<sup>287</sup> *Id.*

<sup>288</sup> *Id.*

<sup>289</sup> *Id.*



The second reason: the non-existence of a permanent and adequately organized unit responsible for implementing the digital transformation within the SC.

As noted above, during the entire period from 1982 until now, a variety of entities were responsible for the digital transformation efforts. While some of them had the jurisdiction to plan for these efforts, all of them, supposedly, had the jurisdiction to supervise the implementation of those efforts.

The Chairman of the SC decree no. 526 of 2012 on the creation and organization of the SCIC provides that the SCIC contributes to the making of executive decisions required for the implementation of the digital transformation efforts and provide recommendations to ensure the success of these efforts. This meant that the jurisdiction to supervise the digital transformation efforts was not exclusive, and many times, it was not enforced at all.<sup>290</sup>

This allowed carrying out other efforts of automation by different other units and without the coordination with the SCIC, which is supposed to gather those judges and court staff who have the necessary qualifications to supervise the automation efforts.<sup>291</sup> This entailed the duplication of efforts, the payment of unnecessary sums, and the reinforcement of resistance because all these unorganized efforts failed after a period of time, leading judges and court staff to lose confidence in the automation efforts.<sup>292</sup>

Another aspect of the problem in question is the continuous change of the managers of the project. As noted above, each new top judicial leadership/administration (Supreme Council) usually changes the inferior leaders, i.e., the second row and middle levels leaders. This includes the judges of the SCIC; therefore, the judges who directly manage the digital transformation projects are changed periodically. This affects the efficiency of management, especially in the absence of a clear policy, vision, or strategy on digital transformation.

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<sup>290</sup> Interview (1) with a working judge at the SC – mid-level – February 1, 2021 – on the file with the author.  
Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

<sup>291</sup> *Id.*

<sup>292</sup> *Id.*

A third aspect of the problem in question is the lack of continuous capacity building for the judges responsible for the management of the digital transformation projects.<sup>293</sup> The method of selection of those judges, their continuous change, and the absence of continuous capacity building necessary to equip those judges with the technical skills and the project management skills entails a serious result. The result is a lack of qualification of those judges and their inability to manage, effectively, the digital transformation projects, especially in the absence of specialized departments in project management in the SC.

This lack of capacity building and appropriate qualification result in ineffective management, which can severely affect the digital transformation projects. One example is the inability to make technical decisions regarding whether to develop new court software or to use framework software provided by giant software companies, e.g., Microsoft and then customize it to the institutional context of the Egyptian courts; and if the development of new court software is adopted, whether to develop this software through a team of in-house developers or through contracting with a software company. Another example is the lack of expertise to draft good contracts that reflect both the legal and technical aspects of the process of digital transformation. One of the main reasons for the failure of the automation project implemented during the period from 2004 to 2006 by the Judicial Information Center of the MOJ for the sake of the SC was the inclusion of provisions in the contract with the software company that allow a period up to one and a half month for the company to provide the required technical support. Due to repeated system errors & bugs, and the delay in the provision of technical support, the automated work cycle was reverted to the paperwork cycle. Consequently, the project, which was planned and implemented over three years, failed and a lot of money, just went in vain.<sup>294</sup>

The third reason: the inefficient project planning process:

Poor planning has several different reasons and aspects; in the following paragraphs, we will discuss some of those reasons and aspects.

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<sup>293</sup> The researcher was one of those judges for five years. During which, he did not receive almost any kind of capacity building activities, whether related to the technical skills or the project management skills. The researcher and some of his colleagues tried to overcome such obstacle through applying for some capacity building activities on their own and outside the institutional framework of the SC.

<sup>294</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

The first aspect is the lack of basic information needed for planning the digital transformation projects. For example, the number of lawsuits and the average number of papers in each lawsuit file is a basic piece of information that is required in the process of planning to determine some aspects of the required infrastructure; however, there are no accurate statistics regarding the number of lawsuits due to the ineffectiveness of the current paper administrative systems. That is why; in 2017, the SC chairman issued the decree no. 514 of 2017 to form a committee called actual inventory and statistics. This committee took almost one year to prepare statistics regarding the number of pending cases and the number of cases that were settled in the previous judicial year. This was done in a manual manner and with a large margin of error.<sup>295</sup> Such lack of information results in the failure to identify the exact needs of the project, leading to problems during implementation.

The second aspect is the lack of interest in the process of stakeholder engagement. Judges usually do not allow for the exchange of opinions with core stakeholders of the judicial process, i.e., lawyers and litigants.<sup>296</sup> This means that the process of project planning does not include the stakeholders' contributions regarding the enhancement, development of the existing judicial process and services and the new services they wish to receive. For example, a lawyer may suggest the possibility of creating an electronic wallet that is registered in the court system that allows direct payment to be deducted without the need to go to the cashier and then back to finish the procedures of each judicial transaction.<sup>297</sup>

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<sup>295</sup> See, <https://www.youm7.com/story/2017/9/13/%D8%AA%D8%B9%D8%B1%D9%81-%D8%B9%D9%84%D9%89-%D9%85%D9%87%D8%A7%D9%85-%D9%88%D8%A3%D9%87%D8%AF%D8%A7%D9%81-%D9%84%D8%AC%D9%86%D8%A9-%D8%AD%D8%B5%D8%B1-%D9%82%D8%B6%D8%A7%D9%8A%D8%A7-%D9%85%D8%AC%D9%84%D8%B3-%D8%A7%D9%84%D8%AF%D9%88%D9%84%D8%A9/3410075> (last visited April 14, 2021). Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author. Interview (1) with a working judge at the SC – mid-level – February 1, 2021 – on the file with the author.

<sup>296</sup> Interview (6) with a working judge at the SC – senior judge – February 6, 2021– on the file with the author. Interview (3) with a working judge at the SC – senior judge – February 15, 2021– on the file with the author.

<sup>297</sup> Interview (1) with a practicing lawyer before the SC – mid-level – March 1, 2021 – on the file with the author. Interview (3) with a practicing lawyer before the SC – mid-level – March 8, 2021 – on the file with the author.

The engagement of stakeholders is essential to guarantee sound planning, to ease the resistance to the automated and digitalized courts' systems, and to motivate the stakeholders to use such new systems and make benefit from the remote and/or online services that will be available.<sup>298</sup>

The third aspect is the misapplication of the concept of the pilot project. Applying a pilot project of automated courts' system in few courts is desirable; however, failure to provide all the factors of success for this pilot project might entail serious results, i.e., leads to a wrongful perception by the majority of judges, court staff, and litigants regarding the entire digital transformation project.

The actual implementation of pilot projects in a few courts was limited to the automated filing system through a front office at the court premises. This means that remote and/or online filing of cases was not available, and the automation of the rest of judicial processes and services was not available, i.e., no possibility of automated service of judicial documents, document management system, judicial session/hearing management system, case management system, and archiving. Furthermore, the pilot project was carried out while maintaining the paperwork cycle and thus duplicating the two work cycles and depleting the limited resources available to courts.<sup>299</sup> The pilot project should have been implemented only once but the differences between the work cycles of courts required that each time the automated filing be adopted; a testing period is given to allow the accommodation of differences if possible or to allow the adaption to the automated system.<sup>300</sup>

Consequently, judges, court staff, and litigants had negatively perceived the pilot project because it was considered to be of limited benefit, especially that the expectations were high due to the various statements of judicial leadership regarding the success of the pilot project and the availability of several automated and online services for litigants.<sup>301</sup> Unfortunately, the negative perception was received regarding the digital transformation as a whole, not only regarding the pilot project.<sup>302</sup>

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<sup>298</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

<sup>299</sup> *Id.*

<sup>300</sup> *Id.*

<sup>301</sup> Interview (1) with a working judge at the SC – mid-level – February 1, 2021 – on the file with the author.

Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

<sup>302</sup> *Id.*

The fourth aspect is the non-existence of the concept of institutional memory in SC. There is almost no documentation of the previous efforts, attempts, and projects of digital transformation; therefore, the collective knowledge and learned experiences gained through the last years are not available for current and future usage and reference.<sup>303</sup> Consequently, there is no learning from the previous experience, and the same errors are repeatedly occurring, especially with the above-mentioned high rate of turnover of both judges and courts' staff responsible for the digital transformation projects.<sup>304</sup> This critically affects the process planning for the digital transformation of the SC. Unfortunately; there is no awareness of the importance of creating institutional memory and utilizing knowledge management tools that allow the transfer/transmission of the knowledge among both judges and courts' staff responsible for the digital transformation projects.<sup>305</sup> Paragraph 7 of article 2 of the Chairman of the SC decree no. 526 of 2012 on the creation and organization of the information center provides for the jurisdiction of the information center to set the applications and systems of institutional memory of the SC. However, this jurisdiction like the majority of other jurisdictions mentioned in the decree was not enforced due to the lack of awareness of the importance of such issues and the continuous interference with the SCIC jurisdiction and tasks.<sup>306</sup>

The fifth aspect is the lack of utilization and learning from the comparative experience and international best practices in technology-based justice. There are many neighboring countries, which share almost the same circumstances and environment as Egypt and which achieved vast strides in the court technology field, e.g., the United Arab Emirates and the Kingdom of Saudi Arabia; however, no attempts were made to make benefit from such experiences. This aspect is related to the previous aspect, considering that both aspects represent the concept of non-learning from existing experiences, whether local or international experiences.

The sixth aspect is the inability to make decisive decisions on some issues. Due to the fear of bearing responsibility and the inefficient existing administrative systems, organization, and regulation used in the administration of justice, there is no ability to take decisive decisions on

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<sup>303</sup> Interview (1) with a working judge at the SC – mid-level – February 1, 2021 – on the file with the author. Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author. Interview (10) with a working judge at the SC – mid-level – February 28, 2021 – on the file with the author.

<sup>304</sup> *Id.*

<sup>305</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021– on the file with the author.

<sup>306</sup> *Id.*

many of the issues connected to the process of planning for the digital transformation;<sup>307</sup> consequently, the planning and implementation of the projects are severely negatively affected.

One example to illustrate a practical result of such inability to make decisive decisions is what happened to the SC project for electronic archiving of the existing stock of lawsuits' files. During the planning process for the e-archiving project in the administrative courts, the directions from the Supreme Council were to scan all the documents of the case files existing in the storage places of the courts, i.e., to scan files of cases from almost 70 years. Scanning, classifying, and storing such big data would consume a long period, great efforts, and huge expenditures; consequently, the project was suspended due to the non-availability of the financial resources.

The right decisions that should have been taken were, in the view of the researcher, first, to get rid of the decrepit case files and the files of those lawsuits which are not needed anymore, second, to include in the scope of the project only the files of cases which are still within the legal period of prescription, third, to scan only the important documents of those files, not all the documents included in the files. However, no one was able to make such decisions, and the project was suspended until the availability of financial resources, despite the well-known fact that scanning and storing all the documents of all case files would not result in any benefit from both the practical and legal perspective.

The seventh aspect is the non-inclusion of key performance indicators to measure the degree of success of the project. The measurement indicators are supposed to be drafted during the planning stage; however, none of the previous or current projects had included specific and clear criteria to measure the success, effectiveness, and customer satisfaction of the projects.<sup>308</sup> This effectively undermines the monitoring and evaluation of the projects.<sup>309</sup> Therefore, it is very usual to find several official statements regarding the success of the digital transformation efforts and, at the same time, no practical and tangible benefit and/or benefits to the stakeholders of the judicial process and services, e.g., judges, court staff, lawyers, and litigants can be found.

Fourth reason: the inefficiency of the process of change management:

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<sup>307</sup> *Id.*

<sup>308</sup> *Id.*

<sup>309</sup> *Id.*

There is strong resistance from many judges to the digital transformation of justice.<sup>310</sup> Some older judges resist because they have no or limited knowledge of computers and/or because they are not convinced that there is a need to use modern technology.<sup>311</sup> The resistance from other judges is based on, first, a misunderstanding of the digital transformation and the misconception that digital transformation entails losing the judges' authority in administering the procedures in favor of computers; second, lack of confidence in the performance of automated systems.<sup>312</sup> One example of the various bad experiences of judges with automated systems is the automated system for providing health care services to judges. Before such systems, the procedures were done manually in few minutes but after the automation of the process the procedures takes much more time and the system failure becomes very usual, leading to judges' frustration from the automated systems. The ineffectiveness or/and the failure of the system is due to poor infrastructure and poor project planning; however, the majority of judges' do not understand that and they only understand the tangible results of delay and loss of service after the implementation of the automated system to replace the manual one.<sup>313</sup>

There is a strong resistance from many of the court staff to the adoption of automated and/or digitalized systems. There are several reasons for the resistance from the courts' staff. First, the limited knowledge of computers and the fear of something unknown to many of them especially that the average age of public employees is high.<sup>314</sup> Second, the fear of losing jobs due to the new systems, which might replace them and the fear that they will not be able to appoint their children when they grow up to work in the SC as they currently do, due to the need to decrease

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<sup>310</sup> Examples of advisory opinions and judicial decisions regarding a very simple and basic use of technology in the judicial process such as the use of computers in writing judgements were mentioned in other parts of this study. Furthermore, the refusal of a technical and financial grant provided by the French State Council to the Egyptian SC to introduce the use of computers was above-mentioned.

<sup>311</sup> See, Mokhtar, *Supra* note 31, at 92. Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author. Interview (3) with a working judge at the SC – senior judge – February 15, 2021 – on the file with the author. Interview (6) with a working judge at the SC – senior judge – February 6, 2021 – on the file with the author.

<sup>312</sup> Interview (4) with a working judge at the SC – junior judge – March 10, 2021 – on the file with the author. Interview (5) with a working judge at the SC – mid-level – March 16, 2021 – on the file with the author. Interview (8) with a working judge at the SC – mid-level – April 10, 2021 – on the file with the author.

<sup>313</sup> *Id.*

<sup>314</sup> Interview (1) with a working employee at the SC – mid-level – March 27, 2021– on the file with the author. Interview (2) with a working employee at the SC – mid-level – February 28, 2021– on the file with the author.

job vacancies as a result of automation.<sup>315</sup> Third, the fear of the strict control over the performance of staff and the possibility of effective follow-up and periodic evaluation through reports produced by the automated system.<sup>316</sup> Fourth, the limitation of the court staff powers regarding the procedures and the separation of the service providers (court staff) from the service recipients (litigants and lawyers) through offering remote and online services will curtail the ability of the corrupted court staff to request unlawful monetary gains.<sup>317</sup>

The process of change management is very important because the resistance to change by the users of the systems that are being developed would thwart the application of the new system. There is no appropriate awareness among judges responsible for the digital transformation of the SC regarding the importance of dealing effectively with the change management process.<sup>318</sup> Therefore, so far, there is no clear plan to deal with change management smoothly and regularly; in addition, there is no utilization from the services of consultation services in change management in order to face the resistance to change, although that resistance was a major reason for the failure of previous projects.<sup>319</sup>

Fifth reason: the ineffective promotion of digital transformation efforts:

There was and still no clear plan for the promotion of the digital transformation and its advantages. The previous and current promotional activities focused only on media and press statements from the top judicial leadership; such statements were not directed to concerned parties but to the political leadership and the international community with the mere aim of promoting investment in Egypt. There were and still no direct messages to the actual stakeholders of judicial services, i.e., judges, court staff, lawyers, litigants. Other institutions in Egypt has launched effective media campaigns that focus on delivering specific message

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<sup>315</sup> Interview (4) with a working employee at the SC – mid-level – February 15, 2021 – on the file with the author. Interview (2) with a working employee at the SC – mid-level – February 28, 2021 – on the file with the author.

<sup>316</sup> Interview (1) with a working employee at the SC – mid-level – March 27, 2021– on the file with the author. Interview (2) with a working judge at the SC – senior judge – March 20, 2021– on the file with the author.

<sup>317</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author. Interview (1) with a working judge at the SC – mid-level – February 1, 2021 – on the file with the author.

<sup>318</sup> *Id.*

<sup>319</sup> Interview (10) with a working judge at the SC – mid-level – February 28, 2021– on the file with the author. Interview (1) with a working employee at the SC – mid-level – March 27, 2021– on the file with the author.



regarding the potential benefits from the digital transformation to its different stakeholders. For example, the Tax Authority is currently investing in a media campaign in the holy month of Ramadan, to make benefit from the high rate of views during this month, at the same time it provides different advertisements that deliver messages for the taxpayer, the trader, and other stakeholders regarding the benefits from using the automated and digitally transformed services that are currently available.

The multiplicity of media and press statements and the inclusion of non-accurate information regarding the extent of progress in the automation and digitalization of judicial processes and services resulted in the lack of confidence of the public towards the digital transformation projects.<sup>320</sup> There are no genuine remote and/or online services such as remote or electronic e-filing and/or online submission of documents;<sup>321</sup> furthermore, there are almost no services provided to judges yet. Therefore, when comparing the information mentioned in the media and press statements to the actual services provided, the public loses trust not only in the credibility of the statements but also the trust in the credibility of the digital transformation project in general.

The only recommendation that can be provided to overcome the obstacle of the inefficient management of the digital transformation efforts is the provision of all necessary factors and means to ensure effective management for the projects of digital transformation. There should be effective solutions to overcome all those elements/obstacles that prevent the effective and

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<sup>320</sup> See, a number of media statements from the ministers of justice in Egypt from the period of 2009 to 2019, all of them claim that a great progress was already achieved and that the complete digital transformation is expected very soon and that many automated and online services are already available, available at, <https://www.alraimedia.com/Home/Details?Id=f66b69da-6675-4e48-9b73-2931ac5a6ff5> (last visited April 14, 2021); <https://www.almasryalyoum.com/news/details/93909> (last visited April 5, 2020); <http://gate.ahram.org.eg/News/578696.aspx> (last visited April 14, 2021); <https://www.elwatannews.com/news/details/3670522> (last visited April 14, 2021).

<sup>321</sup> Except for some limited trial e-filing service of civil lawsuits and the remote issuance of some documents from Economic courts within the OCs, that were recently launched and in the trial period. At the same time, the e-filing does not mean the paperless nature of the transaction because the lawyer is still required to submit the written and assigned original petition of the lawsuit at the first judicial hearing session. See, the steps of electronic filing of civil lawsuits <https://gate.ahram.org.eg/News/2507527.aspx> (last visited April 14, 2021); see also, the MOJ launch a trial service to allow remote issuance of some courts' certificates. <https://gate.ahram.org.eg/News/2646355.aspx> (last visited April 14, 2021).

efficient administration and management of the digital transformation efforts. In particular, special attention should be addressed to the following.

There should be a comprehensive and continuous capacity building for a cadre of young judges to enable them to get an appropriate level of technical, project management, and administrative knowledge/skills that allows them to effectively manage and administer the digital transformation projects.<sup>322</sup> The relative stability of the cadre of judges responsible for the digital transformation is required to allow effective management and administration; therefore, this cadre of judges should not be subject to a frequent periodical change. There should be a special focus on creating an institutional memory through guaranteeing the transfer of knowledge and share of information/data to overcome the turnover.

There should be an extensive study of the experiences of countries that have made significant strides in digital transformation, such as South Korea, Singapore, Estonia, and even countries in the Middle East and North Africa region, such as the UAE and Saudi Arabia. This will allow making benefit from these experiences, examine the obstacles they encountered and the different solutions they tried to overcome them. All this contributes to expanding the perception of project managers in Egypt and enhancing their ability to manage the project.

There should be a focus on the change management process. All the requirements for the effective management of the change management process should be satisfied to ensure the minimization of the expected resistance. The resistance from judges might be reduced through spreading the culture of digital transformation among them, qualifying them to deal with computers and applications used in the automated and digital systems,<sup>323</sup> and emphasizing the advantages of digital transformation in alleviating the administrative burdens on judges and facilitating the process of adjudicating litigations without prejudice to their authority in controlling the procedures.

The resistance from courts staff might be reduced by spreading the culture of digital transformation among them, qualifying them to deal with computers and applications used in

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<sup>322</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

<sup>323</sup> This is not only a mean to reduce the judges' resistance but it is also a basic requirement for the effective adoption of automated and digitalized systems; otherwise, a main stakeholder will not be able to use the basic tools of the new system, thus leading to the system failure. See, Mahmoud, *supra* note 16, at 78.

the automated and digital systems, reassuring that the monitoring of achievement rates is accompanied by the principle of reward and punishment, emphasizing that they will not be laid off, and emphasizing that the aim of digital transformation is to provide a better working environment. The resistance from litigants might be reduced by emphasizing that the digital transformation will not be accompanied by a significant increase in fees and financial burdens on litigants and that the system is reliable and will not be exposed to many breakdowns that disrupt the functioning of the courts.

Finally, Attention should also be given to the promotion of automated and online services provided by the digital transformation projects by delivering appropriate information messages to target groups and motivating them to use these services.

#### B. External challenges:

Those challenges are, largely, beyond the control of the SC but they are negatively affecting and critically hindering the efforts of the automation and digital transformation in it. In the following paragraphs, an examination, analysis, and engagement with the different aspects of those challenges, i.e., the description and dimension of each challenge, the consequences of each challenge, and the reasons for each challenge, shall be provided. Furthermore, recommendations to either adapt or overcome those challenges shall be provided.

##### 1. The lack of coordination and integration with the efforts of other relevant institutions/entities:

The structure of the judicial sector in Egypt is quite complicated. This sector is composed of a group of judicial institutions and entities. Four judicial institutions i.e. the SCC, OCs, SC, and the Military Courts. The terminology “Ordinary Courts” is the traditional term used with regards to the courts of general jurisdiction i.e. criminal, civil, labor, commercial, economic, and family courts in addition to the Public Prosecution. The term ordinary courts is used to distinct those courts from the SC, which include the administrative courts. Furthermore, there are two judicial entities i.e. the APA and the SLA; members of those two entities are not court bench judges but they perform other activities associated to the judicial activity. The MOJ, despite not being a judicial institution but it is an important part of the judicial sector because of its considerable power and authority.

These institutions are equal and independent of each other. The judicial institutions are independent of each other on their administrative and financial affairs but the judicial processes and services provided by each of them are connected and linked to those of other institutions. With the exception of Military Courts, which are not connected, totally, to the work of other judicial institutions but are considered as a judicial institution by virtue of article 204 of the current Egyptian Constitution.

Therefore, each institution manages, solely, the vast majority of its own affairs.<sup>324</sup> Accordingly, each institution/entity has a unit, usually called the information center/ information technology center, which is responsible for managing the automation and digital transformation of the institution's processes and services. There are information technology centers in the CC, Public Prosecution, MOJ, Economic Courts, Appeal Courts, SC, SCC, SLA, and APA. It should be noted that some of these institutions created recently what is called "digital transformation administration" in addition to the existing information centers.

The SC is an independent judicial institution; however, the automation and digital transformation of its processes and services cannot be done in isolation from other judicial institutions/entities. The SLA is the plaintiff, representing the state, in several lawsuits before the SC; it represents the defendant, representing the state, in the majority of lawsuits before the SC. The APA investigates the disciplinary violations from civil servants and represents the society as being a prosecution authority; therefore, it files lawsuits for disciplinary trials, sits on the bench as part of the disciplinary courts' formation, and appeal decisions from such courts before the SAC. The SC and OCs are linked together only in the course of lawsuits referred from one institution to the other, and the suspension of the settlement of some lawsuits before the SC until the issuance of judgments from criminal courts in associated lawsuits. Finally, the SCC is linked to the SC in

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<sup>324</sup> Article 173 of the 1971 constitution of Egypt provided for the creation of a council that gathers the chairpersons of the judicial institutions to manage the joint affairs between those institutions; however, this provision was rarely activated until the cancelation of the entire constitution after the 2011 revolution. There is a current council that is regulated by the law no. 192 of 2008 dated June 22, 2008 on the Council of Judicial Institutions; this council is still in force and it convened only once on December 23, 2018. The constitutional amendment of April 2019 created another council i.e. Supreme Council of Judicial Institutions and Entities. This council convened only twice. The first meeting was on May 12, 2020 to discuss the issue of expediting the digital transformation of the judicial institutions in light of the effects of Covid-19, which caused disorders in the regular work of courts. The second meeting was on August 18, 2020 to discuss some administrative issues such as unified rules for appointing candidates to judicial positions.

the course of lawsuits of unconstitutionality of some provisions of the legislation that are initiated or authorized by the SC courts during the settlement process of existing lawsuits before the SC courts.

This overlap in the activities of almost all other judicial institutions with the activity of the SC requires the integration of efforts of automation and digital transformation; otherwise, the optimal use of the full potential of the automation and digital transformation will not be possible.<sup>325</sup>

One clear example to illustrate the necessity for the integration of efforts is the current situation in the SC regarding several lawsuits on taxes-related issues, i.e., income tax, added-value tax, customs taxes and fees, real-estate tax, and other types of taxes. The SCC ruled to confer upon the SC the jurisdiction to settle almost all tax-related litigations.<sup>326</sup> This resulted in the transfer of tens of thousands of tax-related litigations from the OCs to the SC. Many of those lawsuits were already being appealed before the CC. This resulted in three issues that constituted obstacles to justice before the SC.

First, the majority of the files of the lawsuits transferred from the CC to the SC did not include the documents of the lawsuits but only the decisions of the First Instance Courts (hereinafter, FIC), the Court of Appeal (hereinafter, CA), and the CC. The CC is not a merit court but a law court, it reviews the decisions from CA to ensure its legality; therefore, the file of the lawsuit that is sent from the CA to the CC includes only the lawsuit petition and the decisions of the FIC and CA. This resulted in keeping those lawsuits in judicial preparation sessions before the Commissioners Authority at the SC (hereinafter, SC-CA) for a long period until all documents arrive from the OCs.<sup>327</sup> Due to the severe delays in retrieving documents from the OCs, it is very common that the SC-CA requires the litigants to submit a copy, whether official copy, microfilmed copy, or photo copy, of the documents that were submitted in the lawsuits; despite the fact that this is the role of the referral court.<sup>328</sup>

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<sup>325</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

<sup>326</sup> SCC decision on case no. 162 for the judicial year 31, decision of April 7, 2013.

<sup>327</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

Interview (6) with a working judge at the SC – senior judge – February 6, 2021 – on the file with the author.

Interview (10) with a working judge at the SC – mid-level – February 28, 2021 – on the file with the author.

<sup>328</sup> *Id.*

Second, the files of some lawsuits were transferred twice, one file from the CC and the other from the CA; therefore, they were registered in the SC as two different lawsuits. Third, the OCs transferred several lawsuits to non-competent courts in the SC, e.g., lawsuits that should have been sent to Alexandria CAR were sent to Cairo CAR; this entailed delays in the settlement process because these lawsuits will be redirected to the competent court within the SC.<sup>329</sup>

This clearly clarifies the need for the integration of automation and digital transformation efforts. Connecting the SC and the OCs via an intranet would have allowed sending all those files, if the lawsuits files are created or scanned and stored in online records, from the OCs to the competent court within the SC in a timely manner and without the loss of any documents.

The integration of automation and digital transformation efforts of the different judicial institutions/entities requires one unified policy or vision on digital transformation for the justice sector as a whole. However, the multiplicity of information technology centers in the different judicial institutions/entities and their differing views on digital transformation, in addition to the lack of coordination and cooperation between them,<sup>330</sup> resulted in the difficulty of drafting such unified, integrated policy or vision on digital transformation for the judicial sector in Egypt.

There are two recommendations that the SC should follow in order to overcome the lack of coordination and integration with the efforts of automation and digital transformation of the judicial processes and services of other institutions/entities.

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<sup>329</sup> *Id.*

<sup>330</sup> In 2015, the SC information center exerted efforts to conclude a tripartite protocol between the information centers of the SC and SLA and the MCIT. The draft version included the potential cooperation to allow the electronic service of judicial documents between the SC and SLA. This attempt failed due to the lack of awareness of importance of cooperation among the leadership of both the SC and SLA. In 2016, the SC information center exerted efforts to conclude a protocol between the information centers of the SC and APA. The draft version included the potential cooperation to allow the APA to file the lawsuits electronically, to track the status of the lawsuits remotely, to view the documents submitted in the lawsuits, to access the database of the advisory opinions, and to access the database of decisions of SAC. Furthermore, the potential cooperation included the exchange of data entry employees, administrative employees, and technical employees when needed. This attempt also failed due to the lack of awareness of importance of cooperation among the leadership of both the SC and APA. Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author. Interview (1) with a working judge at the SC – mid-level – February 1, 2021 – on the file with the author. Interview (10) with a working judge at the SC – mid-level – February 28, 2021 – on the file with the author.

First recommendation, the SCIC, or the admiration, unit, and/or committee(s) that currently replaces it, should exert efforts to inform SC judicial leadership of the necessity of close cooperation with other judicial institutions and entities. The SC leadership then should exert efforts to initiate cooperation with other judicial institutions and entities. There should be a focus, during the negotiations with other institutions and entities, on the mutual benefit and the effective application of any prospective protocol that may be signed.<sup>331</sup> This cooperation can be initiated through the current existing Supreme Council of Judicial Institutions and Entities, in order to secure cooperation among all of the judicial institutions, entities, and the MOJ at one time, so the Council can enjoy a holistic view while deciding on this matter.

Second recommendation, the SCIC should prepare back offices that will be responsible for data entry and scanning tasks in order to digitize the information, scan the documents coming from other institutions/entities, and incorporate them into the automated system.<sup>332</sup> This suggestion is applicable only if there will be no possibility of cooperation with other institutions and entities until the deployment of the recently developed automation applications in the SC.

## 2. Legislative challenges:

The role of the judiciary is very important because it entails serious effects on the rights of individuals and the social peace of the society as a whole. That is why the different aspects of judicial activity are organized through a series of constitutional provisions, laws, decrees, and statutes. The use of modern ICT to enhance the quality, efficiency, and efficacy of a judicial institution is, in nature, a reform to the current situation of the ineffectiveness of the judicial settlement of disputes process. The reform that affects judicial activity requires supporting legislation because of the strict regulation of each aspect of that activity.

In order to allow the use of modern technology to modernize the judicial processes, services and make use of the full potentials resulting from such use, there should be supporting legislation in four main aspects.

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<sup>331</sup> These efforts should build on the recent initiatives for cooperation such as the one recently adopted from the CC, see, the CC and MCIT sign a protocol to connect the CC to other judicial institutions, 2020, available at, <https://gate.ahram.org.eg/News/2536928.aspx> (last visited April 14, 2021).

<sup>332</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

First, legislation to allow the use of modern ICT, define the technical terms associated with the use of automated litigation applications and organize the legal effects resulting from such use.<sup>333</sup> This legislation should provide a concrete definition of new concepts such as electronic service of documents, email address, electronic writing, and electronic medium. This legislation should define the legal effects associated with the electronic filing, management, and deciding on lawsuits, e.g., the probative value/force of computer outputs and electronic evidence, the principle of due process in electronic procedures, and the right to confrontation in electronic procedures.<sup>334</sup>

Second, legislation to provide an entirely new organization to the procedures of litigation. This is necessary to cope up with the differentiation between the paper-based and computer-based procedures and allow the full potential from the use of modern ICT.<sup>335</sup> The new set of procedures should be in conformity with the principles of procedural economy. Some scholars, after browsing some comparative experiences of the digital transformation of the judiciary, recognize that some countries introduced a new set of simplified procedures, while others relied on the same existing set of procedures but through electronic medium instead of paper medium, while a third group of countries tried to mix the two previous methods.<sup>336</sup> The research argues that there is a need for an entirely new organization to the procedures of litigation because the current existing one in Egypt is very lengthy, very costly, very outdated, and not in conformity with the principles of economics of litigation, good governance and court governance.

Third, legislation to provide an integrated organization to the digital rights of litigants.<sup>337</sup> This crucial to overcome many fears that might be associated with the use of technology in litigation. The attempt to reinforce transparency and preserve traditional litigations constitutional protections such as the publicity of the hearings might entail allowing the public access to some

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<sup>333</sup> Mahmoud, *supra* note 16, at 57-58. Interview (1) with a working judge at the SC – mid-level – February 1, 2021 – on the file with the author. Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

<sup>334</sup> See generally, Mokhtar, *Supra* note 31, at 110-111.

<sup>335</sup> Interview (3) with a working judge at the SC – senior judge – February 15, 2021 – on the file with the author. Interview (7) with a working judge at the SC – mid-level – March 20, 2021. Interview (5) with a working judge at the SC – mid-level – March 16, 2021 – on the file with the author.

<sup>336</sup> Mokhtar, *Supra* note 31, at 24-25.

<sup>337</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author. Interview (9) with a working judge at the SC – mid-level – February 20, 2021 – on the file with the author.



information/data such as court records or the agenda of the hearing sessions;<sup>338</sup> this might interfere with the privacy rights of litigants.<sup>339</sup> Therefore, some digital rights of litigants, such as privacy rights and the right to be forgotten, should be organized and protected through techniques that allow anonymity of litigants, preventing the misuse of personal information from the court staff, and the deletion of specific litigation information after a defined period.<sup>340</sup>

Fourth, legislation to guarantee the integration of the use of modern ICT with, at least, the basic reform of other aspects of the judicial activity. The use of modern ICT cannot achieve its full potential while other impediments of judicial activity exist. This includes, among others, the limitation of the rapidly increasing number of lawsuits, the implementation of principles of economics of litigation, the modernization of the administration of justice, and the continuing judicial education.

The supporting legislation concerning automation and digital transformation is currently missing in Egypt, thus resulting in curbing the efforts of automation and digital transformation. There were and still many reasons for the legislative challenges that curb the SC from making use of automation and digital transformation.

The First reason: outdated, complicated, and overlapping procedural legislation:

There is no law for administrative proceedings before the courts of the SC (administrative courts), despite the fact, the law of the SC, which includes very few procedural rules, provides for the issuance of a Code of administrative procedures.<sup>341</sup> From 1972, the date of issuance of the SC law, until now, the parliament did not issue such a code.

Therefore, the SAC resorted to applying the rules of law no. 13 of 1968, known as the Code of Civil and Commercial Procedures, as long as they suit the nature of the administrative lawsuit.<sup>342</sup>

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<sup>338</sup> The SCC already allows public access to the entire agenda and schedule of the hearings via its portal on the web; the CC allows access while searching by the number of lawsuit. The OCs and the SC does not currently allow public access to the agenda and schedule of hearings.

<sup>339</sup> Karen Eltis, *The Judicial System in the Digital Age: Revisiting the Relationship between Privacy and Accessibility in the Cyber Context*, 56 MCGILL LAW JOURNAL, 289–316 (2011)

<sup>340</sup> Mokhtar, *Supra* note 31, at 114. Mahmoud, *supra* note 16, at 58.

<sup>341</sup> Article 3 of the issuing law of the law No. 47 of 1972 on The SC, *Al-Jarida Al-Rasmiyya*, 40, 5 October 1972 (Egypt).

<sup>342</sup> SAC decision on Appeal no.348 for the judicial year 9, decision of November 3, 1968.

Furthermore, some rules from the law no. 150 of 1950 on the Code of Criminal Procedure are applicable to the disciplinary trails for public servants before the SC.<sup>343</sup> In addition to that, some rules of other laws are applicable; this includes, among others, law no. 117 of 1958 on the Administrative Prosecution, the law No. 75 of 1963 on the SLA, and the Law no. 7 of 2000 on Conciliation Committees in some Disputes. Finally, some other principles extracted from the SAC decisions are applicable.

All these existing laws are very old and have been amended several times. They provide a set of complicated, long, and unnecessary procedures.<sup>344</sup> The procedures starts with writing a lawsuit petition, then submitting it to the court registry at the court building, then following up with the court staff responsible for notifying the defendant; the lawsuit is then initiated. The procedures are continued with attending hearing session and submitting the required evidence and documents, then waiting for the issuance of the judgment, and finally appealing the judgment or following up with the court staff responsible for enforcing the judgment.

This situation renders the automation and/or digitalization of the procedures and work cycle very difficult because there are an unnecessary repetition and prolongation of procedures. The current procedures and work cycle can be modernized and shortened without prejudice to the fundamental rights of defense or the purpose of the form of the procedure; such modernization can result in even more protection to those objectives and/or values, which are currently seem to be ineffective due to the several gaps in the current procedural organization.<sup>345</sup> Some scholars admit that the basic litigation principles such as publicity of the hearings, rights of defense, and rights of confrontation can be maintained and even developed through the use of modern technology in litigation procedures.<sup>346</sup>

The second reason, the legislative gap:

This is reflected in the non-existence of laws that regulate the use of modern technology in judicial processes and services. Some scholars recognize that some aspects of the limited

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<sup>343</sup> Some rules are applicable by virtue of a provision in the SC law; while others are applicable by virtue of decisions form the SAC such as the decision on Appeal no.502 for the judicial year 31, decision of June 28, 1987.

<sup>344</sup> Mokhtar, *Supra* note 31, at 18.

<sup>345</sup> Mahmoud, *supra* note 16, at 55.

<sup>346</sup> *Id.*

automated systems in Egyptian Courts are regulated through decrees by the MJ. However, those scholars also recognized the inability to get copies of those decrees in order to review, evaluate, and critically engage with them.<sup>347</sup>

There is no law that allows and regulates the use of the e-signature in judicial transactions, its probative force and legal authenticity, the e-filing of lawsuits, the e-service of judicial documents, the electronic submission of documents, the electronic exchange of documents between state institutions, the electronic management of courts' sessions and hearings, the use of courtroom technology, and the electronic storage and archiving of judicial documents.<sup>348</sup>

Therefore, the efforts of digital transformation are faced with objections due to the lack of the legality of such new concepts i.e. the lack of authorizing legislation.<sup>349</sup>

The third reason, the lack of enforcement of existing legislation:

The enforcement of current existing legislation is a serious problem in Egypt. The Electronic Signature Law was issued in 2004, but it was not enforced except for a very narrow scope and only within the financial sector. The e-signature law is not enforced at the SC at all due to the resistance from judges and their interpretation of the law to be applied only on civil, commercial, administrative, but not to judicial transactions, which they assume to be of a more important nature that requires a specific explicit legislation to regulate them while taking into consideration their nature.<sup>350</sup>

The fourth reason, the non-existence of a genuine desire for legislative reform:

There were several calls from more than ten years regarding the issuance of a law that organizes the different aspects of the digital transformation of the judicial sector; however, the parliament

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<sup>347</sup> Mokhtar, *Supra* note 31, at 110. The researcher suffered from the same issues of the unavailability to view or get a copy of those ministerial decrees.

<sup>348</sup> Mahmoud, *supra* note 16, at 57-58. It should be noted that, the recent amendment to the Law of Economic Courts regulates the majority of these issues; however, this law does not apply to the SC.

<sup>349</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author. Interview (3) with a working judge at the SC – senior judge – February 15, 2021 – on the file with the author. Interview (6) with a working judge at the SC – senior judge – February 6, 2021 – on the file with the author.

<sup>350</sup> *Id.*

did not respond yet to these calls except in a narrow margin, which focuses on the nature of some disputes.<sup>351</sup>

In 2013, the MOJ proposed a legislation draft to regulate the technological projects of the ministry. This draft provided legal solutions/responses to the most pressing obstacles that were and still precluding the use of modern technology in the judiciary. The draft law included, among other things, the establishment of a special fund to finance technological projects, the possibility to impose extra fees to allow the use of electronic services that save time and effort and provide judicial services over 24 hours, and appropriate financial incentives to maintain skilled labor.

The draft also included the regulation of the creation and exchange of electronic judicial documents, the use and legal force of the e-signature, the online submission of documents after signing them electronically, and the creation of a multimedia record of the hearings so that the sessions are recorded in audio and video format and saved electronically to prove what happened during these sessions in lieu of the paper minutes of the hearing. Despite the clear advantages of this draft law, it was not issued until now, and no similar legislation was issued so far. This reflects the lack of a genuine desire from the parliament to support the digital transformation of the judicial sector.

The High Committee for Legislative Reform is currently drafting a new modern and unified procedural code. This code shall be applicable to both the OCs and the SC; it also organizes the different aspects of automation of the litigation process. However, the discussions over this legislation continued from early 2018 until now, without finalizing the draft.<sup>352</sup>

In April 2020, the Judges' Club finalized an integrated strategy, with the necessary draft legislation, regarding a complete reform of the judiciary including the highest possible use of modern technology to enhance judicial services; the club communicated the strategy officially

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<sup>351</sup> *Id.*

<sup>352</sup> The official website of the committee reflects that the Unified Procedural Law is under study since 01/04/2018 until now, *available at*, <http://www.lawreform.org.eg/Laws/laws.aspx?id=5> (last visited April 7, 2021).

to the MOJ but the strategy and its attached draft legislation did not find their way to the parliament yet.<sup>353</sup>

The parliament recently issued a law to amend the Economic Courts' law.<sup>354</sup> This law establishes a new work cycle with easy, fast, and simplified procedures. This law also regulated the issue of judicial mediation, i.e., mediation before courts for the first time, with the aim of reducing the burden on the courts and to increase the courts' financial resources through collecting certain fees against the mediation services they provide. Furthermore, this law has regulated several aspects of adopting and implementing full automation and digitalization of Economic Courts' processes and services.<sup>355</sup> This law was adopted after a very brief discussion in the parliament. However, it appears from provisions of this law that it does not impose the use of modern ICT; instead, it created a parallel system that goes in hand with the current traditional paper-based system. Therefore, litigants have the option to use electronic litigation, but in all cases, the court staff will create a paper-based file in addition to the electronic computer-based file that may be created if the litigants choose to use the electronic litigation option.

This reflects the parliament's interest to support only courts with direct relevance to the investment compared to the severe delay in the enactment of legislation to regulate the digital transformation of other courts. It is true that the full reorganization of the judicial procedures is not an easy task. It might be somehow affordable to introduce core changes in the settlement process of certain types of litigations such as the economic litigation due to the limited number of lawsuits, the limited number of courts dealing with them, and the prospective mutual desire from the litigants to use modern ICT to benefit from its advantages. However, the full reorganization of judicial procedures is not a goal that cannot be achieved; allowing public/community discussions over the proposed law and effectively trying to build a consensus

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<sup>353</sup> See, <https://egyils.com/%D9%86%D8%A7%D8%AF%D9%8A-%D8%A7%D9%84%D9%82%D8%B6%D8%A7%D8%A9-%D8%B9%D8%B1%D8%B6%D9%86%D8%A7-%D9%85%D8%B4%D8%B1%D9%88%D8%B9-%D9%84%D8%AA%D8%B7%D9%88%D9%8A%D8%B1-%D9%85%D9%86%D8%B8%D9%88%D9%85%D8%A9/> (last visited April 7, 2021).

<sup>354</sup> Law No. 146 of 2019 on Amending Law No. 120 of 2008 on Economic Courts, *Al-Jarida Al-Rasmiyya*, 07 August 2019 (Egypt).

<sup>355</sup> See generally, Mahmoud, *supra* note 16, at 67-71.

or a wide acceptance will allow the introduction of a full reorganization of the judicial procedures.<sup>356</sup>

This situation was expected to be changed after the spread of Covid-19 and the associated need to expedite the process of digital transformation of public services including the judicial services, but nothing happened until now.

There are two recommendations that the SC should follow in order to overcome the continuous existence of the legislative challenges. First recommendation, SC should propose drafts of the laws necessary to overcome such legislative impediments and exert efforts to convince the parliament of the urgency and necessity of the issuance of those required laws. This legislative reform proposal should include the following eight facets.

-A comprehensive legal regulation of the use of modern technologies in judicial processes and services; such regulation should cover two aspects. The first aspect is the organization of the automation and digitalization of the consecutive stages of the judicial process, i.e., obtaining temporary judicial protection before filing a lawsuit, filing the lawsuit, service of judicial documents, managing the lawsuit during judicial hearings, performing judicial deliberations, issuing judgments, archiving of the documents of the lawsuit file. The second aspect is to regulate the creation, validation, and legal validity/force of digital documents and to regulate the use of digital evidence before courts.<sup>357</sup> It is important to take into consideration the necessity providing new concepts for the traditional litigation guarantees and ensuring the conformity of the new procedures to the litigation guarantees. Otherwise, the SCC might strike down this legislation.

-The development of a modern and integrated set of procedures and work cycles in the different departments of the SC. These new rules should be developed in accordance with the principles of good governance, court governance, the economics of litigation, and the procedural economy.<sup>358</sup> This set of procedures should be updated regularly and whenever needed to ensure

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<sup>356</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

<sup>357</sup> Interview (1) with a working judge at the SC – mid-level – February 1, 2021 – on the file with the author.

Interview (10) with a working judge at the SC – mid-level – February 28, 2021 – on the file with the author.

<sup>358</sup> The proposed procedures should be clear, simple, and associated with limited and non-complicated technological terminologies. See, Mokhtar, *Supra* note 31, at 94.

an adequate level of reflection and/or response to the societal, technical, legal, and other relevant developments.<sup>359</sup>

-The protection of personal data and privacy issues. The concept of fighting corruption through digital transformation is based on the separation between the transaction/service provider and recipient. The provision of remote services is one part of the solution. The other part is the anonymity of the litigants in court records and other possible processes to prevent any unauthorized access or use of litigants' information or other confidential information related to the lawsuits such as the reports from the technical expertise in a specific lawsuit.<sup>360</sup>

-The integrated organization of digital identity for citizens and residents in Egypt. This should allow, first, the provision of electronic signature services for all citizens/residents in Egypt; second, the creation of an e-mail for each citizen/resident in Egypt by allowing them to create e-mail addresses on the web portal for governmental services or the website of the portal for judicial services. Some scholars suggest allowing private institutions i.e. mobile phone providers that are licensed by the government to provide individuals with authenticated email address against certain fees to be regulated by virtue of a decree from the National Telecom Regulatory Authority.<sup>361</sup>

This is a prerequisite to initiating a fully automated system because if the litigants and lawyers do not have e-signatures, then they will not be able to use the system at all or they will still be required to sign documents that are carried on a paper medium then submitting it to the court in addition to other documents that were uploaded to the system. The digital identity is a more advanced approach, which allows not only the e-signature but most importantly, it provides an official, secured, and legally recognized channel to exchange official correspondence between the government institutions and each individual.

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<sup>359</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

<sup>360</sup> Interview (9) with a working judge at the SC – mid-level – February 20, 2021 – on the file with the author.

<sup>361</sup> See, a study and a draft law prepared by Judge Nabil Omran in collaboration with Judges' Club, *available at*, <https://egyils.com/%D9%86%D9%86%D8%B4%D8%B1-%D8%A7%D9%84%D9%86%D8%B5-%D8%A7%D9%84%D9%83%D8%A7%D9%85%D9%84-%D9%84%D9%85%D8%B4%D8%B1%D9%88%D8%B9-%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%AA%D9%86%D8%B8%D9%8A%D9%85-%D8%A7%D9%84/> (last visited April 7, 2021).

The current recent decree issued by the MOJ regarding the creation of a unified electronic record for all Economic Courts<sup>362</sup> cannot be evaluated yet because it was enforced almost three months ago.<sup>363</sup> However, the preliminary examination of this decree reveals that it provides complicated procedures to allow the registration of e-mails that can be attributed to natural or legal persons. The digital identity solutions are more appropriate to provide an easy and comprehensive solution that offers authenticated e-mail addresses and e-signatures. The digital identity solutions are adopted in several countries such as the UAE where the UAE Pass<sup>364</sup> can be used to access court services such as Dubai Courts.<sup>365</sup>

-The organization of specific phases/stages of compelling litigants to use automated and digitally transformed processes and services instead of going to get the services in person from the service centers/front offices at the SC.<sup>366</sup> This can be combined with appropriate exceptions for those who are incapable of using the automated and digitalized services and with the establishment of temporary technical aid offices in courts.<sup>367</sup>

The lack of choice in using electronic means in litigation i.e. forcing litigants to use electronic means in litigation raises some concerns regarding the rights of defense and fair trials. In France, the French Constitutional Council issued a recent decision<sup>368</sup> to declare the unconstitutionality of the obligatory use of audiovisual means of communication during the examination of the

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<sup>362</sup> MJ Decree number 8548 dated November 11, 2020 published December 10, 2020.

<sup>363</sup> The Real Estate Registration and Notarization Agency issued the enforcement instructions for the aforementioned decree on January 11, 2021. See, <https://egyils.com/%D8%A7%D9%84%D8%B4%D9%87%D8%B1-%D8%A7%D9%84%D8%B9%D9%82%D8%A7%D8%B1%D9%8A-%D9%8A%D8%B5%D8%AF%D8%B1-%D8%AA%D8%B9%D9%84%D9%8A%D9%85%D8%A7%D8%AA-%D8%AC%D8%AF%D9%8A%D8%AF%D8%A9-%D8%A8%D8%B4%D8%A3%D9%86/> (last visited April 7, 2021).

<sup>364</sup> An integrated Digital Identity system adopted in the UAE that it is easy and free to register in and use and allows the use of mobile phones to enable the UAE citizens, residents, and visitors to electronically sign several types of electronic documents and access the majority of governmental services. See generally, <https://selfcare.uaepass.ae/> (last visited April 7, 2021).

<sup>365</sup> See, [https://www.dc.gov.ae/DCWeb\\_Common/CommonPages.Login.aspx](https://www.dc.gov.ae/DCWeb_Common/CommonPages.Login.aspx) (last visited April 7, 2021).

<sup>366</sup> Mahmoud, *supra* note 16, at 58.

<sup>367</sup> Interview (1) with a working judge at the SC – mid-level – February 1, 2021 – on the file with the author. Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author. Interview (10) with a working judge at the SC – mid-level – February 28, 2021 – on the file with the author.

<sup>368</sup> Decision n ° 2020-872 QPC of January 15, 2021, available at, [https://www.conseil-constitutionnel.fr/decision/2021/2020872QPC.htm?fbclid=IwAR2z53zS6aelxQEVT4Qc-hQvkWZGAGuqSkziDQYQ0uzo1BW2\\_vy4t8lGTz4](https://www.conseil-constitutionnel.fr/decision/2021/2020872QPC.htm?fbclid=IwAR2z53zS6aelxQEVT4Qc-hQvkWZGAGuqSkziDQYQ0uzo1BW2_vy4t8lGTz4) (last visited April 7, 2021).



lawsuit before placing a person in precautionary detention or renewing such detention.<sup>369</sup> In Egypt, the electronic means are currently used to conduct sessions regarding imposing and renewing precautionary detention through video conferencing.<sup>370</sup> It should be noted that this system is not based on any authorizing legislation; it is based on the current need and circumstances during the Covid-19 pandemic, which resulted in practical difficulties to transfer criminals between prisons and courts. Some lawyers criticize this system due to the non-effective communication among accused persons, their lawyers, and judges and the fear of abuse of authority of officers at prisons over the accused persons who might fear mentioning such abuse while not being in person before judges.<sup>371</sup>

The fact that pleadings before SC courts are almost written pleadings not oral ones<sup>372</sup> and that there are no fears of abuse of authority over the litigants mitigate largely the fear of affecting the rights of defense of litigants if they are compelled to use electronic means of litigation. Therefore, there are no theoretical legal barriers towards setting specific stages or transition periods to force the use of electronic means of litigation.

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<sup>369</sup> Article 5 of the Ordinance No. 2020-303 of March 25, 2020 adapting the rules of criminal procedure on the basis of emergency law No. 2020-290 of March 23, 2020 to deal with the covid-19 epidemic, *available at*, [https://www.legifrance.gouv.fr/download/pdf?id=\\_bhGSZpQEI4f\\_HjbyCJsdO1pWrS6r3xlnI0T8Bw0saA=](https://www.legifrance.gouv.fr/download/pdf?id=_bhGSZpQEI4f_HjbyCJsdO1pWrS6r3xlnI0T8Bw0saA=) (last visited April 7, 2021) provides as follows. "By way of derogation from article 706-71 of the Code of Criminal Procedure, an audiovisual telecommunication means may be used before all criminal courts, other than felonies courts, without it being necessary to obtain the agreement of Parties. In the event of technical or material impossibility to resort to such means, the judge may decide to use any other electronic means of communication, including telephone, making it possible to ensure the quality of the transmission, the identity of the persons and guarantee the confidentiality of exchanges between the parties and their lawyers. The judge ensures the smooth running of the proceedings at all times and the registry draws up the minutes of the operations carried out. In the cases provided for in this article, the judge organizes and conducts the procedure while ensuring respect for the rights of the defense and ensuring the adversarial nature of the debates". The Constitutional Council found that denying the right of litigants to appear before judges in person contradicts with the right of defense.

<sup>370</sup> See, <https://gate.ahram.org.eg/daily/News/783211.aspx> (last visited April 7, 2021).

<sup>371</sup> See,

<https://www.madamasr.com/ar/2020/10/19/feature/%D8%B3%D9%8A%D8%A7%D8%B3%D8%A9/%D9%85%D8%AD%D8%A7%D9%85%D9%88%D9%86-%D9%8A%D9%86%D8%AA%D9%82%D8%AF%D9%88%D9%86-%D8%A7%D9%84%D8%AD%D8%A8%D8%B3-%D8%A8%D8%A7%D9%84%D9%81%D9%8A%D8%AF%D9%8A%D9%88-%D9%83%D9%88%D9%86%D9%81%D8%B1/> (last visited April 7, 2021).

<sup>372</sup> See, articles 26 and 27 of the SC law. See also, the SAC decision on case no. 1172 of the judicial year 35, session of March 25, 1989. The court clearly affirmed that pleadings before the SC are written and should be submitted in specified dates; parties do not have the right to insist on the request of the open of oral pleadings.

-The provision of the appropriate motivation of litigants to use automated and digitally transformed services; this can be done, for example, through establishing a gradual fee list so that the cost of getting the service in person from the service center is much higher than the electronic transaction.<sup>373</sup>

-The integration of the use of modern ICT with other aspects of judicial reform in SC. Ultimately, digital transformation is a means to an end. The objective is to increase the effectiveness of the performance of the SC, and this objective is closely linked to other reform aspects.

One example of such other needed aspects of reform is the need for a comprehensive organization of the economics of litigation before the SC. The current regulations of judicial fees before the SC are very old; the fees are not even regulated by one legislative instrument to ensure their consistency, but with a variety of instruments, which witnessed several amendments. The judicial fees system before the SC courts is regulated by virtue of law No. 55 of 1959 on regulating the SC in the United Arab Republic, the decree on the fees before the SC dated August 14, 1946, and several instructions and periodical books issued by the Ministry of Finance. It should be noted also that, no fees are applicable for the services of the other two departments in the SC i.e. advisory department and legislation department.

As a result of the many amendments without the introduction of a new comprehensive regulation that takes into account the principle of guaranteeing the right of litigation for all and at the same time the principle of the economics of litigation, the system of litigation fees has become largely ineffective. It should be noted that article four of the issuance articles of the current SC law provides for the continuity of the judicial fees regulations until the issuance of a new law on judicial fees before the SC. This law was not yet issued from 1972 until now. It should be also noted that several governmental entities enjoy an exemption from judicial fees; therefore, they do not pay such fees.

Such ineffectiveness resulted in a bad impact on the availability of financial resources for the delivering and administrating of the judicial services. The collection rate of the current small fees is very low as a result of the ineffective court work cycle, which often renders the official

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<sup>373</sup> Interview (8) with a working judge at the SC – mid-level – April 10, 2021 – on the file with the author.  
Interview (5) with a working judge at the SC – mid-level – March 16, 2021 – on the file with the author.

claim of the fees from the losing party to the case occurs after a long time and usually after the prescription of the right to claim such fees. That is why; the SC chairman formed a distinct administrative unit to ensure the full collection of required judicial fees.<sup>374</sup> Furthermore, the current very low judicial fees motivate citizens to file claims, even if they are malicious and false, and this results in increasing the numbers of cases before courts, thus bringing a further financial burden to the SC.

-The regulation of the dissemination of the legal and court technology culture to ensure that the future generations of legal practitioners will be familiar with the use of legal and court technologies. Accordingly, the basic knowledge of technology should be a prerequisite for the SC administrative and judicial positions. Furthermore, Legal education should be reorganized to ensure that an appropriate minimum number of courses and content regarding the use of modern technologies in the legal and judicial fields is taught in undergraduate and postgraduate law degrees. The Supreme Council of Universities issued a decree to require all public universities to teach its postgraduate students at the first stage, then the undergraduate students and later on the teaching staff (faculty members) and the administrative staff.<sup>375</sup> The same can be enforced for law students but not only in the form of a training certificate as a requirement for graduation but in the form of a compulsory study module.

Second recommendation, there should be a teleological interpretation, instead of the literal one, of the existing legislation in order to allow an appropriate margin for the use of modern ICT.<sup>376</sup> For example, articles 14-15 of the e-signature law in Egypt provide for the legal and probative force of the electronic writing, electronic signature, and electronic documents in the administrative, civil, and commercial transactions. Despite the non-inclusion of judicial

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<sup>374</sup> See, <https://www.elwatannews.com/news/details/4347582> (last visited April, 14, 2021).

<sup>375</sup> See, [http://www.eksc.edu.eg/index.php?option=com\\_content&view=article&id=107%3Atraining-on-the-basics-of-digital-transformation&catid=11%3Aacuitnews&lang=ar](http://www.eksc.edu.eg/index.php?option=com_content&view=article&id=107%3Atraining-on-the-basics-of-digital-transformation&catid=11%3Aacuitnews&lang=ar) (last visited April 12, 2021).

<sup>376</sup> Some recent decisions from SAC adopted such interpretation method. There were many contradicting decisions from the different circuits at SAC regarding the legality of writing judgments via computers. In 2009, the Circuit for the Unification of Judicial Principles at SAC issued its decision on case no.18006 for the judicial year 53, decision of January 10, 2009 to approve the writing of judgements via computers as long as the basic information e.g. the number of the lawsuit and the conclusion of the judgement is hand-written. In 2011, the same circuit approved the writing of the entire judgment via computers in its decision on case no.1208 for the judicial year 54, decision of December 3, 2011. These decisions reflect the gradual development in the interpretation of existing legislation to allow the use of modern ICT.

transactions, nothing prohibits, explicitly or implicitly, the application of those two provisions and even the entire law on judicial transactions.

In addition to that, the use of modern ICT to develop the current workflow and procedures should maintain the same purposes of the current legislative regulation of the current procedures, so there would be no annulment attached to such use of modern ICT. For example, the service of the notifications of newly filed lawsuits can be done electronically through an intranet that connects the SC to the SLA and the APA. This will not comply with the current procedural regulations; however, there should be no annulment because the objective of the procedure, i.e., receiving a notification of the filing of a lawsuit, is achieved.<sup>377</sup>

However, this will not possible to apply to all procedures because some procedures are related to some basic litigation concepts and guarantees e.g. publicity of hearings and the principle of confrontation, that were formulated long time ago and are in need of a reformulation in order to cope up with the current technical, legal societal, and other variables.<sup>378</sup>

### 3. Financial challenges:

The difficulties regarding the availability and sufficiency of the financial resources are deeply rooted in the history of SC. Such financial difficulties affect almost every aspect of judicial activity. For example, the premises of the SC do not exist in all governorates until now due to the limited financial resources. Before the 25th revolution, the premises of the SC were very few. After the revolution, many judicial decisions were issued from the SC to force the government to restore the buildings that were rented and/or dedicated to the dissolved national party, and to transform those buildings into SC premises; this happened in several governorates such as Aswan, El-menya, Sharkia, and Menoufia. However, the financial challenges have a

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<sup>377</sup> Paragraph 2 of article 20 of the Code of Civil and Commercial Procedures provides for the prohibition of the issuance of a judgement to annul a procedure if the objective of that procedure is achieved. Furthermore, several decisions from SAC confirm the validity of procedures that were not in compliance of current procedural regulations if the objective of the procedures is achieved. See, for example the Circuit for the Unification of Judicial Principles decision on case no.1123 for the judicial year 43, decision of March 2, 2000.

<sup>378</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

more severe impact in terms of hindering the progress of the activities targeting the digital transformation of judicial processes and services.<sup>379</sup>

It is true that the automation and digital transformation provides crucial assistance in making savings from several aspects of judicial expenditure, e.g., expenditure on court buildings because automated and digitalized court systems will decrease the litigants' pressure on the resources of courts' buildings through providing remote and online services.

However, automation and digital transformation require huge expenditures.<sup>380</sup> The prospective savings and other benefits from the automation and digital transformation cannot be achieved before the completion of projects or major parts of them; this means that such huge expenditures should be spent first then the benefits from the achieved automation and digital transformation can be achieved.

Programs and projects for the automation of judicial processes and services are very expensive in financial terms. There is a cost for acquiring consultation services to plan and implement the automation projects. There is a huge cost to establish and equip a data center and its associated infrastructure, e.g., servers, networks, security systems,<sup>381</sup> and fiber link lines. Another cost is required for purchasing the licenses of the software that is used to develop applications and work systems for the different stages of the judicial process and services. Another cost is dedicated to the purchase of computers, printers, scanner devices, and other equipment for the use of courts' staff and judges. Furthermore, there is a cost for the periodic regular maintenance and update of all of the above. In addition to all these costs, there are some costs associated with the training required for courts' staff and judges on using the computer in general and the applications developed for automating judicial processes and services in particular.<sup>382</sup>

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<sup>379</sup> Mokhtar, *Supra* note 31, at 95-96. Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author. Interview (10) with a working judge at the SC – mid-level – February 28, 2021 – on the file with the author.

<sup>380</sup> *Id.*

<sup>381</sup> Security systems and equipment such as firewalls and antivirus software is of special importance to secure the data of the litigants and the documents with lawsuits files. See, Mokhtar, *Supra* note 31, at 81.

<sup>382</sup> The cost of the second phase only of the enforcing the rule of law program is around 2.5 Billion EGP. See, the MOJ finishes the second phase of the enforcing the rule of law program, 2018, <https://www.youm7.com/story/2018/4/13/%D8%A7%D9%84%D8%B9%D8%AF%D9%84-%D8%AA%D9%86%D8%AA%D9%87%D9%89-%D9%85%D9%86-%D8%A7%D9%84%D9%85%D8%B1%D8%AD%D9%84%D8%A9->

The financial challenges to the automation efforts lead to one of three scenarios, first, to prevent the start of those efforts, second, to block the continuation of those efforts after their start, third, to obstruct the sustainability of the results achieved through these efforts. The first scenario is better compared to the second and third scenarios because, in the last two scenarios, the money invested in such efforts is lost.

The third scenario occurred before in the SC in 2007. The council gained its financial independence from the MOJ. There were no enough financial resources to conclude maintenance and update contracts with the company that developed the applications that were implemented in the SC, as a trial, during the period from 2006 to 2007. The original contract that was concluded by the MOJ in 2004 to automate the SC did not cover the maintenance and update; therefore, the attempt of automating the workflow failed and the investment, even done by the MOJ, was lost.<sup>383</sup> However, in 2011-2012, the SC made use of the already existing applications, and developed it through a team of employees with a background in software development and/or graduates from IT Faculties and schools. This was combined with the purchase of new equipment, in order to make the current system that is still working in few SC premises as mentioned in part one of this study.

The same scenario occurred again during 2012-2013, when MAD implemented, at its own expense, a partial automation in the SC premise in Sharkia. Due to financial limitations and poor planning, the SC did not dedicate financial reserves to cover the cost of periodic and/or maintenance required to face some emergencies. There was an urgent need for frequency stabilizers during the frequent power outages and poor power supply that was spread all over Egypt in 2012 and 2013.<sup>384</sup> The SC did not have any stabilizers, and there was no fund available to purchase such equipment. As a result, the expensive server was damaged, the automation

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%D8%A8%D8%B1%D9%86%D8%A7%D9%85%D8%AC-%D9%81%D8%B1%D8%B6-  
%D9%88%D8%A5%D9%86%D9%81%D8%A7%D8%B0-  
%D8%A7%D9%84%D9%82%D8%A7%D9%86%D9%88%D9%86/3742691 (last visited October 28, 2020).

<sup>383</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

<sup>384</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

attempt in this premise failed, and the investment was lost.<sup>385</sup> The failure to provide these simple sums resulted in wasting other large sums that were spent.

The second scenario occurred in SC during the period from 2012 to 2018. The SC depended on a small team of its employees to update the old applications that were used in 2006-2007. The SC used these applications to implement partial automation in some promises. The software development team and the team of operators become unable to handle any possible expansion of the project. There was no fund available to appoint new staff to join those two teams and/or invest in building the capacity of the existing teams by giving them modern training, e.g., dealing with big data. Therefore, the project is striving to survive without the possibility of continuation.<sup>386</sup> Due to this situation and in light of the desire to achieve quick automation, the SC decided in 2018 to contract with a private company to design and develop completely new applications.<sup>387</sup> It should be noted that the budget of the SC, as an administrative entity, is divided into sections; one section might be lacking funds while other sections have abundance. It is quite hard to transfer funds among those sections or request a reinforcement from the Ministry of Finance (hereinafter, MOF). This explains, partially, why there were no funds to support the existing efforts but some funds became available to create a new project. Furthermore, the same scenario seems to be on its way regarding the new project that was launched in 2018, because there no funds available currently, or expected to be available in the near future, to cover the huge cost of the establishment of a modern data center.<sup>388</sup>

There were and still many reasons for the non-availability of funds to the SC to finance the automation and digital transformation efforts.

The first reason is the lack of funds within the official budget of the SC. The SC is a governmental entity; the main source of financing its operation and activities is the budget, which is allocated by the parliament and provided by the MOF. The funds within the budget

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<sup>385</sup> *Id.*

<sup>386</sup> Interview (1) with a working judge at the SC – mid-level – February 1, 2021 – on the file with the author. Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author. Interview (10) with a working judge at the SC – mid-level – February 28, 2021 – on the file with the author.

<sup>387</sup> Interview (10) with a working judge at the SC – mid-level – February 28, 2021 – on the file with the author.

<sup>388</sup> *Id.*

barely suffice the basic expenditures of the SC, and it is not sufficient to finance projects of the automation and digital transformation of judicial processes and services.

The SC requested further funds several times from the MOF. Obtaining such funding is not an easy task, taking into account, first, the continuous spending on the digital transformation attempts in the SC for many times over many years without achieving tangible results, second, the critical economic situation in Egypt in the last few years, third, the increase of the cost of projects after floating the Egyptian pound and the associated severe decline in the purchasing power of the Egyptian pound. Furthermore, the MOF changed its general project financing strategy; the priority becomes to invest in financing projects that lead to quick financial returns; this does not apply to the digital transformation of the SC as the judicial services are not for profit and the savings from the digital transformation shall take time to be reflected in monetary gains for the MOF. Therefore, the response from the MOF was always the non-availability of funds to reinforce the SC budget or the provisions of limited and insufficient funds.<sup>389</sup>

The second reason is the non-existence of internal financial resources available to the SC that can be used to fund the digital transformation programs. The judicial fees paid for access to judicial services are very low, and there are severe difficulties in collecting them due to the inefficiency of the current work cycle. Furthermore, The State and governmental entities do not pay judicial fees despite the many cases filed by or against them. Finally, MOF gets 90% of the total sum collected from the judicial fees, 5% is allocated to the MOJ, and the last sum of 5% of the collected fees is dedicated to SC. Some scholars suggest relying on judicial fees and fines to finance the digital transformation project.<sup>390</sup> However, the above-mentioned issues concerning the volume of, collection, and distribution of the judicial fees explain why that this suggestion might not be a viable option for financing.

The third reason is the continuous refusal to impose fees for the provision of electronic services. This position started in 1991 when the SAC annulled the decision of the MOJ and some courts

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<sup>389</sup> The budget of the digital transformation in the fiscal year 2019/2020, as an example, was 7.8 Billion EGP; however, the automation of judicial institutions is not within the top priority in spending, except for the national mega project of enforcing the rule of law project. See, the steps Egypt is taking in the context of the transition to a digital society, 2019, <http://gate.ahram.org.eg/News/2270774.aspx> (last visited April 12, 2021).

<sup>390</sup> See, Mokhtar, *Supra* note 31, at 96.



in the OCs to impose obligatory fees for the use of microfilming services. This position continued when the SC leadership refused to approve the SCIC suggestion to start providing limited services through SMS, email, and mobile applications against simple fees. The current applications used in some of the SC premises, allow the provisions of some limited services of tracking the status of lawsuits and receive updates via sms, email, and/or mobile phones application; however, they are not activated due to the shortage of personnel in the team currently running the existing limited automated systems at the SC. This suggestion was refused despite the fact that the use of such services and the payment of associated fee is optional and the litigants and lawyers can still go to the court premises to get their service in the traditional method. The CC already provide services using sms, email, and/or mobile phones application and collect fees for such usage. There were no challenges and/or objections against such fees because they are optional. Furthermore, a considerable number of litigants and lawyers use those services because the fees are simple and advantageous comparing to the cost, time, and effort of receiving the services in the traditional method.

The fourth reason is the making of non-viable and costly decisions during the planning and implementation of automation projects. The decision taken in 2018 to contract with a private company to develop new automation software and applications is a clear example of such costly decisions. This decision is very costly in terms of the sum paid to the company and the additional contract that will be signed, i.e., technical support, maintenance, and update. The other option of depending on in-house IT teams through building the capacity of the existing IT teams in the SC and the appointment of new personnel to join those teams is a much cheaper option than the one that was adopted. The cost of the in-house IT teams' salaries cannot be compared to the cost of the contract. Furthermore, the cost of the additional contract will be saved because the in-house teams will be responsible for the maintenance, support, and update of the software and applications.<sup>391</sup>

The fifth reason is the lack of consistent and organized efforts to seek grants and financial aid. Egypt is a developing country, and it receives several types of financial aid. The efforts of the MOJ and the OCs resulted in cooperation with several national, regional, and international

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<sup>391</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.  
Interview (1) with a working judge at the SC – mid-level – February 1, 2021 – on the file with the author.

donors and receiving several grants to support the efforts of automation and digital transformation efforts.<sup>392</sup> The SC exerted a few efforts in this regard. The only successful efforts in seeking fund from local resources was a protocol that was signed with MAD in 2012, by virtue of which the Sharkia and Menoufia premises were partially automated. However, after the failure of the automation efforts in Sharkia, the MAD did not proceed with any other attempts to support the SC. The protocol was renewed in 2014, but again MAD did not proceed with any other attempts to support the SC.<sup>393</sup>

The only successful effort in seeking external funds was the short-term protocol signed with the Swiss Embassy in Cairo. By virtue of this protocol, the Embassy contracted with a private consulting company to conduct a study to draw a strategy for the continuation of the SC efforts in automation. After the conclusion of this protocol, the negotiations for another long-term protocol failed.<sup>394</sup>

There are a few recommendations that the SC should follow in order to overcome the continuous existence of the financial challenges. First recommendation, the financial burdens of the digital transformation project should be defined accurately during the planning stage, the current tradition of starting some projects while only partial funds are available should stop. There

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<sup>392</sup> In 1996, the MOJ received a grant from the USAID program in Egypt to implement the project “Administration of Justice Support”. The aim of this program was, among others, to introduce the use of modern ICT in courts, see NCSC in the Middle East & North Africa, <https://www.ncscinternational.org/where-we-work/middle-east-and-north-africa> (last visited April 14, 2021). In 2008, the UNDP and the MOJ collaborated to launch the project “Support Legal Aid & Dispute Settlement in Family Courts”. The aim of this project, among others, was the use of ICT in Family Courts and the creation of an intranet to connect the those courts to legal aid offices, dispute settlement offices, and Nasser Bank, see Support Legal Aid & Dispute Settlement in Family Courts, <https://www.eg.undp.org/content/egypt/en/home/projects/support-legal-aid---dispute-settlement-in-family-courts-.html> (last visited April 14, 2021). In March 2019, the USAID program in Egypt, announced a grant of 15 million dollars to support the Egypt Economic Court Automation Activity. The aim of this project is the development of applications for the electronic filing, electronic case management, electronic calendaring system, and electronic archiving, the provision of equipment and the setting up of the required infrastructure in at least one court, and the deployment of the developed application in at least one court, see Economic Courts Support, 2019, <http://english.ahram.org.eg/NewsContent/3/12/373275/Business/Economy/Egypt,-USAID-to-implement-five-projects-worth--mln.aspx> (last visited April 14, 2021). Many other grants were received by the OCs and the MOJ, which were used for training purposes to train judges and court staff on court technology and send judges abroad to examine the technological advancements of courts in developed countries.

<sup>393</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

<sup>394</sup> *Id.*

should be a clear and precise plan for financing the entire stage of each project to ensure its completion and sustainability.

Second recommendation, there should be pressure from the SC over the parliament and MOF to allocate the funds needed for the digital transformation project, especially in light of the many benefits resulting from the digital transformation that will result in recovering the spent funds within few years.<sup>395</sup> Furthermore, efforts should be exerted to convince the parliament to approve the reforms related to the economics of litigation to generate funds that allow both the MOF and the SC to finance some projects from the funds generated from such reform.<sup>396</sup>

Third recommendation, the SC should exert organized efforts to seek financial aid from local, regional, and international donors. The SC should focus on its jurisdiction to fight corruption, protect the rule of law, protect rights and freedoms, and settle investment disputes. These issues are of main interest to donors.

Fourth recommendation, the SC should expand the cooperation with private companies on the same model adopted to automate the advisory department. The SC allowed the company that developed the software that was used to automate the advisory department, to market the database of advisory opinions for the company's own benefit, i.e., to allow the public to access this database in exchange for subscription fees.<sup>397</sup> Therefore, the SC made benefit from having a reduced cost for making the contract, and the private company made benefit from offering services to the public. The same can be done to, for example, make a database of judicial decisions and legislation.

Fifth recommendation, the SC should make benefits from the initiatives made by the state, such as the unified data center at the new administrative capital.<sup>398</sup> This will allow the use of secured cloud services and save the huge costs of the establishment and running a data center. Another suggestion is the coordination of efforts with all other judicial institutions This can be done

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<sup>395</sup> Interview (10) with a working judge at the SC – mid-level – February 28, 2021– on the file with the author.

<sup>396</sup> *Id.*

<sup>397</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

<sup>398</sup> 25 Billion EGP to Establish a Unified Data Center, 2019, <https://almaalnews.com/%D8%A7%D9%84%D8%B3%D9%8A%D8%B3%D9%8A-25-%D9%85%D9%84%D9%8A%D8%A7%D8%B1-%D8%AC%D9%86%D9%8A%D9%87-%D9%84%D8%AA%D9%86%D9%81%D9%8A%D8%B0-%D8%B9%D9%82%D9%84-%D8%AC%D8%A7%D9%85%D8%B9-%D9%84%D8%A8%D9%8A/> (last visited April 12, 2021).

through the Supreme Council of Judicial Institutions and Entities as being the official entity responsible for the common affairs of judicial institutions and entities in Egypt; so the judicial institutions and entities share all their resources to create one giant data center that can be used by all of the judicial entities. This suggestion might be better than using the data center of the government, because the judicial leadership already refused to use cloud services provided by other governmental entities due to the desire to protect the secrecy of judicial data. Therefore, sharing infrastructure with other judicial institutions while keeping the secrecy of the information of each institution might be an optimal solution; furthermore, that option can facilitate the integration and connection among all judicial institutions, which is a main current objective for all judicial institutions and entities.<sup>399</sup>

Sixth recommendation, the SC should impose fees for the services that are provided via electronic methods; however, such fees should be voluntary and only in case of the desire of the litigant and/or lawyer to use such services via electronic method instead of the traditional methods. The fees should be reasonable, to motivate lawyers and litigants and avoid any resistance for change due to the financial burden of that change. The SC should follow the same approach taken by the CC; the financial fees imposed by the CC for its electronic services are quite reasonable,<sup>400</sup> while also allowing litigants and lawyers to make online inquiries about the status of their lawsuits in civil and criminal lawsuits without charge.<sup>401</sup>

Seventh recommendation, the SC should try to make savings from its budget to finance the automation efforts. The SC can exert efforts to limit the number of lawsuits in order to relieve pressure on the courts' infrastructure and relieving the depletion of the resources of the courts. The SC-CA can activate the judicial conciliation to settle disputes at an early stage. The SC can coordinate with the SLA to rationalize the number of lawsuits and/or appeals initiated by the

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<sup>399</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author. Interview (10) with a working judge at the SC – mid-level – February 28, 2021 – on the file with the author.

<sup>400</sup> Details about financial plans for the CC electronic services (receiving notifications about the appeal updates – online view of documents of the appeal) are available at <https://egyils.com/%D8%A8%D8%A7%D9%84%D8%AA%D9%81%D8%A7%D8%B5%D9%8A%D9%84-%D9%85%D8%AD%D9%83%D9%85%D8%A9-%D8%A7%D9%84%D9%86%D9%82%D8%B6-%D8%AA%D8%B9%D9%84%D9%86-%D8%B9%D9%86-4-%D8%AE%D8%AF%D9%85%D8%A7%D8%AA-%D8%A5/> (last visited April 14, 2021).

<sup>401</sup> Tracking civil appeals before the CC can be accessed via [https://www.cc.gov.eg/civil\\_appeals\\_services](https://www.cc.gov.eg/civil_appeals_services) (last visited April 14, 2021). Tracking criminal appeals before the CC can be accessed via [https://www.cc.gov.eg/criminal\\_appeals\\_services](https://www.cc.gov.eg/criminal_appeals_services) (last visited April 14, 2021).

SLA, especially with the current attitude in the SLA to do the same. That's is why, in November 2019, the SLA Chairman issued the directive number 3 for the year 2019 to organize the conditions of filing lawsuits and making appeals by the SLA members; this directive enumerated several types of judicial decisions that the SLA members should not try to appeal. Finally, the SC can prepare a report to the Prime Minister to inform him/her of the persistence of specific governmental entities to violate clear laws and regulations the resulting number of lawsuits and inform him/her of other observations necessary to limit the number of lawsuits.

#### 4. General challenges facing the digital transformation of governmental services in Egypt:

These barriers are not, specifically, related to the automation and digital transformation of the SC, but rather to the digital transformation of governmental services in Egypt in general. Judicial processes and services, including those of the SC, are part of the government processes and services; therefore, they are affected by the degree of progress and the challenges that affect the progress of the efforts of automation and digital transformation of the government processes and services.

For example, the establishment of the automated systems in the SC is dependent on the ICT infrastructure within the entire country not only to those available to the SC; furthermore, the use of remote/online services is affected by individuals' degree of trust and the percentage of usage of online government services in general.

There are almost no officially announced/available statements, data, information, and/or documents regarding the vision, strategy, the progress of efforts, and/or the challenges that hinder the efforts of the automation and digital transformation of government processes and services. However, there are some scattered statements and news available on the websites of different governmental entities, e.g., MCIT and Ministry of Planning and Economic Development, and the websites of some national newspapers.

Statistics retrieved from relevant international reports show that Egypt's indicators regarding the adoption of ICTs and e-government services still need to be improved. For example, the statistics provided by the Global Competitiveness Report 2019 issued by the World Economic Forum

show that Egypt ranks 106 out of 141 countries surveyed in the ICT adoption;<sup>402</sup> this means a decline in these indicators because it was ranked 100 out of 140 in the Global Competitiveness Report 2018.<sup>403</sup>

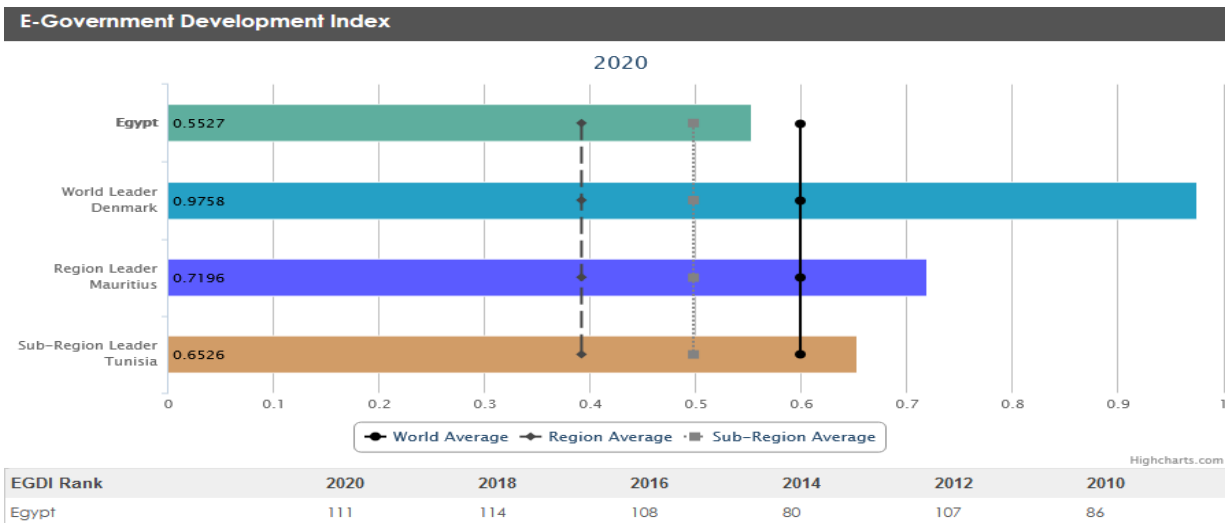
Figure 5: Global Competitiveness Report 2019 - Egypt ICT Adoption Rank.

Economy Profiles

Egypt		93rd/141		
Index Component	Value	Score *	Rank/141	Best Performer
<b>3rd pillar: ICT adoption 0-100</b>	-	40.6 ↑	106	Korea, Rep.
3.01 Mobile-cellular telephone subscriptions per 100 pop.	95.3	79.4 ↓	109	Multiple (63)
3.02 Mobile-broadband subscriptions per 100 pop.	53.9	N/Apl.	100	United Arab Emirates
3.03 Fixed-broadband Internet subscriptions per 100 pop.	6.7	13.4 ↑	87	Switzerland
3.04 Fibre internet subscriptions per 100 pop.	0.0	N/Apl.	109	Korea, Rep.
3.05 Internet users % of adult population	46.9	46.9 ↑	98	Qatar

The statistics in the UN E-Government Survey 2020 show a general decline in indicators related to the development of e-government and e-participation in Egypt in the last few years.<sup>404</sup>

Figure 6: United Nations E-Government Survey 2020 - Egypt Rank in E-Government Development Index.

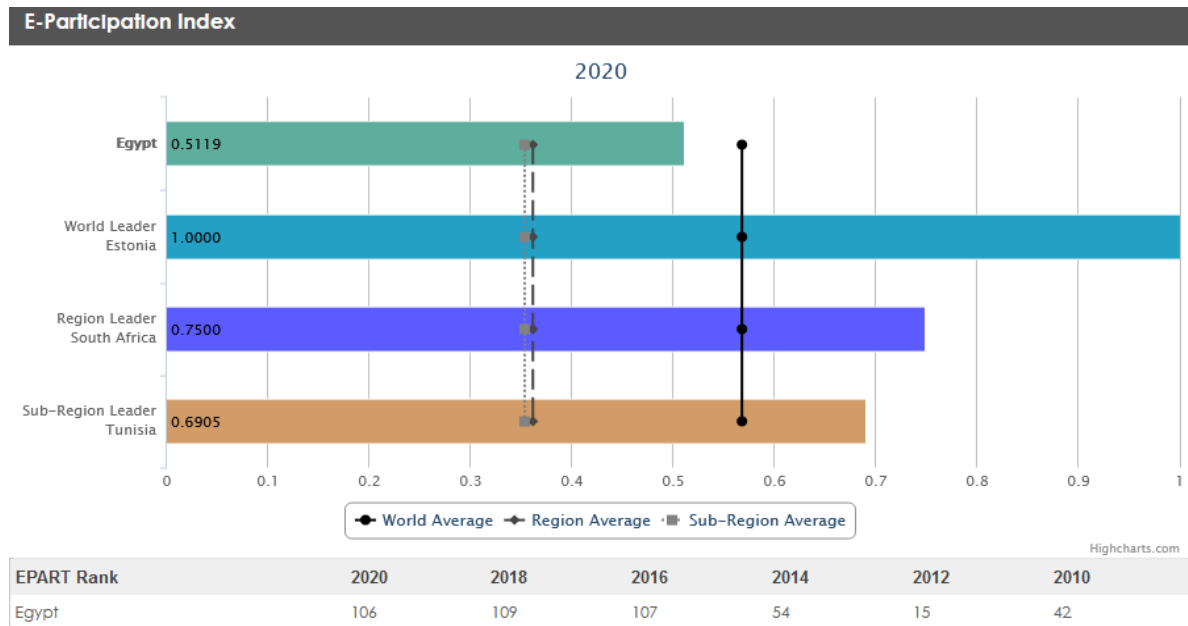


<sup>402</sup> The Global Competitiveness Report, 2019, <http://reports.weforum.org/global-competitiveness-report-2019/economy-profiles/#economy=EGY> (last visited April 14, 2021).

<sup>403</sup> The Global Competitiveness Report, 2018, <http://reports.weforum.org/global-competitiveness-report-2018/country-economy-profiles/#economy=EGY> (last visited April 14, 2021).

<sup>404</sup> UN E-Government Survey, 2020, <https://publicadministration.un.org/egovkb/en-us/Data/Country-Information/id/53-Egypt> (last visited April 14, 2021).

Figure 7: United Nations E-Government Survey 2020 - Egypt Rank in E-Participation Index.



The partial disclosure of the vast majority of governmental processes and services in Egypt during the first wave of Covid-19 clarifies the insufficiency and ineffectiveness of the efforts of automation and digital transformation in Egypt. The failure to submit any online governmental services, except for limited services for educational purposes only,<sup>405</sup> indicates that the several official statements regarding the e-government program’s fast progress do not match the reality.

The positive side of the shutdown is the increasing demands from average citizens to accelerate the pace of digital transformation efforts. This motivated the government to accelerate the pace of its digital transformation efforts as a response to the outbreak of the coronavirus epidemic. Therefore, the Prime Minister declared that the current situation is an opportunity for the digital transformation of governmental services, that citizens should use the currently available e-services, and that the government will be moving fast to make the majority of governmental services available online.<sup>406</sup>

<sup>405</sup> The educational service included, among others, the provision of digital database containing educational curriculums for different educational stages and the online examination for some educational grades, *see*, Statement from the Ministry of Education, 2020, <https://www.almasryalyoum.com/news/details/1628503> (last visited April 14, 2021).

<sup>406</sup> Statement by the Prime Minister: the Crisis of Coronavirus Epidemic Outbreak is an Opportunity for Gradual Movement towards Digital Transformation, 2020, *available at*, <https://www.gomhuriaonline.com/%D8%B1%D8%A6%D9%8A%D8%B3%20%D8%A7%D9%84%D9%88%D8>

There are several reasons for the current situation of the automation and digital transformation efforts of governmental services in Egypt; these reasons include, among others, the following.<sup>407</sup> First, legal reasons such as the non-existence of access to information law and the non-enforcement of e-signature laws.<sup>408</sup> It should be noted that Egypt is working to update the legislative framework to fix the legal challenges of digital transformation. In 2009, the MOF created the Government Electronic Certification Authority (GOV-CA) to allow the use of electronic signatures within the Egyptian government, especially in the financial transactions.<sup>409</sup> In 2014, the Prime Minister issued the decree number 2259 for the year 2014 to create the Supreme Council for the Cyber Security, which is responsible for drawing a national strategy to deal with cyber-attacks. In 2015, the Prime Minister issued the decree number 1453 for the year 2015 to create the Supreme Council for the Digital Society. Egypt also issued Law No. 175 of 2018, the “Anti-Cyber and Information Technology Crimes” law and the law No. 151 of 2020, the “Data Protection Law”. The access to information draft proposal was preliminary approved by the parliament in 2018 but not finally discussed yet.

Second, social and cultural reasons such as computer and digital illiteracy and the bad reputation of the quality and continuity of e-services.<sup>410</sup> Third, economic reasons such as the limited availability and usage of options for e-payments, especially for average citizens.<sup>411</sup> Fourth, institutional and bureaucratic reasons such as the lack of coordination of efforts, the inflexibility of workflows modification process in several governmental entities, and the lack of information exchange and integration of current databases among the governmental entities.<sup>412</sup> The government took some actions to fix some of those challenges. In 2020, the government finally

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<sup>407</sup> The examination of those reasons is beyond the scope of this study. The mentioning of those reasons is to enable readers of this study to visualize the complete the framework of challenges facing the digital transformation of governmental services in Egypt, as being one of the challenges for the digital transformation of the SC.

<sup>408</sup> Gebba & Zakaria, *Supra* note 1, at 18.

<sup>409</sup> See, Government Electronic Certification Authority, 2010, <http://www.mof.gov.eg/English/MinistryActivities/Pages/GovernmentElectronicCertificationAuthority.aspx> (last visited April 14, 2021).

<sup>410</sup> Gebba & Zakaria, *Supra* note 1, at 19.

<sup>411</sup> *Id.* at 18.

<sup>412</sup> *Id.* at 20.



ended the mutual jurisdiction of planning and implementation of automation and digital transformation projects that was distributed, without clear lines, between the MCIT and the Ministry of Planning and Economic Reform (formerly known as the Ministry of Administrative Reform, then as the Ministry of Planning, Follow-up, and Administrative Reform). The full jurisdiction is now with the MCIT to create a vision, strategy, and build on the previous efforts to develop the governmental services.<sup>413</sup> Fifth, technical reasons such as the ICT infrastructure capabilities<sup>414</sup> and the validation and verification of the data recorded in governmental databases.<sup>415</sup>

The above-mentioned reasons and the resulting challenges facing the digital transformation of governmental services in Egypt are beyond the control of the SC. Therefore, there are no specific recommendations regarding this set of challenges. However, it is recommended that the SC examine those challenges and try to deal with those aspects that it can exert efforts to overcome it and which might be of importance as to its services.

For example, to overcome obstacles related to computer and digital illiteracy and the limited awareness of the use of e-services, SC can draw strategies and mechanisms to make individuals aware and motivated to use such services. This may include the establishment of technical assistance offices in each court to assist lawyers and litigants to use the e-services and the publication of information, user manuals, and short videos to show lawyers and litigants how to use the e-service. It may include, also, the delivery of e-services in a shorter time and cheaper

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<sup>413</sup> See, Cabinet Decision to Transfer the Jurisdiction of Digital Transformation Projects to the MCIT, 2020, <http://gate.ahram.org.eg/News/2346868.aspx> (last visited April 14, 2021).

<sup>414</sup> Is the telecom infrastructure eligible for digital transformation?, 2019, <https://almaalnews.com/%D9%87%D9%84-%D8%A7%D9%84%D8%A8%D9%86%D9%8A%D8%A9-%D8%A7%D9%84%D8%AA%D8%AD%D8%AA%D9%8A%D8%A9-%D9%84%D9%84%D8%A7%D8%AA%D8%B5%D8%A7%D9%84%D8%A7%D8%AA-%D9%85%D8%A4%D9%87%D9%84%D8%A9-%D9%84%D9%84%D8%AA/> (last visited April 14, 2021).

<sup>415</sup> MCIT: Data validation is a major challenge for digital transformation, 2020, <https://akhbarelyom.com/news/newdetails/3000815/1/%D9%88%D8%B2%D9%8A%D8%B1-%D8%A7%D9%84%D8%A7%D8%AA%D8%B5%D8%A7%D9%84%D8%A7%D8%AA--%D8%AA%D9%86%D9%82%D9%8A%D8%A9-%D8%A7%D9%84%D8%A8%D9%8A%D8%A7%D9%86%D8%A7%D8%AA-%D8%A3%D8%A8%D8%B1%D8%B2-%D8%AA%D8%AD%D8%AF%D9%8A%D8%A7%D8%AA-%D8%A7%D9%84%D8%AA%D8%AD%D9%88%D9%84-%D8%A7%D9%84%D8%B1%D9%82%D9%85%D9%8A> (last visited April 14, 2021).

than in-person services from the court's premise; this will motivate lawyers and litigants to use e-services instead of in-person services.

In conclusion, in this chapter we analyzed the main reasons that resulted in the constant failure of the continuous efforts towards using the technological advancements to modernize the judicial processes and services within the SC. Several recommendations were provided to overcome the aforementioned reasons of failure. In the next chapter, we will discuss the desired features of the digital transformation of the SC.

### **III. The aspirations of the digital transformation of the State Council**

The use of modern ICT to modernize and develop the judicial process is a matter of widespread concern among not only judicial and legal academics and practitioners but also among average citizens. There were and still several discussions regarding the effects of the use of modern ICT on judicial processes and services. Even among academic discussions, some discussions are over-ambitious, while others are very limited in their conceptualization of the technology-empowered judicial processes and services.

It was mentioned before that there is very limited academic literature on the use of technology in the Egyptian judiciary; furthermore, only a few of this literature tends to focus or mention on the SC as the majority focus on the criminal and economic courts, which rests with the OCs. Another issue is that the majority of literature is written by academics with limited practical experience, which renders this literature of a more theoretical approach without due concern to the practicalities. Finally, the literature tends to focus only on the judicial department of the SC without mentioning the other two departments or the other aspects that should be modernized using technology.

Therefore, this study aims to provide an integrated conception regarding the use of technology to modernize the entirety of the SC. This is a legal study; therefore, it will be limited to mention the desired outputs from the prospective use of modern ICT without examining the relevant technicalities, i.e., how to make these outputs made using the technology. In the following paragraphs, the use of modern ICT in the different departments of the SC shall be examined.

#### **A. The judicial department:**

The judicial department is the core and largest department in SC.<sup>416</sup> The judicial department in the SC is composed of ADCs,<sup>417</sup> CAR,<sup>418</sup> and the SAC,<sup>419</sup> in addition to the SC-CA.<sup>420</sup>

The proposed concept for the digital transformation of the judicial department is divided into five main phases, as follows.

Before the filing of the lawsuit:

The judicial proceedings usually start with the process of filing the lawsuit; however, in some cases, there might be a need to apply for certain procedures and/or measures before the filing of the lawsuit. The measures that might precede the filing of the lawsuits include motions for judicial fees waiver and requests for interim and precautionary measures. Despite automating the filing phase in some premises, the current system applied in the SC did not consider this step; therefore, the prospective court system should allow concerned persons to apply for those measures.

As for the motion of judicial fees waiver, the court system should enable concerned persons to get an estimation of the judicial fees required for filing their lawsuits. This means that concerned persons can enter the data of their prospective lawsuit and receive an estimation of the costs of the judicial fees. The current regime of estimation of costs before the SC is based on a formula that combines the number of claims within the lawsuits,<sup>421</sup> the types of such claims,<sup>422</sup> and/or the aggregate monetary amount of the claim.<sup>423</sup> Therefore, there might be a need for a review

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<sup>416</sup> That is why the SC is usually called as the administrative courts.

<sup>417</sup> ADCs are courts of first instances. They exist in almost each governorate.

<sup>418</sup> This court is a first instance court to the lawsuits that are not within the jurisdiction of the ADCs and a second instance court for appeals made on the decision issued from the administrative courts. This court is based in Cairo with several circuits in the different governorates.

<sup>419</sup> This court is an appellate court only, it is not considered as a degree of litigation because it is a court of law.

<sup>420</sup> The SC-CA is composed of judges who are doing supportive tasks to the settlement of disputes but not settling the disputes themselves. The tasks of this authority include deciding on motions of judicial fees waiver, providing judicial conciliation services, preparing lawsuits for settlement before courts, writing legal opinions on the merit of lawsuits to be presented to courts, and appeal decisions from different courts for the sake of the unification of the interpretation of the law.

<sup>421</sup> One lawsuit might include one or more claims, such as the cancellation of an administrative order and the compensation of damages resulted from that decision.

<sup>422</sup> The types include, among others, cancellation of administrative decisions, compensation for damage, annulment of monetary claims, requesting monetary claims.

<sup>423</sup> In lawsuits where there is a claim for requesting/annulment of monetary payments, the amount of the requested payment is taken into consideration while calculating the judicial fees.

from the competent court staff on both the validity of the data entered by the concerned persons and the validity of the results before confirming the estimation of the fees so the concerned persons can decide whether to apply for a motion of fees waiver or not.

The submission of the motion of the judicial fees waiver should be available through an electronic form via the SC portal and the SC mobile phone application. The form should include the information necessary for deciding on the motion, e.g., grounds for the request and the contact information of the requester, e.g., email and mobile phone number. After the submission of the motion, the system notifies the applicant of the number of motion to allow online tracking.

The system should notify the competent member of the SC-CA, so he/she views the request, request further clarifications, and/or decide on the motion. Then the system sends an email and/or a message to the requester phone to notify him/her of the result of the motion. If the motion is approved, the instruction shall be provided to allow proceeding with the filing of the lawsuit without paying the fees.

The submission of the request for interim and precautionary measures should be available through an electronic form via the SC portal and the SC mobile phone application. The form should include the information necessary for deciding on the request, e.g., the grounds for the request and the contact information of the requester, e.g., email and mobile phone number. After the submission of the motion, the system notifies the applicant of the number of the request to allow online tracking.

The system should notify the competent judge so he/she views the request, request further clarifications, and/or decide on the request. Then the system sends an email and/or a message to the requester phone to notify him/her of the result of the request. If the request is approved, then an electronic certified copy of the interim judicial decision should be available to the applicant. The copy should include a barcode or a Quick Response code (QR code) to enable concerned persons to scan it to gain access to the secured electronic copy on the SC portal to make sure of the validity of the interim judicial decision. The court system may, based on the request of the applicant, send an electronic copy to administrative entities for the execution of the judicial order. If there is a need for a paper-based executory wording to allow the execution of the interim decision, then the court system should allow requesting this document and define the earliest

possible date for collection of the document from court premises. The executory wording cannot be sent via mail services because of its importance. The current judicial regulations requires its personal delivery to the beneficiary or its lawyer at the court premise.

It is suggested that the prospective court system include two other services in the phase before filing the lawsuit. The first service is providing applicants with a simple artificial intelligence (AI) application to inform them whether they should resort to the obligatory conciliation before the administrative committees in the MOJ, to provide them with the details of the competent committee, and to enable them to submit their conciliation requests before these committees. It should be noted that several lawsuits are being declared non-admissible every judicial year due to the lack of prior resort to those committees. This usually happens because lawyers think their lawsuits are in one of the cases of exemption from resort to those committees; however, the court later on find that they are not exempted. The main reason is usually that courts give another legal qualification to the facts. For example, in taxes litigations lawyers tend to request the suspension of the Tax Authority until the settlement of the dispute. The attachment of the request of suspension indicates an urgency that justify going to courts directly without prior resort to the conciliation committees. Courts tend to qualify the claim as a request for annulment of monetary claim not a request to cancel an administrative decision, thus requiring the prior resort to the conciliation committees because there is no suspension of monetary claims. It should be noted also that connecting the court system to the system of conciliation committees facilitate sending the committee's decision to the court. In addition to saving time, money, and effort of the litigants.

The second service is judicial conciliation. According to the SC law,<sup>424</sup> the SC-CA is required to attempt the settlement of the dispute based on the legal and judicial principles of the SAC. This attempt is currently made after the filing of the claim; however, it is suggested to allow litigants to request such judicial conciliation before the filing of the lawsuit. The request for judicial conciliation can be submitted and processed the same as the motion for the fee waiver. If the conciliation is successful, the agreement is then documented and becomes available for concerned parties the same way as the above-mentioned interim judicial decisions.

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<sup>424</sup> Article 28 of the SC law.

The filing of the lawsuit:

The submission of a lawsuit petition should be available at the court building or remotely. The court staff enter the required information into the system, scan paper-based documents, and upload them into the system. The payment of fees is made through modern payment methods such as debit and credit cards or electronic wallets. This allows the full working of the front offices until the end of working hours; currently, front offices receive new cases until noon because the cashier needs time to wrap up and go to the bank to deposit the sum of judicial fees in the court bank account. The submission at the court building should be allowed for lawsuits to be settled before all courts within the SC without restricting it to only lawsuits that fall within the jurisdiction of the court in which the submission is taking place in its building.

The submission through front offices at the court building should be allowed for a transition period. To motivate individuals to use electronic filing, the transition period of allowing in person submission of lawsuits at court building should be split into different phases. During early phases, no extra fees for personal submission at court premises. During later phases, gradually increasing extra fees can be imposed.

The remote submission of lawsuit petition should be made available through computer devices available at court premises. During the transition period, there should a possibility for free access to computers at court premises to motivate lawyers and litigants to use the electronic services; furthermore, technical assistance offices can be established to assist litigants and lawyers to use the electronic services. The free access to computers and the technical assistance will help in motivating increasing numbers of lawyers and litigants to use electronic system and thus shortening the transition period. The remote submission should be made available also through a service provider such as official post offices and governmental service provision centers. Offering judicial services through governmental services providers is to allow access to justice to individuals who cannot use the electronic filing system and exist far from courts premises, especially with the limited number and geographical expansion of the SC. Finally, the remote submission should be made available also online via the SC portal and the SC mobile phone application.

The submission of lawsuits petitions is made through an electronic form. The form includes the typical information provided in the paper-based petition, i.e., the details of litigants, the facts, the legal grounds, and the claim. To accommodate differences among the various types of lawsuits submitted to different types of courts, there might be customized forms according to the type of lawsuit and the competent court. The form also includes the contact information of the requester, e.g., email address and mobile phone number of the plaintiff and the defendant, if possible. The online submission requires the e-signature of a lawyer as regulated by the current laws.

After filing in the form and uploading the supporting documents into the system, the system provides an estimation of the judicial fees, which shall be paid electronically. Electronic payment should be available through a variety of options including, among others, debit cards, credit cards, and electronic wallets.<sup>425</sup> After the successful payment, the lawsuit is submitted provisionally. This is considered the date of submission in relation to legal prescription and related legal and procedural issues.

The court staff then review the data entered and ensure the completion of the required information, the validity of choosing the accurate type of the lawsuit,<sup>426</sup> and the accuracy of judicial fees estimation. Then he/she approves the submission or notify the applicant via email, SMS, and system notification to edit the submission. Once the submission is confirmed, the first judicial hearing session is determined electronically according to the criteria set forth by the competent authority at the beginning of each judicial year and communicated to the litigants.

As for the legal value of the online submission of documents, there will be no issue with the digitally created, signed, and authenticated electronically. As for the paper-based documents,

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<sup>425</sup> Mokhtar, *Supra* note 31, at 84.

<sup>426</sup> This is to link the lawsuit to the competent jurisdiction. The current automated filing system is based on giving each lawsuit a unified judicial number that is different from the ordinary judicial number. The ordinary judicial number is composed only of the number of the lawsuit in the record and the lawsuit during which the lawsuit is submitted. The unified number is composed of few segments, the important segment is the one that is generated from choosing the general type/jurisdiction of the lawsuit e.g. taxes litigation then the specific type/jurisdiction e.g. income tax, real estate tax, or added-value tax. This allows a classification of the lawsuits from the first phase of filing, to facilitate the following phases of settling those lawsuits. The unified judicial number is fixed during all stages of litigation, thus allows tracking the lawsuit in different stages of litigation i.e. the first instance court, the second instance court, and the Supreme Court. The ordinary judicial number is changed according to each stage of litigation.



which are scanned then uploaded to the system, they can be of the same legal value as photocopies. The majority of the documents currently submitted before courts are mere photocopies. The court may ask the litigants to submit the original paper-based documents before the court to double-check the validity of the scanned copies. In order to ensure the smooth handling of their lawsuits, lawyers and litigants may voluntarily choose to submit original paper-based documents to the competent court staff for authentication of the submitted scanned copies.

After the successful submission of the lawsuit, the next stage is the serving of the lawsuit petition.<sup>427</sup> In the majority of lawsuits before the SC, the plaintiff is a private person, whether natural or legal persons, and the defendant is one or more of the governmental entities. The service of governmental entities is done electronically through the intranet that connects the SC with the SLA,<sup>428</sup> APA,<sup>429</sup> and/or other government entities; otherwise, the service is done through sending the petition via email to the institutional email address of the focal point in the SLA, APA, and/or other governmental entities. The SC can officially coordinate with the few of governmental entities that are not represented by the SLA to assign a focal point, which is usually one of the legal administration within those entities.

In the few cases that a governmental entity is a plaintiff and an individual is a defendant, then the service shall be as follows. If the plaintiff submitted the email address and mobile phone number of the defendant during the submission of the lawsuit petition, then the defendant shall be notified using the provided details. In the majority of cases, the government entity shall have the contact details of the defendant because the defendant is either an employee at this entity or an individual who has transactions with this entity. If the plaintiff did not submit the contact information of the defendant or if he/she submitted them and the court already notified the defendant but did not receive any acknowledgment, then the service is done through the traditional method or through the contact details of defendants as registered in the database of the civil affairs department, if the SC is able to coordinate with the Ministry of Interior to gain such access. This might entail a delay of the first scheduled judicial hearing session to allow the

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<sup>427</sup> Some scholars suggest serving the lawsuit petition and other documents, in civil litigations, via email and arguing that this is an easy process and that it helps in proving that parties received the petition. However, they does not discuss the hardships of the practicalities such as the non-availability of the email address and the legal certainty of the accessibility to this email address. *See, Mokhtar, Supra* note 31, at 162-163.

<sup>428</sup> The SLA is, by virtue of law, the legal representative of the majority of governmental entities.

<sup>429</sup> The APA is party to the disciplinary trials.

proper time for serving the defendant and the time for enabling the defendant to prepare his/her defense.

In some jurisdictions, such as France, the legislator required the approval of the party to the litigation of the use of electronic service of documents; the objective of such approval is to protect the interests of the party that might consider the service using traditional methods to be a guarantee of receiving the notice from the court.<sup>430</sup> However, leaving the application of the ICT within the judicial field to the will of the litigants, might hinder that application; the law should enforce that application while making due regard to allowing a transition period and offering technical aid to those who are in need of it.

Once the defendant appears before the court/the SC-CA to present his/her defense, the contact details of the defendant and his lawyer should be acquired and registered in the court system. Serving appeals petitions is much easier because the contact information of the parties is already registered.

It should be noted that the MOJ launched a beta version of the e-filing service, which was offered initially in New Cairo First Instance Court on June 2020, and is supposed to be available currently on some other First Instance Courts within the OCs.<sup>431</sup> However, this service is limited and does not offer fully electronic services because it does not include the incorporation of the e-signature, so the lawyer is required to download, print, sign the petition of the lawsuit manually, scan it, upload it to the system, and finally deliver the original to the court at the first hearing session.<sup>432</sup> However, it is still an important progress achieved with the OCs.

Judicial hearings sessions:<sup>433</sup>

The current judicial hearing sessions are conducted in court premises; we will discuss this type of session first before we examine the virtual hearing session.

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<sup>430</sup> See, Mokhtar, *Supra* note 31, at 165.

<sup>431</sup> See, <http://gate.ahram.org.eg/News/2534172.aspx> (last visited December 28, 2020).

<sup>432</sup> The service is available through the Digital Egypt portal, see <https://digital.gov.eg/categories/5e72724bf645255d7f824a3e> (last visited December 28, 2020).

<sup>433</sup> Almost the same work cycle applies to the hearing sessions before both the SC-CA and the court panel.

After the service of the lawsuit petition, the defendant starts to prepare his/her defense. Then the court summons the parties to appear before the court in a hearing session, so both parties can present their oral and/or written defense, submit documents, make requests from the court, and/or reply to the defense of the other party. The main objectives of the hearing session are the exchange of written defense memorandums between the parties,<sup>434</sup> the knowledge of the documents submitted before the court, and gaining knowledge on the court's decision regarding the following steps in preparing the lawsuit for settlement. The hearing sessions also serve another theoretical objective, which is to allow transparency through publicity and easy access of court proceedings to all .<sup>435</sup>

The court system should enable litigants to submit administrative requests before the conduct of the hearing session. These requests may include the request to delay the hearing session to allow further examination of the lawsuit, the request to move the lawsuit to an earlier hearing session, and/or the request of authorization to get documents. In general, the majority of governmental entities require a court authorization in order to allow litigants to receive originals and/or certified copies of documents that are in the possession of this entity. Therefore, the plaintiff usually request an authorization from the court to get access to the documents that might support his/her claim. The advance communication saves the efforts of litigants who might be forced to attend the hearing session only to submit an administrative request. Once the request is made, the other party is notified of it and is notified of the decision of the court. All notifications from the submission of the lawsuit petition until the final settlement of the dispute should be made through a system notification, sms, and an email message. This is to ensure the knowledge of the receiver of the notification.

On the other side, the court system should allow the court panel to notify litigants to inform them of predetermined court decisions. These decisions include, among others, adjourning the hearing session for administrative reasons,<sup>436</sup> the decision to postpone the hearing to a later hearing

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<sup>434</sup> The court supervises the process of exchange of written defense memorandums and makes sure that each party gains knowledge of the documents submitted by the other party, so it can request to adjourn the hearing in order to examine the submitted documents and prepare counter arguments.

<sup>435</sup> Mokhtar, *Supra* note 31, at 184.

<sup>436</sup> This decision is intended to be communicated to all litigants with lawsuits scheduled to be heard on the hearing session, which shall be postponed.

session to allow the arrival of the expert's opinion,<sup>437</sup> and the decision to refer the lawsuit to another circuit for reasons of local or substantive jurisdiction. In advance communication saves the time and effort of the court panel.

The list of lawsuits to be examined by the court panel in each judicial hearing session should be determined and communicated to the parties at least 24 hours before the session. There should be screens in the lawyers' and the litigants' waiting rooms and in front of the chambers of judicial sessions to broadcast the list of cases scheduled for hearing at the different chambers and the number of the currently examined lawsuit at each chamber. The court system should notify the lawyer and litigant to proceed to the chamber to attend the hearing of the prospective timing of hearing their dispute. However, this is a mere estimation. There can be no accurate estimation because there is no specified time slots for hearing disputes and because the percentage of the attendance of hearing session before the SC is very low due to the current attitude of the SAC to prohibit striking the lawsuit off because of the absence from the session.

There should be self-check-in devices in the lawyers' waiting rooms and in front of the chambers of judicial sessions to allow lawyers to confirm attendance and provide the system with the information of the power of attorney to save the time and effort of submitting a power of attorney to the court panel to check the legal representation status. There should be a cooperation between the SC and the real estate and notarization authority to provide lawyers with electronic versions of the power of attorney or to include a QR code in the printed document. The lawyer can then scan the QR code on the reader on the court premises and the information shall be uploaded to the system automatically.

To facilitate the examination of lawsuits, the court system should organize the lawsuits according to the criteria set forth by the court panel, e.g., urgent lawsuits first, then other lawsuits organized according to the type of the lawsuit. There should be a screen in front of the court panel to broadcast the details of each lawsuit. The screen should allow judges easy access to a variety of information. This information includes, among other, the procedures of the lawsuit, the submitted documents whether related to the form, e.g., power of attorney, copy of the IDs of the litigants, copy of the lawyers; union card, or related to the substance, e.g., copy of the challenged

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<sup>437</sup> This decision is intended to be communicated only to specific litigants.

administrative decision.<sup>438</sup> The court panel should have access to all lawsuits within the jurisdiction of the circuit to allow the panel to decide on the requests to merge two lawsuits together. This happens when the two or more lawsuits are united in the parties and the subject of the lawsuits. This happens frequently in some types of lawsuits such as the taxes litigations where both the taxpayer and the tax authority challenge the same decision issued from the one of the administrative appeals committees.

The courtroom should be equipped with modern courtroom technology equipment to allow recording the sessions, the automated recording of the court decisions in different lawsuits instead of entering this data manually during and after the judicial hearing session, and the mutual interaction between judges, lawyers, and litigants. The mutual interaction during the hearing session is crucial to guarantee the right to submit defense and the due process of court procedures. After the conclusion of the judicial hearing, the system should automatically notify the litigants of the court decision regarding their lawsuit.

Despite the current wide resistance,<sup>439</sup> the virtual judicial hearing sessions are very appropriate in the SC courts. The SC judiciary depends on written pleadings, not oral pleadings.<sup>440</sup> The exchange of written pleadings among the parties can be done online without the requirement of attending the judicial hearing session. The system allows each party 24/7 access to view the submitted written memorandums and documents. This option is sufficient because even in judicial hearing sessions, the court panel ensures that each party gets knowledge of the submitted written pleadings but does not require parties to examine and engage with those pleadings.

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<sup>438</sup> The description of each document should be also available to the court panel to allow judges to quickly review the different aspects of the lawsuit thus facilitating the discussion between the court panel and the lawyers.

<sup>439</sup> Interview (3) with a working judge at the SC – senior judge – February 15, 2021 – on the file with the author. Interview (6) with a working judge at the SC – senior judge – February 6, 2021 – on the file with the author. Interview (8) with a working judge at the SC – mid-level – April 10, 2021 – on the file with the author. The majority of interviewed judges refused to conduct virtual hearing session due to their fear from affecting the powers attributed to judges.

<sup>440</sup> See, articles 26 and 27 of the SC law. See also, the SAC decision on case no. 1172 of the judicial year 35, session of March 25, 1989. The court clearly affirmed that pleadings before the SC are written and should be submitted in specified dates; parties do not have the right to insist on the request of the open of oral pleadings. Some of the interviewed judges mentioned that they fear from the lack of effective appropriate communication with the lawyers, despite the above-mentioned fact that the SC depends only on written pleadings.

Therefore, the use of virtual judicial hearing sessions might not contradict the need to make effective communication during the session.

The regulation of judicial hearings during the second half of the judicial year 2019/2020 and the current judicial year 2020/2021 might motivate accelerating the application of virtual hearing sessions. Due to the effect of the Coronavirus and the accompanying precautions and procedures, judges do not bring the files of lawsuits to the courtroom; they do not engage with lawyers discussing the evidence/claims of the few lawsuits that judges require clarification from the lawyers. The hearing session only take few minutes, during which judges inform the lawyers on the decision on each bunch of similar type lawsuits. Then judges asks lawyers to submit any documents, evidence, or written defense to the secretary of the judicial circuit in order to attach them relevant lawsuits files. Any motions or requests that might change the decision of the court e.g. motion to end the litigation process, motion to send the lawsuit to technical expertise, or motion to rectify the form of the lawsuit due to any reasons such as the death of a party, is submitted to court panel during the hearing session. However, the court panel decision will not be made immediately such as the old regulation of the hearing; instead the court panel may deliberate at the deliberations room and make its decision, which will be delivered to the secretary who may inform the lawyer later on when the lawyer come back to inquire about the court decision. According to this current regulation of the judicial hearing session, the hearing session plays only an informative role, which can be effectively achieved through virtual hearing sessions. Furthermore, virtual hearing session might be the only available solution to allow the continuation of the judicial activity during times of emergencies such as the current pandemic. To this end, among other objectives, the MOJ introduced virtual hearing session in criminal cases.<sup>441</sup>

The conducting of virtual judicial hearing sessions does not require judges and lawyers to get advanced computer skills or to use complicated equipment. Virtual judicial hearing session's applications are easy to access and easy to use; judges and lawyers can access these applications via personal computers, laptops, tablets, and/or smartphones. The SC portal should allow lawyers and litigants access to the virtual judicial hearing sessions and effectively interact with

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<sup>441</sup> See, <https://www.dostor.org/3247171> (last visited April 14, 2021). See also, <http://gate.ahram.org.eg/News/2547094.aspx> (last visited April 14 1, 2021).

judges; it should also provide some tutorials on the use of such applications. Furthermore, Court premises should provide free public access to an adequate number of computers to allow lawyers and litigants to use such a service.

The requests of parties should be submitted to the court before the session, considering that the session is dedicated to achieving the confrontation principle. Finally, the virtual judicial hearing sessions do not contradict the principle of the publicity of judicial sessions because this principle is limited only to the issuance of judgments, and there is a possibility to allow the public access and public broadcasting of the virtual hearing sessions.<sup>442</sup>

#### Judicial Deliberations and decision-making:

The claims, arguments, and defense of parties are examined during the judicial hearing sessions until it is fully prepared for the settlement. The court then decides to set a date for the issuance of the judgment. The court system distributes the lawsuits among the judges electronically according to the criteria set forth by the chair of the circuit. The judge then utilizes access to the database of judicial decisions, advisory opinions, and legislation in order to assist him/her in gathering information and examines the latest relevant decisions from the SAC.<sup>443</sup> Some scholars

Furthermore, the court system should provide a judicial decision support system to assist judges, especially in frequently settled types of cases and similar cases.

The judge writes the draft of the decision. Then he/she shares his/her work through the judicial deliberations application, which allows all judges to view the draft decisions, provide comment, and facilitate group dissemination among the judges of the same circuit. Judicial deliberations applications should be divided into two applications, one to be used for individual judicial circuits, and a general one to allow the deliberations among all judges of the SC but without access to the specific lawsuit files because the view of lawsuits files is limited to the members of the competent circuit only.

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<sup>442</sup> Ras Al Khaimah Courts in the United Arab Emirates offer public access to virtual court sessions, see, The courts of Ras Al Khaimah allows remote access to the virtual courtroom for the public, 2020, <https://www.emaratalyoum.com/local-section/accidents/2020-04-15-1.1335167> (last visited April 14, 2021).

<sup>443</sup> See, Mokhtar, *Supra* note 31, at 201.

Before submission of the final draft, judges should upload any associated research that was done while writing the judgment, and they should also assist in enriching the search options within the database by entering the information that links the judgment to legislative texts, judicial decision, and/or other advisory legal opinions. Furthermore, if the judgment sets out a new legal principle, the judge should mark the judgment as being this; therefore, the system notifies the technical bureau to examine this judgment and include its summary in the periodicals issued to judges that include the new important legal judgments. Finally, the judge uploads the judgment to the system and then signs it electronically. The same work cycle is adopted before the SC-CA while deliberating and writing the report of the legal opinion to be presented to the court. After the submission of the report, the lawsuit is referred to the court for examination during judicial hearing sessions before the court, then writing the judgement.

Finally, it should be noted that judges are already trying using technology to conduct virtual deliberations, so they can benefit from each other experience without being physically gathered. This is basically to save time and effort through making use of the experience of other judges and the research that they have done in lawsuits of similar type. Judges usually do so on their own initiative and without institutional support, using simple technology available such as closed groups on social media platform such as Facebook. However, recently, the SC motivated judges<sup>444</sup> to conduct deliberations using secured technological applications that allow conducting private virtual meetings that allow conducting virtual deliberations between judges within the same circuit such as Skype, Zoom Meetings, and Google Meet. This is the first of its kind institutional support within the SC to motivate judges to use the available technological tools until the completion of the digital transformation efforts with the SC. This institutional attitude might motivate accelerating the development and enforcement of virtual judicial deliberations.

After the issuance of decisions:

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<sup>444</sup> Periodical Book No. 1 for the judicial year 2020/2021 regarding the regulation of work of the ADCs during the continuation of Covid-19. Despite the fact that the regulation that included this motivation was directed to judges, working on ADCs, but it represents a guideline to judges working on other courts within the SC i.e. CAR and the SAC. However, this might contradict the Periodical Book No. 2233-6 dated 25/01/2021 from the Secretary-General of the Egyptian Cabinet that prohibits the circulation of work information and work documents through any other means but the official e-mail services of each institution in Egypt. At the same time, it should be noted that the SC does not yet provides an official service to its members.



If the decision is to refer the lawsuit to the OCs, then the system notifies the parties with the judgment and the information of the referral so they can track the file while being transferred. If the integration with the court systems of the OCs is enabled, then the judgment should include setting a date for the first hearing session before the other court. If either party chooses to appeal the judgment, then the system notifies other parties of the filing of the appeal. The files of the original lawsuit shall be merged with the appeal, so the appellate court can access all the files of the entire lawsuits from its begging.

If no party chooses to appeal or if the judgment is already issued as final, then the rest of the administrative procedures are processed, i.e., the monetary claim of the rest of the judicial fees and the electronic archiving of the lawsuit file.

The executory wording of the judgment is delivered to the concerned party according to the same method described for the interim measure, as above-mentioned. Finally, the court system invites the lawyers and litigants to a short survey to measure their satisfaction and provide any comments and/or suggestions.

#### B. The advisory and legislation departments:

The conception of the digital transformation of both the advisory and legislation department is addressed together due to the similarities of the work process of the two departments. In the following few paragraphs, we will briefly illustrate the structure, jurisdiction, and previous efforts of the digital transformation of the two departments, then provide the proposed outputs of the digital transformation of the two departments and finally summarize the benefits resulting from such digital transformation.

The advisory department has a hierarchical structure. At the bottom, there is a number of advisory administrations; each administration provides the legal opinion to similar activity administrative/governmental entities<sup>445</sup> on the accurate interpretation of the law regarding actual cases in which the administrative/governmental entities do not know how to apply the law over

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<sup>445</sup> In general, administrative/governmental entities has the option to request the advisory opinion; however, requesting that opinion is obligatory in some cases specified by the SC law, the civil service law, and the public tenders law. In practice, the governmental entities frequently request the advisory opinion to avoid the misapplication of law, which might entail the disciplinary liability.

them.<sup>446</sup> The advisory committees exist in the middle of the hierarchical structure; each committee supervises a number of advisory administrations to decide on the differences in advisory opinions among those administrations in order to ensure the unified interpretation of the law.

The general assembly of the advisory and legislation departments (hereinafter, the general assembly) rests on the top of the hierarchical structure; it decides on the important legal issues referred to it by one of the committees or directly referred to it by the president, the chairperson of the parliament, the cabinet and/or a minister. Furthermore, the assembly settles legal disputes among the persons of the public law, i.e., ministries, public institutions, governorates, and other units of local administrations.

The legislation department is structure is very simple; it is composed of one unit that gathers all judges working within the department and the technical bureau that performs a number of assistive tasks. The legislation department has two types of jurisdiction. First, an optional jurisdiction, which is the formulation and drafting of legislation presidential decrees of legislative nature, and statutes if the concerned governmental entities choose to ask the legislation department to do this task. Second, an obligatory jurisdiction, which is the review of the formulation and drafting of legislation, presidential decrees of legislative nature, and statutes before their issuance.

The efforts of the automation of the advisory department started in 2009 as an initiative by some judges working in the technical bureau of the general assembly.<sup>447</sup> The efforts started with hiring some private software developers to create a simple program that facilitates the work cycle; this resulted in an application to be used to ease the internal communications within the department. In 2011, an information center was created to develop automation efforts. This center was created by virtue of the approval from the head of the advisory department on the memorandum presented by some judges working in the technical bureau. The task of this center was the mere automation of the advisory department. The jurisdiction of the main information center that was

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<sup>446</sup> To respond to the practical need for quick and direct advisory opinions, the SC law allows the system of commissioners i.e. some SC judges are relocated from the SC to the headquarters of governmental entities to provide legal opinions more effectively.

<sup>447</sup> The information regarding the efforts of the automation of the advisory department was acquired through interviews with judges who held and/or currently holding responsibility for these efforts.

created by virtue of the SC chairman decree no. 526 of 2012 included the automation of the entire SC. However, we mentioned before that the lack of enforcement of the jurisdiction of the information center resulted in the continuation and even the initiation of other efforts of automation that were not coordinated with the main information center as supposedly being the main unit responsible for the automation efforts.

The information center contracted with a private software development company to design and develop an application for the automation of the workflow and the creation of a database, including the advisory opinions issued by the general assembly. The automation efforts resulted in the automation of some aspects of the workflow. The official documents and/or reports are created via computers and then are printed for signature and use in the other aspects of the workflow. Recently, an intranet was created to connect the admirations, committees, and the general assembly of the department altogether with the aim of facilitating the preparation of statistics and reports. The automation efforts also resulted in the creation of a database, which includes all the advisory opinions issued by the general assembly since the creation of the SC until now and is being updated regularly. However, the database includes only those advisory opinions issued by the general assembly and does not include those opinions issued by the various administrations and committees.

Access to this database is available to both the judges of the SC and for the public through an application, which is available on Google Play<sup>448</sup> and on the website of the developing company.<sup>449</sup> Access to this database is free for the SC judges i.e. the login credentials for each judge is available upon request from the information center of the general assembly. Access for the public is on a subscription basis; therefore, who want to get access should pay the fees for the company. The company was given the advantage to allow the public access via subscriptions, in exchange of a discount on the cost of the contract between the information center and the company to develop the application and the database.<sup>450</sup>

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<sup>448</sup> The Advisory Opinions of the General Assembly of the Advisory and Legislation Departments, <https://play.google.com/store/apps/details?id=com.laaeg.laafatwa> (last visited October 27, 2020).

<sup>449</sup> The Advisory Opinions of the General Assembly of the Advisory and Legislation Departments, <https://www.laa-eg.com/Sections/Users/nVersions> (last visited October 25, 2020).

<sup>450</sup> Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

As for the legislation department, there were almost no efforts towards the use of modern ICT within the department. The workflow is entirely paper-based, with the use of computer-written documents instead of hand-written ones.

The proposed concept for the digital transformation of the advisory department is divided into three main phases, as follows.

The first phase is the delivery of the request of the legal advisory opinion from the governmental entity to the administration or the general assembly. The SC portal should include a section for providing advisory legal opinions to the governmental entities. The governmental entity that requests the legal opinion should use the portal of the SC to fill in the form of requesting advisory opinions. At a later stage, the system may provide governmental entities with option to register as a user in order to ease the management of legal opinions requests.

The form should include the information necessary for the issuance of the legal opinion and other information required for communication between the SC and the requesting governmental entity. Therefore, it may include the description of the issue in question, the factual facts, the procedures that were taken by the governmental entity, the degree of importance of the request, and the official email address of a contact person within the requesting entity. Furthermore, the form should allow the upload of supporting documents. The supporting documents may be electronically created documents, which are electronically signed and/or certified for governmental transactions using the services of the Government Electronic Certification Authority. The supporting documents can also be traditionally created documents that were scanned and sent as attachments. This method can be used until the success of the state efforts regarding the creation of a unified intranet, which allows effective exchange of information and documents among all government entities.

If the requesting entity is not cooperating in using the portal, the request can be received in the traditional method, i.e., paper-based, and then be entered into the system by the employees of the SC. It is expected that some of the governmental entities shall resist using the portal until there is a legal obligation to enforce this usage through either a legislative instrument or a decision from a higher authority.

If the opinion is requested from the commissioner of the SC at the governmental entity, then this process is not undertaken because the commissioner is already seated within the premise of the requesting governmental entity. In case of referring legal issues from an administration to a committee<sup>451</sup> or from a committee to the general assembly, then the process is done through the intranet that connects all administrations, committees, and the general assembly altogether.

The second phase is the processing of the request. The competent judge, i.e., the chair of the administration or a committee or the competent member of the technical bureau of the general assembly, should review the information related to the importance of the request and should add further information regarding the type of the legal issue in question and the degree of complexity.<sup>452</sup> The distribution of the requests of legal opinions among the judges should be done electronically through an application designed for this task, based on objective criteria such as the date of arrival of the request, the type of the legal issue in question, and the degree of complexity. The competent authority should determine of the relative weight of each of the objective criteria at the beginning of each judicial year. However, there should be an appropriate margin for accommodating direct orders from the competent authority to send some request to specified judges; otherwise, senior judges may resist the automatic distribution of requests because it will entail depriving them from their administrative powers.

Judges can utilize access to the database of judicial decisions and legal opinions to assist them in examining the issue in question and writing the legal opinion.<sup>453</sup> Before submission of the legal opinions to the system, judges should upload any associated research that was done while writing the opinion, and they should also assist in enriching the search options within the database by entering the information that links the opinion to legislative texts, judicial decision, and/or other advisory legal opinions. Furthermore, if the opinion sets out a new legal principle, the judge should mark the opinion as being this; therefore, the system notifies the technical

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<sup>451</sup> Advisory committees do not receive requests directly from government entities. It only decides on the legal issues referred by an administration or on the legal issues, which were a matter of contradicting opinions from two or more administrations.

<sup>452</sup> Some legal issues are already extensively examined; therefore, they are not considered as complicated. Other issues might be less examined or non-examined at all, thus are being considered of different degrees of complexity.

<sup>453</sup> The system may allow judicial decision support systems in the future, to assist judges while writing the advisory legal opinions. Interview (2) with a working judge at the SC – senior judge – March 20, 2021 – on the file with the author.

bureau to examine this opinion and include its summary in the periodicals issued to judges that include the new important legal opinions. After submitting the opinion, the system notifies the supervisor or the chair in order to review the opinion; the opinion is then electronically endorsed or return to the judge who wrote it for further edits.

The third phase is the delivery of the legal opinion. Once the legal opinion is endorsed, it can be sent back to the requesting entity. The legal opinion can be electronically signed and then sent to the requesting entity via email. If the system allows the registration of governmental services as users, then the system should send a notification of the availability of the legal opinion so the entity can access it. If there is another method for the exchange of governmental correspondence, then it can be used to send the opinion back. If the requesting entity wants paper-based documents, then the legal opinion can be printed, manually signed, and sent to the entity through the traditional methods, i.e., governmental mail services. The same method used for the delivery of the opinion, can be used if the judge who writes the opinion requests further information/clarification from the requesting entity in order to be able to write the opinion.

The proposed concept for the digital transformation of the legislation department is almost the same as the one proposed for the advisory department. However, some changes may be required in the information related to the classification and distribution of the legislative drafts to accommodate the requirements for work within this department.

The digital transformation of the advisory department is of quite an importance to the SC, the state, legal practitioners, and average citizens.

The SC benefits from avoiding the delays resulting from the exchange of correspondence using the traditional methods, the easiness of classifying and distributing work among judges, the ability to track files and the notification of superiors after the passage of time slot dedicated for each transaction and the easiness of sharing research outputs with other judges during deliberations.

The state makes benefits from the increasing rapidity of its transactions because several transactions are based on the delivery of the opinion from the advisory and legislative departments. The work process within the two departments will be expedited by the use of modern ICT, thus allowing the rapidity of the dependent government transactions. Furthermore,

enabling the state employees to access the database of advisory opinion shall allow them to avoid making inaccurate interpretation of the law.<sup>454</sup>

Allowing the access of law practitioners to the database of advisory opinions enriches their legal mentality and allows them to engage with those opinions results in the development of the legal field in general. Allowing the public access to the database of advisory opinions<sup>455</sup> helps in supporting the legal certainty because such opinions clarify the ambiguity of the law. Especially that the public law sphere is not fully organized; that is why the SAC admits the creative rule of administrative judiciary to overcome the legislative gap.<sup>456</sup> To serve this objective, the public access should be free. The SC should follow the CC, which allows free public access to its decisions database. Furthermore, the public institutions that already have a regularly updated database of advisory opinions such as the Public Institution for the affairs of official printing, should allow free public access to the information.<sup>457</sup>

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<sup>454</sup> Some governmental entities publish the relevant advisory opinions to make sure its employees are aware of them, *see*, for example, the databased provided by the MOF, *available at*, <http://www.mof.gov.eg/Arabic/Pages/legislationEncyclopedia.aspx> (last visited October 29, 2020).

<sup>455</sup> The access to the database including the work of the legislation department, after its creation, might require a legislative provision. The process of reviewing the legislation and provide comments on it, might have a political aspect, thus, publicizing such works might entail political consequences. There should be a provision in the SC law to determine the degree of secrecy and define the time limit for keeping such information as classified; otherwise, the prospective law that shall regulate the right to access to information shall govern the availability of the works of this department.

<sup>456</sup> SAC decision on case no.506 for the judicial year 38, session of June 03, 1995.

<sup>457</sup> The SC obliged the Public Institution for the affairs of official printing to allow free access to the official gazette, *see*, the CAR decision on case no. 63089 for the judicial year 66, session of June 24, 2014.

## **Conclusion:**

There is no doubt regarding the importance of the rule of law and the persistent need for continuous work to maintain and increase public confidence in it. There is also no doubt the judiciary is constantly working to ensure the effective prevalence of the rule of law; this endeavor must keep pace with developments and use the latest technologies that enable it to build public trust and enhance confidence in the judiciary and the rule of law.

The digital transformation is a comprehensive process, it is not just about the use of the latest technologies, but it includes other societal aspects. Therefore, digital transformation takes time. Countries, which were able to achieve considerable success in its digital transformation, took years to achieve this result. It is true that making benefits from the comparative experience may shorten the time required for digital transformation; however, the rapid change might negatively affect the human element, which is a core aspect of the digital transformation.

The digital transformation of the SC is a means to an end, not an end in itself; it is a method for judicial reform that should be combined with other aspects of judicial reform. The digital transformation is not even possible to achieve in a sustainable way unless the integration with other aspects of the judicial reform is provided.

This study examined the digital transformation as an aspect of judicial reform in the current circumstances in the Egyptian state and society. A focus was made on the main challenges that hinder the desired and long-awaited digital transformation. Furthermore, a brief mention of the aspirations of such digital transformation was made. The SC exerted several scattered efforts, without achieving tangible results except for the loss of efforts, money, and time. This study tried to engage with the reasons for the failure to pave the way for further studies with the broad aim of empowering those who are in charge of overcoming the reasons for failure and achieve the long-awaited digital transformation.