



Comparative Analysis of Criminal and Civil Liability of Judges in Iranian and Egyptian Law: A Look at Judicial Procedure

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Abstract

Judicial liability of judges, as a key element in legal systems, especially in Iran and Egypt, has always been an important and challenging issue. This article deals with a comparative study of the criminal and civil liability of judges in the legal systems of Iran and Egypt and analyzes the effects of judicial procedure in this field. The criminal liability of a judge means his accountability for improper behavior and judicial violations that can lead to criminal penalties. Also, the civil liability of a judge refers to his obligations towards the rights of individuals that, in case of violation, may lead to compensation for damages. In the Iranian legal system, there are specific laws to determine the criminal and civil liabilities of judges, and the judicial procedures of this system indicate the importance of monitoring judicial behavior and ensuring compliance with legal principles. On the other hand, similar responsibilities have been defined for judges in the Egyptian legal system, which requires a more detailed analysis, emphasizing its challenges and strengths. This study, while examining the laws and judicial practices of both countries, addresses the commonalities and differences between them, and seeks to clarify the concept of judicial responsibility and its effects on citizens' rights. Ultimately, the results of this study can help policymakers and decision-makers to improve judicial systems and strengthen public trust in the judiciary.

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Introduction

Judicial responsibility of judges has been increasingly considered as a key element in legal systems, especially in Iran and Egypt (Terrill, 2015). The responsibility of judges not only affects the functioning of the judicial system, but also affects human rights and public trust in this system (Pikramenos, 2022). Given the challenges faced by both countries, a close examination of the criminal and civil liability of judges can provide a better understanding of the quality and efficiency of the judicial system and highlight the need for legal reforms and improved procedures (Riyazet, 2014; Mohammadi, 2018; Razavi et al., 2019).

The criminal and civil liability of judges, as two important dimensions of judicial responsibilities, refers to issues that have profound effects on justice and the rights of individuals (Shakeri and Soleimani, 2019; Gharibi et al., 2020). In this regard, the concept of judicial independence and its importance in ensuring justice, as well as the ethical principles that must be observed in judicial behavior, are among the issues that need to be addressed (Rabbani Moussavian and Tavakoli Goljeh, 2019; Mortazi and Daei, 2019). It is also of great importance to examine the types of judicial liability (criminal and civil) and how they affect the rights of individuals. In the Iranian legal system, the criminal liability of a judge is precisely defined and

there are specific laws in this regard (Mir Mohammad Sadeghi, 1403). According to existing laws, judges who commit violations in the performance of their duties may face criminal penalties. Iranian judicial practice has also repeatedly addressed cases of judicial violations and their criminal liability, and in some cases, judges have been convicted of misconduct. This indicates the high importance of monitoring judicial behavior and ensuring compliance with legal principles (Shamloo et al., 1401).

The civil liability of a judge is also recognized as an important issue in Iranian law. In this system, a judge can be held civilly liable if his behavior harms the rights of individuals. There are specific judicial laws and procedures that help determine the civil liability of a judge. Also, in some cases, judges have been held liable for their incorrect decisions and their negative effects on the rights of others. This demonstrates the importance of transparency and judicial accountability in the Iranian legal system (Shekrbeigi and Emami, 1403). In the Egyptian legal system, the criminal and civil liability of judges has also been defined and examined. The criminal liability of judges in Egypt, similar to Iran, includes judicial violations and misconduct that may lead to criminal penalties (Bagherzadeh et al., 1403). Egyptian laws in this regard clearly refer to the responsibilities of judges and judicial practice is also active in this regard. Also, the civil liability of judges in Egypt is also recognized as an important issue in public law, and judges who harm the rights of individuals may be held civilly liable. A comparison of the criminal and civil liabilities of judges in Iran and Egypt shows that both systems face their own challenges and strengths (Mirshekari and Ahmadi, 2017). On the one hand, monitoring the behavior of judges and preventing judicial violations is of great importance, and on the other hand, there is a need for transparency and accountability in the judicial system (Al Hajjaji, 2018). This analysis can help policymakers and decision-makers to provide better solutions to strengthen the judicial system and protect citizens' rights based on each other's experiences, and ultimately increase public trust in the judiciary .

In this context, the question arises as to what the aforementioned responsibilities mean and how they are defined and implemented differently in the two legal systems of Iran and Egypt. The differences in the judicial procedures of these two countries can lead to public distrust in the judiciary and, as a result, disregard for citizens' rights. Therefore, research in this field is necessary in order to help clarify and strengthen the judicial systems.

Materials and Methods

In order to clarify the history of the subject carefully, and on the other hand, since our law is influenced by Islamic jurisprudence, especially Imami jurisprudence, reference has been made to jurisprudential books, and above all to books of hadith, and an attempt will be made to avoid literal translation as much as possible. Useful and usable topics in this regard are examined in this research.

The research method is descriptive, comparative and its organization is in two stages. By searching in related sources and resources and referring to libraries, archives of educational and research centers, universities, scientific journals, media, jurisprudential sources, the necessary information has been collected and the relevant topics have been translated, categorized, arranged and compiled.

Iran's Criminal Policy Towards Professional Crimes of Judges

In this article, we have devoted ourselves to a review of the provisions of an international document on the patterns of judicial behavior, which can be considered, without exaggeration, a summary of all human documents that have been written in this field with inspiration from the commonalities of all systems and ideas, including Western and Islamic, communist and liberal:

The Bangalore Principles on Judicial Behavior are the result of the work and consultations of a group consisting of high-ranking judges from different countries, known as the "Judicial Group for the Promotion of Moral Integrity", which was established in 2000, following the Tenth United Nations Congress on Crime Prevention and the Treatment of Offenders, with the aim of setting a set of uniform rules to promote moral integrity. Its meeting was held at the United Nations Office in Vienna. For this purpose, the said group examined and analyzed the rules of judicial conduct of various countries and prepared the initial draft of the rules of judicial conduct at a meeting held in Bangalore, India in February 2001. However, considering that most of the members of the drafting group were from countries with common law legal systems, the said text was finally approved after some amendments in November 2002 at a meeting of senior judges of

a number of countries with common law legal systems. This document refers to the fundamental principles and values of judicial conduct, such as independence, integrity, impartiality, equality of treatment, preservation of judicial dignity and the competence of judges, and various aspects of the application and implementation of these principles are given. It should be noted that this document is a non-binding document; however, it has global value and credibility, and numerous regional and international institutions, including the United Nations Commission on Human Rights in its resolution 43/2003 and the United Nations Economic and Social Council in its resolution 23/2006, have supported it and called on member states to reform their systems for managing the professional conduct of judges within the framework of the guidelines of this document .

The Legislator's Approach to Professional Crimes of Judges In the Islamic Republic of Iran, where, based on considerations of social interests and the necessity of eliminating hostility and establishing order in society, some of the original and primary conditions for holding a judicial office have been ignored and individuals who do not have the Shariah qualifications for holding a judicial office assume this important position, there is no other way than for the legislator to adjust its expectations of judges according to their situation and not to grant unlimited powers to judges - many of whom are not worthy of them due to the lack of the Shariah qualifications for holding a judicial office - because, on the one hand, granting unlimited powers to non-innocent people leads to the unfortunate consequence of corruption and abuse of this position or inability to make proper use of it. On the other hand, although the judge is the investigating authority They are subject to public grievances, but the position of government, whether they like it or not, places them in a position of power that makes the members of society vulnerable. It is in such a situation that the responsibility of the judge to pay attention to the security of the individuals becomes a logical necessity .

Regulations governing the criminal prosecution of judges

In all advanced judicial systems, judicial immunity is recognized as a permanent requirement and is the flip side of the coin of the impartiality and independence of the judge; Because if the judicial profession is not accompanied by immunity and strength and the position of the judge is not established in his profession, it is obvious that he will not find the courage and boldness necessary to take on important social matters and engage with influential people. Because if a judge, like ordinary people, is attracted and detained by anyone with legitimate or illegitimate complaints, he will no longer have sufficient courage and strength to carry out judicial affairs .

In this regard, Article 16 of the International Covenant on Fundamental Principles of the Independence of the Judiciary provides: Judges shall enjoy personal immunity from any civil suit for damages resulting from their wrongful acts or negligence. This immunity shall not prevent disciplinary proceedings or the right to appeal against their decisions to the State for compensation for damages in accordance with national law. Article 17 of this document also stipulates:

-The handling of accusations or complaints raised against each judge must be carried out promptly, fairly and with due process, taking into account his specific judicial or professional title. The judge also has the right to a fair trial and the examination of the matter in the first stage must be confidential unless the judge has requested otherwise.

In order to make appropriate and effective use of this measure, specific provisions have been foreseen in the domestic laws of countries .

In our country, until October 2011, Article 42 of the bill amending a part of the Law on the Principles of the Judicial Organization and the Employment of Judges, approved in 1954, was in force, which provided for a special type of immunity for judges, known as procedural immunity . The Civil Liability of Judges and Its Relationship to Criminal Liability

Article 171 of the Constitution of the Islamic Republic of Iran stipulates: "Whenever "If, as a result of the fault or error of the judge in the matter or the ruling or in the application of the ruling to a specific case, material or moral damage is suffered by someone, in the event of fault, the guilty party is a guarantor according to Islamic standards, and otherwise the damage is compensated by the state, and in any case the defendant is restored to his dignity ".

In this article, for the first time in Iranian law, the legislator explicitly considers the judge to be a "guarantor" in cases where they commit a fault, and has also considered the restoration of the moral dignity of individuals necessary, of course, with the passive verb "shall. "

We will discuss what is meant by fault in Article 171 shortly.

Article 58 of the Islamic Penal Code, which can be considered a repetition of Article 171 of the Constitution with some tolerance, stipulates:

"Whenever a person suffers material or moral damage as a result of a judge's fault or error in the subject matter or in the application of a ruling to a specific case, in the case of material damage, the guilty party is liable in accordance with Islamic standards, and otherwise the damage is compensated by the state, and in cases of moral damage, if the judge's fault or error causes someone's reputation to be tarnished, steps must be taken to restore his reputation ".

Before the revolution, the civil liability of judges was not recognized. After the victory of the Islamic Revolution and the ratification of the Constitution, the financial liability of judges was foreseen, taking into account jurisprudential sources, as we have seen .

In comparing Article 171 with Article 58, it has been stated:

"The Constitution holds the judge responsible (in case of fault) for both material and moral damage and also provides for the restoration of the victim's dignity. The Islamic Penal Code holds the judge responsible only for material damage in case of fault, and it is not clear why, although the legislator has repeated the word moral damage twice in Article 58, he has not held the judge responsible for compensating the victim in case of fault. In any case, what seems to be the case is that in cases of moral damage, in accordance with Article 171 of the Constitution, the judge is responsible for compensating the damages caused to the victim, provided that this damage was caused by the fault of the judge, and the lack of mention of this point in Article 58 of the Islamic Penal Code does not prevent the judge from being held responsible for compensating the victim's moral damage if the conditions for liability are met. "With regard to whether, according to Article 58, in cases where the fault of the judge causes moral damage to individuals, it is the judge's responsibility to restore dignity or compensate for moral damage, the author, contrary to the aforementioned view, believes that in this regard there is no difference between the provisions of Article 171 and Article 58; Because in both, the duty to restore dignity is referred to with a passive verb; therefore, if we believe that, according to Article 171, a judge is responsible for compensating for moral damage in the event of fault, we must have the same belief regarding Article 58, although this article only specifies the duty to compensate for "material damage" with regard to the judge .

Judicial professional values in Egyptian handwritten documents

Here, first, we will briefly review the values manifested in the Egyptian constitution as the mother of other laws of this country, and then we will review the transnational documents that monitor the professional behavior of judges: a) Values manifested in the Egyptian constitution, as we saw in the previous speech, in the Egyptian constitution, there are different values in the field of proceedings and the conduct of judges. are enumerated, the vertices of these values are:

-The right of an arrested person to be informed of the reason and communicate with relatives during arrest (Article 61)

-The rule of law: this value, in addition to articles 64, 164 and 165 of the constitution, has been repeatedly emphasized in the text of the oath prescribed for judges in article 71 of this law .

-Judicial independence: this value is recognized in Article 65 of the male law as one of the two foundations and the basic guarantor of the protection of public rights and freedoms, also the independence of the judiciary is emphasized in Article 165 and the independence of the judge in Article 166 of the Constitution .

-The principle of legality of crime and punishment (Article 66)

-Principle of acquittal (Article 67)

-Appropriate response to the people's right to sue through quick proceedings and the inclusion of the law on everyone (Article 68 of the Constitution)

-The right to have a lawyer (Article 69)

- Defendant's right to defense (Article 96 of the Constitution)
 - Necessity of execution and non-closure of judicial rulings: this value is explicitly recognized in Article 72 of the Constitution as requiring criminal protection .
 - Public proceedings except in exceptional cases specified by law (Article 169 of the Constitution)
- b) Values recommended in transnational documents In addition to bilateral agreements, the Egyptian government has accepted more than 24 treaties and transnational documents in the field of justice or as a member of the United Nations, among them, the following can be mentioned :
- Universal Declaration of Human Rights of the United Nations approved in 1948
 - The International Treaty on the Elimination of All Forms of Racial Discrimination approved in 1966
 - International Covenant on Civil and Political Rights
 - International Covenant on Economic, Social and Cultural Rights approved in 1966
 - The International Convention on the Prohibition of the Crime of Racial Discrimination and its Punishment, adopted in 1973 by the United Nations
 - African Charter on Human and Peoples' Rights, adopted in 1980
 - The International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment, adopted in 1984 by the United Nations
 - The basic principles of the independence of the judiciary approved by the United Nations General Assembly in 1985
 - The basic principles regarding the role of lawyers approved by the 8th United Nations Congress regarding the prevention of crime and the treatment of criminals in 1990
 - Principles of Bangalore reform 2002
 - Ethics and professional conduct of the judge; Approved by the 11th Conference of Heads of Research and Inspection Agencies of the Community of Arab States, 2007 (Sharjah Document)

Below we review some of these documents:

The Universal Declaration of Human Rights of 1948 has declared the following values in the field of justice and proceedings :

- Prohibition of harsh punishments and behaviors against human dignity (Article 4)
- The right of every person to refer to national courts for litigation (Article 8)
- Prohibition of illegal detention (Article 9)
- The right to a fair and public hearing of any person's case in an independent and impartial court (Article 10)
- The principle of acquittal and the protection of privacy and the prohibition of sentencing to a punishment more severe than the punishment

The legality of the time of committing a crime (Article 11) in the document on the basic principles of the independence of the judiciary approved in 1985 by the United Nations General Assembly, after the introduction of this document on the necessity of approving these principles despite the existence of previous documents regarding them in general, referring to and omitting them in practice as one of these necessities, the countries The members of the United Nations have been encouraged to ensure the observance and implementation of these principles in their domestic legislations .

Professional crimes of judges in Egyptian laws

The Egyptian legislator has criminalized some professional behaviors of judges in articles of the Penal Code:

A) Refusal to issue a verdict due to one of the causes of penetration Refusing to issue a verdict and intentionally issuing an unjust verdict due to one of the causes of penetration are two crimes that are dealt with in Article 121 of the Penal Code.

b) Deliberate issuance of an unjust verdict through one of the causes of penetrability Article 121 (amended in 1957) of the Penal Code provides for the two mentioned crimes: "Any judge who refrains from issuing a sentence for one of the reasons provided in the article before issuing a sentence or issues a sentence that is proven to be unjust, in addition to dismissal from the job He will be repeatedly sentenced to the punishment prescribed in Article 105.

Explaining that Article 120 has criminalized mediation between one of the parties to the case and the judge by a government employee by issuing an order, request, expressing hope and advice to the judge in order to secure the benefit or loss of one of the parties to the case, and Article 105 has repeatedly performed or refrained from performing one's duty or obstructed the performance of one's legal duties as a result of expressing hope. Other personal advice or mediation by public officials is punishable by indeterminate imprisonment and a fine of a minimum of 200 and a maximum of 500 pounds .

It should be mentioned that according to articles 16 and 18 of the Egyptian Penal Law, the sentence of the convict to be kept in one of the public prisons and by engaging in one of the tasks Which is determined by the government for a period of at least three and a maximum of 15 years, but imprisonment refers to the detention of the convicted person in one of the central or public prisons (without the obligation to engage in specific work) for a period of at least 24 hours and a maximum of three years.

Regulations for the Investigation of Judges' Crimes in Egypt

Here, I consider it necessary to present in general terms some of the formalities and procedures for investigating judges' crimes, as well as a discussion about their civil liability :

In Article 95 of the Judiciary Law, the jurisdiction to investigate misdemeanors and crimes committed by judges, even in cases that are not related to their judicial duties, is exempted from the general rules of local jurisdiction, and the determination of the competent court to investigate his charges is entrusted to the Supreme Judicial Council under Article 99, and this judicial body can determine the court competent to investigate misdemeanors and crimes committed by judges without observing the general rules of jurisdiction. Also, in cases of committing a crime, the arrest and detention of a judge must be notified by the prosecutor and must be notified to the Supreme Judicial Council within 24 hours, so that this council can decide on the continuation of the arrest or release of the arrested judge .

In addition, according to Article 96 of the aforementioned law, any decision regarding any investigative action against a judge or the filing of a criminal case against him must be with the permission of this council .

According to Article 97, in cases of imprisonment of a judge, the Disciplinary Council of the judge can order his suspension from his job during the investigation and proceedings, whether his imprisonment is due to the commission of a crime related to the performance of his professional duties or not.

It should be noted that the Egyptian legislature has limited the scope of judicial immunity to felonies and misdemeanors and does not consider the commission of criminal offenses to be subject to judicial immunity .

The system of civil complaints against judges

"Judge's dispute" is one of the legal institutions in the laws of Egypt and other Arab countries; this lawsuit refers to a complaint that one of the parties to the lawsuit brings against a court judge or prosecutor's office with a main claim, in which the judge is required to compensate for the damage caused, and the annulment of the ruling or executive order issued by them due to their failure to comply with their professional duties is demanded. The legislator has limited the adversarial system of judges with the aim of providing the judge with the necessary confidence and peace of mind in performing his duty and feeling safe from the tricks of the convicts in his cases.

There is a difference of opinion about the nature of the adversarial lawsuit. Some consider it an example of civil lawsuits for compensation, some consider it an example of a lawsuit to annul a verdict issued by a judge, and some consider it an example of a disciplinary complaint against the judge's performance in order to belittle him and label his behavior as treason or a major mistake (al-khusaat al-jasim). The benefit of identifying the nature of this lawsuit is in recognizing the real and legal authority for its proposal.

Some Egyptian jurists have considered it a disciplinary lawsuit and have argued that in fact this lawsuit is a call to account for the judge's professional errors and mistakes. In response to this view, it has been said that a disciplinary lawsuit is different from an adversarial lawsuit in terms of the type of guarantee of execution, and this difference alone is sufficient to negate the disciplinary nature of an adversarial lawsuit .

Jurists who believe that an adversarial lawsuit is an extraordinary way of objecting to rulings argue in support of their view that the effect of accepting this lawsuit is the nullification of the ruling issued. To prove the view that this claim is a civil claim in nature, the following argument has been made:

A study of the criminal policy of three countries regarding professional misconduct of judges

Unlike moral duties that have internal enforcement guarantees, in legal matters the only guarantee for the enforcement of legal rules and obligations is the same as administrative, disciplinary, civil or criminal enforcement guarantees, and these obligations themselves are not considered guarantees so that the name of guarantee can be applied to them .

Iran's criminal policy regarding professional misconduct of judges

Laws before the victory of the Islamic Revolution

The first law in our legal system that independently and directly, though briefly and in three articles, dealt with the issue of the professional conduct of judges and provided a guarantee of disciplinary enforcement for it, "temporary law determining administrative punishment for non-compliance with articles 253, 445, 446 and 447 of the principles of legal trials" approved 3/6/1301 The Judiciary Laws Commission is of the National Assembly.

According to Article 1 of this law, failure to comply with summary trial cases under Article 253 of the Principles of Legal Trials by the presidents of the courts would result in a disciplinary punishment of "sixmonth penalty or demotion" and for the members of the courts, "one-third of the penalty from one to six months ."

The second article of this law prescribes the same punishment for violating the duties of articles 445 (about the obligation to announce the status of the court's decision in ambiguous cases, by the president of the court in the open court session), 446 (about the obligation of the president of the court to announce the date of delivery of the written judgment) to the parties) and 447 (about the duty of the president and members of the court to draft and sign a declaration opinion within five days from the date of the declaration) the principles of legal trials were extended to "the presidents and members of the appellate and primary courts" and the third article also made the repetition of the same violation within six months of the first violation aggravating the punishment. He knew to a degree.

It is reminded that the "Temporary Law on the Principles of Judicial Organizations and Sharia Law and Peace Rulers" approved on 26/4/1290 in the third chapter (chapters one, two, three, four and six) had provisions in this field. This chapter includes articles 147 to 195 of this 263-article law and The chapters referred to in it were repealed by Article 39 of the Law on the Employment of Judicial Court Governors and Parke Officials.

Laws after the victory of the Islamic Revolution

After the victory of the revolution, no special law regarding the professional conduct of judges was approved until 1364, until the presidential election law was approved on 4/5/1364 .

Article 87 of this law stipulates as follows: "Members of the executive board (governor or district governor, chief registrar, prosecutor or his representative) in case of violation of Article 41 {required to report the absence of a member to the executive authority and the Ministry of Interior {and note two of Article 47 of this law} prohibiting the change of the registered branch and Taking votes will be sentenced to the punishment of deduction of salary up to one-third from one month to six months according to the ruling of the competent authorities, and in the case of the rest of the members, they will be banned for up to two rounds of elections from being members of the executive boards and supervising the voting branches.

We see the same ruling in Article 32 of the Referendum Law in the Islamic Republic of Iran approved on 4/4/1368.

The question that exists here is whether both punishments prescribed in these two articles are disciplinary and disciplinary, or the second punishment is punitive and the first is disciplinary, and the competent authorities mean criminal or disciplinary and disciplinary?

It seems that although Article 32 talks about crime and punishment, and the context of the legislator's expressions in using such words in the mentioned article, in the first decade after the victory of the Islamic Revolution, it mostly indicates that the violation of the aforementioned duties is a criminal offense, but in terms of the punishment prescribed for other members who They are examples of deprivation of social rights, and considering the necessity of homogeneity of the prescribed punishment for all members of the executive board, as well as considering the nature of the prescribed punishment for the prosecutor and his representative, which are examples of disciplinary punishments, as well as the necessity arising from the principle of acquittal to not develop criminal charges, the legislator's intention in both articles is to treat the aforementioned behaviors as administrative offenses, not crimes. criminal

The single article of the right to choose a lawyer, approved on 11/7/1370 by the Expediency Council, is one of the special laws that explicitly determine the type of violation and the type and extent of the judge's disciplinary punishment. According to note two of this article:

"Whenever, according to the judgment of the Supreme Court, a court deprives the accused of the right to choose a lawyer, the issued sentence lacks legal validity, and for the first time it causes a disciplinary punishment of the 3rd degree and for the second time it causes dismissal from the judicial profession." is, a matter that has been neglected by legislators in almost all the laws before and after it.

Criminal policy manifested in the law of monitoring the judge's behavior

At this point, we consider it appropriate to review the provisions of the bill on monitoring the judicial behavior of the judge and compare it with the aforementioned laws and regulations, which after 14 months from the date of sending to the parliament by the government and approval in the parliament, with the objections of the Guardian Council, and with the opinion of the representatives for further investigation in the judicial commission of the parliament, and after resolving the objections The Guardian Council was finally approved by the relevant commission through letter No. 463/48856 dated 8/7/1390 by the Speaker of the Islamic Shura Majlis to the President, and the President communicated it to the Minister of Justice for implementation through letter No. 156451 dated 8/15/1390.

In this way, the most comprehensive and complete law in the field of criminal offenses and punishments of the judge in the history of legislation in Iran was established in the cold autumn and winter of 2013 :

Although d There is much to be said about this law from various perspectives, but here, considering the subject of the thesis, we will examine it in comparison with previous laws and regulations in relation to instances of disciplinary violations and disciplinary penalties: First of all, we consider it necessary to explain the title of this law; It seems that the title "Supervision of the Conduct of Judges" is not commensurate with the high status and authority of this position because it has a negative connotation in the mind of every reader. Although supervision is a desirable and comprehensive measure for all government officials, regardless of the fact that this law does not have any article in the field of supervision, a measure should not be the title of the law. Rather, it would have been better to include the purpose of the law in its title and say: "The Law for Promoting the Professional Conduct of Judges." If this were the case, the concept of misconduct and the need to supervise judges would not have arisen from it .

It is worth mentioning that, at the insistence of the Guardian Council, clerical judges were excluded from the scope of this law by adding a note to Article 2 and were subject to the regulations of the regulations of the prosecutor's offices and special courts for the clergy, although the aforementioned regulations did not specify any specific duties in this regard. Because Article 2 of the regulations in paragraph (b) only allows for "guidance" regarding "matters that are against the dignity" of the clergy, Article 17 of this law generally stipulates that "violations committed by judges and employees of the prosecutor's office and the special court during or due to their service will be investigated under the direct supervision of the appointed prosecutor and the head of the first branch of the court," while these violations are not enumerated anywhere, and even the provision of Article 18 and the note to this law that any act or omission that is punishable by law or Sharia law or is subject to security and educational measures, as well as "acts that are considered to be a crime for the clergy" And according to Article 42, the judge of the special court has been given permission to issue a verdict based on personal opinion in cases of silence of the law and Sharia.

Finally, in Article 43, the punishment of disrobing for “clerics who have caused disrespect to the dignity and honor of the clergy by committing a crime” does not fill the void of disciplinary violations by the clerical judge, because in all these cases, we are talking about a crime with all the breadth of its scope in this regulation, not a disciplinary violation. If it is said that in this regulation, behaviors that cause disrespect to the dignity and honor of the clergy have been criminalized and there is no example left for the violation, we respond that not all disciplinary violations necessarily lead to this result, and Article 17, which speaks of “violations of the judge” of this judicial authority, confirms this view; because if all violations of the clerical judge working in this authority or any other authority were to be considered crimes, the inclusion of this article would be pointless and null.

In any case, it seems that by adding a clause, instead of deleting the issue, the opinion of the Guardian Council could have been secured and the violations and punishments stipulated in the law in question would have been considered to include all judges, both clerics and laymen, and if necessary, a different procedure would have been foreseen to address their violations.

Article 11 of this law has allowed all judges of the disciplinary prosecution to communicate directly with the head of the judiciary to carry out the duties stipulated in this article, and has considered only the request for the suspension of a judge from his job, the issuance of an indictment, and the suspension of the prosecution of a judge under disciplinary prosecution as the exclusive duties of the prosecutor and, in his absence, the deputy prosecutor .

The provision of the right to appeal the decisions of the Supreme Court of Justice by the convicted judge, the elimination of the necessity of suspending judges accused of unintentional crimes with the motive of preserving their professional rights, which would be lost if the proceedings were suspended and prolonged, and the payment of one-third of the judge's salary to support his family during the period of suspension, contrary to previous regulations that required the termination of all the judge's salaries and benefits, are the most important features of this law, according to the judge's disciplinary prosecutor. As mentioned, contrary to the title and Article 1 of this law, which includes “supervision of the judge’s performance and conduct” within the provisions of this law, Article 12 stipulates:

“The method of inspecting, supervising, and evaluating the judge’s behavior and performance shall be based on a regulation that shall be approved by the Chief of the Judiciary within six months of the date of approval of this law, upon the proposal of the prosecutor.” In other words, the legislator has given this law a name, but it does not have a single article or note that covers this name!

Disciplinary punishments prescribed by the law

Article 13 of this law enumerates the disciplinary punishments applicable to judges: "Article 13 - Disciplinary punishments for judges of thirteen grades are as follows :

-1Written reprimand without entry in the service record 2- Written reprimand with entry in the service record

-3Deduction of monthly salary up to one third from one month to six months 4- Deduction of monthly salary up to one third from six months to one year 5- Deduction of monthly salary up to one third from one year to two years

-6Demotion by one judicial grade and in the case of a military judge, demotion by one military grade or civil servant rank 7- Demotion by two judicial grades and in the case of a military judge, demotion by two military grades or two civil servants Employee rank 8- Temporary separation from one month to six months 9- Temporary separation from six months to one year

-10Termination of service through retirement with at least twenty-five years of experience and redemption of service if less than twenty-five years of experience 11- Conversion to administrative status and, in the case of a military judge, cancellation of judicial notification and reinstatement to the service unit 12- Permanent separation from judicial service 13- Permanent separation from government services"

Procedure for Handling Disciplinary Violations

Chapter Three of the Law on Supervision of Judge Conduct, entitled "Procedure for Handling Disciplinary Violations", includes Articles 22 to 38 .

The points that can be raised in this chapter in this thesis are:

- Considering it optional for the prosecutor to obtain explanations from the judge under disciplinary prosecution at the disciplinary prosecution stage (Article 27,)
- Prescribing the suspension of the disciplinary prosecution of the judge by the disciplinary prosecutor in cases of committing a violation punishable by up to the eighth degree (Article 29,)
- Giving the judge's disciplinary court the authority to determine the guilt of the subject of Article 170 of the Constitution (Article 30,)
- Obliging the disciplinary court to send a copy of the disciplinary indictment to the judge under disciplinary prosecution to present his defense if he wishes (Article 34,)
- The finality of disciplinary convictions up to the fifth degree and the exclusive authority of the prosecutor to object to the rulings of disciplinary acquittal and non-conviction Provision of a right for the plaintiff in this regard (Article 36), while pursuant to Article 22, the complaint of the interested party or his legal representative is recognized in terms of initiating prosecution and disciplinary proceedings, and in the note to this article, the plaintiff is also recognized as having the right to be informed in person about the process of examining his disciplinary complaint. - Recognition of the right to request a retrial for a judge convicted of disciplinary proceedings with the same aspects stipulated in the Code of Criminal Procedure (Article 37 and its note) in Chapter Four (Articles 39 to 43), which is dedicated to the suspension of a judge. The new point related to Article 40 is regarding the revocation of the judicial immunity of a judge in unintentional crimes that do not warrant the temporary detention of the judge and the arrest of the judge is also not relevant; Of course, the need for the prosecutor's permission to prosecute a judge in these cases has replaced the need for him to go through the suspension procedures.

An interesting point in this regard is the secrecy of the judge's summons and the necessity of doing so, under any title, through the Chief Justice of the province; it goes without saying that this article is illogical in the case of judges of the judicial organization of the armed forces, and especially military judges; because they are not subject to the judicial hierarchy.

Special criminal protection for judges and the places under their control against any summons, arrest, detention, and inspection is one of the innovations of Article 41. As we have said before, the clarification of the possibility of combining criminal and disciplinary aspects in one behavior and the lack of connection between obtaining acquittal or release from any of the responsibilities with release from the other responsibility is a point that Article 43 has clarified. It is obvious that civil liability is not an exception to this rule; although Article 43 in this regard The fifth chapter, entitled "Investigation of the Competence of Judges," includes Articles 44 to 56, although the final articles, namely Articles 52 (regarding the authority for executing final Supreme Court rulings), 53 (regarding the necessity of sending documents to the competent court if the behavior committed by the accused judge is a crime), 54 (regarding the grounds for disqualification of judges of the Public Prosecutor's Office and Supreme Courts), 55 (regarding the executive regulations of the law), and 56 (regarding the repeal of certain laws), are not related to the title of this chapter .

The duties of a judge in Egyptian ordinary law

Regardless of the fact that the Egyptian legislator, like many other legislators, has violated the principle of legality, especially in the field of disciplinary violations, and has delegated the determination of the enforcement guarantee for violations of professional duties and obligations or those related to the judicial profession to the disciplinary council, it has been said that the criterion for the action of the authorities investigating disciplinary violations is the high rules of professional conduct and the moral virtues that we have mentioned in the above documents, because the position and personality of a judge enjoy a superiority and greatness that undoubtedly requires greater rigor and more accurate calculation from them in order to avoid a position of doubt and suspicion.

Also, although it has been said that it is impossible to predict all the events and facts that lead to a disciplinary investigation of a judge, various laws, especially the Egyptian Judiciary Law, have listed specific cases of these duties, and in some cases, these violations have been recognized as punishable by dismissal from the judicial profession - as one of the two punishments allowed in Egyptian laws for violations by judges:

Egyptian Criminal Procedure Code

The Egyptian Criminal Procedure Code stipulates duties for judges, as follows :

Article 36 of this law obliges the prosecutor to interrogate the arrested defendant within 24 hours of his/her delivery to him/her by judicial officers and to make a decision on the Regarding his release or temporary detention after this interrogation .

According to Article 43 of this law, the prosecutor, immediately after being informed of the illegal imprisonment of a person or his imprisonment in a place other than those prescribed by law, must appear at the said place and, in addition to investigating the matter, issue an order for the release of that person and record the proceedings :

In Article 124, the investigation of crimes, except in urgent cases and situations where the evidence is lost, is prescribed only in the presence of an appointed or occupied lawyer (as the case may be and in accordance with the defendant's request), although the judge can not allow the lawyer to speak.

Article 125 obliges the judge to inform the lawyer about the contents of the case one day before the interrogation or confrontation, unless it is decided otherwise based on legal considerations.

Under the same article, it is forbidden to separate the present lawyer from the accused during the investigation .

The reason for this prohibition is to prevent the violation of the defense rights of the accused, because the accused and his lawyer are two sides of the same coin who are responsible for defending him, and there is no expedient to prescribe the separation of the two from each other during the investigation of the accused's accusation .

In Article 134, the cases of issuing a temporary arrest warrant have been listed .

According to Article 312, if the accused is acquitted in court or the prosecution is prohibited in court, by publishing the verdict of acquittal in two widely circulated newspapers, the prosecutor is obliged to compensate the moral damages caused by the temporary detention of the accused. According to the same article, the government is obliged to compensate for the material losses caused by detention, in two cases. Article 268 of this law foresees the principle of public proceedings and its exceptions .

Article 269 of this law stipulates the necessity of the presence of the prosecutor or his representative in the criminal court session and Article 270 prohibits the expulsion of the accused from the court during the hearing of his case and its exceptions.

Prohibition of issuing opinions based on the judge's personal knowledge is also one of the duties stipulated in this law.

Criminal law

Article 126 of this law is about the prohibition of issuing orders or actions regarding the torture of the accused in order to obtain a confession .

This ruling has been emphasized in various documents that we mentioned before.

Article 129 has criminalized the mental and physical harassment of people by abusing their job position .

Attorney law

Article 49 of this law obliges judicial authorities to respect lawyers.

Article 52 also obliges all the judicial and law enforcement authorities to provide the necessary platform for the lawyer to perform his professional duty, to inform him of the documents and statements contained in the case and to be with his client during the investigation within the framework of the law, and has warned against violating these duties.

Violations and disciplinary punishments in the laws

The Egyptian Judiciary Law, which was approved on the basis of Article 167 of the Constitution in 1972 and was amended in 1984, 2006 and 2007 after years of conflict between the Judges' Association and the Egyptian Ministry of Justice, includes provisions on the duties of judges and their disciplinary orders .

Although this law does not specify that disobedience to the duties is considered a disciplinary offense, but since most of the issues and rulings related to the disciplinary prosecution of the judge are included in this law, at least and as a matter of certainty, it can be considered that the Egyptian legislator, this He has considered the law as the disciplinary law of the judge and has established a violation of these duties as an example of a disciplinary offense; The nature of these behaviors, as we will see, are directly related to the judge's job and professional position and are seen in a partial way and not in a general way.

Violations of the Law of the Egyptian Judiciary

Article 18 of this law foresees the necessity of public court proceedings and its exceptions.

Article 52 of the Judiciary Law prohibits the transfer and representation of judges except in exceptional cases .

Article 71 contains the provisions of the oath that judges are required to take at the beginning of their tenure :

I swear to the great God that I will issue judgments among the people based on numbers and follow the laws.

According to various articles of this law, the following things are prohibited for a judge:

- Commercial activity (Article 72 of the Law on the Judiciary): This violation somehow refers to the professional ethics of paragraph 2 of the recommendation of the Arab Heads' Conference on the optimal management of personal and financial affairs by judges .

- Activity against the independence and dignity of the judge (Article 72 of the Judiciary Law): This violation also includes the protection of the value stipulated in paragraph one of the mentioned document; However, its content is very general, and while the mentioned document lists the examples of the judge's independence, which include: rejecting pressures and confronting them, recognizing and implementing the right and freedom of action in the performance of duty .

Also, since the existential philosophy of a value called judicial independence is a guarantee of the judge's impartiality, therefore it is considered a methodical aspect and a tool for securing this fundamental value, it was possible to provide examples of behavior that disrupts independence by bringing examples of behaviors that show the judge's departure from the circle of impartiality in It is the effect of other people's influence, he stated more clearly.

Special disciplinary punishments of the judge

Article 108 of the Judiciary Law states that the punishments that can be applied to court judges are only reprimand and dismissal from the judicial job (dismissal), and according to Article 128 of the same law, the same punishments can be applied to court judges.

Article 120 of the Law of the State Council foresees the same punishments for the judge of this council. In addition, according to Article 94 of the Judiciary Law, the president of the Supreme Court or based on the decision of the General Assembly, can ask the judge in cases of defiance of his duties, after hearing their explanations, By observing the formalities of Article 83 within a period of 30 days, contrary to the provisions before the amendment of this article, which considered the verdict to be final (Article 107), and the types of disciplinary punishments that can be issued against a judge (reprimand and dismissal) have been discussed (Article 108).

Article 127 also stipulates that disciplinary punishment of members of the prosecution (members of the House of Representatives) will be subject to the system and formalities established for judges and pursuant to Article 98.

Article 129 makes the Public Prosecutor responsible for initiating disciplinary proceedings, acting either directly or upon the recommendation of the Minister of Justice. Paragraph 2 of the same article allows the Public Prosecutor to suspend a member of the prosecution whose disciplinary case is in the investigation stage from his job until the case is completed, and the judge will enjoy all his financial rights during this period .

In evaluating the new law of the Egyptian judiciary regarding the professional conduct of judges, it can be said that this law, despite having positive aspects, still has shortcomings in several aspects:

- The principle of legality of disciplinary violations and punishments has not been accepted,
- This law still does not have a clear ruling on the status of the prosecutor's office and whether it is part of the judiciary or the executive branch ,
- Although this law recognizes the right of judges to object to disciplinary decisions, this objection does not lead anywhere, considering the regulations governing the jurisdiction of the Supreme Court - which is the authority for appealing against disciplinary court decisions; Because in Article 83, the grounds for objection are limited to the same grounds that are foreseen for the final hearing; namely, issuing a ruling without observing legal standards, error in comparing the ruling with legal articles, error in interpreting the law, or the existence of reasons for the substantive invalidity of the ruling, or actions by the person issuing the ruling that require the invalidity of the ruling. Therefore, the second court hearing the objection does not enter into the substance of the issued disciplinary ruling, and in fact, contrary to appearances, the matter of investigating disciplinary violations by the judge in Egypt is of one level .
- In this law, the right of a judge under criminal investigation to use a lawyer has been ignored, a right that is recognized not only by the constitution for all citizens, but also by transnational documents and international treaties for judges who are prosecuted for their professional and professional actions .

In addition to the mentioned objections, the aforementioned law also has other objections, such that one of the demands of the revolutionaries of Egypt in 1390 is the drafting of a new law in this regard, and in this regard, committees have been formed by the Association of Judges and the Supreme Court of Egypt, and proposals have also been received and are being reviewed.

Law No. 47 of 1972 regarding the disciplinary prosecution of the judge of the State Council has provided special provisions: the provisions related to the body in charge of disciplinary punishment of the members of the State Council and its composition are in Article 112, the competent authority and the procedures related to the institution of disciplinary proceedings are in Article 113 of this law .

In articles 15, 19 and 20 of the Supreme Court Law of the 1998 Constitutional Amendment, the Supreme Court of the Constitution has delegated the jurisdiction to deal with violations and complaints against the members of this court .

In Egyptian law, the rule is based on the fact that the members of the prosecution are not criminally or civilly responsible for mistakes made during the prosecution or investigation, and therefore the accused who has been acquitted cannot request compensation from the members of the prosecution due to the restriction of his freedom due to the arrest or search of the house, etc. The wisdom that has been said for the lack of responsibility of the prosecutor's office is that holding them responsible causes them to exercise caution in cases where their actions conflict with the freedom of individuals, and this also causes a great loss to the society.

On the other hand, the member of the judiciary, who acts on behalf of the public, cannot do his job properly unless he is safe from the consequences of his mistake, and it is in the interest of the society to grant him the power and freedom to act without any fear or hesitation. However, in the article 494 A.D.M. And Article 63 of the Criminal Law stipulates the responsibility of the members of the prosecutor's office if their actions are caused by negligence, fraud, treachery, or serious professional misconduct. Considering the type of disciplinary punishments of a judge in Egypt, which only includes reprimand and dismissal of the judge from the judicial job and early retirement (in cases of disqualification of the judge), in this country, in case of the judge's retirement or his release from service in any way, his disciplinary prosecution is rejected and stopped. In this country, as in the first years after the victory of the Islamic Revolution in Iran, there is still a difference of opinion about whether prosecutors are considered judges or not; Of course, the basis of this dispute in Iran is a special interpretation that is derived from jurisprudential sources, and only the judge of the court, i.e., the person who, according to the interpretation of that day, was entitled to the title of judge, while the basis of the dispute in Egypt is that the prosecutor's office follows the hierarchy of the Ministry of Justice. Regarding whether the prosecutor's office is a judicial position or an administrative position, changes are also seen in the Egyptian judicial procedure, although at present this procedure has progressed towards recognizing this position as a judicial official, taking into account the provisions of the new laws; For example, the Law of the Judiciary, by dealing with the administrative, employment and disciplinary issues of this authority, has implied its judicial nature, in addition, in the preamble of Law No. 35/84, which amended articles of the Law of the Judiciary, it is explicitly stated:

"Since the prosecutor's office is an original part of the judiciary and is responsible for judicial responsibilities in connection with criminal cases and plays a role in the establishment of the law, it is necessary to recognize judicial immunity for this institution ".

Conclusion

An applied study of the two countries' criminal policy against professional crimes. Here, we will describe the similarities and differences of the two systems: the similarities of the two systems.

The examination of the legal materials related to the special crimes of the judge in the two countries under study shows that there is not much similarity in the criminal system and their criminal policy in front of the judge, because although in both countries, at the request of the judge and He objected to the indicated maturity, but the conditions of the investigation of the crime and the prescribed punishment are different in all of them .

Regarding the civil liability of the judge, an important similarity that exists in the two systems is that the legislators of both countries are silent about whether the reasons for the civil liability of the judge are cases of professional crime or not. Some of these cases, such as resisting the administration of justice, have been separately criminalized, and some others, such as embezzlement or serious professional mistakes and the fault of the judge, have not been criminalized; Unless we want to consider all these cases in Iranian law as examples of behavior against the law, which are considered crimes in Article 597.

Also, the cases of civil liability of the judge in the two systems are similar to each other.

It is mentioned that considering that the cases and rulings of civil liability of judges in Egypt are taken from French laws, there is more similarity between the two countries in this regard .

In fact, this similarity covers all areas except the area of civil responsibility of the government to compensate for the damages caused by the malpractice of the judge, which in Egypt bears this responsibility .

Even though there is a fundamental difference in the studied countries in the intellectual bases of the ruler regarding the regulation of the professional behavior of the judge. While one of them has a religious and divine dimension, the other has a more secular dimension of the system of thought. However, this difference prevents the formation of common and similar concerns to take measures to optimally control the professional behavior of judges and drive it towards the goals of justice in each and to prevent deviations and deviations from the path of truth and justice, to design similar expectations, and to compile similar documents and works to clarify the dos and don'ts of the judiciary. The ethics of the judicial profession and the judiciary have not been; also, this difference has not prevented the countries under study from being influenced by each other in the field of criminology and taking similar measures to prevent some abnormal behaviors of judges; although, as we will see, there are also differences in this area between the two countries under study, and although these differences do not have a significant relationship with their philosophical thought system .

From here, an important achievement can be achieved, which is to provide platforms for scientific cooperation between thinkers from the two countries, who, in terms of judiciary, are also representatives of three important intellectual spectrums prevailing in the world today. Thinkers from Iran and Egypt can be the standard-bearers of a scientific movement in the field of studying the professional behavior of judges from the perspective of criminal policy, so that, in addition to other subsidiary achievements, theoretical poverty and narrowness existing in the field of law. They should avoid judicial punishment in the best possible way .

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