

1989

The Office of prosecutor in Egypt

Talaat M. Elwan
San Jose State University

Follow this and additional works at: https://scholarworks.sjsu.edu/etd_theses

Recommended Citation

Elwan, Talaat M., "The Office of prosecutor in Egypt" (1989). *Master's Theses*. 3065.
DOI: <https://doi.org/10.31979/etd.tf37-233n>
https://scholarworks.sjsu.edu/etd_theses/3065

This Thesis is brought to you for free and open access by the Master's Theses and Graduate Research at SJSU ScholarWorks. It has been accepted for inclusion in Master's Theses by an authorized administrator of SJSU ScholarWorks. For more information, please contact scholarworks@sjsu.edu.

INFORMATION TO USERS

The most advanced technology has been used to photograph and reproduce this manuscript from the microfilm master. UMI films the text directly from the original or copy submitted. Thus, some thesis and dissertation copies are in typewriter face, while others may be from any type of computer printer.

The quality of this reproduction is dependent upon the quality of the copy submitted. Broken or indistinct print, colored or poor quality illustrations and photographs, print bleedthrough, substandard margins, and improper alignment can adversely affect reproduction.

In the unlikely event that the author did not send UMI a complete manuscript and there are missing pages, these will be noted. Also, if unauthorized copyright material had to be removed, a note will indicate the deletion.

Oversize materials (e.g., maps, drawings, charts) are reproduced by sectioning the original, beginning at the upper left-hand corner and continuing from left to right in equal sections with small overlaps. Each original is also photographed in one exposure and is included in reduced form at the back of the book. These are also available as one exposure on a standard 35mm slide or as a 17" x 23" black and white photographic print for an additional charge.

Photographs included in the original manuscript have been reproduced xerographically in this copy. Higher quality 6" x 9" black and white photographic prints are available for any photographs or illustrations appearing in this copy for an additional charge. Contact UMI directly to order.

U·M·I

University Microfilms International
A Bell & Howell Information Company
300 North Zeeb Road, Ann Arbor, MI 48106-1346 USA
313/761-4700 800/521-0600

Order Number 1337799

The office of prosecutor in Egypt

Elwan, Talaat M., M.S.

San Jose State University, 1989

U·M·I
300 N. Zeeb Rd.
Ann Arbor, MI 48106

THE OFFICE OF PROSECUTOR IN EGYPT

A Thesis

Presented to

The Faculty of the Administration of Justice Department

San Jose State University

In Partial Fulfillment

of the Requirements for the Degree

Master of Science

By

Talaat M. Elwan

August, 1989

APPROVED FOR THE ADMINISTRATION OF JUSTICE DEPARTMENT

Harry Allen

Dr. Harry Allen

Inger J. Sagatun

Dr. Inger Sagatun

L. M. Holscher

Dr. Louis M. Holscher

APPROVED FOR THE UNIVERSITY

Serena H. Stanford

ABSTRACT

THE OFFICE OF PROSECUTOR IN EGYPT

by Talaat M. Elwan

This thesis describes and analyzes the office of the prosecutor in Egypt, examining its historical development, structures and functions, as well as the roles of incumbents. It also provides a description of the country's court and legal system.

This study reveals that the role of the prosecutor has been present since ancient times but the modern form of the office is borrowed from the French system and has been in existence only since 1883.

The Office's main function and concern is the trial of criminal offenders; its roles also include addressing a wide variety of civil matters as well. The prosecutorial role includes investigation and interrogation, as well as charging offenders with offenses and presentation of cases in court.

Legislative and court decisions were found to limit the discretion of the prosecutor in Egypt. Suggestions for additional study are offered.

TABLE OF CONTENTS

	PAGE
LIST OF FIGURES	viii
Chapter	
1. INTRODUCTION	1
Overview	1
Purpose of the study	1
Significance of the Study	1
Limitations of the Study	3
Egypt - the Country and the People	4
The People	5
The Language	5
Religion	6
Demography	6
Education	6
History	6
Recent History	7
The Government and Constitution	7
Crime and Delinquency	8
The Judiciary and the Court	9

	The Supreme Constitutional Court	9
	The Court of Cassation	10
	The Courts of Appeal	10
	The Tribunals of First Instance	11
	District Tribunals	12
	A Summary of the Court Structure	12
2.	OFFICE OF THE PROSECUTOR	14
	Origin and the History of the Office	16
	The Prosecution System in Ancient Egypt	16
	During the Islamic Empire	17
	The Office and Its Forms at the Beginning of Contemporary Egypt	17
	Modern Duties	18
	Civil Matters	19
	Plaintiff or Defendant	19
	Interventions	19
	Discretionary Intervention	21
	Appeal	21
	Structure and Jurisdiction of the Office of Prosecutor	22
	The Attorney General	22
	The Premier Advocate General	23
	Advocates General at Court of Appeal	24

Prosecutor	24
Assistant Prosecutors	24
The Administrative Office of Prosecutors	25
Personnel and Recruitment	28
Promotions and Career Ladder	28
Major Characteristics of the Office	30
The Unity of the Office	31
Undividability	31
Investigation and Preliminary Interrogations	33
Inspection	34
Listening to Witness Testimony	35
Search	36
Preliminary Interrogation	37
Temporary Detention	38
Prosecutorial Discretion	40
Prosecution	40
Decision Not to Prosecute	41
Restrictions on Authority	43
Complaints	43
The Request	44
Permission	45
Summary of Prosecutorial Discretion	45

3. SUMMARY AND CONCLUSIONS	47
Future Research	48
LIST OF REFERENCES	50

LIST OF FIGURES

FIGURE		PAGE
1.	THE COURT STRUCTURE IN EGYPT	13
2.	THE STRUCTURE OF THE OFFICE OF PROSECUTOR	27

CHAPTER 1
INTRODUCTION

Overview

Purpose of the Study:

The objective of this effort was to conduct an exploration of the office of the prosecutor in Egypt. The office of the prosecutor is considered one of the most important and powerful components of any criminal justice system, particularly in a country that varies in many respects from the legal setting and structure of the United States of America.

The secondary objective is to add to the literature of the justice systems more information on the international scenes, by focusing in detail on the prosecutor's role, authority and structure. Such international perspectives are often missing in American justice studies.

Finally, this study focuses on a justice component whose missions include both criminal and civil functions. Thus the third purpose is to explore the office of the Egyptian prosecutor to secure a better understanding of the role of an office that seeks to secure the public welfare and protect its citizens.

Significance of the Study

There is a limited amount of information on the roles of the prosecutor in the United States, although in more recent years the number and variety of such studies have expanded. More researchers are addressing the prosecution's role, operations, policies and impacts, and the body of

knowledge is growing.

Fewer cross-national and international studies of the office of the prosecutor exist. After extensive computer and library search, not one study of the role of the Egyptian prosecutor could be found. To this extent, this thesis is an initial contribution to the vacuum found in this area.

Filling this vacuum, even in a tentative way, would make this study significant, for it may contribute to the reduction in the existing insularity that American legal students may experience. By providing a cross-cultural perspective, this thesis would help in developing a clearer understanding of foreign countries and their legal systems.

In addition, this effort provides a definite path for others whose interests might well be to expand on the initial information developed for this thesis. Many questions are raised by this investigation, and further studies and evaluations are needed to expand the information and perspective provided.

Finally, existing works on the Egyptian Criminal Code and Criminal Procedure can be found in Arabic, but few are in English. The results of this investigation thus avoid the limitations inherent in single-language documents. To the best of the author's knowledge, there is no English work on the Egyptian prosecutor's office, and there is limited data available even in Arabic. Thus this effort is significant because it provides an initial conception of a major component of the justice system of another country in which the native tongue is not English.

Limitations of the Study

There are two major points to be made under this topic. First, material problems arose when searching for published documentation on the criminal justice system of Egypt. Second, there are certain validity issues that should be addressed, especially in the area of experience.

There were major hurdles to be overcome in the search for library resources and materials that dealt with both the Egyptian justice system in general, and the office of the prosecutor in particular. First, a search was made of two computer-based informational systems to identify work in English that focused on the Egyptian prosecutor. None was found. The search for such documents published in Arabic then proceeded. Few were found and, of those found, most were published decades before. Furthermore, most major libraries in the Bay Area did not have the necessary volumes that dealt either directly or indirectly with this subject. These libraries included even the Federal Depositories at Stanford University and the University of California at Berkeley.

Non-availability of resource materials locally led to innovative approaches, including frequent intercontinental telephone calls to former Egyptian professors and peers, and the literal airlift of documents and texts from Egypt to the United States. What appears in this thesis resulted from translation of these documents from Arabic to English.

Finally, the author was an attorney in Egypt, experiencing first hand many of the opportunities and some of the limitations inherent in this role.

No doubt such experiences may have colored the perspectives and insights included in this thesis. Without such experience, however, this document could not have emerged. Others who investigate this topic later can correct any inaccuracies contained herein and perhaps buttress the generalizability of the contents of this thesis.

The thesis begins with an overview of Egypt, its history and people. It then turns to the exploration of the history of the courts and prosecutor in Egypt before turning to a detailed analysis of the roles and functions of the Office of the prosecutor. The final chapter offers conclusions and raises questions yet to be addressed. We begin with an overview of the country.

Egypt - The Country and the People

Egypt is a nation occupying the northeastern corner of Africa, the Sinai Peninsula in adjacent southwest Asia, and some islands in the Gulf of Suez and the Red Sea. It is bounded by the Mediterranean Sea on the North, Sudan on the South, the Red Sea and Israel on the East, and Libya on the West.

The name "Egypt" is derived from the Greek word "Aegyptus," which was taken from the ancient Egyptian term "Hik Up Tah" (House of the Spirit). The term was used to designate the city of Memphis, Egypt's earliest capital (The World Book Encyclopedia, 1972).

Egypt is the most populous nation in the Arab World and, after Nigeria, the second most populous country in Africa. Cairo, Egypt's capital, is the largest city in both Africa and the Middle East. Over 96% of Egypt's population lives along the narrow, fertile Nile River Valley and its Delta, which accounts

for only 4% of the total land area. Overpopulation in relation to the country's resources is Egypt's greatest barrier to economic development and today the nation is heavily dependent upon foreign aid.

Egypt's climate is generally dry with two seasons: the hot season from May to October and the cool season from November to April. During the summer, temperatures may reach 42° C (107° F). Winters are generally warm, with the average temperature between 13° - 21° C (55° and 70° F).

The People

Most Egyptians are descended from the successive Arab settlements that followed the Moslem conquest in the 7th century, mixed with the indigenous pre-Islamic population.

The typical Egyptian of mixed heritage is the fellah, or peasant. The fellahin constitute more than 60% of the population. Egyptian Copts, a Christian minority who constitute about 5% of the population, are the least mixed descendants of the pre-Arab population. The Nubians who live south of Aswan have been Arabized in religion and culture, although they still speak the Nubian language.

The Language

Arabic is the official language of Egypt and is spoken by almost all Egyptians. The Coptic language (which descended from Ancient Egypt) has died out among the people and is now used only in the Coptic liturgy. Italian, Greek, and Armenian are heard in Cairo and Alexandria. Berber is spoken in some of the Western Oases. Many of the nearly 100,000 Nubians in the south

speaking Sudanic languages.

Religion

About 94% of Egyptians are Sunni Muslims. The Coptic Church has more than 2,600,000 followers. Other religious minorities include the Greek Orthodox, Roman Catholics, Armenians, and a very small Jewish community. Most non-Muslim communities are concentrated in urban centers.

Demography

Egypt has a high rate of population growth. The present population is 50.5 million. By the mid-1980's, more than half of its people were under the age of 15 years. Population density in the Nile Delta is one of the highest in the world: 1,600 person per square kilometer (4,143 per mi.) in 1980.

Education

Education in Egypt is under government control and is free, including university education. Children between the ages of 6-12 are required by law to attend elementary school. Egypt has a large number of institutions of higher learning, including 11 state universities.

The illiteracy rate has not dropped substantially due to the rapid population growth. In 1940, about 80% of Egypt's population did not know how to read or write. In 1980, 42% of Egyptian adult population were literate.

History

Egypt has the oldest and most ancient history of all the countries in the world. Its documented history goes back to the year 2890 B.C., but the most

recent evidence and tradition show that prehistoric Egypt (originally petty kingdoms and chiefdoms) had coalesced into the great kingdoms by 3100 B.C.

Recent History

Egypt, a province of Turkey's Ottoman Empire from the 16th Century, was later occupied by British officials, although Egypt remained nominally an Ottoman province until 1914, when a British Protectorate was declared.

The United Kingdom granted nominal independence to Egypt on February 28, 1922. On July 23, 1952, King Farouk's unpopular regime, widely recognized as corrupt, was overthrown by a bloodless military coup and thus the kingdom era ended. Egypt then formed a Republic headed by a President.

The Government And Constitution

Egypt is considered one of the most ancient of all nations but its current Constitution is fairly new in comparison with Egypt's long existence. The newness of the Constitution is one of the major characteristics of Egypt's political life.

The Egyptian government is currently organized by and administered under the new Constitution that was approved by referendum on September 11, 1971 (The Europa Year Book 1987). This Constitution is the fourth one that Egypt has established. The first three Constitutions were adopted in 1913, 1923 and 1964, and each one of these Constitutions reflects major changes in the Egyptian political structure.

One of the major characteristics of the current Egyptian Constitution is that there is no separation between the church and state: Article 5 of the

1971 Constitution indicates that Islam is the religion of the State. The Islamic Code is a principal source of legislation. In the same article, the Egyptian Constitution guarantees the freedom of worship and performance of all religions (El Sharkawi & Abdoula, 1984).

Another important new characteristic of the 1971 Constitution is its emphasis on the independence and immunity of the judiciary. The 1964 Constitution did not include such practices, as is detailed below.

Crime and Delinquency

Crime in Egypt does not represent a major threat to the modern Egyptian society. According to 1983 statistics furnished by the Ministry of the Interior, the crime rate in the last four decades has decreased significantly. For example, 8,369 felony crimes were committed and reported to the authorities in 1944 while, in 1983, the total number of felony crimes was 1,635. The total crime rate in 1983 was 3.65 per 100,000 population. This compares with 5,550 offenses per 100,000 inhabitants in the USA in 1987 (FBI Law Enforcement Bulletin, 1988). Most of these crimes, particularly homicide, were committed in the southern part of the country (Upper Egypt). In particular, 305 of the 615 homicide cases of 1983 (49.6%) were committed in Upper Egypt (Eabaid, 1985). This concentration may reflect the cultural tradition of "honorable revenge"; it is the duty of all family members to retaliate against anyone who causes harm to their family. This phenomenon represents one of the most crucial crime problems facing the authorities in Upper Egypt.

The Judiciary and The Court

There are two major divisions of the courts of law in Egypt: Courts of General Jurisdiction, and Administrative Courts. Since 1969, the Supreme Constitutional Court has been the highest court in Egyptian judicial structure.

The Supreme Constitutional Court

This court is, again, the highest court in Egypt, having specific jurisdiction over judicial review of the constitutionality of laws and of regulations. Its scope of power includes resolution of jurisdictional conflicts; it may also determine which of the different judicial court systems (Courts of General Jurisdiction and Administrative Courts, as well as other bodies exercising judicial competence) is the competent court for legal actions. In addition, the court is also empowered to resolve disputes over the enforcement of two final but contradictory judgements rendered by two courts, each of which belongs to different judicial court systems. Finally, the Supreme Court is empowered to render binding interpretation of enacted or decreed laws, in the event of a dispute in the application of said laws.

This Court is composed of a chief judge and six other judges, all appointed by the President of the State. All seven members must have been judges (counselors) for at least five years before appointment to this Court, and must be at least 45 years of age.

One of the critical issues surrounding the formation of this court is that the enabling legislation did not specifically indicate the number of members to sit on this court. Although the court renders verdicts by the seven judges,

the actual total number of judges could technically vary. The President might appoint any number of judges to this court, and this potential ("court packing") is considered dangerous to the independence of this court. For example, when there is a dispute over a constitutional issue between the government and any other exercising law bodies, the government (Executive Office) which the President heads, could win by appointing to the court judges who would adopt the Executive's point of view.

The Court of Cassation

Immediately under the Supreme Constitutional Court is the Court of Cassation. Final judgement rendered by the Courts of Appeal in criminal and civil litigation may be petitioned to the Court of Cassation by the Defendant or the Public Prosecutor. Grounds for the petition might range from defective application or interpretation of the law as stated in the challenged judgement, to irregularity of form or procedure in violation of due process, or even defective reasoning of judgment rendered.

The Courts of Appeal

Each Court at this level has geographical jurisdiction over one or more of the 28 political divisions or governorates of Egypt, and is divided into criminal and civil chambers. Each chamber is composed of three superior judges (counselors).

The criminal chambers hear and try felony crimes, and the civil chambers hear appeals from cases originally heard before the Tribunals of First Instance.

Each Court of Appeal is composed of the President and sufficient but varying numbers of vice presidents and superior judges. The criminal chambers of the Court of Appeal has original jurisdiction for all crimes that are considered felonies; only three superior judges hear the case. The procedures of this Court are highly formal, and the only participants in this court are the prosecuting attorney and the defense attorney. There are no juries involved in any criminal case, since Egypt does not employ jurors in its criminal justice system.

The Court of Appeal and its criminal chambers could also hear misdemeanor cases but these misdemeanor charges would have been brought under the Criminal Procedure Law Article #216, which governs any misdemeanors that have been committed by the Press. All judgments from these courts could be appealed before the Court of Cassation, which would then seat five judges to hear the appeal on the grounds of dispute in the application of the law (not on the basis of facts). This is only for civil cases; in criminal cases, the court also hears facts since this is considered the Appellate Court for criminal cases.

The Tribunals of First Instance

In each governorate, there are one or more Tribunals (or Courts) of First Instance, each of which is divided into several chambers for criminal and civil litigations. Each chamber is composed of a presiding judge and two sitting judges. A Tribunal of First instance can serve and hears cases as an Appellate Court for misdemeanor cases tried before the District Tribunals. In

such a case, this Court is called "Court of Appealed Misdemeanors."

District Tribunals

This type of court exists in every small district within the jurisdiction of Tribunal of First Instance. It is composed of only one judge. These courts are considered Ancillary Chamber of a Tribunal of First Instance and have jurisdiction over minor civil and criminal litigations.

The Court structure of Egypt is pictorially displayed in Figure 1.

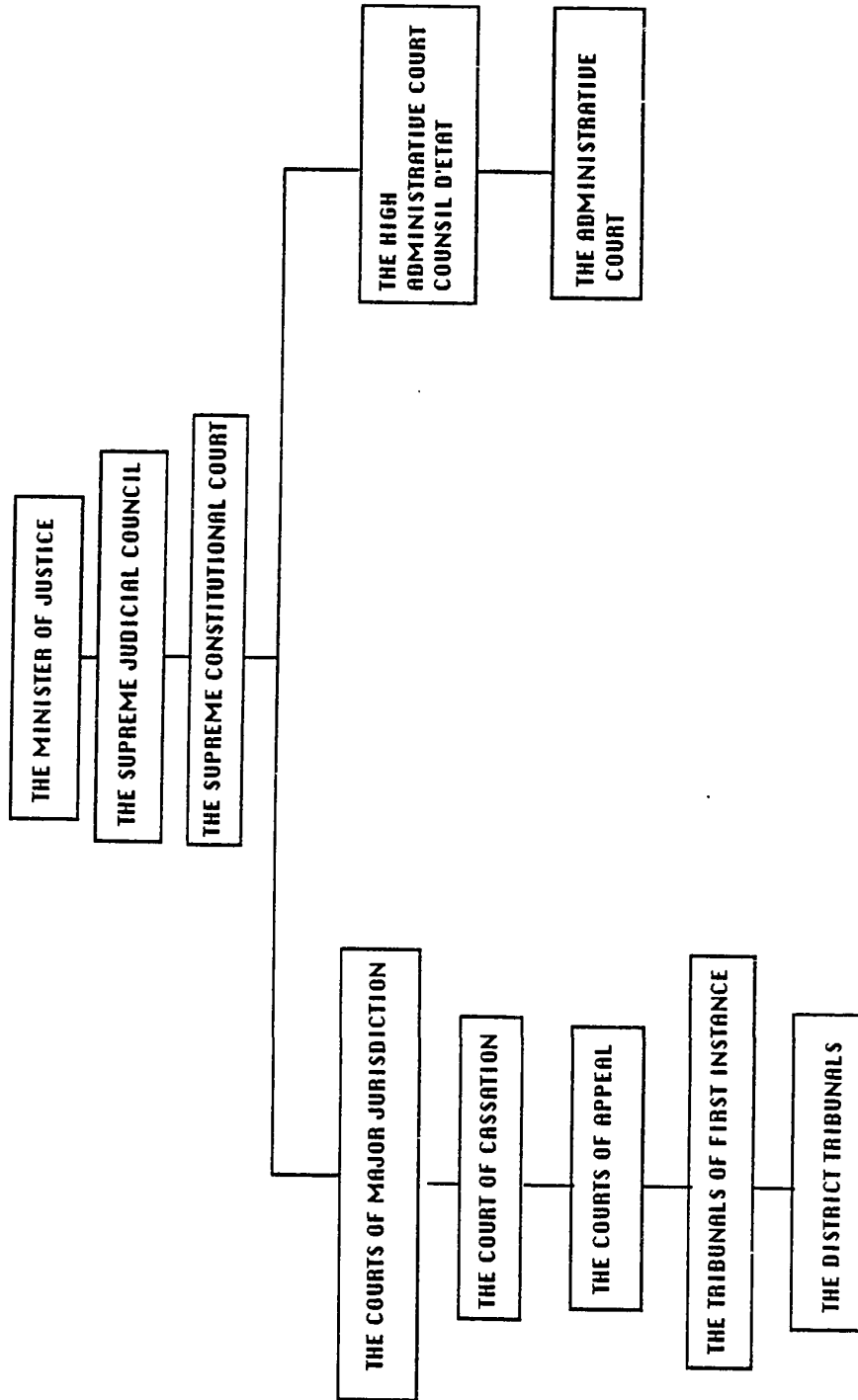
A Summary of the Court Structure

In summary, a misdemeanor case might begin in a District Tribunal, and then be appealed to a Tribunal of First Instance. A felony case on the other hand, would begin in the Criminal Chamber of the Court of Appeal, and then be appealed before the Court of Cassation. Finally, civil issues may be disputed in the District Tribunals and be appealed to the Tribunals of First Instance, or may be initiated before that latter court and be appealed before the Court of Cassation.

We turn now to an analysis of the Office of the Prosecutor (hereafter "Office"), beginning as before with historical development.

FIGURE 1

THE COURTS STRUCTURE IN EGYPT



CHAPTER 2

OFFICE OF THE PROSECUTOR

The Office of Prosecutor in Egypt is borrowed directly from and patterned on the French system of the Fifteenth Century. The office is currently headed by the Attorney General who, unlike his American counterpart, is not the head of the Department of Justice. The Egyptian Prosecutor's functions are much different from the American system, which could make comparisons misleading. The Attorney General and his staff constitute the "Parquet," a group which takes its name from the flooring or "Parquet" before and below the court, where the officers of justice originally took their positions in a trial function.

The Prosecutor's status in the "parquet" is considered to be semi-judicial, and the prosecutorial staff are looked upon as members of the magistracy. They are even called the "Standing Magistracy," in contrast to the judges who comprise the "Seated Magistracy." Standing Magistracy derives from the traditional practice of rising when addressing the Court. The "Standing Magistracy's" dress code consists of a black robe with a red silk sash.

Although the Office of Prosecutor interfaces with the Court, as we have seen above, the office is in certain respects independent of the judicial hierarchy. First, the Constitution contains an Article that declares the Attorney General and his staff are expressly declared to be removable from office, in contrast to the judges who enjoy life-long security (with mandatory

retirement at the age of 60). Theoretically, such strictures would place the office of Prosecutor at the mercy of the government but, in practice, the Attorney General is as secure as the judges, a security that does not necessarily apply to his staff.

The Attorney General's office interfaces with the Police, although the latter agency falls under the jurisdiction of the Minister of the Interior. Police must work in accordance with the Prosecutor's directions. They must follow and obey all orders and directions they receive from the Prosecutor's Office regarding both criminal and civil matters (as will be discussed below). The police conduct all necessary investigations as requested by the Prosecutor. They also make any arrests ordered by the Prosecutor. The police also secure all crime scenes, and they retain all evidence. The police must also refer to the Prosecutor, within 24 hours of the arrest, all suspects taken into their custody.

From this brief description, one may reasonably conclude that the Attorney General and his staff are placed in a position superior to the staff of the police in Egypt.

Further, there is a superordinate relationship between the Prosecutor's Office and the corrections service in Egypt, very much the same as with the police. Although the correctional facilities are administered by the police, with the assistance of some civilian personnel who belong to the Ministry of Social Welfare, correctional units are still supervised by the Prosecutors. This is dictated by the law of criminal procedure: one of the

duties of the Office of the Prosecutor (and his staff) is the supervision of the correctional facilities (El Rashidy, 1980). The Office must also ensure that penalties are being enforced properly, as well as oversee the conditions at penal facilities, including the condition of the inmates. Office staff report on these conditions directly to the Attorney General. Such practices reflect contemporary criminal policy and Egyptian emphasis on the importance of the role of the Prosecutor in penal practice.

The Origin and the History of the Office

As we have mentioned earlier, the modern Egyptian Office of the Prosecutor was copied from its French counterpart in 1883 when the mixed courts in Egypt were first established. But the origin of such a system could be traced back to the Pharaohs' times. The Office's long existence is briefly discussed below.

The Prosecution System in Ancient Egypt

Legal and historian scholars claim that a position similar to the one of the Attorney General was first introduced to the Egyptian legal system during the rule of the Twelfth Dynasty. The person who performed this job function was called "nem suten," meaning "The King's Tongue" (El Ghareib, 1979).

Prints and carvings from the Twelfth Dynasty indicate that this "Great Prince," the King's Tongue, was in charge of interrogation and investigation of criminals and was the only one who could bring charges against them. This great prince "Nem" also had assistants, known by the name of "Denu." They were responsible for authorizing all arrests and assisting "Nem" in the

investigations (El Marsafawy, 1978).

During the Islamic Empire

As a result of Moslems' conquering Egypt, which up until then a part of the Roman Empire, the Roman criminal procedure was replaced by the Moslem "Shariah," which postulates the state would prosecute offenders who violate laws that effect the interest of the whole society. The Shariah defined prosecution as a power limited to the state and not permitting private prosecution. This prosecutorial role of the State was carried out by one of two functionaries ("Wally El Mazalem and El Mehtasib") whose jobs and functions were very similar to the Attorney General's role in Egypt today (El Gharieb, 1979).

It was their duty to bring appropriate charges against criminals, conduct the primary investigation, file the case before a judge who would rule on it and, finally, see that the judgements were enforced and punishment carried out in the appropriate way.

The Office and Its Form at the Beginning of Contemporary Egypt

Archives indicate that the Islamic Shariah continued to be the dominant procedure until the establishment of modern Egypt by Mohamed Ali Pasha. As a result of the strong influence that the French law had at that time on the Egyptian society and Ismael Pasha (the ruling Khedive at that time), the Shariah and its procedures were discarded, to be replaced by French law and criminal procedures. This change began in 1883, and helped pave the way for the creation of the office of Prosecutor in its present form. Also created in

the same year was the Public Court. The Public Court was needed to help the Office regulate the type of cases that would be heard before it, as opposed to other cases that would be heard before the mixed court (El Gharieb, 1979).

This office was granted jurisdiction through the first Egyptian Criminal Procedural Statute (passed in 1883), which dictated that all criminal cases that would be heard before the public court must be initiated by the Office of the Prosecutor. This latter law and its regulations was later replaced by other statutes in 1895, 1897, 1904 and finally by the present Criminal Procedural Law #50 of the year 1950.

From this brief description of what the Office was like in its premature stages, we can conclude that the final form of this office and its present functions and duties may be accredited to the French system. Also, the Prosecutor's office was not created until after the French Revolution.

Beginning with the Pharaohs, the state has always been a part of the accusation system. Private prosecution in Egypt is unknown.

Modern Duties

One salient characteristic of the Office is that it represents the state as a sovereign, but does not represent the government as a party litigant. One result is that the Attorney General is generally perceived as the defender of the public order, and protector of the public interest and general welfare. Therefore, office functions and duties are not limited only to the prosecution of crimes, but also include extensive responsibility in civil and administrative matters, as are discussed below.

Civil Matters

There are three ways by which the Office of Prosecutors may become involved in a civil dispute: As a plaintiff, as a defendant, or by intervening in a case.

Plaintiff or Defendant

The Office may initiate an action in a disputed case in which case the prosecutor would serve as a plaintiff. This is usually seen in cases that involve public interest. For example, Article #196 of the Commercial Code allows the office to file a demand for bankruptcy on a merchant or an organization (Wally, 1980).

In other cases, the Office may stand as a defendant in a civil trial. This is most obvious when the Office serves as guardian of a minor. For example, disputes arise from discretionary decisions that the Office may take while acting as the guardian. In such circumstances, the Office would have all rights and duties that any party would have in a civil litigation, particularly in the area of motions, timing and appeals. In any litigation before a Court that might arise from a discretionary decision designed to protect the public interest, the Office would not enjoy a favored position.

Interventions

The Office of Prosecutor may also enter in a civil dispute by way of intervention. In such an action, the Office would not support either of the sides (plaintiff or defendant) but, rather, would become involved to protect a

public interest that would be at issue in a trial already underway. Therefore, the Office's rights and duties regarding these disputes are more extensive than those of the original parties. Any intervention by the Office could be either mandatory (required by law) or discretionary (existing law allows the office to intervene under certain conditions.)

In case the Office is required by law to intervene but does not, any decision that the court would render in a dispute would be considered null or invalid (in the absence of the Office's intervention). A court decision would be considered valid if Office intervention was discretionary but the Office choose not to act.

Mandatory intervention by the Office is required by law in three sets of circumstances (Wally, 1980):

1. All cases that the Office initiates from the start, such as bankruptcy cases in which the office cannot just file the case but must actively intervene by litigation.
2. All situations where the law mandates the Office to intervene (for example, Article #88-2 of the civil commercial code). The Office is required to intervene in all motions and appeals that would be filed before the Court of Cassation in issues in civil and family affairs.
3. All cases referred to the Office by a judge. When the Court discovers, during a trial, an issue that may effect or involve the public welfare and moral interest, the Court may order that the

case dossier be sent to the Prosecutor's Office; such referral by the Court to the Office is within the judge's discretion.

Discretionary Intervention

As was mentioned earlier, the Office of Prosecutor is provided with discretionary authority to intervene in some civil cases. These cases are limited by law and usually of a nature that embrace a public interest or represent a moral issue. For example, Article #89 of the civil and commercial code allows the Office to intervene in cases that involve minors or persons who, in litigation, are represented by a guardian. The Office may also enter all suits brought by married women for recovery of their dowries; cases regarding charitable gifts and legacies; cases where a judge is legally unfit to hear a case and therefore must be excused (recusal); and, finally, all other cases in which the Office by statute might intervene, at either the trial stage or the appeal level.

Appeal

This is the third and final way that the Prosecutor's Office may become involved in a civil or commercial dispute and this latter approach has two versions.

1. Appeals of cases in which a Court rendered a decision without intervention by the Office, despite the fact the law originally required Office participation. In such cases, the Office is appealing on the grounds of invalidity of the earlier decision, based on the court's denial of the Office's opportunity to intervene.

2. In all cases in which the law allows the rights of appeal to the Court of Cassation, the Attorney General can appeal any decision reached by a lower court that is perceived as not being in accordance with the public interest and welfare. If appealed, the Office would be the plaintiff in the case and would have all the rights and duties of the plaintiff.

Structure and Jurisdiction of the Office of Prosecutor:

The Office of the Prosecutor is detailed in Figure 2, "Structure of the office of the prosecutor in Egypt." The Figure includes the primary structure addressing criminal matters, as well as Administrative Prosecution and the Prosecutor's Office at the Supreme Court. At the top of the General Prosecution column can be found the Attorney General.

The Attorney General

The Attorney General presides at the top of the hierarchy. He is appointed by the President after being selected from judges of the Supreme Court or the Court of Appeal, or the top echelon of the Office of prosecution, or other judicial officeholders.

He enjoys a nationwide jurisdiction and authority over the criminal cases within all the Offices' Divisions except the Court of Cassation division, which is managed by a panel and headed by a separate director (Sorour, 1981).

The Attorney General may exercise the power vested in him by law either by himself or through one of his assistants across the nation. Such

broad powers and authority are found in the statutes, empowering the position of Attorney General with certain mandates and legal influence. Existing law prevents anyone else from exercising such specific authority without special permission, granted only in individual cases. As one example, Article 116/1 of the Penal Code lists certain types of cases in which only the Attorney General might file against a public official who, as a result of misconduct, has caused a major loss of or damage to public property. In yet another example, the Minister of Justice might instruct the Attorney General to file against a judge, although the Attorney General might unilaterally undertake such an action under the scope of his "discretionary power." A third example is the Attorney General's lifting existing immunity of a member of Parliament in order to be able to prosecute that member for a crime.

The Premier Advocate General

In the event the position of Attorney General were to become vacant or the incumbent Attorney General becomes disabled in any emergency, the President selects and appoints the Premier Advocate General from the peers of the "Superior Judges" found at the Supreme and Appellate Court levels.

In addition to his "standby authority," the Premier Advocate General is also responsible for certain administrative duties. As an example, he heads the panel of Prosecutors, Directors and Secretary Generals who are administratively responsible for hirings, promotions and transfers of all the Court Reporters within the Department.

Advocates General at the Courts of Appeal

At every Court of Appeal, there is an Advocate General who is appointed by the President. Such Advocates General exercise the same kind of power and authority that the Attorney General would have over criminal cases, but their scope of authority is limited to their local geographical jurisdiction.

Advocates General also serve as the administrative supervisors of all the prosecutors that work in their jurisdiction, regardless of the court. They also have certain authorities granted under existing law, including the right to nullify, within 10 days of its issuance, any decision made by a prosecutor in their jurisdiction if it were believed that the prosecutor misapplied the law.

Prosecutor

The Prosecutors in this office level represent the majority of the working force, empowered with the same authority held by their superiors in general, particularly in the disposition of criminal cases. However, they may not assume certain decision-making powers that statutes would require their superiors to retain. This restriction concerning decision-making can, upon occasion, be lifted if the superior formally gives his permission through written delegation.

Assistant Prosecutors

This level of the Office of Prosecutor contains newly-hired prosecutors who would have just enlisted in the Office. As new hires, they have somewhat limited discretion but can represent the Office at all levels except

before the Supreme Court.

The Administrative Office of Prosecutors

In addition to the general Office which is headed by the Attorney General, there is an independent division that falls under the jurisdiction of the Minister of Justice and is headed by a "president." This Division (Office) is composed of a President, assisted by a number of Vice Presidents, directors and prosecutors. The Division is divided into two major Departments (also known as "Sections"): Investigation (control) and Interrogation Departments. Each Section is further divided into sub-divisions as might be created by the Minister of Justice upon recommendation of the President of the Administrative Office of Prosecutors.

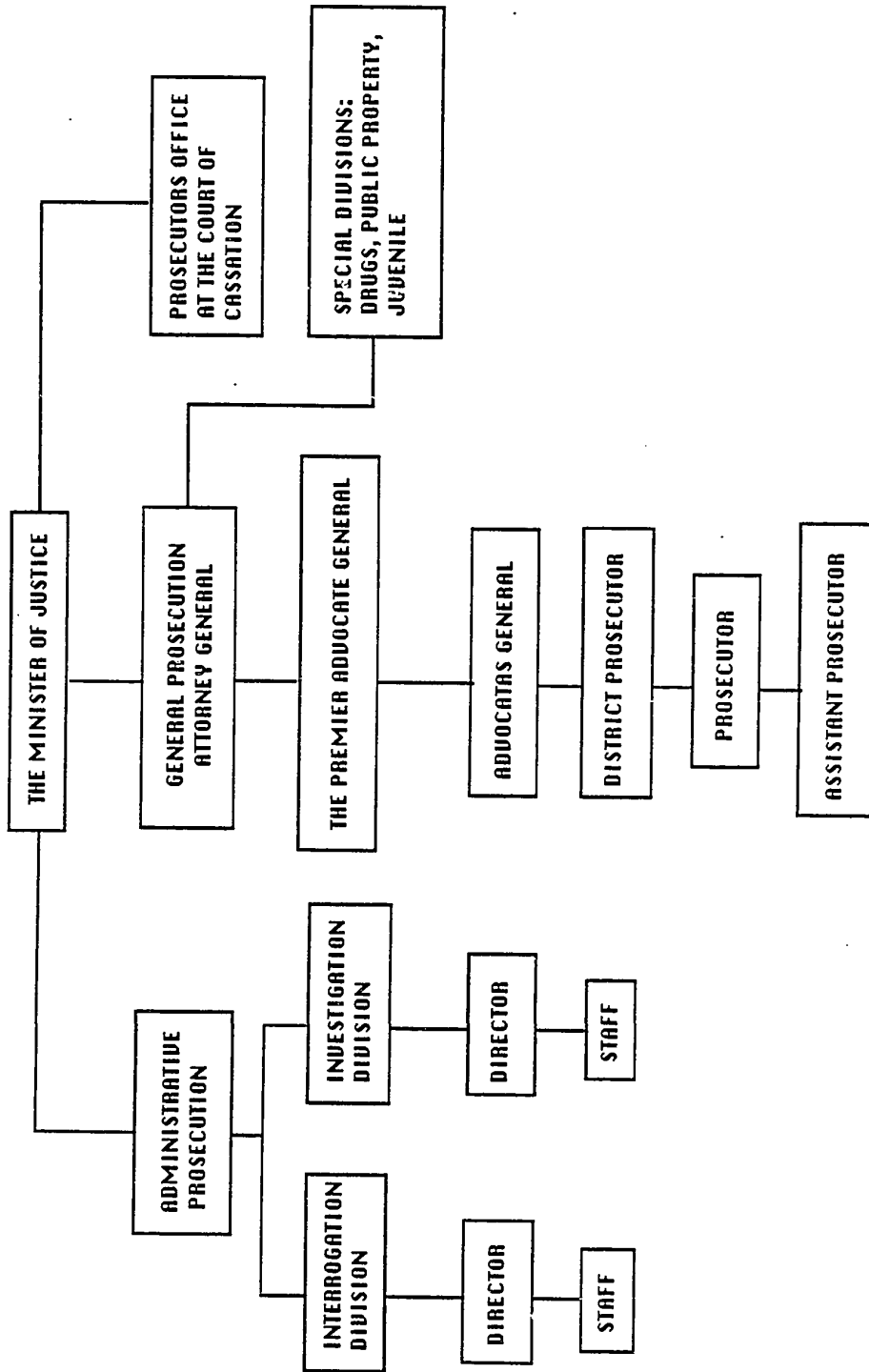
The primary focus of the Administrative Office (AO) is administrative misconduct committed by a public employee. Such conduct would have caused harm to the public interest or order. For example, the AO's major functions are to:

1. Conduct the necessary investigations to discover any financial or administrative violations.
2. Investigate and analyze all complaints filed by Department Heads or other public officials against a public employee.
3. Conduct disciplinary hearings for those public employees found to be in violation of their job codes and expectations.
4. Refer to the General Office of Prosecutors any cases in which the investigation revealed a suspected felony.

5. **Conduct a search and seizure, if necessary, of the employee's home and belongings in cases where there is enough evidence to justify such action (Mourad, 1988).**

FIGURE 2

STRUCTURE OF THE OFFICE OF PROSECUTOR



Personnel and Recruitment

As is the case in civil law countries, the method of selecting and training prosecutors in Egypt is significantly different from that found in such common law countries as England and the United States.

In order for anyone to become a prosecutor, they must first obtain a law degree (License in Law) from a University Law School. They then must be admitted to the High Institute of Judicial Study (hereafter "Institute"), a special institute designed to train law school graduates as Prosecutors. These prosecutors may later become judges (discussed below). This approach to training is relatively new; the Institute has only been in existence since 1981. The Institute provides both an academic and apprenticeship training component which take a little over a year to complete. Upon the completion of the program, the successful candidate will join the rank of prosecutors as an assistant prosecutor (Sorour, 1981).

It is important to note that this system enables Egyptian prosecutors to begin their professional careers at a fairly young age. They are usually in their early twenties, which is noticeably different from their colleagues in common-law countries.

Promotions and Career Ladder

Upon graduation from the Institute, the young assistant prosecutor will usually work for the Office for eight to ten years, at the end of which he would have ordinarily attained the position of District Prosecutor.

During this eight or ten years, he must have been transferred to and

worked in different jurisdictions all across the country. The rationale behind such transfers is the belief that, by then, the prosecutor would have gained different experiences which would vary across jurisdictions.

For example, a Prosecutor serving in Cairo or Alexandria (both major commercial areas) could develop expertise in business and commercial law. Those persons serving in Upper Egypt, known for its drug trafficking and violent crimes, would have amassed different skills. Rotating tours increase the range of skills and experiences of the officer.

As the prosecutor gains experience and at the end of the eight to ten year rotational cycle, an opportunity for career change will occur. It is the practice in Egypt to select and appoint judges from the ranks of those prosecutors who have attained the age of 30 and gained the necessary experience. This represents the usual pattern of judge selection in the country.

In practice, only a few of the otherwise eligible prosecutors would remain in the Office. The majority would be appointed as judges, such appointments being made by the Minister of Justice upon recommendation from the Attorney General. The Attorney General develops such recommendation from prosecutors who might volunteer for judge duty, as well as supervising prosecutors who could recommend their younger subordinates by generating a recommendation report to the Attorney General.

In addition to salary considerations, becoming a judge has other advantages. First, judges enjoy considerable tranquility in office, as opposed

to the more hectic pace of the prosecutor. In addition, there is high status that adheres to the role of judge. Finally, judges enjoy life-time tenure for, according to the Constitution, they are not subject to being removed from office except through disciplinary removal (by the High Judicial Council) or reaching mandatory retirement age (60).

Those prosecutors selected to be judges receive additional training in job performance (at the "Institute") and may also attend other seminars designed to provide additional skills and training.

Prosecutors not selected for promotion to judge may remain in the Office until retirement age, or may decide to join the Bar and become defense attorneys in the private sector. This also provides an opportunity to increase income over that available at prosecutorial salary levels.

Law school graduates see the Office of the Prosecutor as providing a major avenue for professional development, one that could lead to a secure position as a judge or entry into an institution that would provide the means needed for a professional and comfortable life. The office of the Prosecutor provides the education, experience, and ties without which a position with the legal profession would be hard to obtain.

Major Characteristics of the Office

Two important legal principles govern the functions and duties of the office of the Prosecutor and the individual prosecutors who work within the Office. These are (1) the unity of the office and (2) immunity.

The Unity of the Office.

There are two sources in the Judicial Authority Code that impact on the conception and unity of the office, known commonly as "the appurtenance by degrees" and "undividability." The former refers to Article #132 of the Judicial Authority Code, which states that all members of the Office are under the jurisdiction and supervision of the Attorney General, who directly reports to the Minister of Justice.

The superordinate authority that the Minister of Justice has over the Office and its members is administrative, not judicial. Any violation of a rule or regulation issued by the Minister would not result in nullification of a prosecutor's action, as long as the prosecutor acted in accordance with the law.

This principle originated in the French tradition governing the penal system as epitomized in the expression: "La plume est servie mais la parole est libre" (The pen must obey but the tongue is free). As long as the prosecutor acts within the limits of the law, any violation of directives of the Minister of Justice cannot be used to nullify the action of the prosecutor.

Undividability

The second criterion governing the principle of the office's unity can be termed "undividability." From the legal point of view, all members of the Office are one. Any legal action taken cannot be seen as personal opinion but, instead, would be considered an official act of the Office. In addition, members of the Office are interchangeable and may be replaced in all phases

of work by other colleagues. For example, if a prosecutor has initiated an investigation, any other peer might replace him during the process. If a trial has been started by one prosecutor, another could sit for him for the trial's duration. The principle even extends to appealing of decisions rendered by the court: any other peer could initiate an appeal, even if he were not part of the initial trial. In practice, replacement of prosecutors is generally limited to the same geographical area, and the replacing colleague must legally be allowed to work on that particular case (an Assistant Prosecutor could not, for example, replace a District Prosecutor) (Sorour, 1981).

Prosecutors are granted immunity from civil liability that might result from proceedings in a criminal case. This would mean, *inter alia*, that if the accused were acquitted, the Office and individual prosecutor would not be liable for court expenses. This is in contrast to civil suits in which the liability rule would be: Whoever loses the dispute must pay court costs.

Immunity also means that prosecutors enjoy a limited immunity for statements made during a trial that might cause the defendant a hardship. If the prosecutor acted intentionally to harm the defendant or his action included either fraud or deception, then the defendant could sue the prosecutor in particular, the Office, or both. Suits alleging these faults are required to undergo "antagonism," a difficult legal procedure that requires the plaintiff to prove harm and seek redress.

In addition, Article 248.2 of the criminal procedure states that a prosecutor is not subject to "recusal"; the defendant does not have the right

to ask that a particular member step down to be replaced by another prosecutor. Such a request might be based on the prosecutor's personal involvement in the situation under litigation. The judge renders the decision, not the prosecutor. The latter's role is limited to representing the facts of the case.

A further deterrence to harm of defendant is the possibility that a prosecutor may himself be subject to criminal charges if his actions failed to conform to law or constituted what the criminal law would consider a crime.

Investigation and Preliminary Interrogations

Investigation and preliminary interrogations are assumed to be the most important and vital duties of the Office for two reasons. First, at this stage, the civil rights of an individual are involved. Second, the Prosecutor has legal authority granted under law to decide not to prosecute a suspect but to dispose of the case by other action. This section details the obligations of the Office in fulfilling these roles, the authority that enables the Office to perform its functions, and limitations of these powers.

Investigation per se is founded on two important principles not unknown to English law. First, "All suspects are considered innocent until proven guilty." The accuser (prosecutor) must prove otherwise; the burden is not on the suspect to prove his or her innocence.

The Office is defender of the public order and protector of public welfare, not just an accusation authority. As such, the Prosecutor does not have to secure convictions; the Office secondly seeks "truth and justice." It

is the duty of the Office to gather both incriminating as well as exculpatory evidence while conducting investigations. Both types of evidence would be necessary to further the "truth and justice" objective.

It should be remembered that the Office of the Prosecutor has authority to oversee police activities, including investigations. Prosecutors can also conduct their own investigations, across a wide gamut of procedures.

Inspection

Article 31.2 of the Criminal Law Procedure empowers all members of the Office to the right of inspection as a technique to gather all available evidence that might be useful in the criminal case under question. Inspection is in fact mandated for all felony cases, and the Prosecutor must undertake the inspection personally. In cases of misdemeanors or code violations, the Prosecutor is empowered to delegate inspection to a police officer or detective of the police department.

Inspection includes more than premises and crime scenes. It would include such items as weapons, documents and currency. If there is a victim, the body itself could be subject to inspection; a deceased's body may be checked for bruises or marks that might be left, in an effort to determine if death resulted from assault. The suspect's body is also subject to inspection to determine, among other things, possible use of a controlled substance or even mental status.

After such inspection, the office member may direct evidence collection and preservation. A police officer may be assigned to secure the

crime scene or gather fingerprints, or criminalist lab personnel may be directed to conduct further investigation for forensic evidence.

The initial report of the prosecutor would ordinarily identify the condition of the object or place investigated, testimony of witnesses (if any), and statement of information and evidence to date. The Prosecutor, under law, must refrain from indicating his own opinion from such inspection, or offering concluding statements. The role is limited to the collection and preservation of evidence.

Listening to Witness Testimony

Article 208.1 of the Criminal Law Procedures accords all members of the Prosecutor's office the right to listen to witness testimony and to examine witnesses. They are also empowered to issue subpoenas to further their criminal investigation. In case of a witness who ignores such a request the examining prosecutor may ask a district judge to fine the witness or issue a warrant for the arrest of the errant witness.

Prosecutors have the right to refuse to hear any witnesses whose testimonies are believed not to benefit the investigation, but the determination turns on an issue of role performance. They are not questioning witnesses to arrive at a certain fact or conclusion. Prosecutors must remain neutral and not be influenced by personal bias for or against a particular witness.

In dealing with witnesses, the prosecutor must refrain from using interview methods that may deceive the witness or force the witness to

testify to other facts than the ones he or she may have witnessed. Personal opinions offered by the witness must be disregarded. In these procedures, the prosecutor may listen to a witness in private or en masse, even in the presence of a suspect. If the witness does not speak Arabic, the prosecutor must secure an interpreter whose translation would be considered the true words of the witness. The interpreter, in keeping with the chain of evidence, must take an oath of accuracy and honesty.

Search

Another means by which the investigating prosecutor may gather additional evidence needed to construct the truth is to order a search. The power of the search is allowed the prosecutor but is an extremely sensitive act due to its nature and the fact that it addresses one of the most important of civil rights: privacy. Law of searches restrict them to certain types of crime, as well as the time and manner in which a search should be conducted by the investigating prosecutor.

Articles 91 and 94 of the Criminal Law Procedure Code permit the prosecutor to conduct a search in the premises of a crime suspect, be it a felony or misdemeanor offense. The suspect per se may also be searched. Both search of premise and person require sufficient evidence that a crime has been committed and a determination that this measure is necessary to obtain evidence that would be constructive in the case.

Such searches are best seen as pre-trial measurements and do not require that a case must have been filed. Yet existing law mandates that the

order for a search must have been reasoned prior to the event and not be a "fishing expedition." A statement, although not necessarily very detailed, must be drawn up prior to the search and indicate both the seriousness of the crime and the necessity of the search to discover evidence for determination of truth.

While the Code empowers the prosecutor to conduct the search, it also requires that this procedure not exceed legal norms in the conduct of the search. For example, the use of force is permitted when necessary to complete the search of a person, but the search must not be conducted in any locale that would cause the person to experience a sense of indecency, (The Code is silent on the issue of the timeframe for a search.).

Preliminary Interrogation

As was mentioned above, the Attorney General and his staff are considered a part of the standing magistracy. They are expected to be objective and professional in their work. The Legislature has determined that the Office of the Prosecutor should be the main governmental body in charge of conducting preliminary interrogations that precede any criminal trial. Article 199 of the Criminal Procedure Code assigns the preliminary (and later) investigation duty to this Office and, in sharply delimited ways, delegates this duty to other judicial departments.

The Code provides the Office and individual prosecutors with the necessary authority to achieve this task, some parts of which may represent constraints of an individual's right to freedom. The Code also established

certain rules to guide the interrogator, maintaining the concept that all suspects are innocent until proven guilty and establishing the principle that interrogations should not cause the suspect any unnecessary harm. One example of this principle in action is the rule of secrecy of results that might arise from interrogation and otherwise cause the suspect harm.

The Code also provides certain tools which may, if necessary, be utilized in initiating or conducting interrogations. These include powers of subpoena and arrest warrants. The latter are restricted to certain cases, such as:

1. The prosecutor decides that for the good of the interrogation, the suspect should be detained in a detention facility (available only in case of specific crimes).
2. The suspect did not appear after receiving an initial request for appearance.
3. There is good evidence that the suspect might flee or escape.
4. The suspect does not have a residential address.
5. The suspect was caught perpetrating the act under investigation.

Temporary Detention

Temporary detention may be used only in cases where certain factors exist that would justify such an invasion of the rights of the individual in a society that posits all persons innocent until proven guilty. The required factors include:

1. **The crime perpetrated is punishable by a minimum of three months in jail.**
2. **There is sufficient evidence that the suspect did in fact commit the crime. This judgement of the evidence is subject to review by the Court.**
3. **The suspect must first be questioned before the order of temporary detention may be issued.**
4. **Temporary detention is limited to four days and, if the Office determines that the suspect must be detained longer, a detention order for up to 45 days must be obtained from the District judge in the relevant jurisdiction.**

During the interrogation and before possible detention, the prosecutor must observe certain guidelines. The prosecutor must act in conformity with the assumption that the main reason for the instant interrogation is discovery of truth rather than securing of conviction. The law forbids the interrogating prosecutor from using hypnotism, polygraphs, or any substance that might elicit information from the suspect.

In addition, the prosecutor may not interrogate someone suspected of committing a felony without defense counsel present, unless there is substantial reason to suspect that crucial evidence may be tampered with as a result of waiting. Not only must defense counsel be present during the interrogation, the prosecutor cannot separate the suspect and attorney during that time. Prosecutors may interrogate without counsel a person

accused of committing a misdemeanor.

Prosecutorial Discretion

Following the investigation and interrogation, the prosecutor arrives at a decision point. Prosecutorial discretion in disposing of the case could result in two outcomes.

Prosecution

First, the prosecutor may decide to carry the case forward for formal prosecution. The Office has thus previously functioned as the investigating and interrogating authority, and would now remain active in the case as the prosecuting authority.

The law requires that the prosecutor have enough evidence that points toward the incrimination of the defendant; it does not require belief beyond a reasonable doubt that the accused had violated the law in committing the instant crime. Statutes do not require the prosecutor to file a statement of reasons for taking such a decision, as there is a legal assumption that the prosecutor and Office would file cases before the court only when there is a substantial case. Furthermore, there is the legal assumption that the office will be a protector of the society's welfare and this assumption, rather than the need to secure frequent convictions, guides the operations of the Office.

In those occasions wherein the defendant is suspected of conduct that would represent multiple offenses, the prosecutor may elect to file a single charge ("one count"). The decision to file only one charge may result from insufficient evidence on the other possible crimes, or the investigation and

interrogation for other alleged crimes are still on-going and may later result in additional charges being brought forward for formal prosecution.

The prosecutor carries the case forward by filing the case before the appropriate court, determined by the seriousness of the crime and locality of the jurisdiction. Alacrity is considered in charging; filing should be as early as possible to avoid a delay that might inflict a hardship on a suspect, especially if the suspect is being detained.

The Legislature's concern over unnecessary delay in carrying the case forward can be seen in Article 160 of the Criminal Procedure Code, that allows the Office to file felony cases before misdemeanor courts in order to secure faster adjudication. Those felonies filed in a misdemeanor court must be accompanied by mitigating circumstances that, in fact, would make the criminal act punishable by sanctions that could not exceed one year of imprisonment. Discretion to file in a lower court is restricted to the Attorney General or one of his premier advocate generals.

Decision Not to Prosecute

The second alternative is a decision not to prosecute. The interrogating prosecutor may conclude from the investigation and interrogation that no reason to file a case before the court emerged from his investigation of the suspected crime. He may arrive at this decision for many reasons but, in all cases, this decision must be clear and the underlying reasons identified in writing. The interrogating prosecutor must draft a memorandum to his superior, recommending to not file the case before a court.

Before the memorandum can be written, however, the interrogating prosecutor must have undertaken at least one of the primary investigations, conducted by himself or by an authorized official. The primary examinations are the medical examiner's autopsy of the deceased's body, a search of the suspect's premises, or investigation of the crime scene.

The memorandum may recommend that one or more of the crime suspects not be prosecuted, or that one or more of the acts of crime not be the subject of a prosecution. The memorandum may be written before the end of the interrogation, or before the suspect has been questioned. The latter is particularly relevant if the suspect is not available (as is discussed below).

There are two basic reasons the interrogating prosecutor may conclude that a prosecution should not be recommended: legal and objective reasons. The former may include the non-existence of an alleged crime ("act committed by the suspect does not constitute a crime or a violation of law as the complainant had believed"), or the suspect cannot be held responsible for his actions (suspect is below the age of legal responsibility of seven). In recommending not to prosecute, the interrogating prosecutor would avoid filing the case before the court which would automatically dismiss the case for the very same reasons.

The objective reasons may best represent the ultimate discretion available to the Egyptian prosecutor in criminal matters. The primary objective reasons are the decision of the prosecutor not to file because of

insufficient evidence, or his belief that available evidence is false (and would not hold up in a court of law). The difference between these two is that insufficient evidence represents a link between the suspect and the crime, whereas the false evidence issue represents a belief in the absence of a crime.

Restrictions on Authority

The final outcome of a behavior believed to be a crime and investigated by the prosecutor revolves around the role of the prosecutor: protector of society and the public welfare. The Legislature, well aware of this role and having empowered the Prosecutor to move against anyone who violates the law, has restricted this right in the area of complaints, requests, and permissions.

These restrictions are intended to protect the victim as an individual, the interests of a Department of the government, and the defendant per se, under certain circumstances. The Legislature has in effect suspended the rights of the office until certain requirements can be met.

Complaints

The victim must complain in certain cases. Until a formal complaint from the victim has been filed, the Criminal Procedure Code prevents the prosecutor from proceeding against a suspect, even when the suspect is apprehended in the very behavior that would be a crime. One example of such a restriction is adultery. The prosecutor can take no action until receiving a formal complaint from the spouse (husband or wife), charging the

other with adultery. Even if caught flagrante delicto, the Office is restricted from taking legal action against the offending spouse until a complaint is received (Housney, 1981). The intent underlying this restriction is to protect the victim's right to be free from the harm that the publicity of the criminal case might cause him or her.

A second example of such a restriction is when a crime of theft occurs within the family. Article 312 of the Penal Code forbids prosecution until a family member complains. The Legislative intent appears to reflect the belief that public welfare might best be served if the victim were to solve the problem domestically, rather than suffering the collateral consequences of trial and its impact on family unity.

The Request

The "request" is another form of restriction on prosecution. Until a request to initiate a criminal case and prosecute is received from a governmental Department, the Office is restricted from taking action against the suspect or employee in the requesting Department.

As an example, Article 184 of the Penal Code gives the right to the Minister of the Economy to request the Office to prosecute those citizens violating customs or taxation laws. Until this request is made by the Minister (or any of his legal representatives), the Office cannot move forward with a prosecution. The Legislative intent appears to be to recover the money or fine the offender, rather than going through the trouble of a trial.

Finally, Articles 8 and 9 of the Criminal Procedure Code mandate that

the request must be initiated by the appropriate party in a formal manner. Just the indication in a police report that a request may be made is insufficient, and does not meet the test of appropriate party and formality. (Parenthetically, a 1978 Supreme Court decision concluded that for multiple crimes or multiple suspects, one request is all that is required to initiate the criminal case and resultant prosecution.)

Permission

Existing law requires two Departments to give formal permission for the prosecutor to undertake any movement against that Department's employees and members. These are the Parliament, and the judiciary. The immunity is designed to enable those members to function in their inherent roles. The procedural act requires a written statement of permission and, absent same, the Office cannot investigate, arrest, detain or prosecute a member of either of these two governmental units. This proscription governs not only the Attorney General but all prosecutors.

When given, the permission statement does not delimit the prosecution to specific time periods. Permission could be requested at any time, unless there is substantial lapse of time between the criminal occurrence and prosecution. If the lapse is inordinate, the request for permission could easily be denied (censored).

Summary of Prosecutorial Discretion

While the prosecutor in Egypt has been granted discretion in terms of deciding whether to prosecute, such discretion is limited and restricted by

legislative and case law. For example, in cases where the decision might be to prosecute, the prosecutor is required to establish a sufficient belief that the crime exists and the defendant is guilty. Such beliefs must be based on sufficient evidence. Laws also mandate speedy trials and, in some cases, require permissions, requests and complaints before initiating prosecution.

Discretion is also limited in cases in which the prosecutor decides not to take action. In these instances, an investigation must first be undertaken prior to the decision, and a written explanation detailing the rationale for not prosecuting must be submitted to supervising officials. In short, discretion is limited.

With these conclusions in mind, we turn now to a discussion of the findings and recommendations for future research. These are found in the next chapter.

Chapter 3

SUMMARY AND CONCLUSIONS

This thesis has examined the development of the office of the prosecutor in Egypt from a historical as well as functional perspective, focusing on current authorities and roles of the office.

From this preliminary analysis, three major conclusions have emerged. First, one may conclude that the office enjoys a certain amount of additional reach that is not evident in the American scene or otherwise available to American prosecutors. This is not to say that the Egyptian prosecutor has more authority; it means that the latter has more responsibility for more varied duties. This is seen in the concern of the office with protecting society and securing the public welfare in civil as well as criminal cases, and in the scope of authority the Office enjoys over police and correctional functions. It is also reflected in the status of the Office relative to the judiciary: part of the standing judiciary in dress and function.

The authority of the Egyptian prosecutor is directed toward attaining the common good, not at simply securing convictions for legal violations. To this extent, the Office includes more responsibility.

A third element in this simplistic comparison is that there is a fairly well-defined career ladder inherent in the role of the prosecutor. One could move from the entry position of assistant prosecutor to governorate or District prosecutor, as well as be trained for assumption of a new career as a judge.

Second, one could conclude that the duties of the Office are more complex than those of the American prosecutor, for the Egyptian prosecutor must function in investigative, interrogative and prosecutory roles. These roles are hedged in with legislatively-defined restrictions, and require a more visible paper-trail in the decision-making process of detention, discretionary decision, and prosecution. The decision not to prosecute is visible and would require a concurrence from supervising administrators. This latter is not frequently found in the American system.

Third, most prosecutors in the United States are highly politicized incumbents whose major consideration may well be an election process rather than "seeking truth and justice." The office of the prosecutor in California, as an example, requires decisions made with a concern about forthcoming elections and career implications. In Egypt, daily attention to political considerations within the role would not be conducive to longevity and would undoubtedly encounter conflict with existing legislative mandates. In brief, the law to be enforced must be administered within the boundaries of expectations, openly and fairly.

Future Research

While this preliminary examination of the role of the Prosecutor in Egypt suggests the impacts of Moslem law, such influences have not been extensively documented here. In what ways does the religious system affect the role of the prosecutor? To what extent is the operation of the Office reflective of civil rather than common law, and what are the relative

contributions of the religious code, civil law approach, and secular law?

Additional topics that require further research include the influence of court decisions on operations and procedures. Is, for example, law emerging from court decisions? If so, in what directions is the development of the law going?

A third set of issues yet to be addressed revolve around adequacy of the Office in addressing the public welfare. Are there other practices in similarly situated countries that might be instructive and transferable to the Egyptian circumstances? If so, with what possible consequences or impacts?

Finally, this effort has not addressed such issues as incumbent satisfaction with work experiences, role satisfaction, or career mobility. These latter are issues that others might seek to address in future research efforts.

LIST OF REFERENCES

LIST OF REFERENCES

- Ebaid, R. (1985). Awsoul Elmiy el Egram Wel Eqab [Principals of Crime and Punishment Science]. Cairo: Dar El Ficker El Araby Press.
- El Gharieb, M.E. (1979). El Markez El Qanoony Lil Niaba El Amma [The Legal Position of the Public Prosecution. A comparative study.] Cairo: Dar El Ficker El Araby Press.
- El Marsafawy, F. (1978). Tarekh El Qanoon El Masri [The History of the Egyptian Law. An analysis study of the pharaonic law.] Cairo: Dar El Ficker El Araby Press.
- El Rashidy, M.S. (1980). El Talimat El Amma Lil Niabat [General Instruction to the Prosecutions Office]. First Book Judicial Instruction, First Section, The Criminal Manners. Cairo: The Attorney General Ministry of Justice.
- El Sharkawi, S., N. Abdoula (1984). Ossoss El Qanoon El Destory [The Foundation of the Constitutional Law] Cairo: Dar El Nahda El Arabia, Cairo University.
- The Europa Year Book (1987) 1, 963.
- Federal Bureau of Investigation, "Crime in the United States: 1987", FBI Law Enforcement Bulletin 57 (August 1988): 6-9.
- Housney, M.N. (1981). Shareh Qanoon El Auqubat [Elucidation of the Penal Law]. Special Section, Cairo: Rosolwosef Association Press.
- Mourad, A. (1988). Awsoul Amal El Niabat [The Principals of the Prosecution's Function]. Alexandria: Mounshaa El Maareff.
- Sorour, A.F. (1981). El Waseat Fi Qanoon El Egraat El Genaeia [Intermediary of Criminal Procedures]. Cairo: Dar El Nahda El Arabia.
- Wally, F. (1980). El Waseat Fi Qanoon El Kadaa El Madany [Intermediary of the Civil Judiciary. A study of the civil and commercial procedural law and the supplementary acts.] Cairo: Dar El Nahda El Arabia, Cairo University Press.
- The World Book Encyclopedia (1972) 6, 90.