

# Security checks don't mean interference in State Council, says expert

By Sarah Carr  
Daily News Egypt

CAIRO: Security interference in appointments to the State Council and the absence of women judges from the council were the focus of a seminar organized by the Arab Center for the Independence of the Judiciary and the Legal Profession (ACIJLP) and the German Konrad Adenauer Stiftung foundation.

The State Council, created in 1946, hears cases brought by individuals against state bodies.

Law professor Dr Gaber Gad Nassar emphasized the difference between the State Council's administrative judiciary, and judges belonging to the "ordinary" judiciary, and stressed the State Council's role in defending rights and freedoms.

"An individual facing the state is not equal to a case before an ordinary judge because in that case both parties are equal," Nassar said.

"The environment in which the administrative judge works influences both him and his rulings. In a country in which decent administrative mechanisms exist, as well as transparency and democracy, the judge's job is pretty routine. But when these factors are missing, the administrative judge wakes up.

"Citizens today feel that the state doesn't educate their children or provide them with jobs. It is in these instances that the judge of rights and freedoms assumes an important role in society."

Nassar stressed that unlike civil law judges, the administrative judiciary "make the law" rather than merely interpreting legislation where no applicable law exists.

He added that the importance of the State Council also lies in the fact that the litigation process is speedier than it is in other courts.

"As a lawyer, when a client brings a case to me, I examine it every way possible to see if there is any way we can send it to the State Council because if it goes to the ordinary judiciary, the case dies; even if you got a ruling at first instance you then have to wait for the appeal which might take 10 or 15 years — in effect the right to litigation has been stripped of meaning," Nassar explained.

Nassar went on to present four problems with appointments to the State Council.

He emphasized that the executive branch has no power to interfere in appointments to the State Council, saying, "the government cannot even appoint a cleaner in it."

However, he pointed out the need for the body responsible for appointments to decide on

clear criteria governing the selection process.

Turning to the obligatory security checks carried out by security bodies on all candidates for appointment to the State Council, Nassar said that the checks were "unnecessarily wide-ranging".

"In the past, security was precise and gave reasons why a candidate should be excluded. But now it might come up with the reason that a distant relative, the son of the son of the cousin of so-and-so is of doubtful character. The candidate might never have even met this person," Nassar explained.

"The Administrative Court has challenged this recently. In February it said in its ruling that a State Council candidate had been unfairly excluded because security checks should be limited to the immediate family."

Ali El-Feel from the Ibn Khaldun Center contended that checks made by security bodies in fact constitute direct interference by the executive authority in appointments.

This was strongly rejected by Nassar.

"The executive authority has never interfered in appointments to the State Council. Its general assembly chooses the body which is responsible for appointments and has absolute freedom without any interfer-

ence," Nassar said.

"The government has nothing to do with State Council appointments under the law. The Justice Minister cannot appoint a cleaner to it. What you're saying means that security bodies totally control the State Council. That's entirely untrue."

## Female Judges

Considering the appointment of female judges to the State Council (a woman has never been appointed to it) Nassar pointed out that there exists no law prohibiting this, but that some of the State Council's judiciary — "of all ages, not only senior judges" — are opposed to it.

Nassar reviewed two administrative court rulings concerning the appointment of women to the State Council.

He explained that the first ruling, issued in 1953, held that "traditions and customs" may render the appointment of women judges "inappropriate" even if there exists no "general rule" stating as much.

The second ruling, issued in 1973, made reference to article 2 of the Egyptian Constitution which provides that the Islamic Sharia is the principal source of law. It stated that while there exists no law explicitly prohibiting women occupying judicial posts in the State Council, there is equally no provision laying down women's equal

right to occupy such posts.

The administrative body responsible for appointments was thus permitted to "adopt one of the two previous positions mentioned above which it considers most appropriate for the age in which its decision is issued".

Nassar said that in his opinion this ruling "closed the door" to the appointment of women to the administrative judiciary, adding that it was time to "review" this policy and allow women to take up judicial positions.

One audience member, who identified himself as a State Council Judge, challenged Nassar's opinion that there is no reason why women should not occupy judicial posts in the Council.

"Traditional Islamic schools of thought do not allow women to occupy judicial posts. Physiologically, women are different to men; they do not have the same levels of intelligence and their brains weigh two grams less than those of men," the judge said.

Nassar, while acknowledging that there does not exist consensus on the subject, pointed out that female judges "have been appointed in Iran where Islamic Sharia is applied" adding, "justice and logic should not deprive an outstanding female law student from pursuing her success."

Daily News 6. May 2008