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Egypt's Constitutional Court Half a Century of Transformations

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Egypt: Legislative Structure of Funds.. the Case of 'Tahya Misr'

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The Mubarak regime expanded establishment of special funds as money safes outside the official state budget, creating a corrupt environment par excellence. The official use of the idea of special funds started in the wake of the 1967 setback, through establishment of a fund in local administrations for collection of fees from citizens for garbage collection service¹.

However, the legal emergence of 'special funds' was initiated during the era of President Anwar Sadat, when he issued the state's general budget law², whereby setting up special funds was allowed based on a presidential decree, where certain resources are allocated for specific uses³.

Despite the popular criticism the special funds were subjected to after the January revolution, the effort exerted by the revolutionary Parliament to curb this type of legalized corruption, the idea strongly reappeared in the aftermath of the 2013 coup, but this time based on a completely different system compared to the situation before the revolution, in terms of size, centralization and goals.

There are two experiences of the July 2013 regime in establishing funds outside the state budget and far from its oversight: the "Egypt Support Fund" and the "Tahya Misr Fund", where the two experiences are linked to each other, given that the latter inherited the former and replaced it.

Egypt Support Fund

Two days after Sisi's statement announcing the military coup (3 July 2013), a number of businessmen, media professionals and politicians launched an initiative, specifically on 5 July, for setting up a fund which they called (Egypt Support Fund 306306), which was announced by businessman Mohamed Al-Amin, and promoted by the media professional Khairy Ramadan⁴.

Immediately after the initiative was announced, and even coinciding with it, millions of Egyptian pounds were donated from private and government bodies. However, taking into consideration the

¹ This was stated by Article 8 of the Public Hygiene Law No. 38 of 1967 published in the Official Gazette issue No. 77 on 31 August 1967

² Law No. 53 of 1973 regarding the general state budget, published in the Official Gazette issue No. 31 on 2 August 1973

³ Al-Ahram investigation, the missing facts.. the secret of special funds, [link](#)

⁴ Hani Sarie El-Din: The idea of the Egypt Support Fund was suggested by Al-Amin and Khairy Ramadan, [link](#)

complicated accounting procedures followed by government bodies and the number of approvals required to disburse funds, several question marks arise about coincidence of their response with the launch of the initiative. This also raises questions about the purpose and feasibility of setting up the fund, as most contributions came from state institutions, particularly the EGP 300 million donation made by the armed forces.

According to news websites, the armed forces announced its donation to the fund one day after announcement of the initiative to establish it, followed successively by donations, blessings, press reports and open media coverage. Then the Prime Minister issued Resolution No. 1118 of 2013 to legalize the Fund's business and regulate its tools.

Several personalities that participated in inauguration of the fund announced that its main goal was to support the Egyptian state, after the United States had announced likelihood of blocking part of the US aid to Egypt after the 3 July coup, where the fund would be placed at the disposal of interim President Adly Mansour to support Egypt's economy.

Farouk Al-Oqdah, the former governor of the Central Bank of Egypt, assumed presidency of the fund's board of trustees, where the fund's proposed projects were the subject of praise and support from the official state bodies at the time⁵.

Removal of Egypt Support Fund

The experience of Egypt Support Fund ended quickly and surprisingly for everyone, notably officials who took over its management, where Dr. Hani Sarie El-Din, the Fund's vice chairman of the board of trustees, published an article entitled (there is something wrong)⁶ criticizing the way of removing Egypt Support Fund by the regime and how its money was integrated to the Tahya Misr Fund. He said he had contacted the State Council and the Council of Ministers to inquire about the law issued, to know that they had not been informed of the decision to cancel Egypt Support Fund and replace it with Tahya Misr Fund.

⁵ Mahlab reviews Egypt's support projects in the presence of Al-Oqdah and 3 ministers, Al-Masry Al-Youm, [link](#)

⁶ Hani Sarie El-Din, There's something wrong, [link](#)

Tahya Misr Fund

In fact, the page of Egypt Support Fund was folded after Sisi had expressed his desire to establish his own fund (Tahya Misr Fund), to which he donated half of his wages and his wealth, without indicating the size of that wealth or the continuity of deducting half of Sisi's wages or not; where this was an indication of the confidentiality of the Fund's accounts, absence of oversight mechanisms, and ambiguity of its management.

Legislative features

The Fund's legal system had several legislative features, indicating the special status it enjoyed, and the exceptional framework in which it was issued, most notably the following:

1- The law was issued twice

Establishment of the Tahya Misr Fund was carried out via two successive legal issuances, both of which were issued by a presidential decree, where it was remarkable that the subsequent decree was not issued in the form of an amendment to the previous decision, nor did it explicitly indicate that the previous law (Law No. 139 of 2014)⁷ was canceled by issuance of the subsequent law (Law No. 84 of 2015)⁸, both of which were issued by presidential decrees.

2- Retrospective effect

The law issued in July 2015 approved implementation of its articles retroactively, in violation of the constitution, from 14 November 2014, the date of issuance of the first law, which may explain the lack of expressly stipulating the of the first version of the law.

3- Financial exemptions:

The Tahya Misr Fund obtained a wide range tax exemptions, including all taxes imposed at the time of its establishment or that may be imposed in the future; where the amendment issued in June 2021⁹ also added a new package of exemptions, so that the law - almost - exempted the Fund from

⁷ The Official Gazette Issue 46 (continued) on 13 November 2014

⁸ The Official Gazette No. 27 bis (D) on 8 July 2015

⁹ Law No. 68 of 2021 amending some provisions of Law No. 84 of 2015 establishing the Tahya Misr Fund, published in the Official Gazette No. 23 bis on 13 June 2021

any financial dues to the state treasury, whatever its type, including any transaction in which the Fund is a party, which makes exemptions include dealers with the Fund, albeit mere partnership at a marginal rate, which leads to depriving the state treasury of fees and due returns, and opens the door to some businessmen's practice of deception through a fictitious partnership with the Fund in order to benefit from these enormous financial exemptions.

Tahya Misr Fund and establishment purposes

The Tahya Misr Fund is a legal entity of a special nature, where it is financially and administratively independent from state entities and institutions, enjoying special patronage from the President of the Republic, not bound by government regulations stated in other laws, and not subject to any control or accountability from state institutions - according to the first article of the law.

Parental property and special status

According to the second article of the law, the Fund enjoys patronage and care of the President of the Republic, where this formulation seems closer to the monarchy systems, although there is no similar statement in Egypt's royal laws.

In expression of this situation, Tahya Misr Fund's official website stated¹⁰: "On June 24, 2014, Sisi announced that he would give up half of his wages, amounting to EGP 42,000, equivalent to about \$ 5,900 at the time, as well as half of his wealth, in favor of Egypt... He added, "The Fund is scheduled to be under the direct oversight of the President of the Republic," despite the fact that the law stipulates that the Fund is affiliated to the Prime Minister.

Purpose of setting up the Fund

The law defines the purpose of establishing the Tahya Misr Fund via several tasks, including assisting state bodies in establishment of service and development projects, development of slums, reducing the phenomenon of street children and the homeless, and supporting micro-projects, infrastructure projects and youth projects, which are the same tasks that the Egypt Support Fund had worked on. It is noteworthy that these tasks are similar to those of charitable and non-profit associations and

¹⁰ About us, the official website of the Tahya Misr Fund, [link](#)

institutions, except for the fact that the Fund enjoys powers, exemptions and advantages that those institutions do not enjoy.

How is the Fund managed?

The Fund's board of trustees is the highest authority that draws up its general policy, where the Prime Minister chairs it, with membership of the Al-Azhar Grand Sheikh and the Patriarch of the See of St. Mark , in addition to the Governor of the Central Bank of Egypt, the ministers of Finance, Planning, Investment, Justice and Industry, as well as six public figures and experts appointed by the President of the Republic¹¹.

Shortly after the launch of the Fund, the President of the Republic issued a decree to appoint six members, namely, Ali Gomaa, the former Mufti; Naguib Sawiris, a businessman; Mohamed Al-Amin, a businessman; Major General Mohamed Amin Ibrahim Nasr, head of the Armed Forces Financial Authority; Basil Osama Al-Baz, a businessman and son of the former advisor to Mubarak, Osama Al-Baz; and Reham Fouad Aboul Fotouh.

The Fund has a CEO that represents it before the judiciary and others, appointed by the prime minister, in addition to a sufficient number of workers, technicians and administrators that are also appointed to work for the fund, who may be delegated from among the state's civil servants.

A joint executive committee is also formed, including several members of the Fund's board of trustees and chairman, whose task is to put into action the decisions of the board of trustees.

Tasks

The bylaw statute issued by the Prime Minister¹² specified several tasks for the Fund's board of trustees, including drawing up policies, forming supporting committees, following up on the implementation of policies, contributing to the establishment of companies, and approving contracts and agreements.

¹¹ Decree No. 500 of 2014 appointing members to Tahya Misr Fund's Board of Trustees, published in the Official Gazette issue No. 51 bis (b) on 21 December 2014

¹² The Prime Minister's Decree No. 1400 of 2015 on bylaws statutes of Tahya Misr Fund, published on the official island, issue No. 22 bis on 30 May 2015

It also specified the tasks of the chairman of the board of trustees, his deputy, the board's general rapporteur, the treasurer, the CEO and the financial manager.

The armed forces' role

Since the first day of the inception of Support Egypt Fund and the Tahya Misr Fund, the Armed Forces have been present actively and strongly, in a way that makes the army seem like the actual owner, or the key partner of the funds.

Donations

The armed forces donated an amount of EGP 300 million¹³ to the Egypt Support Fund, where the same thing was repeated upon establishment of the Tahya Misr Fund when the army donated EGP one billion to the fund, which was announced at the time by then Minister of Defense Sedki Sobhi¹⁴, followed by other regular contributions by the Ministry of Defense. But did the role of the armed forces stop at supporting the fund and donating money in its favor, or did it have assumed other roles?

Tahya Misr Fund's treasurer

Major General Mohamed Amin Nasr has been appointed as treasurer of the Tahya Misr Fund from 2015 until now¹⁵ following his appointment as member of the Fund's board of trustees in December 2014¹⁶. Major General Nasr is the former director of the Armed Forces Financial Affairs Authority and member of the Military junta between 2012 and 2019¹⁷. Al-Sisi also appointed him as adviser to the president for financial affairs. Since his appointment, Nasr has become the most prominent figure at the fund and the board of trustees, where he combined two functions: director of the Armed Forces Financial Affairs Authority and the treasurer of the Tahya Misr Fund from April 2015 to June 2019, which indicates the dominance of the armed forces over the money of the Fund, and the overlap of financial tasks between a basically financial fund and a financial authority affiliated to the Armed

¹³ The Armed Forces announces a donation to the Egypt Support Fund in the amount of EGP 300 million , Al-Shorouk, [link](#)

¹⁴ EGP One billion from Egyptian army to support the Sisi initiative - CNN Arabic, [link](#)

¹⁵ Mahlab issues a decision appointing Mohamed Nasr as treasurer of the Tahya Misr Fund, Youm7, [link](#)

¹⁶ Decree No. 500 of 2014 for appointing members to Tahya Misr Fund's Board of Trustees, published in the Official Gazette issue No. 51 bis (b) on 21 December 2014

¹⁷ Appointed by Presidential Decree No. 29 of 2019, published in the Official Gazette issue No. 26 on 27 June 2019

Forces institution, where the two sides share vagueness of information and data, as well as absence of real oversight.

Is the Fund subject to oversight?

Perhaps the main reason for issuance of a second version of the Fund's law was to avoid the fund being subject to the jurisdiction of supervisory authorities that have the right to hold the fund administration accountable, and convict it.

While the first legal version of the Fund, issued in 2014, had imposed a balanced control over the accounts and money of the Fund, according to Article 8 that states that: the Fund's money are considered public funds according to the Penal Code, where the Central Auditing Organization undertakes auditing and control of the Fund's accounts, preparing a quarterly report to be presented to the President of the Republic.

Lack of oversight

The second legal version of the Fund, issued in 2015, marginalized the oversight of the Fund's accounts and money, making it a purely formal oversight, where it sufficed with only two articles of the Penal Code that are related to the crimes of bribery and embezzlement of public money, where the Central Auditing Organization's control over the Fund's money and accounts was abolished and replaced with issuance of a report on performance indicators. In light of the financial statements approved by the Fund's auditor, where the report is presented on an annual basis to the board of trustees, not to the President of the Republic on a quarterly basis, as in the early version of the law.

Additive

The second version of the Fund law added a new article stipulating that: The President of the Republic, determines via a decree the methods for supervising and managing the Fund and disposing of its financial and administrative affairs, in accordance with the Fund's nature and activity, and the need to enable it to achieve its mission, without being bound by governmental regulations stipulated in any other law.

This means that the law of the Central Auditing Organization¹⁸ does not apply to the fund, as it is another law that the fund is not bound by, while the Penal Code does not also apply to the Fund, except within the limits of bribery and embezzlement, and the law regulating government contracts does not apply to the Fund's contracts, either¹⁹. On the other hand, the Fund is not bound by the laws regulating the administrative prosecution or disciplinary courts, as it is considered a private entity.

Finally,

Early on, the intention of the July 2013 regime was to create free financial tools, outside the state's normal restrictions, to enable financial systems not known to the Egyptian state's accounting and control rules, and immunized them via highly exceptional laws, with attaching them to the Presidency of the Republic, to add further immunization to them, as happened in the case of the experiences of the Egypt Support Fund and the Tahya Misr Fund, and then setting up several similar funds that benefited from the experience of the two funds, particularly in legalization and development of the legislative context, most notably Egypt's Sovereign Fund, which benefited so much from the experience of the Tahya Misr Fund.

Based on the nature and scope of the decree to establish the Tahya Misr Fund, and the exceptional legal conditions included in the law and the statutes, it is clear that the Fund is free from all restrictions, as none of the state's oversight bodies, no matter how strong it is, can monitor the Fund or hold members of its board of trustees or even its employees accountable.

Also, the state institutions that made generous donations in favor of the Fund add financial ambiguity to its activity and the purpose of its inception; where the military institution that is part of the state has deposited billions of Egyptian pounds in a fund established to support the state; and the civilian state institutions, including ministries, the public sector, and their affiliated companies have also made donations to the Fund, in a strange context of transferring state funds to entities that have more freedom of movement.

¹⁸ Central Auditing Organization Law No. 144 of 1988 published in the Official Gazette issue No. 23 (continued) on 9 June 1988

¹⁹ Law No. 182 of 2018 regulating government contracts concluded by public entities, published in the Official Gazette No. 39 bis (D) on 3 October 2018 - The Tenders and Auctions Law has been canceled.

This trend was expressly announced by Sisi at inauguration of the Tahya Misr Fund in 2014, when he expressed his desire to own 100 billion Egyptian pounds (to be set side), as he put it²⁰, and then he confirmed this desire in 2018, but after changing the currency to the dollar instead of the Egyptian pound, to become (a desire to own 100 billion dollars), using the same expression (to be set side) which he repeated over and over again²¹.

The Tahya Misr Fund has used legislative tools to secure the real owner of the fund as well as its administration, away from any oversight or accountability from the state's oversight bodies.



²⁰ Sisi: I want EGP 100 billion, and I hope the oppressors pray to our Lord - Rasd News Network, [link](#)

²¹ Sisi: When I was young, I prayed to God to endow me \$ 100 billion, Al Jazeera Net, [link](#)