

Summary notes on the Roundtable Discussion (RTD):

“Indecisiveness of Public Officials: The Problem and Solutions”

This RTD was held at the ECES premises on February 20, 2018.

Speakers:

Reda Farahat – Former Governor of Alexandria and Qalioubia

Hisham Ragab – Member of the Supreme Legislative Reform Committee

Mona Zulfaqar – Founding Partner and Head of the Executive Committee, Zulfaqar and Partners Law Firm

Main points addressed in this RTD:

- Bureaucracy, corruption and policy unpredictability are among the most important impediments to doing business in Egypt, according to the Global Competitiveness Report. Worldwide Governance Indicators show that government performance is generally lower than the average in the Middle East and North Africa.
- Signs of Indecisiveness: the hesitance of officials to decide on disputes between state institutions and investors, lack of transparency and accountability in the state bureaucracy, as well as the complexity thereof and the power overlap among its units.
- The law does not penalize the public official if he acts in good faith, but places the burden of attesting to good faith on the official himself, which cannot be attested to in most cases. Therefore, an article should be added to the law, requiring the judiciary to enable the official to access or obtain authenticated document copies to help him attest to her/his good faith.
- It is necessary to draw on the waivers granted to the board of directors of joint stock companies and apply what is suitable thereof to the public official.
- Public officials should be subject to a special statute of limitations, so as not to be pursued for liability indefinitely. Also, the right of pursuing legal action in some cases should be conditional on the presence of a written request from some of the entities stipulated by law.

The main comments during the RTD:

The problem clearly exacerbated after 2011 due to the following reasons:

- 1- The articles on profiteering and waste of public funds in the Penal Code (Article 119:113) is one of the most important reasons for the phenomenon of indecisiveness of public officials. For example, a public official may take what to him is the more prudent approach by refraining from buying an asset of variable value for fear of future impairment, and hence being accused of wasting public funds.
- 2- Abuse of litigation, and resorting to the judiciary to decide on all issues, regardless of severity.

- 3- The multiplicity of regulatory bodies, whose supervisory authority oversteps limits to interfere in the discretionary power of decision makers.
- 4- Weak enforcement by the State bureaucracy of the rule of law and slow pace of achieving objectives.
- 5- The overall climate contributes to the exacerbation of the indecisiveness phenomenon, as the public official is liable to be accused of wasting public money and profiteering at any time, even if the he took the right decision by giving investors their due rights, for example.

It is therefore necessary to pursue the following plan of action:

1. Encouraging and accelerating the pace of automating government services.
2. Institutional reform of the State bureaucracy, and accelerating the shift to performance budget.
3. Reform the penal philosophy in the Penal Code as a whole.
4. Clearly define corruption and profiteering.
5. Benefit from the special rules applied by the armed forces and communicate their spirit to the different state bodies and the private sector.
6. The problem of lax implementation can be remedied by amending and clarifying executive regulations to achieve transparency and reform.

The main points of discussions:

- The administrative prosecution is one of the reasons for poor government performance. The public official does not use his discretion in accordance with the law.
- The State must respect its contracts. The increase in the price of square meter of land ten years after the date of its sale to the investor makes the public official liable to be accused of wasting public money and the land may be re-priced for the same investor.
- State bodies might hear stakeholders but do not take their opinions into account. The opinion of the Investors Union and the Businessmen Association was heard regarding specific articles in the Investment Law, but their proposals were not implemented.
- The rule is to accelerate the procedures of tenders and auctions and not to create a parallel track, which is assignment by direct order.
- The theory of reward and punishment and the tendency towards decentralization must be activated in decision-making.
- All problems related to the phenomenon of indecisiveness can be solved if there is political will and the government is serious in this regard.
- There is a need to restore confidence in dealing with government agencies, and to build a climate of confidence in the public official and respect thereof.
- There is strong centralization in decision-making at the level of ministries. The minister is required to ratify/sign every single issue whether big or small. There is no delegation of authorities, slowing procedures and worsening the phenomenon of decisiveness.