

In the name of Allah, the Most Merciful, the Most Compassionate
In the name of the People
(All Court Circuits Assembled)

In its open session on the morning of Thursday 13 Muharram 1436 AH corresponding to 06/11/2014 AD in the premises of the Supreme Court in the City of Tripoli,

With the Presidency of Counsellor: **Kamal Bashir Dhan** (President of the Court) and the membership of Counsellors:

Azzam Ali Al-Deeb	Saleh Abdulgader Al-Sghier
Dr Jumaa Mahmud Al-Zreigi	Dr Saad Salem Al-Asbali
Mukhtar Abdulhamid Mansour	Lotfi Saleh Al-Shamli
Mohammed Abdullatif Yousef	Ahmed Bashir Mussa
Mohammed Al-Qammudi Al-Hafi	Fathi Hussain Al-Hsomi
Naeema Omar Al-Belazi	Omar Ali Al Bershni
Dr. Noureddine Ali Al-Akremy	Nasredine Mohammed Al-Aaqil

With the attendance of the Public Prosecutor

Cassation Prosecution: Ahmed Taher Al-Naas

Circuit Clerk: Osama Ali Al-Madhouny

issued the following verdict:

For the Case of Constitutional Appeal No. (17) of judicial year 61

(Unconstitutionality of Article (30), Paragraph (11) of the Constitutional Declaration amended by Constitutional Amendment No. (7))

Lodged by:

- 1) Abdurraouf Ali Al-Manaie on his own behalf in his capacity as a member of the House of Representatives
- 2) Khalid Ammar Ali Al-Meshry on his own behalf in his capacity as a member of the General National Congress

Represented by attorneys:

(Abdulahakim Alamin Al-Naibi, Al-Bashir Omar Gweisha, Abdurraouf Bashir Al-Najjar)

Against:

1. The Speaker of the House of Representative, in his capacity
2. The President of the General National Congress, in his capacity

3. The Prime Minister, in his capacity

Represented by the State Lawsuits Authority

Upon review of the documents and presentation of the summary and after hearing the verbal plea and the opinion of the cassation prosecution and after court deliberations,

The Facts:

The two appellants made this constitutional appeal against the Speaker of the House of Representatives and the President of the GNC and the prime minister in their respective capacities, giving the following explanation:

The General National Congress (GNC) formed a committee to draft an amendment to the Constitutional Declaration which included parliamentary and presidential elections, and this committee submitted a draft of 57 articles which formulated presidential elections to be direct from the people. This matter faced opposition in the GNC, which led to deferral of the vote on this matter to the incoming House of Representatives. Thereby the GNC issued the Constitutional Amendment No. (7) with the following formulation: “The February proposal is hereby enacted provided that the elected House of Representatives decisively resolves the issue of interim presidential elections, whether in favour of a direct or indirect system, within a period not exceeding 45 days from the date of its first session”. This paragraph was submitted to a vote in the session held on 11 March 2014 with other paragraphs, but all were voted on in one vote with a majority of (124) votes, and with this vote the February Committee’s proposal composed of 57 articles was adopted in its entirety and became a part of the Constitutional Declaration without recitation of a single article from its articles, which is clearly evident from the minutes of the session. They concluded to request a verdict of unconstitutionality and nullification of Paragraph (11) of Constitutional Amendment No. (7), and voiding all its consequential effects.

The Procedures:

On 04/03/2014 the February Committee issued its draft amendment to the Constitutional Declaration, and on 11/03/2014 Constitutional Amendment No. (7) was issued, and on the 04/09/2014 the appellants’ counsel made the appeal against the constitutionality of Paragraph (11) of Constitutional Amendment No. (7) by lodging the case with the registrar of the Supreme Court, paying fees and depositing power of attorney and representation documents in addition to a brief stating the grounds for appeal along with a copy of the minutes of the General National Congress session no. (176) of 2014 dated 11/3/2014, a copy of the February Committee proposal and a copy of Constitutional Amendment No. (7). Then, on 22/9/2014 he lodged the original copy of the notification of appeal that was announced to the respondents in their respective capacities on 10/09/2014.

On 12/10/2014 a member of the State Cases Authority lodged a defence for the second respondent and on 01/10/2014 a member of the State Cases Authority lodged the defences for the first and third respondents. The cassation prosecution presented its opinion to accept the appeal in form, and on the merits to decide the unconstitutionality of the amendment set forth

in Paragraph (11) of Constitutional Amendment No. (7) and the session of its enactment, and maintained its view.

The Grounds:

Since this case is in the form of an appeal, therefore the defence submitted by the State Cases Authority that the court lacks jurisdiction in this case and that the appellants do not have a direct and personal interest is not correct. Although the mandate of constitutional oversight – in accordance with Article (23) of Law (6) of 1982 amended by Law (17) of 1994 regarding the reorganisation of the Supreme Court -- is limited to oversight of the extent of compliance of the law subject of appeal to constitutional provisions, and does not extend to oversight over the constitutional provisions themselves, yet whenever the text of the constitutional provisions prescribe a method or a particular procedure to amend constitutional provisions, then the legislative power must abide by these provisions when issuing the law. Thus to appeal the text of the amendment on the grounds of violation of procedures and provisions of the Constitutional Declaration is within the jurisdiction of the Constitutional Circuit to provide oversight over the extent of compliance of those branches with the restrictions imposed by the constitution. This was the subject of the Court's present proceedings. In accordance with a basic principle of litigation, the judiciary possesses general jurisdiction to adjudicate disputes with the exception of specifically provided exceptions, and if this were not the case the legislative power would be free and unrestricted by the constitution's restrictions regarding constitutional amendments. This would leave its power unchecked and serve a gateway for violation of the constitutional text, which is not correct under the law.

And whereas interest in the constitutional appeal – as deemed by this court – is a special concept which is satisfied by the appellant whenever the text of the law subject of the appeal must be or shall inevitably be applied by them or against them. Moreover, constitutional interest is only invalidated for a provision or procedure in violation of the constitution if its application is limited to a category of which that the appellant is not a member.

As such, and whereas the subject of the appeal is in regards to the unconstitutionality of the voting procedures on Article (30), Paragraph (11) of the Constitutional Declaration amended by Constitutional Amendment No. (7), and whereas the first appellant was a member of the House of Representatives and the second a member of the General National Congress, as such making them directly addressed by this amendment, thereby they have a direct personal interest in the appeal for unconstitutionality, and thereby the appeal fulfils its legal requirements and must be accepted.

And whereas the plea made by the appellants against Article (30), Paragraph (11) amended by Constitutional Amendment No. (7) stated that the voting of the General National Congress was concluded with 124 votes and this does not represent two thirds of the members of the GNC, who are 200 members according to the provisions of the Constitutional Declaration.

And whereas this plea – regarding the non-fulfilment of the constitutionally-required quorum for the vote – is correct, since the text of Article (36) of the Constitutional Declaration issued on 03/08/2011 prohibits the abrogation or amendment of any of its provisions without a

majority of two thirds of the GNC. And whereas Article (73) of the GNC bylaws issued by Resolution (62) of 2013, whose basis is found in the Constitutional Declaration and which was issued in application of its provisions, states that “All members absent from the session when voting commences are deemed to be abstaining from the vote”.

And with reference to the minutes of the 176th ordinary session of the GNC held on Tuesday 11 March 2014, it is evident that the voting on the item regarding the proposal of the February committee achieved 121 votes by show of hands, then the members of the GNC moved on to another item. Afterwards, the President of the GNC stated that three additional members have now joined and want to vote in addition to the 121, and he declared that the result of the vote is 124 votes, and requested the legislative committee to issue the constitutional amendment decree.

This means that that result of the vote on the constitutional amendment was settled at 121 votes then the members moved on to deliberate another item, and that the three who joined after this were not among those present in the session when the voting commenced. And whereas the basis for the voting numbers to be fulfilled when commencing the vote on the subject item with yay or nay – in accordance with Article (73) of the bylaws of the GNC -- is the attendance of the session by the member at the point when voting commence, and that the aforementioned article provides that absentees from the session are deemed to be abstaining from the vote.

As such, and whereas constitutional provisions, both substantial and procedural, are supreme principles of law that prevail over any other legal basis, as they represent the conscience of the nation and the will of the people, and whereas they are the supreme regulator of common values and the determinant of the system of governance for the State, thereby the legislator has endowed them with guarantees ensuring their sanctity and non-violation, except within the framework provided for by the constitution itself. Among such guarantees is the requirement for a specified majority to amend or abrogate its provisions, which is stipulated by Article (36) of the Constitutional Declaration, which necessitates a majority of two thirds of members of the chamber to amend or abrogate any of its provisions. This is in addition to the internal bylaws of the GNC and its provisions stipulating the organization of the sessions, deliberations, minute taking, required quorum for voting, and other subjects concerning the internal rules of the GNC. All these texts have their basis in the Constitutional Declaration and their provisions must be applied. Therefore 121 votes were cast in favour of Article (30), Paragraph (11) of the Constitutional Declaration, whereas it required at least 124 votes, taking into account that the members of the GNC numbered (186) as evidenced by the minutes, then the vote -- in this form -- is invalid, due to violation of Article (36) of the Constitutional Declaration and Article (73) of the aforementioned internal bylaws of the GNC.

And as the fault pursuant to this violation necessarily leads to its consequential effects, necessitating a verdict of its unconstitutionality.

Therefore:

The court has decided – in a full session of all its chambers – to accept the appeal in form; declares unconstitutional Article (30), Paragraph (11) of the Constitutional Declaration amended by Constitutional Amendment No. (7) issued on 11 March 2014, and all its consequential effects; and rules to hold the respondents in their respective capacities liable for the fees, and to publish this decision in the Official Gazette.

Counsellor	Counsellor	Counsellor
Kamal Bashir Dhan	Azzam Ali Al-Deeb	Saleh Abdulgader Al-Sghier
Counsellor	Counsellor	Counsellor
Dr Jumaa Mahmud Al-Zreigi	Dr Saad Salem Al-Asbali	Mukhtar Abdulhamid Mansour
Counsellor	Counsellor	Counsellor
Lotfi Saleh Al-Shamli	Mohammed Abdullatif Yousef	Ahmed Bashir Mussa
Counsellor	Counsellor	Counsellor
Mohammed Al-Gammudi Al-Hafi	Fathi Hussain Al-Hsomi	Naeema Omar Al-Belazi
Counsellor	Counsellor	Counsellor
Omar Ali Al-Bershni	Dr Nouredine Ali Al-Akremy	Nasredine Mohammed Al-Aaqil
		Circuit Registrar Osama Ali Al-Madhouny