

**In the Name of the People
The Constitutional Circuit**

In its open session on the morning of Tuesday 16 Rabi' al-Thani 1434 AH,

Corresponding to 26/02/2013 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:

Yousef Mawloud Al-Hanish
Al-Maqtouf Bileid Ishkaal
Al-Taher Khalifah Al-Wa'er
Abdel Salam Mohammed Bahih
Dr. Jumaa Mahmud Al-Zreigi
Al-Mabrouk Abdallah Al-Fakhiri
Dr. Hamid Mohammed Al-Qimaty
Dr. Nouredine Ali Al-Akremy
Mohammed Ibrahim Al-Warfali
Jumaa Saleh Al-Fituri
Abdulgader Jumaa Radwan
Mohammed Abdelsalam Al-Ayan
Rajab Aburawi Aqeel
Dr. Saad Salem Al-Asili
Faraj Ahmed Marouf

With the attendance of the Public Prosecutor

Cassation Prosecution: Ahmed Taher Al-Naas

Director of Registration Department: Mr. Osama Ali Al-Madhouny

issued the following verdict:

For the Case of Constitutional Appeal No. (28) of judicial year 59
(Unconstitutionality of Constitutional Amendment No. (3) of 2012)
Issued by the Interim National Transitional Council on 05/07/2012

Lodged by:

1. Abdelhadi Mohammed Ali, on his own behalf in his capacity as the General Secretary of the Athal National Foundation.
2. Tarek Mohammed Al-Nimr, on his own behalf in his capacity as the President of the Board of Directors of the Libyan Association for Political Science.
3. Mahmoud 'Aysa Salem Al-Bir'asi, on his own behalf in his capacity as President of the February 17 Revolutionary Union.

4. Abdelsalam Mohammed Al-Basyouni, on his own behalf in his capacity as representative of the National Free Trend.
5. Younis Omar Fannoush, on his own behalf in his capacity as President of the Libyan Democratic Assembly Party.
6. Mohammed Moussa Mohammed Al-Baidi.

Represented by attorney: Salwa Sa'ad Bughaighis.

Against:

1. The President of the General National Congress, in his capacity
2. The Prime Minister, in his capacity

Represented by the State Lawsuits Authority

Upon presentation of the summary and after hearing oral arguments and the opinion of the cassation prosecution and after review of the documents and court deliberations.

The Facts:

The fact concludes that the appellants filed this appeal by lodging the case with the registrar of the Supreme Court against the respondents in their capacity as having stated that Constitutional Amendment No. (3) of 2012 issued on 05/07/2012 was issued in violation of the Constitutional Declaration and the rules of procedure of the Interim National Transitional Council.

They concluded with a request to accept the appeal in form and on the merits to declare the unconstitutionality of Amendment No. (3) of 2012 issued by the National Transitional Council, and to urgently cease the implementation of the amendment pending adjudication of the matter.

The Procedures:

The appellants' counsel made the appeal against the constitutionality of Constitutional Declaration No. (3) of 2012 by lodging the case with the registrar of the Supreme Court on 24/09/2012, paid the fees and deposited power of attorney and representation documents, as well as a brief stating the grounds for appeal and a portfolio of documents. On 01/10/2012, she filed the original document announcing the appeal, of which the respondents were informed in their capacity on 27/09/2012. On 16/10/2012, a Lawsuits Authority member filed a memorandum with the defence of the respondents, which concluded by rejecting the appeal. The Cassation Prosecution filed a memorandum in which it provided its opinion to accept the appeal in form and reject it on the merits.

In the session designated to consider the appeal, the Lawsuits Authority argued the Supreme Court's lack of jurisdiction to adjudicate the appeal. The Court concluded the postponement of the appeal to the verdict in the session on 23/12/2012. The proceedings were then reopened and the Court ruled the authorisation of the prescribed Counsellor to review the minutes of the entity that issued the amendment under appeal, investigate the extent of its adherence to the procedures and

conditions stipulated by the Constitutional Declaration for the amendment thereof. The prescribed Counsellor lodged his report and the presentation of the summary was reviewed.

The Cassation Prosecution filed a supplementary memorandum in which it provided its opinion to reject the appeal.

The Grounds for Appeal

Since the appeal meets the conditions prescribed in the law, it is accepted in form.

Since the defence submitted by the State Lawsuits Authority that the court lacks jurisdiction to adjudicate this appeal is groundless, even if constitutional oversight – in accordance with the provision of Article (23) of Law (6) of 1982 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 constitution prescribes a particular method or specific procedures to amend the constitutional provisions, the legislature must abide thereby when issuing the amendment. 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 this authority with the restrictions imposed by the constitution. 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 legislature would be free and unrestricted by the constitution's restrictions regarding the amendment. This would leave its power unchecked and serve as a gateway for violation of the constitutional texts, which is not correct under the law.

Since the result of the appellants' claim about Constitutional Amendment No. (3) of 2012 issued on 05/07/2012 by the Interim National Transitional Council, which contains in its first article the following: "Clause 6, Paragraph 2 of the aforementioned Constitutional Amendment No. (1) of 2012 shall be amended as follows: Elect a constituent assembly of non-GNC members by direct free vote to draft the country's permanent constitution, called the Constituent Assembly. It shall be composed of sixty members after the model of the Committee of Sixty, which was established to draft the constitution of Libya's independence in 1951..." that this amendment was not issued by the Interim National Transitional Council by a two-thirds majority of its members, but was instead issued by a two-thirds majority of the attendees in violation of the provision of Article (36) of the Constitutional Declaration. It was also in violation of Article (17) of the Constitutional Declaration which stipulated the formation of a Committee of Sixty elected after the model of the Federal Union System issued by the Constitution in 1951.

Whereas the prescribed Counsellor lodged his report in which he substantiated his transfer to the headquarters of the General National Congress and his review of the minutes of meeting of the Interim National Transitional Council No. (83) of 2012 on 05/07/2012 to issue its decision of Constitutional Amendment No. (3) of 2012 subject of appeal.

Whereas the report proved that the constitutional amendment subject of appeal was issued by the approval of 49 of the 55 members in attendance, while the total number of Council members during

that time was 102. As such, the provision of Article (36) of the Constitutional Declaration issued by the Interim National Transitional Council on 03/08/2011 mandates that a majority of two-thirds of the members approve the amendment of the provisions thereof and the number of members that approved the said amendment was less than this majority. Thus, the issuing of this amendment was done without meeting the conditions thereof, which places it in violation of the prescribed constitutional rule for the validity of the amendment.

And as the defect pursuant to this violation necessarily leads to its consequential effects, which is the issuance of the text subject of appeal, this shall not be changed by the issuance of General National Congress Resolution No. (9) of 2013 on Initiating the Direct, Free Election of the Constitutional Drafting Assembly, which is no more than an executive regulation for the text subject of appeal in which the procedures of constitutional amendment were not followed, did not take the form thereof, and the statement did not contain amendment of the text in question, and did not rise to the status of a constitutional amendment, thus necessitating a verdict of the unconstitutionality of this amendment.

Therefore

The court has decided to accept the appeal in form, declares unconstitutional Amendment No. (3) of 2012, Article (30), Clause (6), Paragraph (2) of the Constitutional Declaration, and shall publish this decision in the Official Gazette.

Counsellor

Kamal Bashir Dhan
Circuit President

Counsellor

Al-Maqtouf Bileid Ishkaal

Counsellor

Abdulgader Jumaa Radwan

Counsellor

Dr. Jumaa Mahmud Al-Zreigi

Counsellor

Dr. Saad Salem Al-Asili

Counsellor

Dr. Noureddine Ali Al-Akremy

Counsellor

Yousef Mawloud Al-Hanish

Counsellor

Jumaa Saleh Al-Fituri

Counsellor

Abdel Salam Mohammed
Bahih

Counsellor

Rajab Aburawi Aqeel

Counsellor

Dr. Hamid Mohammed Al-
Qimaty

Counsellor

Mohammed Ibrahim Al-
Warfali

Counsellor

Al-Taher Khalifah Al-Wa'er

Counsellor

Mohammed Abdelsalam Al-
Ayan

Counsellor

Al-Mabrouk Abdallah Al-
Fakhiri

Counsellor

Faraj Ahmed Marouf

**Director of Registration
Department**

Osama Ali Al-Madhouny