

**In the name of God, the Merciful, the Compassionate
In the name of the people**

The Supreme Court (in its combined chambers)

In its public session held on the morning of Thursday, 13 Muharram 1436 AH, corresponding to 06/11/2014 AD, at the seat of the Supreme Court in the city of Tripoli;

Presided over by Counsellor Kamal Bashir Dahan, President of the Court;

With the membership of Counsellors:

Azzam Ali al-Deeb	Saleh Abdul Qadir al-Saghir
Dr. Jumaa Mahmoud al-Zoreiky	Dr. Saad Salem al-Oseili
Mukhtar Abdul Hamid Mansour	Lotfi Saleh al-Shamli
Mohamed Abdul Latif Yousef	Ahmed Bashir Mousa
Mohamed al-Gammoudi al-Hafi	Fathi Hussein al-Hosoumi
Naima Omar al-Bulazi	Omar Ali al-Barsheni
Dr. Nouredine Ali al-Akrami	Nasreddine Mohamed al-Aqel

And with the presence of the advocate-general:

From the Cassation Prosecution: Mr. Ahmed al-Taher al-Naas

And the Secretary of the Chamber: Mr. Osama Ali al-Madhouni.

issued the following decision:

**In the case of Constitutional Appeal No. (16) of judicial year 61
on the unconstitutionality of the session of the House of Representatives
convened in Tobruk on 04/08/2014 and the sessions that followed.**

Submitted by:

Mr. Abdul Raouf Ibrahim Ali al-Monaai, elected member of the House of Representatives, represented by lawyer Abu Bakr Ali al-Sherif.

Against:

1. The legal representative of the elected House of Representatives, in its capacity.
 2. The legal representative of the General National Congress, in its capacity.
- (Both parties are represented by the Cases Authority).

Upon review of the papers, reading of the summary report, and hearing the oral proceedings and the opinion of the Cassation Prosecution; and following deliberation.

The Facts:

The appellant, in his capacity as a member of the elected House of Representatives, filed the present appeal by a statement of claim in which he sued the two respondents in their capacities (as the legal representative of the House of Representatives in its capacity, and the legal representative of the General National Congress in its capacity). In it, the appellant stated: On 20/07/2014, the High Elections Commission announced the final results of the election of the House of Representatives and stated that the appellant was one of its members. On 22/07/2014, the second respondent issued Resolution No. (56) of 2014 calling for the General National Congress and the House of Representatives to convene, in order for the handover to take place. It set the date of 04/08/2014 for this, and on 30/07/2014 it issued a circular that the handover session would be in Tripoli.

On 30/07/2014, a message was received by the appellant on his mobile phone from the head of the office of the second respondent and from the oldest member of the House of Representatives, informing him that the first session of the House of Representatives would be convened on 02/08/2014 in the city of Tobruk. An amended message was received by him stating that the session would be on 04/08/2014. As the President of the General National Congress alone is authorised to call the House of Representatives to convene its first session, and since for it to be properly convened it must either be in the city of Tripoli or in the city of Benghazi, in accordance with Article (2) of the amended Constitutional Declaration, the call to convene that was sent by a person other than the abovementioned person is unlawful, and the convening of the House of Representatives in the city of Tobruk is also unlawful, and the effects thereof are rendered invalid. The appellant concluded by requesting a ruling establishing the unconstitutionality of the session of the House of Representatives that was convened in the city of Tobruk on 04/08/2014 and the sessions that followed, and establishing the invalidity of the measures and outcomes that resulted therefrom.

Procedures

On 07/08/2014, the lawyer of the appellant determined to challenge the constitutionality of the session of the House of Representatives that took place on 04/08/2014 in the city of Tobruk, and this by filing a statement with the Registrar of the Supreme Court, paying the fee and depositing the guarantee, submitting a memorandum with the reasons for the appeal and another explanatory memorandum, power of attorney, and a copy of Constitutional Amendment No. (7). On 25/08/2014, he filed the original document announcing the appeal, of which the Public Prosecution was informed on the same date. On 14/09/2014, one of the members of the Cases Authority filed a memorandum with the defence of the second respondent, which concluded by supporting the appellant's request. Similarly, one of the members of the same Authority filed a memorandum with the defence of the first respondent on 15/09/2014, arguing initially that the court did not have jurisdiction to look into the appeal and alternatively to reject 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, and in the session designated to consider the appeal it amended its opinion – through a supplementary memorandum – to accept the appeal in form and on the merits to declare the convening of the session of the House of Representatives in the

city of Tobruk unconstitutional and invalidate the violating measures and decisions resulting from this session.

Grounds

The first respondent, in its capacity, argued that the court lacks jurisdiction to consider the appeal, because the appeal does not pertain to legislation that could be challenged as unconstitutional.

This argument is inapposite, as Article (23) of Law No. (6) of 1982 on the re-organisation of the Supreme Court, as amended by Law No. (17) of 1994, stipulates in Paragraph (1) that: “The Supreme Court alone, convened in its combined chambers, is competent to adjudicate appeals raised by anyone having a direct personal interest in any legislation that violates the constitution.” According to this provision, this Court must adjudicate on constitutional matters that fall under its jurisdiction, and its addressing of these matters is obligatory to the extent that they relate to a substantive dispute, within the limits of facts that are presented before the court.

This, and among the reasons for the appeal was the assertion that the session that was convened by the House of Representatives, and that was argued to be unconstitutional, was not called to convene by the person who is authorised by the Constitutional Declaration to do so, which is the President and of the General National Congress. Rather, this was done by the oldest member of the House of Representatives, and as such the session was in violation of Amendment (7) of the Constitutional Declaration, which includes the February proposal. Thus, this court has jurisdiction to consider the appeal.

This, and the appeal met the conditions prescribed by law, so it was accepted in form.

Whereas this court previously ruled on Constitutional Appeal No. (17) of judicial year 61 to establish the unconstitutionality of Paragraph (11) of Article (30) of the Constitutional Declaration, as amended by Constitutional Amendment (7) issued on 11 March 2014, and all of the effects arising therefrom.

Whereas rulings issued on constitutional cases, which are of their nature *in rem* cases, in which the dispute targets legal texts being challenged for breaching the constitution, have absolute force of *res judicata*. Their impact is thus not limited to the parties to the cases in which they were issued, but rather their effect reaches all, and all state authorities must abide by them, in accordance with Article (31) of the abovementioned Supreme Court Law, whether these rulings establish the unconstitutionality of the legislative text under appeal or uphold their constitutionality, thus rejecting the case on this basis.

This, and the session whose constitutionality is being challenged was convened based on the constitutional amendment that was ruled unconstitutional. This ruling held absolute force of *res judicata* that settled the constitutional dispute. As such, the present dispute is without merit, thus requiring a ruling to consider the case closed.

For these reasons,

The court, in its combined chambers, ruled to consider the case closed.

Counsellor Kamal Bashir al- Dahan President of the Court	Counsellor Azzam Ali al-Deeb	Counsellor Saleh Abdul Qadir al-Saghir	Counsellor Dr. Jumaa Mahmoud al-Zoreiky
Counsellor Saad Salem al-Oseili	Counsellor Mukhtar Abdul Hamid Mansour	Counsellor Lotfi Saleh al- Shamli	Counsellor Mohamed Abdul Latif Yousef
Counsellor Ahmed Bashir Mousa	Counsellor Mohamed al- Gammoudi al-Hafi	Counsellor Fathi Hussein al- Hosoumi	Counsellor Naima Omar al- Bulazi
Counsellor Omar Ali al- Barsheni	Counsellor Dr. Nouredine Ali al-Akrami	Counsellor Nasreddine Mohamed al-Aqel	Secretary of the Chamber Osama Ali al- Madhouni