

State of Libya
Supreme Court
In the name of God, the Merciful, the Beneficent
In the name of the People
The Full Chamber of the Court:

In its session held publicly on the morning of Tuesday, 11 Shaaban 1435 AH, corresponding to 09/06/2014 AD, at the Supreme Court Courthouse in the city of Tripoli.

Presided over by Counsellor Kamal Bashir Dahan, Head of the Chamber

With the following counsellors as members:

Yousef Mawlud Al-Hanish
Al-Maqtuf Bileid Ishkal
Saleh Abdel-Qader Al-Saghir
Abdel-Salam Emhamed Bahih
Hamid Mohammed Al-Qammati
Bashir Saad Al-Zabbani
Mohammed Ibrahim Al-Wirfli
Azzam Ali Al-Dib
Fawzi Khalifa Al-Aabed
Dr. Saad Salem Al-Asbli
Faraj Ahmed Marouf
Tawfiq Hassan Al-Kirdi

**With the attendance of the Attorney General
of the Cassation Prosecution Mr. Ahmed Al-Taher Al-Nuaas
and Chamber Secretary Mr. Osama Ali Al-Madhuni**

issued the following ruling:

On Constitutional Challenge No. (11) of 61Q on the unconstitutionality of General National Congress Resolution No. (38) of 2014 AD issued in session No. (187) held on 04/05/2014 AD, appointing and assigning Mr. Ahmed Omar Maiteeq Prime Minister of the interim government.

Submitted by:

1. Al-Sharif Al-Wafi Mohammed
2. Abdel-Aali Idris Al-Murtada
3. Fahim Ali Al-Ratab
4. Othman Idris Karim
5. Nadia Al-Rashed Omar
6. Khaled Ibrahim Sula
7. Suad Mohammed Sultan
8. Abdullah Omran Al-Qamati
9. Al-Dawi Ali Al-Muntaser
10. Najm Al-Din Abdel-Jalil
11. Abdel-Sadeq Ahmed Al-Suwediq
12. Alaa Fathi Al-Senusi
13. Al-Sadeq Abu Aisha Kashir

All members of the General National Congress

Represented by attorneys Hussein Abdel-Salam Qanau and Dr. Suleiman Abu Hanik

Against

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

(represented by the Lawsuits Department)

Upon review of the documents, reading aloud the summary report, hearing oral arguments and the opinion of the Cassation Prosecution, and after deliberation.

The Facts

The Appellants submitted their challenge on the unconstitutionality of the resolution issued by the General National Congress in its session No. (187) held on 04/05/2014 AD appointing and assigning Mr. Ahmed Omar Maiteeq Prime Minister of the interim government against the Respondents in their capacity. In setting out their challenge, they stated that on said date the Congress held a session to select the person who was to hold the position of Prime Minister; the session was chaired by the First Deputy President of the Congress, and the voting process was stopped when the candidate Ahmed Maiteeq obtained 113 votes, whereas it had been agreed that the selection of the Prime Minister required at least 120 members. This prompted the chairman of the session to request adjourning the session and moving to the following item. Due to the disturbance caused by certain members, the session was adjourned, and the chairman and some members left.

Afterwards, the Second Deputy President of the Congress entered the session hall, took the podium, and started to run the session without the original chairman (the First Deputy) and a large number of members present; it was announced that Ahmed Maiteeq had obtained the 11 remaining votes and won the post of Prime Minister.

The Appellants concluded that the procedures were invalid and violated the approved amended Constitutional Declaration as well as the Congress' by-laws, which prompted them to challenge the resolution in accordance with the Law on the Supreme Court.

The Proceedings

On 15/05/2014 AD, the Appellants' lawyer decided to challenge said resolution at the registrar of the Supreme Court. He paid the fees, filed a deposit, a memorandum on the grounds of the challenge, an explanatory memorandum, power of attorney documents, and a copy of the challenged resolution. On 29/05/2014 AD and 03/06/2014 AD, an original notice of service of the challenge to the Respondents through the Lawsuits Department was filed [and] the Respondents' memorandum of defence in their capacity, that included the original argument that the Court does not hold territorial jurisdiction to hear the challenge, and alternately that the challenge should be rejected in form for being filed by someone who is not an interested party. The Cassation Prosecution filed a memorandum stating its opinion that the challenge should be accepted in form and on the merits that the Constitutional Chamber does not hold jurisdiction to hear the matter, and if it is found that the challenge is based on the legitimacy of the amendment made to Article (1.6.10) of the interim Constitutional Declaration, it should be accepted in form and, on the merits, that the aforementioned amendment is unconstitutional; in the session set for hearing the challenge, the Prosecution maintained its opinion.

The Grounds

Whereas the Respondents in their capacity based their argument for the court's lack of territorial jurisdiction to hear the challenge on the fact that the Appellants' claims are limited to the invalidity of the Prime Minister's appointment, which is not a challenge to the constitutionality of the legislation but a challenge to the soundness of the appointment procedures due to alleged flaws in these procedures, which are outside the Court's jurisdiction.

This argument is not sound, as the first paragraph of Article (23) of Law No. (6) of 1982 AD reorganising the Supreme Court states that the Full Chamber of the Supreme Court holds sole competence to rule on challenges filed by any person with a direct personal interest in any legislation that violates the Constitution.

Pursuant to this provision, this Court must rule on constitutional matters within its competence, as its response to such matters is necessary to the extent that they are connected to the merits of the dispute and within the limits of the facts presented thereto.

Thus, and since among the grounds of the challenge to the challenged resolution is that it is in violation of the amendment made to the Constitutional Declaration, pursuant to which 120 votes of the members of the General National Congress are required to select the Prime Minister, this Court holds jurisdiction to hear the challenge.

Whereas the Respondents in their capacity based their argument to reject the challenge in form on the fact that the Law of the Supreme Court provides that the Court holds jurisdiction to rule on challenges filed by anyone with a direct personal interest, stating that none of the Appellants have a direct personal interest in requesting a ruling for the unconstitutionality of the challenged resolution because they were not members of the former interim government. This argument is also not sound, because the Appellants are members of the General National Congress and the challenged resolution was issued by this Congress, hence their interest in challenging any resolutions issued by the Congress to which they belong that they believe are in violation of the Constitution is met.

Thus, and as the challenge has fulfilled the conditions set under the law, it is accepted in form.

Whereas among the matters challenged by the Appellants in the challenged resolution is that it is in violation of the amendment made to the Constitutional Declaration, where the percentage required for the selection of the Prime Minister was changed to require 120 votes from members of the General National Congress. This amendment was approved by the General National Congress as established in the minutes of the session on 05/05/2014 AD, on whose basis the voting continued and votes were taken; if there was not an amendment to the percentage of votes, it would have been sufficient for the candidate for Prime Minister to obtain 50% + 1 or 72 votes, an absolute majority, in accordance with the Constitutional Declaration prior to amendment.

This challenge is valid. If the seventh amendment to the Constitutional Declaration did not list the resolution appointing the Prime Minister among the legislation set out in Paragraph (6) that must be issued a majority of at least 120 members, it would have remained within the legislation listed in Paragraph (9), which is issued by an absolute majority of those present. However, Paragraph (8) provides: "A member of the Congress may propose that voting on a matter under discussion be subject to a majority of 120 members. The proposal shall not be submitted for voting until it obtains the support of five members and a resolution

must be adopted by an absolute majority of those present to make voting subject to this majority."

Whereas, referring to the minutes of the one hundred eightieth ordinary meeting of the General National Congress held on 04/05/2014 AD, it is found that the first matter discussed in that meeting was voting on the selection of the new prime minister for the interim government. The existence of a General National Congress resolution that the Prime Minister must be approved by 120 votes was confirmed at the beginning of the session, and before voting started the chairman of the session (the First Deputy President of the Congress) confirmed the necessity that one of the candidates for prime minister obtain 120 votes, saying that if none of the candidates obtained 120 votes, there would be a vote of confidence on the winner and if the winner obtains 120 votes they would welcome him as Prime Minister.

According to the minutes, none of the Congress members objected to this, and the voting process commenced on this basis. None of the candidates received 120 votes, and prior to starting the vote of confidence on Mr. Ahmed Maiteeq as the candidate with the greatest number of votes, the chairman of the session reconfirmed that the acting prime minister must obtain 120 votes. After voting took place on this basis, the chairman of the session announced the voting results, with Mr. Ahmed Maiteeq obtaining the confidence of 113 members, and requested moving to the second item on the agenda or he would be forced to adjourn the session. Following arguments between members of the Congress and his demand that they sit in their places, the chairman of the session (the First Deputy President of the Congress) adjourned the session by stating: "Enough. We shall adjourn the session at 3:00. That's enough. 3:00."

Immediately following this, the Deputy Rapporteur of the Congress said that two new members granted confidence, making the number 115 votes. Then the Second Deputy President of the Congress took over chairing the session and said that three members granted confidence and the number was 118 votes. The Deputy Rapporteur of the Congress followed him by stating three other names who granted confidence, and the Second Deputy said that now the number of votes granting confidence had reached 121 votes. He then announced that Mr. Ahmed Omar Maiteeq had become Prime Minister of the interim government, which is the resolution being challenged.

Among the most important constitutional rights in the Constitutional Declaration given to the General National Congress is appointing the interim government. Such right is not properly established unless it is done in accordance with the procedures established preliminary to obtaining this right, which required the General National Congress to issue its by-laws. This makes the violation or infringement of these procedures a violation of the constitutional rule.

Based on this, the prescriptive provisions in the General National Congress' by-laws require that the Congress adheres to them, and it is not correct to say that the resolution appointing the Prime Minister was made in accordance with the Constitution if it is established that the selection process took place in violation of these provisions.

Whereas referring to the provisions of the General National Congress' by-laws issued under Congress Resolution No. (62) of 2013 AD and the minutes of General National Congress Meeting No. (187) held on 04/05/2014 AD, it is found that there are gross violations of such provisions marring the voting process on which the challenged resolution is based, the most significant of which are as follows:

I.

Article (8) of the by-laws provides that the First Deputy President shall exercise the powers of the President in the event of his absence, and in the event of the absence of both, the Second Deputy President shall exercise these powers, i.e. the Second Deputy shall exercise the powers of the President, including opening the session, chairing it, and announcing the results thereof, on condition that the President and First Deputy President are absent. It is established in the minutes of said meeting that the First Deputy President of the Congress was present at the meeting, and thus the Second Deputy assuming management of the session invalidates it and the results thereof.

II.

Article (74) of the by-laws states: "If the session is adjourned before the end of the discussion of a matter, the Congress chairman may decide to suspend it, and the sessions held thereafter to continue the discussion shall be deemed a continuation of the first session." This means that deeming the sessions held after a session is adjourned a continuation of the first session is conditional on there being a resolution to suspend the session after it is adjourned, and it is established in the minutes of said meeting that the chairman decided to adjourn it, which falls within his powers as provided under Article (7.6) of the by-laws. It is also established that there was no resolution to suspend the session, which makes reconvening it after it was adjourned to continue the discussion of the matter proposed an explicit violation of said Article, which makes all procedures that took place after the session was adjourned invalid.

III.

Article (73) of the by-laws states: "Anyone who fails to attend the session at the start of voting shall be deemed to have abstained from voting." It is established in the meeting minutes that those who granted confidence at the start of voting, prior to the close of the session, were 113 members among those present. This necessarily means that the remainder of those present either withheld confidence or abstained from voting, which also means that the eight members who granted confidence after the end of the session were not present at the session when the voting started. The aforementioned Article (73) deems them to have abstained from voting, and thus, the voting result was established at the end of the session, making opening voting only to certain members who did not vote in the voting session an invalid procedure the results of which may not be taken into consideration.

IV.

As previously stated, the First Deputy President of the Congress exercises the powers of the President in his absence, according to Article (8) of the by-laws. Article (7) identifies these authorities, which include calling the Congress to convene, opening sessions, chairing them, and signing resolutions issued by the Congress. It is established that the President of the Congress did not attend the session in which voting on the appointment of the new prime minister took place, and that the session was convened under the chairmanship of the First Deputy President of the Congress. This means that the powers of the president transferred to him for everything related to that session, including signing the resolutions issued therein. As seen in the challenged resolution, the resolution is signed by the Congress President, who was not present at the session in which it was issued and does not have capacity to issue it.

For all of the foregoing, the voting process on which the challenged resolution was based and the procedures accompanying its issue were in violation of the rules and procedures set out in the by-laws of the General National Congress, which the Congress was to abide by in order to realize its most important constitutional right, which is the selection of the prime minister, who exercises executive power in the country. If the Congress' by-laws are founded in the Constitutional Declaration and issued in application of the provisions thereof, then the violation of such by-laws by the challenged resolution is unconstitutional.

For these reasons

The Full Chamber of the Court ruled to accept the challenge in form and that General National Congress Resolution No. (38) of 2014 AD appointing Mr. Ahmed Omar Maiteeq Prime Minister of the interim government is unconstitutional, obliging the Respondents in their capacity to pay the court fees. This ruling shall be published in the Official Gazette.

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