

In the Name of Allah, the Most Merciful, the Most Compassionate



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**In the Name of the People
The Supreme Constitutional Court (SCC)**

In the public hearing held on Sunday, the 2nd of June 2013 AD, corresponding to the 23th of Rajab 1434 AH

Chaired by Chancellor / Maher Al-Behiry – **Chairman of the court**

With the membership of Messrs/ Chancellors: Anwar Rashad Al-Aasy, Abdel Wahab Abdel Razaq, Mohammad Abdel-Aziz Al-Shenawy, Maher Sami Youssef, Mohammad Khairi Taha Al-Nagar, and Saied Marie Amr - the **Court Vice-Chairmen**

And the attendance of Councilor / Dr. Hemdan Hassan Fahmy – **President of Board of Commissioners**

And the attendance of Mr. Mohamed Nagy Abdel-Samee – **Secretary**

Issued the following ruling

In the case listed in the Supreme Constitutional Court roll #112/34 judicial “Constitutional” after the Supreme Constitutional Court – first division, appeals review in accordance to ruling issued in the hearing dated 07/07/2012- referred appeal file #10627/58 judicial “High”.

Submitted by

Mr. Adnan Mokhtar Osman Mohamed

Against

1. Chairman of Higher Elections Commission
2. Chairman of the Election Commission overseeing Shura Council Elections - Luxor Governorate.

Proceedings

On 16 July 2012, appeal file #10627 of the 58th supreme judicial year submitted to the court registry, to implement ruling of division of challenge examination at the Supreme Administrative Court, at the hearing dated 07/07/2012, to suspend the appeal review and transfer the documents to the Supreme Constitutional Court to adjudicate the constitutionality of the texts of the first paragraph, Article (2) and first paragraph, Article (8) of law # 120/1980, on Shura Council and amendments thereof.

State Litigation Authority submitted three defense memoranda, in the first memorandum it requested non-acceptance of the lawsuit originally, and dismissing it provisionally, and in the second and third ones it delegated opinion to the court.

After preparation of the lawsuit, the Board of Commissioners reported its opinion. The Board of Commissioners reviewed the case in the manner prescribed in the minutes of the hearing. The court decided to issue the ruling today.

The Court

After reviewing documents and after deliberation:

Whereas facts of the case - as evidenced by the initiatory pleadings and all documents- indicate that Mr. Adnan Mokhtar Osman Mohamed filed an action dated 19/02/2012, #8679 of the 20th judicial year, before the Administrative Court, Quenna district, asking to suspend execution and then repeal decision of Shura Council elections results for Luxor's constituency of the individual system, including the run-off held between four candidates, not including the plaintiff, and its implications thereof, of which the most important are suspending polling procedures of the run-off election scheduled to be held on 22/12/2012, seizure of all envelopes and documents of the conducted elections. Mr. Adnan explained the case saying that he stood for Shura Council elections for Luxor's individual seat, as an independent candidate, held on 14 – 15 February 2012, and results were announced on 18/02/2012, in which he lost, and runoff elections were conducted among four candidates. The plaintiff considered balloting and sorting processes invalid due to change in his election number, and to removal of his election symbol in ballot papers, in a way that hindered his supporters to vote for him. Besides, the results announcement shows contradictions in the number of votes, in addition to scrapes and modifications in some forms, while others are not signed by heads of the committees.

In 21/12/2013 session, the Administrative Court decided to decline the urgent part of the lawsuit. Since the plaintiff has not accepted such ruling, he challenged it before the Supreme Administrative Court pursuant to appeal No. 10627/58 Judicial Year, Supreme. In 7/7/2012 session, appeal examination division of that court has decided to halt hearing the appeal and referring the papers to the Supreme Constitutional Court to decide on the constitutionality of the texts stated in the referral ruling; owing to its violation of the provisions of the constitutional declaration issued on 25/9/2011.

Whereas the plaintiff has referred in his note, filed in case the court decides to set the lawsuit for adjudication, to the annulment of the new constitutional document owing to lacking the majority required by article (60) of the constitutional declaration, other violations of the conditions required by this article for the validity and integrity of the referendum as well as the unconstitutionality of the Presidential decree calling for referendum on the constitution.

Whereas what the plaintiff raised is false, that the litigation of this court has settled that the judicial control over the constitutionality of the laws and regulations adopted by the SCC finds its basis – as a general basis – in Sharia principle, rule of law and state submission. However, this basis is replied to that the constitution with its precedence and sublimity as the supreme main law and pre-issuance procedures – carried out pursuant to article (60) of the constitutional declaration referred thereto – are out of the range of this judicial control, based on the fact that the nature of such texts and works declines to be subject to a judicial lawsuit; since the constituent authority responsible for drafting the constitutional document is superior to all state

authorities, which are considered the product of its work as the authority establishing other authorities. It is unimaginable that this authority shall be subject in its formation or the control works it practices to any of the other state authorities. Thus, overseeing it or overseeing what it issues is not included within the SCC jurisdiction. Moreover, the litigation of this court has also settled that the resolution of the President of the Republic on calling for a referendum on the constitution is among sovereignty works that are also out of the court's scope of control.

Whereas State Lawsuit Authority has decided to decline the lawsuit since it is not connected to SCC as stated by its law; since the appeal examination division at the Supreme Administrative Court, preceded by State Commissioners Authority, have exceeded their jurisdictions regarding its preparation and expressing the legal opinion thereon or decide on the appeal against the ruling issued by the Administrative Court, where it declined the urgent request in the lawsuit, and has been subject with no coercion on the part of the plaintiff, since some legislative texts infringe the provisions of the constitutional declaration, and depended in this on the report of the State Commissioners' Authority in this regard. The Authority also ruled that the appellant's interest is untainted owing to the wholeness of election process of the Shura Council members prior to the issuance of the referral ruling.

Whereas this rebuttal, with all its aspects, is refutable, first: based on the case law of this court that each of the substantive and constitutional lawsuits has its own subjectivity and constituents which neither mix nor combine in the conditions for their acceptance. Nevertheless, each lawsuit is independent of the other one in its subject, as well as the content of the conditions required by the law to allow its filing. The duties vested in SCC by the legislator do not include settling the conditions of the lawsuit's connection to the court of the subject pursuant to the conditions set forth before it, or its adherence to the limits of its jurisdictions set out by the law. However, its mandate is limited to the constitutional matters set forth before it, as set forth in the law of this court. Second: based on the case law of this court that the constitutional legitimacy which the SCC monitors adherence to, aims at ensuring that the legislative texts complies with the provisions of the constitution. Such legitimacy lies on top of the states legal structure, and it is also a branch of its subjection to the law; which indicates that any court or authority of a judicial jurisdiction refrain from the enforcement of a legal text that is necessary to settle its mandate or in the dispute set forth before it, in case it is clear for it, from an initial perspective, that it is contradictory to the constitution. Having such suspicion, shall accordingly oblige it to verify its validity first, through presenting it to the SCC, which the constitution tasked with settling the constitutional matters. Third: the interest in the constitutional lawsuit in examining the action is concerned only with, regarding the lawsuit referred from the trial court pursuant to article (29/a) of the SCC law No. 48/1979, the fact that the text, which a court has seen as unconstitutional, is necessary to settle the dispute presented thereto, without considering the impact of the reflection of this text on the personal interest of the plaintiff. This agrees with what is stated in the explanatory memorandum of the SCC draft law, that the consideration of a constitutional action by way of reference has targeted widening the scope thereof, to confirm the adherence of the judicial rulings to the right constitutional rules. Fourth: in case the board of commissioners at the State Council Courts realizes suspicion of a legislative text's infringement of the constitution's provisions; it shall state this in a report to be submitted to the court. In this regard, the court to which the report is submitted shall

be responsible for the issue, either by the consideration or elimination thereof. In case the board of commissioners sees – from an initial perspective – that the legislative text contradicts the constitution, it should first check its validity while being set forth before the SCC. If the trial court – appeal examination division – has ruled that the texts referred thereto to decide its constitutionality include unconstitutionality defect and are necessary to settle the substantive lawsuit, the interest in the constitutional lawsuit shall exist.

Whereas concerning the intervention requests submitted by each of Mr/Ayman Zakaria Hassan, Mr Dr/Gaber Gad Nassar, Mr/Ashraf Abdullah Mohamed, Mr/Mohamed Ibrahim Amin, Mr/Ali Ahmed Mohamed Borham, Mr/Mohamed Ahmed Shehata, Mr/Ahmed Abo Baraka, Mr/Mohamed Hassan Abo Al-Enein and Mr/Gamal Tag Al-Din, the case law of SCC court decides that the condition of accepting the intervention in the constitutional lawsuit shall be submitted by who was a party in the subjective lawsuit, which the ruling in the constitutional issue affects the ruling thereon. If the intervention requester is not represented in this lawsuit, he shall not be considered from the concerned parties in the subjective lawsuit and his intervention shall be rejected. Whereas the aforesaid and the intervention requesters are not represented in the subjective lawsuit, neither as original opponent nor interveners, due to non-issuance of a ruling from this court – either explicit or implicit – on accepting their intervention therein and thus they are not considered from the concerned parties in the proposed constitutional lawsuit and their intervention request shall be declined. This was accompanied by declining all the defenses and requests they filed in this lawsuit, considering that the review thereof follows accepting their intervention in the constitutional lawsuit, which the conditions thereof are not fulfilled.

Whereas article (2) of law No. 120/1980 on the Shura Council, after being replaced by decree No. 120/2011, stipulates in its first paragraph that "Two-thirds of the members of the Shura Council shall be elected through the closed list system, while the remaining third shall be elected through the individual system. The number of members representing each governorate through the closed list system must be equal to two-thirds of the [total] number of seats allocated to the governorate, and the number of members representing the governorate through the individual system must be equal to one-third of the [total] number of seats allocated to the governorate."

Paragraph 5 stipulates that "Subject to the provisions of Article 16 of the present law, the number of candidates on any of the party lists shall be equal to two-thirds of the number of seats allocated to the electoral district, provided that at least half of them are farmers and workers and that they alternate on the list..."

Article (8) of the said law, replaced with decree law No. 109/2011, stipulates that "The nomination request for the Shura Council membership shall be submitted in writing to the elections committee in the governorate where the candidate desires to nominate himself for one of constituencies thereof, during the period to be determined by a decree of the Higher Elections Commission, provided that this period shall not be less than five days from the date of opening the nomination period..."

The provisions stated in the 3 previous paragraphs shall apply to closed party-list candidates. The respective authority of the relevant party/parties shall handle the

candidacy procedures of such candidates through submitting an application using the Higher Elections Commission form..."

Article (24) of this law, replaced with decree law No. 109/2011, says "Subject to the provisions of the present law, the provisions prescribed in law No. 73 for the year 1956 regulating the exercise of political rights, and the provisions prescribed in articles (2),, (9-Ibid "a"), andof law No. 38 for the year 1972 concerning the People's Assembly shall apply to the Shura Council."

Article (9-Ibid "a") of law No. 38/1972 on the People's Assembly, added by decree law No. 108/2011, says that "After the objection committee has decided on the objections presented in the previous article, the election commission in a governorate shall produce two final candidate lists, one containing the names of the individual candidates and the other containing the names of candidates included in party lists. The candidate lists shall record the status of each candidate, the political party for which he is nominated, and if applicable, the electoral symbol attributed to each candidate or party list..."

Whereas Article (5) of the decree law No. 120/2011 amending some provisions of the law No. 38/1972 on the People's Assembly as well as law No. 120/1980 on the Shura Council says "Whoever applies for the membership of the People's Assembly or the Shura Council under the individual electoral system shall not be affiliated to any political party. Membership shall only remain valid as long as a member remains unaffiliated to any political party. Should such status lapse, the membership shall lapse as well by a majority of two-thirds of the People's Assembly/Shura Council members".

This provision was annulled by virtue of decree law No. 123/2011, where Article (1) thereof says :Article five of Law 120/2011 shall be cancelled, where Article (2) states that such decision should be published in the official gazette and should be treated as a law, applicable the day it is published.

Whereas the interest, which is the condition for accepting the constitutional case, requires a connection between it and the interest in the objective lawsuit, such that deciding on the constitutional issue shall be necessary for ruling on the related requests submitted to the subject court. For this reason, and because the dispute based on which the lawsuit is filed requires the stay of execution and then the annulment of the Higher Election Commission's (HEC) decision to announce the Shura Council election results in Luxor district, including the runoff held among 4 candidates from the individual electoral system and the consequent results thereof.

Whereas the referral ruling as well as the documents presented by the State Lawsuits Authority to the Administrative Justice Court and the Higher Administrative Court indicate that the Freedom and Justice Party (FJP) list presented by FJP representative to the head of the election monitoring committee in Luxor on 20/10/2011 included 4 names, the second of which is Saied Ahmed Mohamed Mahmoud (Workers), and whereas the latter submitted a request to the head of such committee on 24/10/2011, requesting that his name be transferred from FJP list to the individual system (Workers). His request was met and he took part in the first round of the Shura Council elections under the individual electoral system as illustrated in the annexed

ballot paper. He was announced among the winners in this phase. Then, he took part in the runoff election and won the membership of the Shura Council. He was granted membership card no. (139), as stated in the session minutes dated 07/07/2012 at the Higher Administrative Court, according to the statement made by his lawyer at the time he filed an application for joint intervention at the administrative body. Such means that during the Shura Council elections conducted in Luxor under the individual electoral system in February 2012, candidates fielded by political parties competed with independent candidates unaffiliated to such political parties, including the plaintiff.

Based on the above, and whereas the first paragraph of Article (2) of law No. 120/1980 on the Shura Council determines the percentage that shall be elected under each electoral system and says that two thirds of the members of the Shura Council shall be elected by the closed party-list system and one third shall be elected by the individual system. Also, the first paragraph of Article (8) of this law, replaced by decree law no. 109/2011, sets out the requirements for applying for the Shura Council membership in the constituencies allocated for the individual electoral system, and refers Article (24) of the same law, replaced with decree law No. 109/2011, to the provisions of Article (9 Ibid "a") of law No. 38/1972 on the People's Assembly, added by decree law No. 108/2011, so that they apply to the Shura Council. Therefore, the final candidate list under the individual system shall include the party with which the candidate is affiliated. This comes along with the legislature's explicit desire for limiting candidacy for the membership of the People's Assembly within the two thirds allocated for closed-party list electoral system to members of political parties only and granting the right to candidacy for the remaining one third allocated for individual system to both political party candidates as well as independents who are not affiliated with political parties. So, the recognition of such competition left those affiliated to political parties with two options for applying for the Shura Council membership. Those options are the closed-party list and the individual system, of which the independent candidates are deprived, where they may only run for such membership through the one third elected under the individual system, even though party candidates compete with them in this percentage as well. Hence, the interest in the submitted lawsuit exists through challenging paragraph (1) of Article (2) of law No. 120/1980 on the Shura Council, replaced with decree law No. 120/2011, as well as the first paragraph of Article (8) of the same law, replaced with decree law No. 109/2011, which allows both political party candidates as well as independent candidates not affiliated with any political party to submit a nomination request for the Shura Council in the constituencies allocated for the individual electoral system. Deciding upon the constitutionality of such provisions will impact the objective lawsuit, the requests submitted therein, and the judgment made by the subject court. The scope of such lawsuit, and the interest thereof, extends to include Article (24) of the law on the Shura Council, replaced with decree law No. 109/2011, which says "...The provisions of Article (9-Ibid"a") of law No. 38/1972 concerning the People's Assembly shall apply to the Shura Council", added by decree law No. 108/2011, which stipulates that the final candidate list under the individual system shall include the party with which the candidate is affiliated. Whereas Article (24) of the law on Shura Council requires the referral of Article (9-Ibid"a") of the law on People's Assembly so that it applies to the Shura Council means that the provision of such article shall be included within the provisions of the Shura Council law and be an integral part of it that is subject to whatever applies to the rest of the law provisions. Hence, such is not affected by the

previous ruling on the non-constitutionality of Article (9-bis"a") of the law on People's Assembly, by virtue of the ruling issued in the session held on 14/06/2012 on the constitutional case no. 20/34 "judicial", since the effect of such ruling is limited to the article provisions on the People's Assembly. However, such effect does not include the Shura Council. Since Article (24) of the law on Shura Council is inseparably connected to the first paragraph of Articles (2) and (8) of the same law, the scope of the lawsuit shall be extended to include it. It shall also be extended to include Article (1) of decree law no. 123/2011 since it is inseparably connected to the same provisions. The 2 provisions shall be presented to court to decide on constitutionality thereof.

Whereas the SCC has ruled in 14/6/2012 in the constitutional case No. 20/34 Judicial Year, on the unconstitutionality of article 1 of the decree law No. 123/2011 and the annulment of article 2 thereof; which indicates that all the provisions stated in the present decree law are no longer existing as of the date of its issuance pursuant to the provisions of articles (48 and 49) of the SCC law promulgated by law No. 48/1979. This adjudication has its own absolute argument against the whole, and with respect to the state with all its various branches; since it is a conclusive decision on the claim preclusion. This an argument that prevents the controversy thereabout or putting it once again to review, which makes the disagreement according to this text, settled.

Whereas the referral ruling criticizes the challenged texts that they infringe the right to election and principles of equity and equal opportunity to allow the competition of party candidates with independent candidates on the third of the individual seats in contravention of the provisions of the constitutional declaration.

Whereas it is decided that the present court's protection of the constitution focuses on the existing constitution; however as long as the constitution has no retroactive effect, the provisions of the former constitution, under whose provisions the challenged text has been issued, shall be enforced as long as this text has been enforced until it was annulled or replaced by another one within the enforcement lapse of that constitution. In such case, and where the current constitution has adopted, pursuant to article (231) thereof, a political system contradicting with what the legislator followed in law No. 120/1980 and the amendments thereof on the Shura Council, where it stipulates that "the legislative elections following the date of enforcement of the constitution by third of the seats for the list system and another third for the individual system. Parties and independent candidates may apply for candidacy in both systems", which indicates the repeal of the aforesaid law as of the date of enforcement of the new constitution on 25/12/2012. Thus, the constitutional document governing the constitutionality of the constitutional declaration issued on 30 March 2011, amended by the constitutional declaration issued on 25/9/2011.

Whereas article (1) of the constitutional declaration issued on 30th March 2011 stipulates that "The Arab Republic of Egypt is a state that has a democratic system based upon citizenship" and articles (32, 35, 38, 39, 40, 41) of the present declaration has determined the rules of People's Assembly and Shura Council. The significance of these provisions and rules is that the constitutional legislator is keen on ensuring the political rights for all citizens, of which the rights of candidacy and election are its main elements, and expressing opinion on the constitution and enabling them to practice such rights to contribute to public life and since it is a democratic means to

express their opinions, select their leaders and representatives in managing the country's affairs, forming parliamentary councils. Hence, the citizens' practice of their political rights, of which candidacy and election rights are in particular the most important features and applications, either as voters enjoying the right to select their candidates based upon out of conviction about their ability to express the issues that concern them or as candidates contesting, pursuant to fair rules, to win the seats they compete therefor. Hence, the legislator's practice of his discretionary authority in regulating these rights is subject to the limits and regulations set out by the constitutional declaration and so that he may not invoke the organization of the electoral process, wither in respect with its time, place or the way it will be managed, to infringe the rights which the constitutional declaration connected therewith, which would hinder its essence, detract from it, affect its existence or include the waste or confiscation thereof.

Whereas based on the case law of this court, the principle of equality before the law – stated by article (7) of the aforesaid constitutional declaration – is neither an inflexible leading principle contrary to the practical necessity, a hard rule that denounces all forms of discrimination nor a guarantee of the arithmetic accuracy required by the absolute justice balances among things. Should the state may take the measures it finds appropriate to regulate a specific subject, avoid an evil that should be combated and should replacing the greater harm by a lesser harm is a necessity, its application of equality principle may neither reveal its impulsive acts, be a predictor of embracing inequitable stances that raises rancours which result in breaking the rules of the behavior thereof nor may it be an aggression against the strength of its power, its stance should be moderate in dealing with the citizens. It should not discriminate among them either by dictation or forcibly. Accordingly, the legislative authority may, according to rational standards, not differentiate among positions of which the givens neither combine nor contrast in the foundations upon which they are based; provided that the discrepancies among them are real, with no fabrication or imagination, based on the grounds that what protects equality principle and does not lessen its content is that organization which establishes a legislative division where the legal texts it includes relates to the legitimate purposes it seeks. If the evidence is based upon the separation of these texts from their purposes, discrimination is an unconsidered disorder. The same thing happens if the relevance of the means to the objectives is inappropriate. At this point, discrimination is considered based upon facts that it cannot be attributed to, thus it becomes constitutionally legitimate.

Whereas, the content of the equal opportunity principle, which is a branch of equality principle, and is considered one of its elements, is connected to, based on the case law of this court, the opportunities which the state pledges to offer and whereas its enforcement takes place when competing for such opportunities and the constitutional protection of those opportunities aims at determining priority according to objective bases necessary for public interest.

Whereas political system in Arab Republic of Egypt based on multi-partisan system, - under the 1971 constitution, which confirmed in Article (4) of the constitutional declaration – it's intended to turn away from the single popular system to the multi-partisan system to build state political system on it, taking into consideration that the multi-party system's main goal is to deepen democracy and to lay its foundations in the framework of the right to election and candidacy, which are considered an

entrance and a solid base to it. Hence, constitutional declaration ensure them to all citizens have popular sovereignty, as per article (3) of the constitutional declaration, and exercising it as prescribed in such declaration. It is clearly evident that multi-partisan system has opinions which may contradict or conform, may disagree or agree, yet, national interest remain to be a framework and a standard to evaluate it and to control its activity and it's an interest on which all the people depend. Therefore, multi-party system is not a means used by the constitution makers to replace dominance; however, they considered it a correct road for national work, through democracy of dialogue in which there are many contradictory opinions. Provided that the role played by political parties, eventually, remains connected with the will of the electorate, which is crystallized through free choice of representatives in parliaments, and through the weight it gives to competitors, what is confirmed in the constitution declaration by ensuring rights to voting and candidacy, and equality in exercising both rights, and never differentiate in bases of exercising them, never discriminate between citizens concerning that point. However, it ensured the two rights to all citizens – who meet the set conditions – of different political belongings and opinions, in order to guarantee that national work remain to be group work without discrimination among citizens. Through such great efforts in building the national work, political parties work in cooperation with those who don't belong to them to establish its pillars. Thus, the true content of the text of article (3) in the mentioned constitution declaration is determined; the text that doesn't give popular sovereignty to a specific bracket and excludes another, and doesn't impose dominance by a certain group. Within this framework lies the value of the multi-partisan system, taking into consideration that it's a constitutional approach towards deepening the concept of democracy which doesn't grant political parties a role in the national work that exceeds limits of confidence the electorate give to their candidates, who fight the election with others in accordance with objective bases not restricted by a creed of any type, or by any type of political or non-political belonging, provided that same opportunities are available for all citizens - who meet the set conditions – to be able, through them, to share equally in the formation of the national policy and determining its final features. The constitutional declaration ensured that because it doesn't contain any text that enforces citizens to accede to political parties or confines the exercising of political rights, particularly the rights to candidacy and voting, to those belong to parties. This ensures the freedom of the citizen whether to belong or not belong to political parties, and in exercising the mentioned political rights through or away from political parties. Undoubtedly, the two concepts of equality and equal opportunities, which are the main principles and factors concerning that affair, necessitate treatment of all candidates equally, and on a base of equal opportunities to all, without discrimination based on partisan belonging. Discrimination, in such case, is based on difference in political opinions, which is banned in accordance to the constitution. Since, it's not acceptable that party system turns to be a restriction to general freedoms and rights, among which is the right of candidacy, which is one of the general rights determined by the nature of the parliamentary democratic systems, and imposed by its fundamental pillar which based on approving the concept of granting people sovereignty, in accordance with the text of article (3) of the constitutional declaration.

Whereas, it's determined, based on the case law of this court, that explanation of texts of the constitutional declaration will be based on considering them a single integrated unit, and the meanings come from them must be connected, in the manner that no text

may be explained separately, yet, such explanation should be based on understanding its significance, in order to achieve consistency, not contradiction, between them.

Whereas Article 38 of the Constitutional Declaration issued on March 30, 2011, amended by the Constitutional Declaration issued on September 25, 2011, under which the elections were held, provides that: “The law shall regulate the right to candidacy for the People's Assembly and the Shura Council according to an election system that combines both the closed-party list system and the individual electoral system, at the ratio of two thirds for the former, and one third for the latter.” The significance of the wording of that provision, in light of the principles of equality, equity, and the rules of justice, was that limiting candidacy for the membership of the Shura Council within the two thirds allocated for closed-party list electoral system to members of political parties was set against limiting the right to candidacy for the remaining one third allocated for individual system to independents who were not affiliated with political parties. This is because the constitutional legislature adopted this division to establish intellectual and political diversity within the Shura Council, so that the Council, in its final formation shall represent society's visions, all its varied spectra, streams, and inclinations, and encompass them, so that they play an effective role in the Council's performance of its constitutional duty provided in Article (37) of the Constitutional Declaration. What contradicts this aim is the course taken by the legislature in the provisions appealed against, where they limited candidacy for the two thirds allocated to election by the closed-party list system, to those affiliated with political parties, as confirmed by the provisions of Article 8, para.4, of Law 38/1972, replaced with Decree Law 109/2011, which stipulates that "The respective authority of the relevant party/parties shall handle the candidacy procedures of such candidates through submitting an application using the High Elections Commission form." However, the legislature did not make the application for the remaining one third allocated for the individual system limited to independent candidates unaffiliated with political parties. It was rather left open for competition among independents and political-party candidates, contrary to what the constitutional legislature intended, as expressed by Article (1) of the Decree Law 123/2011, by repealing the provision of Article (5) of Decree Law 120/2011, and confirmed by the rest of provisions appealed against – as mentioned previously. Hence, the legislature gave political party candidates two opportunities for winning the membership of the Shura Council, one through closed party lists, and the second through the individual system candidacy. Nevertheless, the only opportunity that was given for independent candidates not affiliated with those parties was limited to the one third allocated to the individual system, where they are competed against and rivaled by candidates affiliated with political parties, who enjoy the financial and moral support of the parties to which they belong, which exploit all their available capabilities in supporting them. However, this is not available to independent candidates unaffiliated with any parties, violating Article (38) of the Constitutional Declaration, and poses an infringement of the content, elements, and guarantee of right to candidacy. It, also, discriminates between two classes of citizens, violating the principles of equality and equal opportunity, as it entails discrimination between the two classes in treatment and in the opportunities available to gain membership, without this discrimination being, in all its aforementioned aspects, justified by a subjective rule related in origin to the nature of the right to candidacy and the requirements for practicing it, through which and with which equality and equal opportunity are achieved. This is in addition to the course of the legislature representing a violation of the bases of justice, which are

confirmed by Article (5) of the Constitutional Declaration, which does not deviate in aim from the Law as, as established in the administration of justice in this court, as an instrument of realizing such justice. The law shall not be just unless it achieves goals thereof. If the legislature deviates from them, and violates the true values they embrace, as pursued in the provisions appealed against, they would terminate the accord within the scope of their implementation, and shed in vain every value of their presence, and contradict – accordingly – the bases of justice.

Whereas the aforementioned constitutional defect extends to include the entire election system determined by the legislature and included in the provisions appealed against, whether it is the two-third percentage allocated to closed-party lists or the one third allocated to the individual system, since the limitation thereof to the latter system alone leads to, besides what was previously mentioned, the violation of the principles of equity and equal opportunity among political-party candidates, according to the type of the electoral system based on which they were nominated. Also, the competition between party candidates and independents for the one third allocated for the individual system had a significant effect on the two-thirds allocated for closed-party lists. If it were not for such competition, party lists would have been re-arranged, according to the priorities of each party; hence affecting the opportunities of the candidates of such parties for winning the membership of the Shura Council.

Whereas in the light of all the above, it is evident that the whole of the first paragraph of Article (2), the first paragraph of Article (8), and Article (24) of law No. 120/2011 on the Shura Council, amended by decree laws 109 and 120 of the year 2011, determining their extent as stated before, are in violation of the aforementioned provisions of the Constitutional Declaration, which requires ruling them unconstitutional.

Whereas Article (5) of the current constitution provides "Sovereignty is for the people alone and they are the source of all authorities. The people shall exercise and protect this sovereignty, and safeguard national unity in the manner specified in the Constitution" and whereas Article (225) thereof says "This Constitution shall enter into force as of the date of announcing the public approval of it in a referendum, based on a majority of valid votes of the referendum participants."

Whereas popular sovereignty, as established in the administration of justice in this court, shared by all citizens, since they are the basis and source of such sovereignty, which they shall exercise and protect through national unity, via enforcing the provisions of the constitution which overtop all other authorities in the state. Consequently, the provisions of the Constitution shall be enforced upon the enactment thereof, in accordance with the result of the constitutional referendum that was held. The SCC may not review or monitor such provisions since the Constitution is the reflection of the popular will and the aggregation of the diversified aspects thereof at the entire regional level. The SCC's adoption of the Constitution shall emphasize the intention thereof to run the state, including all structures thereof, affairs according to the provisions thereof, with the Constitution being the basis of the ruling regime therein, a binding framework of the people's duties and freedoms, and a pillar of all aspects of the constitutional sphere. This is whether the Constitution meets the aspirations a sound state-citizen relationship or neglects/avoids some aspects thereof. The Constitution will always be above every defect on top of the legal hierarchy.

Even though the unconstitutionality of the aforementioned articles leads to the invalidity of the Shura Council, since the elections thereof were held on such basis, the effects of that invalidity have been halted by the new constitution of December 2012. Article (230) of the new constitution specifies that the Shura Council, in current formation thereof, takes over legislative powers until a new House of Representatives is elected at which point the legislative powers are transferred to the latter. A new Shura Council is to be elected within a year of the date of the first meeting of the new Lower House." So the Shura Council, in current formation thereof, remains the holder of legislative powers as Article (230) of the Constitution stipulates. After a new House of Representatives is elected, the effects of this ruling on the unconstitutionality of the aforementioned articles can take their course.

This shall neither include the constitutional declarations issued by the President of the Republic, which were repealed by virtue of the first part of Article (236) of the Constitution, nor the provision provided for by the last part of this article which states that their consequent effects shall remain valid and in force, where no effect was proved to be resulting from such declarations in this regard. This entails the lapse of the allegations made by the plaintiff concerning such declarations as well as the defenses raised in this regard.

For the above reasons

The court hereby rules:

First: The unconstitutionality of the provision of the first paragraph of Article (2), of Law 120/1980 on the Shura Council, substituted by Decree Law 120/2011.

Second: The unconstitutionality of the provision of Article (8), paragraph 1, of that law, substituted by the Decree Law 109/2011, providing a general right to submit candidacy applications for the Shura Council elections within constituencies subject to the individual electoral system, to those affiliated to political parties, in addition to independent candidates who are not affiliated with those parties.

Third: The unconstitutionality of the provision of Article (24) of the said law, substituted by Decree Law 109/2011, for providing that Article (9-Ibid "a") of law No. 38/1972 on the People's Assembly applies to the Shura Council as well.

Fourth: This verdict is not to be implemented until a new House of Representatives is elected as Article (230) of the Constitution stipulates.

Secretary

Court President

In the name of the people
The Supreme Constitutional Court (SCC)

In the public session held on Sunday, June 2, 2013 AD, corresponding to Rajab 23, 1434 AH

Under chairmanship of Justice Maher Al-Beheiry **Court President;**

In membership of chancellors: Adly Mahmoud Mansour, Anwar Rashad Al-Aasy, Abdel Wahab Abdel Razeq, Mohamed Abdel Aziz Al-Shenawy, Maher Samy Youssef and Mohamed Khairy Taha Al Naggar..... **Vice-Presidents;** and

In presence of Chancellor Hamdan Hassan Fahmy.....**Chairman of Board of Commissioners**

And Mohamed Nagy Abdel Samee'**Secretary**

Has issued the following ruling:

In the case registered in the SCC schedule under no. 166 of the “constitutional” judicial year 34, referred by the Administrative Justice Court in Cairo, first department, by virtue of its verdict issued in the session dated 23/10/2012, lawsuit No. 45931 of the “constitutional” judicial year 66.

Filed by

1. Khaled Fouad Mohamed Hafez
2. Ihab Hafez Ragheb

Against

1. Head of the Supreme Council of the Armed Forces;
2. Chairman of the People's Assembly;
3. Chairman of the Shura Council;
4. President of the Republic; and
5. Head of the Constitution Constituent Assembly (CCA)

Proceedings

On October 30, 2012, the clerical office of the Supreme Constitutional Court received lawsuit No. 45931 of the judicial year 66, following the ruling issued by the Administrative Justice Court in Cairo, "first department", ordering the stay of the lawsuit proceedings and the referral of papers thereof to the SCC to decide upon the constitutionality of the provisions of Article (1) of the law No. 79/2012 on the criteria for electing CCA members for drafting a new constitution. This article says that the decisions made by members not appointed in the People's Assembly nor the Shura Council regarding the election of CCA members who are drafting a new constitution

for the country shall be subject to the monitoring of the constitutionality of parliamentary laws and decisions.

The State Lawsuits Authority presented a memorandum of defense, in which it originally requested a verdict ruling that the CCA is not authorized to consider the lawsuit, and alternatively requested the rejection of the lawsuit since it does not meet the '*interest*' requirement. The memorandum, as an alternative, also requested the rejection of the lawsuit as a whole.

Once the lawsuit had been drawn up, the Board of Commissioners submitted a report presenting opinion thereof.

The lawsuit was reviewed in the session dated 12/05/2013, in presence of Khaled Fouad Mohamed Hafez, the first plaintiff in the substantive lawsuit, who decided to settle the pendente in the present lawsuit as well as lawsuit no. 45931 of the judicial year 66 "administrative justice". The representative of the defendants has accepted such. Also, Alaa Samir Mahmoud was present and lodged a request asking that he be allowed to jointly intervene in the petition with the second plaintiff. The court decided to issue its ruling in today's session.

Court:

Having reviewed the paper and after deliberation.

Whereas the facts – as seen after reviewing the referral ruling and the other papers – can be summed up that the 2 plaintiffs have filed lawsuit No. 45931/66 "Judicial Year" before Cairo Administrative Court against the defendants demanding to rule on the stay of execution of the challenged resolution together with the consequent effects, particularly suspending the proceedings of the election of the Constitution Constituent Assembly members, the annulment of all the resolutions following the challenged resolution and repealing it, based upon the fact that Cairo Administrative Court has previously issued its ruling on lawsuit No. 26657/66 "Judicial Year" in 10/4/2012 session on the stay of execution of the formation of the first CCA that was elected to prepare the new draft constitution of the country. Then, Supreme Council of the Armed Forces (SCAF) once again called the members mentioned in article (60) of the constitutional declaration issued on 30 March 2011 to select the members of the new CCA. The second defendant has issued a resolution dated 7/6/2012 on starting receipt of CCA membership candidacy applications on 9-10/6/2012. People's Assembly has been called to convene an urgent session on 11/6/2012 to discuss the law on CCA formation standards. After the People's Assembly's approval during this session, the draft law has been sent to SCAF to be issued. The two defendants claimed that the resolution on starting receipt of CCA membership candidacy applications is null since it infringes the requisite of the previous ruling issued by the Administrative Court as well as issuing it before issuing the law regulating the election of CCA members and determining the condition that should be met in the candidates for its membership, so that the candidates qualified for such task shall be selected in accordance with specific rules and regulations that achieve equity and equal opportunities. While hearing the said lawsuit, the two plaintiffs claimed in 9/10/2012 session a stay of execution and then the annulment of the resolution issued in the joint meeting of the People's Assembly and Shura Council non-designated members dated 12/6/2012 on the

election of the second CCA members. Furthermore, the State Lawsuit Authority and the jointly interfering litigants raised a plea that the Administrative Court does not have jurisdiction on the state level to hear the lawsuit based on law No. 79/2012 issued on 12/7/2012, of which article 1 stipulates that the resolutions of the non-designated members of the People's Assembly and the Shura Council on the election of CCA should be subject to the control on the constitutionality of the laws and parliamentary decrees. If this court sees that the resolution issued by the non-designated members of the People's Assembly and Shura Council on the election of the members of the CCA which is the subject matter of the substantive lawsuit is not a parliamentary act, nor a legislation in the objective sense according to which the SCC imposes its judicial jurisdiction thereupon; however it is in fact an administrative resolution whose legality shall be decided by the State Council at an Administrative Litigation Authority, hence article 1 of law No. 79/2012 infringes the provision of article (48) of the constitutional declaration issued on 30 March 2011 which vested settling the administrative disputes in the State Council. It also infringes article (21) of the aforesaid constitutional declaration which bans laws from stipulating the immunization of any administrative act or resolution against judicial control. Accordingly, this court has decided in 23/10/2012 session to stop the lawsuit proceedings and refer its papers to the SCC to decide on the constitutionality of this text regarding what it indicates that the resolutions of the People's Assembly and Shura Council non-designated members on the election of the CCA members shall be subject to the control on the constitutionality of the laws and parliamentary decrees.

Whereas article 1 of law No. 79/2012 on the standards of the election of the CCA members stipulates that "without prejudice to the provision of article (60) of the constitutional declaration, non-designated members in the People's Assembly and Shura Council shall elect a constituent assembly composed of 100 members to prepare the country's new draft constitution, as well as 50 alternative members. There resolutions in this regard shall be subject to the control on the constitutionality of the laws and parliamentary decrees".

Whereas the State Lawsuit Authority has raised a plea that the SCC does not have jurisdiction to hear this lawsuit based upon the fact that the legislative text referred thereto includes a provision that is considered from the proceedings of issuing constitutions that are inherently from the political acts which the SCC case law has decided to exclude from the scope of its control.

Whereas this judgment is refuted that what should be taken into consideration in determining the legal framing of the "political acts", and based upon the law case of this court, is the nature of the act itself, not the descriptions that the legislator may apply thereto whenever its nature is in contrast to such descriptions; since the exclusion of the "political acts" from the constitutional litigation mandate comes only to achieve the political considerations which require - due to the nature of these acts and their close connection to the state's political system or internal or external sovereignty, to take them away from judicial control in response to preserving the state, defending its sovereignty and guarding its supreme interests. This requires granting the entity executing these acts, either it is the legislative or executive authority, broader discretion to achieve the country's good and safety, without entrusting the litigation with the power to comment on the decisions it takes in this regard; since considering and commenting on them requires information, regulations

an evaluation scale that are not available for the litigation as well as such matters are inappropriate to be raised explicitly within the courts. Hence, the SCC shall solely determine - when considering the nature of the matters regulated by the challenged texts - whether the texts before it are considered as "political acts", so they shall be excluded from its mandate of controlling constitutionality, or not and hence they shall be subject to its control.

Whereas the legislative text referred from the Administrative Court to examine the constitutionality thereof vest the jurisdiction to consider the resolutions issued by the People's Assembly and Shura Council non-designated members on the election of the CCA to the entity concerned with the judicial control on the constitutionality of laws. Hence, whatever the opinion in this referred legislative text is, referral has been done within the area of the judicial jurisdiction of this court and its practice of its judicial mandate in controlling the constitutionality of laws.

Whereas the aforesaid is not affected by saying that law No. 79/2012 – which included the referred text – has been issued in a matter related to the issuance of the constitutions that are considered from the political matters in the case law of this court which takes it out of its judicial control; since this comment is only a criticism of the law itself due to exceeding the limits of the jurisdiction of the legislative authority and intruding the circle where the full jurisdiction is given to the constituent authority. This requires imposing the control of this court upon this law as it assumes judicial control over the constitutionality of the laws and regulations.

Whereas the State Lawsuit Authority has also ruled to decline the present lawsuit due to the infringement of the interest condition; since the two plaintiffs in the constitutional lawsuit has no direct personal interest in settling the dispute thereof; since the present lawsuit seeks determining the rule of the constitution with regard to the text which determined the standards of selecting the CCA members. The said text has not been applied on any of the two plaintiffs in a manner that has violated the rights ensured by the constitution which accordingly inflicted harm directly thereon. This shall not be affected by the fact that one of the two plaintiffs has been a candidate for the CCA membership; since he has not gained a legal position, as he has not been elected as a CCA member yet. Thus, he only has a hope that does not give him a direct personal interest in challenging the standards of its formation.

Whereas this judgment is refuted that the origin of the legal basis is that it comes into force since the date of its enforcement on the facts that take place under it until its annulment. If the legislator replaced it with a new basis, it should be applied as of the date of its enforcement and the old basis should be neglected as of the date of its annulment. Accordingly, the range of the enforcement of each of the two bases with respect to the timing. The legal positions that have been established – in presence and impact – under the old legal basis remain subject to it solely; whereas the positions or facts established under a legal basis and their presence has not been completed, then a new legal basis has been issued that governs this position or that fact, the provision of the new legal basis shall be enforced.

Whereas law No. 79/2012 on the standards of the election of CCA members, which was issued on 11/7/2012, enforced as of the day following its publication on 12/7/2012, stipulates in article 1 thereof that considering the resolutions issued by the

People's Assembly and Shura Council non-designate members on selecting the CCA members shall be entrusted to the entity vested with controlling the constitutionality of laws, SCC, the substantive lawsuit has been considered before the Administrative Court until a plea has been raised before it that it has no jurisdiction on the state level to consider the lawsuit in observation of this text, the code of procedures stipulates in article (1) thereof that the laws amending the jurisdiction shall be enforced on the suits of which the pleading has not been yet closed, which is fulfilled in the lawsuit before the Administrative Litigation body, that court should, after suspecting the infringement of article (1) of law No. 79/2012 of the constitution's provisions, refer the subject of its constitutionality to the entity which the constitution vested with the judicial control over the constitutionality of laws, since the jurisdiction of any court is not a pure right to it or to any other court, it may adhere to or waiver if it wishes, however it is a mandate which the constitution vested therein. Moreover, no court or body which the legislator vested with the judicial resolution of a particular dispute may apply a legislative text necessary to settle the dispute presented thereto if it finds out that it initially contradicts the constitution; since such suspicion shall oblige it to check the validity thereof through presenting it to the SCC to give its firm decision thereon. Thus, the plea expressed by the State Lawsuit Authority is inappropriate and must be declined.

Whereas the first plaintiff has decided to abandon the litigation in the lawsuit under review, and the attorney representing the defendants has accepted that, and the abandonment of litigation in the lawsuit is regulated by the code of procedures in articles 141 and et seq., which applies to the constitutional lawsuits in accordance with article 28 of the SCC law promulgated by law 48/1979 and based on the case law thereof, this court shall rule that the plaintiff Khaled Fouad Mohamed Hafez's abandonment of the litigation in the lawsuit under review shall be proved.

Whereas the intervention request presented by Mr/ Alaa Samir Mahmoud and the two joint intervention requests submitted at the preparatory session held on 10/2/2013 before the Board of Commissioners of this court presented by Mr/ Mahmoud Abo Al-Enein, as the attorney of Mr/ Mokhtar Mohamed Al-Ashry attorney and Mr/ Mohamed Ahmed Shehata, the condition for approving the joint intervention – and based on the case law of this court – is that the applicant should be a party in the substantive lawsuit which the ruling in the constitutional matter shall affect the ruling thereon.

Whereas the intervention requesters are not parties in the substantive lawsuit, even after submitting their requests to the Administrative Court, the papers did not show that this court has decided whether to accept or reject these requests; thus, they are not considered parties in the litigation presented to the trial court yet which accordingly indicates deciding to reject their intervention.

Whereas the scope of the constitutional lawsuit is determined as it's necessary to decide on objective requests, and to meet the interest of the plaintiff. Then, the scope of the presented lawsuit is determined according to the provision of article (1) of law #79/2012; stipulating that decisions by un-appointed members in People's Assembly and Shura Council on election of members of the Constituent Assembly vested with the creation of a new constitution, are under supervision on constitutionality of parliamentary laws and decisions.

Whereas, the case law of this court is based on the fact that rules of constitution, which are above any other legal rules, and which regulate values, upon which the group based, require that all legal rules – whatever dates of enforcement thereof - should be subject to the current constitution, to ensure its compliance with its concepts, thus, provisions of such rules don't scatter among various contradictory systems, in the manner that hinders its enforcement in accordance with the objective standards required by the current constitution as a condition to its constitutionality.

Whereas, impediments set by the ruling of referral at the appealed text, are under objective allegations based on the violation of a constitution rule by a specific legislative text concerning its objective content. Therefore, such court functions its supervisory role on the referred text in the light of the rulings of the current constitution that is issued in December 2012.

Whereas, the case law of this court decided that the constitution is the supreme decree that establishes the rules on which the ruling regime depends, determines public freedoms and rights, arranges fundamental guarantees to protect them, determines functions and powers of legislative, executive and judicial powers, set limitations and restrictions that control their activities, in a manner that prevents intervention from any of them in the powers of another one, or overlap in exercising jurisdictions accorded to it by constitution.

Whereas, the constitution issued in December 2012, accord enacting laws to the legislative power, in accordance with the provision of article (115) “The Council of Representatives holds legislative power, and is responsible for approving the state’s general policy, the public plan for economic and social development and the annual state budget law. It exercises control over the executive power’s work, in the manner prescribed by the Constitution.

Whereas, vesting legislative power with enacting laws – in accordance with article (115) in the constitution – doesn't grant it the power to intervene in functions of any other power; thus, it, rather, doesn't have the power to intervene in the functions of constituent power - vested with drafting the constitution – which, alone, has the power to set standards and controls that regulate performance of missions vested to it.

Whereas, constitutional amendments to articles of 1971 constitution, after revolution of 25 January 2011, included amendment to article (189), and adding a new article (189) bis. In accordance with such amendment, an elected constituent assembly has vested with the mission of drafting a new constitution, provided that members of such assembly will be elected from un-appointed members of the first People’s Assembly, and Shura Council following announcement of results of referendum on constitution amendments. The people accept such amendment in the referendum conducted on 19/03/2011. On March 30, same year, SCAF – vested with ruling the country during the transitional period following revolution of 25 January – issued a constitutional declaration, including constitutional rules regulating rule of the country during the transitional period that ends on electing the two legislative councils, - People’s Assembly and Shura Council – and electing a president. Besides, the declaration included amended and added articles in 1971 constitution, accepted by the people in the referendum. Article (60) of such declaration repeated provisions included in the

text of articles (189) and 189 Ibid in 1971 constitution, according to which election of members of the constituent assembly is confined to un-appointed members in People's Assembly and Shura Council, within appointments and procedures prescribed in such text, which didn't present any provisions that should be taken into account on drafting the new constitution. Such approach emphasizes that the constitution legislator wanted to produce all stages of drafting the new constitution, starting from meeting with the electoral body vested with the mission of appointing the constituent assembly, represented in the un-appointed members of the People's Assembly and Shura Council, then, appointing members of such assembly, and exercising their missions in accordance with the controls they set, without any interference by any of the three powers; legislative, executive or judicial., till completion of that mission by drafting the constitution, taking into consideration that work of such constituent assembly, at all stages, will be subject to the control of the people, being the source of all powers, and exercise them on submitting the constitution draft to referendum, to accept it or reject it, as they might wish.

Whereas in light of the above, the power given to the constituent authority drafting the constitutional document is higher than all other state powers since it is a result of the work thereof, being the power establishing all other powers. Hence, neither the composition of such power nor the method through which it conducts work thereof can be subject to the supervision of any entity which it establishes.

Also, neither the lower nor the upper houses of the parliament were asked to form the Constitution Constituent Assembly. Instead, such task was assigned to an electoral assembly that had a distinctive formation independent from the two legislative councils. Through this electoral assembly, MPs that are not appointed elect the CCA which is responsible for drafting Egypt's new constitution. If the constitutional legislature wanted the legislative council to play a role in the work of such committee, it would have explicitly said so at the time the amendments were introduced to the 1971 constitution in the aftermaths of the revolution which broke out on January 25, 2011. It could have also stated so in Article (60) of the Constitutional Declaration promulgated on March 20, 2011.

Whereas it is established that legal texts, regardless of content thereof, shall be regarded as tools used by the legislature for regulating a certain issue. Also, through linking such texts to objectives thereof, and assuming legitimacy thereof, and the presence of rational connection between them, the constitutionality of such texts are determined.

This being so, and even though the legislature, through law No. 79/2012, has interfered, according to title thereof, to set the criteria for electing members of the CCA for drafting a new constitution for the country, it deviated from such objective, despite the fact that it is not entitled to interfere with the regulation thereof in the first place based on the above. The legislature, instead, regulated another matter that has nothing to do with the title it gave to this law, where it said that the decisions issued by the joint meeting of the members not appointed in the People's Assembly nor the Shura Council with regards to the election of the CCA members shall be reviewed by the body responsible for monitoring the constitutionality of parliamentary laws and decisions. By doing so, it exceeded the limits of the legislative mandate thereof, hence violating Article (115) of the Constitution. Thus, a verdict shall be issued to rule the

unconstitutionality of the law No. 79/2012 as a whole, including all texts thereof, since the constitutional defect in this text has affected the entire legislative structure of the said law as a whole, since the parts thereof are integrally interrelated, since some parts of those texts may not be effective or enforced in the presence of the other parts.

Whereas the verdict ruling the unconstitutionality of the provisions of the law No. 79/2012 is not affected by the provisions of Article (236) of the Constitution issued in December 2012 which provides that "Constitutional declarations issued by the Supreme Council of the Armed Forces and by the President of the Republic from 11 February 2011 to the date of the adoption of this Constitution are hereby repealed, while their consequent effects shall remain valid and in force and may not in any way be appealed against". Whereas, and regardless of the legitimacy of the constitutional declarations issued by the President of the Republic, Article (236) of the Constitution explicitly says that the consequent effects of such declarations shall remain valid and in force. However, the provision of this Article shall not apply to the effects that are yet to happen. Consequently, whereas the constitutional declaration issued by the President of the Republic on November 21, 2012, has ruled the abatement of proceedings brought to court with regards to laws and decrees issued by the President of the Republic since the date on which he held office. Such abatement of proceedings which arose as one of the consequent effects of this declaration should be entrenched in a court ruling to make such abatement effective. However, this was not done prior to the adoption of the new constitution in December 2012.

Also, whereas this ruling is not affected by the enforcement of such effect as of the date of the promulgation of the said constitutional declaration, since the annulment of the constitutional declarations by virtue of the Article (236) of the current constitution as of the date on which it came into force in December 2012 does not allow the abatement of proceedings that was of the consequences of such declaration, following the annulment thereof by virtue of the provisions of such constitution.

For these reasons,

The Court ruled upon the unconstitutionality of Law no. 79/2012 setting out the criteria for electing the members of the Constitution Constituent Assembly for drafting a new constitution for the country.

Secretary

Court President