

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



The Arab Republic of Egypt

The Presidency of the Republic

Official Gazette

Price: EGP 3

Issue No. 21 bis (a)	Issued on 16 Rajab 1434 A.H. 26 May 2013 A.D.	Year 56
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In the name of the people

Supreme Constitutional Court (SCC)

In its meeting held on Saturday, May 25, 2013 A.D., corresponding to Ragab 15, 1434 A.H.;

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

In membership of chancellors: Adly Mahmoud Mansour, Anwar Rashad el-'Assy, Abdel Wahab Abdel Razeq, Dr. Hanafy Aly Gebaly, Mohamed Abdel Aziz Al-Shennawy, and Mohamed Khairy Taha El-Naggar..... **Court Vice-presidents;** and

In presence of Justice Hamdan Hassan Fahmi.....**Chairman of Board of Commissioners**

And Mr. Nasser Emam Mohamed.....**Secretary**

Has Decreed the Following

In reference to the request registered in SCC's schedule under # 2/1935-Judicial "pre-control"

Proceedings

On April 14, 2013, letter No. 426, dated 11/04/2013, from Shura Council speaker, was referred to the SCC. Attached thereto was a draft law regulating the exercise of political rights, to be presented to the SCC pursuant to article No. (177) of the Constitution.

Upon the preparation of the request, the Board of Commissioners reported opinion thereof.

The request was examined as required by the minutes of the session and the Court decided to issue a decision thereon in today's meeting.

Court

Having reviewed the Constitution and the presented draft law and after deliberation;

Whereas article (177) of the Constitution promulgated in December 25, 2012 stipulates that “The President of the Republic or the House of Representatives shall present draft laws governing the exercise of political rights as well as presidential, legislative and local elections before the Supreme Constitutional Court, to determine their compliance with the Constitution prior to dissemination. The Court shall reach a decision in this regard within 45 days from the date the matter is presented before it; otherwise, the proposed law shall be considered approved.

If the Court deems one or more parts of the text non-compliant with the provisions of the Constitution, decision thereof shall be implemented.

The laws referred to in the first paragraph are not subject to the subsequent control stipulated in article (175) of the Constitution”.

Whereas the aforementioned text determines the bodies which have the right to present draft laws regulating the exercise of political rights as well as presidential, legislative, and local elections to the Supreme Constitutional Court to apply pre-control procedures thereto; and whereas it stipulates that only two bodies are entitled to do such, namely: President of the Republic and the House of Representatives; thus, the presented draft law was supposed to be presented to the stated court by one of these two bodies. However, since article (230), Section (3), Chapter (5), of the Constitution, which includes Final and Transitional Provisions, says that “The existing Shura Council, in current formation thereof, shall assume full legislative authority starting from the date on which the Constitution comes into force until the new House of Representatives is formed.....”. This means that the Shura Council shall undertake full legislative authority during the transitional period which starts from the date on which the Constitution comes into effect until the new House of Representatives is formed. Based on that, the stated court decided to accept the submitted request.

Whereas article (177) of the abovementioned Constitution states that the scope of the "pre-control" is limited to draft laws governing the exercise of political rights as well as presidential, legislative, and local elections, legislative texts not directly related to such areas shall not fall within the scope of the "pre-control" of the constitutionality of legislations, even if they are part of the draft laws regulating such laws.

Based on the above, articles (14) and (15) of the presented draft law are not directly related to the exercise of political rights, where the first one tackling the independent budget of the High Election Commission (HEC) and the development of the financial regulation thereof and the second tackling the commitment of state authorities to help the HEC conduct tasks thereof. Such matters are not related to the exercise of political rights in essence. Hence, such two articles shall be excluded from the scope of the pre-control. Consequently, the request submitted with regards to such two articles shall be rejected.

Whereas this court, in reviewing the draft law hereof, asserts that the pre-control procedures thereof are limited to comparing the draft law with the Constitution to determine whether or not it conforms to provisions thereof. Hence, the following are excluded from the scope of the said control:

1. Reviewing the legal wording of the draft law.
2. Examining whether the provisions of the draft law are contradictory or contradict other legal texts, unless such contradiction is not deemed as a constitutional violation.
3. Determining the conformity of some of the provisions included in the draft law, since such matter falls within the legislator estimated authority.

Having reviewed the present draft law, the Court hereby concludes the following:

First: Articles (168) through (180) stated in Section (3), Chapter (3), of the current Constitution adopted a new ideology that differentiates between "judicial branches" and "judicial bodies". The first refers to each entity enjoying judicial power including ordinary courts such as Public Prosecution, State Council courts, and Supreme Constitutional Court as stated in articles (172) through (175); while the judicial body refers to the State Affairs Body and the Administrative Prosecution as stated in articles (179) and (180).

Also, Section (4), Chapter (4), of the Constitution assigned articles from (208) to (211) for the National Elections Commission (NEC). Paragraph (2) of article (210) stipulates: "The Commission assigns the supervision of voting and counting to members of the judiciary and of judicial bodies. This mandate lasts at least ten years from the Constitution's entry into force. Also, article (228) of the Constitution stipulates "The High Election Commission in existence at the time this Constitution enters into effect is responsible for full supervision of the first legislative elections ...". This means that supervision of voting and counting processes shall be supervised by members of judicial branches and bodies.

Based on the above, article (5), paragraph (1) of article (6), paragraph (2) of article (7), article (9), paragraph (1) of article (13), and article (33) of the presented draft law indicate that such draft law violates the constitutional requirement differentiating between "judicial branches" and "judicial bodies". Thus, to address such violation, wherever the terms "of branches", "branches", and "branch" appear in article (5), paragraph (1) of article (6), and paragraph (2) of article (7), they shall be replaced by "of bodies", "bodies", and "body", respectively. Moreover, the same violation shall be addressed in article (9) as well as paragraph (1) of articles (13) and (33) through replacing "judicial bodies" with "judicial branches or bodies" and "judicial body" with "Judicial branch or body", as appropriate.

Second: article (1) of the draft law stipulates that "Every male and female Egyptian reaching eighteen years of age shall personally exercise the following political rights:

First: Express opinion in all referenda prescribed in the Constitution.

Second: Elect each of:

1. The President of the Republic;
2. Members of the House of Representatives;

3. Members of the Shura Council;
4. Members of the Local Councils.

The election of the President of the Republic shall be conducted according to the law regulating the presidential elections. The exercise of other rights shall be in the manner and according to the arrangements prescribed in such law.

Officers and members of the main, subsidiary, and additional armed forces, as well as police officers and members shall be exempted from performing such duty throughout their period of service in the armed or police forces."

Whereas article (5) of the Constitution says "Sovereignty is for the people alone and they are the source of authority. The people shall exercise and protect this sovereignty, and safeguard national unity in the manner specified in the Constitution."

Also, the first part of paragraph (1) of article (6) of the Constitution stipulates that "The political system shall be based on the principles of democracy, consultation (Shura), and citizenship, which ensure that all citizens are equally eligible to public rights and duties....."

Moreover, article (33) stipulates that "All citizens are equal before the law. They have equal public rights and duties, without discrimination".

Furthermore, paragraph (1) of article (55) of the Constitution stipulates that " Citizen's participation in public life is a national duty: Every citizen shall have the right to vote, run for elections, and express opinions in referendums, according to the provisions of the law."

According to paragraphs (1) and (2) of article (64), "Work is a right, duty and honor for every citizen, guaranteed by the State on the basis of the principles of equality, justice and equal opportunities.

There shall be no forced labor except in accordance with law."

The aforementioned texts stipulates that the sovereignty of people can only be achieved through ensuring that all citizens have the right to elect their leaders and representatives who rule the country affairs, as long as they are eligible to be elected. Every citizen shall have the right to express his/her opinion in all elections and referenda. Thus, no citizen may be deprived of exercising such constitutional right unless there is a reasonable cause, whether temporary or permanent, prohibiting them from such. Such cause shall, in nature, be related to the polling right and requirements thereof such as reaching a certain age to ensure a citizen is eligible to make a sound decision, in addition to being free from any mental disabilities depriving them of the ability to make such decision. Also, the citizenship right requires ensuring that all citizens are equal in public rights and duties. Such right may neither be restricted nor curbed unless there is a reasonable cause and as long as such does not constitute a constitutional violation. Also, the Constitution granted citizens the right to work and hold posts. Thus, prohibiting officers and members of the armed and police forces from exercising political rights throughout their period of service due to holding such posts, despite having the capacity required for exercising such rights, curbs popular

sovereignty and breaches the principle of citizenship which assumes equality among all citizens. Furthermore, it also deprives such category of participation in public life as a national duty. This, also, means violating the essence of the right to work. Such means that the text is defected since it violates article (5), first part of paragraph (1) of article (6), article (33), article (55), as well as the first and second paragraphs of article (64) of the Constitution.

Third: Article (2) of the draft law stipulates that "The following categories shall be deprived of exercising political rights:

1. Convicts in a felony, unless rehabilitated;
2. Convicts sentenced to imprisonment terms for a crime of theft, hiding stolen objects, swindling, issuing an uncovered check, breach of trust, perfidy, bribery, criminal bankruptcy, forgery, using forged papers, perjury, suborning witnesses, rape, corrupting ethics, committing a breach of morals, vagrancy, and committing a crime to get rid of military or national service, as well as convicts sentenced for attempting to commit one of the said crimes, unless the sentence is passed with a stay of execution or the convict has been rehabilitated; and
3. Convicts sentenced to penalty of detention in one of the crimes prescribed in articles from (51) to (61) of such law, unless the sentence is passed with a stay of execution, or the convict has been rehabilitated.

Whereas, clauses (2) and (3) of the stated article entitled convicts sentenced to imprisonment terms or penalty of detention in the crimes stated herein to exercise political rights as long as the sentence is passed with a stay of execution. However, in such case, the penal status of the convict is not stable yet, since the stay of execution may be annulled during the three-year probation period which is required for the sentence to be final. Thus, establishing equality between convicts in such case and other citizens whose history is free of a similar record violates the principle of equality. This text is considered defected since it violates article (33) as well as the first paragraph of article (55) of the Constitution.

On the other hand, the first clause of this article prohibits convicts in a felony from exercising their political rights on an absolute basis without any exception, unless when a convicted has been rehabilitated. However, the third clause of the same article stipulates that the deprivation of a convict of exercising such rights lapses if such convict is sentenced to a penalty of detention and the sentence is passed with a stay of execution, in one of the crimes stated in such clause. Whereas such crimes include ones on which felony penalty is imposed, such as the case stated in the first clause of the same article, for which no exception was set out. Thus, the third paragraph breaches the principle of equality set forth in article (33) of the Constitution.

Also, the penalty imposed on attempts to commit the crimes stated as offenses in articles (52), (53), (54), (55), (57), (58), (59), and (61) of the draft law is the penalty prescribed for complete crimes, as stated in article (63) of the same draft law. Whereas clause (3) does not deprive convicts sentenced to a penalty of detention for attempting to commit such crimes, as set forth in clause (2) of the stated article, the text shall also be deemed defected since it violates the principle of equality set forth in article (33) of the Constitution.

Fourth: article (10) of the draft law stipulates that "HEC shall, in addition to the powers contained herein, have competence to:

First:

Fifth: lay down the rules regulating the engagement of International organizations, as well as Egyptian and international civil society organizations in observing all electoral processes."

As for the terms stated in such text with relevance to international organizations as well as Egyptian and international civil society organizations, no clear definition was set out for such terms. Instead, such terms are so wide and general that they can include a large group of non-governmental and non-profit organizations which contribute to public life and express the interests and values of their members, according to moral, cultural, political, scientific, religious, or charity considerations. Such entities include, for example, political parties, trade unions, and NGOs. Hence, a definite and exact criterion must be set in order not to prohibit unauthorized organizations from attendance. Also, there must be a maximum ceiling for the number of members representing such organizations in each election committee in order to avoid large numbers of representatives hindering or disturbing work of such committees in a way breaching the constitutional guarantees for the right to nominate and the right to vote. Also, only the organizations authorized by the HEC shall be allowed to participate in the work of the stated committees.

Fifth: clause 6 of the same article 10 stipulates that "HEC shall undertake setting the rules governing electoral campaigning, considering the ban of campaigning activities based on distinction as to religion, gender or origin ".

The preparations of the presented draft law revealed clearly the exclusion of banning the use of religious slogans in electoral campaigning, since it was mentioned in the proposed text presented by the government. Based on the above and whereas article (6) of the constitution sets the state's political system on citizenship which ensures that all citizens are equal in public rights and duties and respects human rights and freedoms; for preserving national unity which is emphasized in article (5) of the constitution and protected by principles 5 and 7 of the constitution preamble. Whereas the use of the religious or doctrinal slogan leads in itself to division among citizens with respect to religion or doctrine, since the followers of each religion will use the slogan that glorifies their religion, which violates the essence of citizenship principle basically and adds a new reason for spreading and deepening disunity and dissension among citizens. Whereas the organization of the electoral process shall not be possible unless it is reasonable, - it's not reasonable, unless it is neutral in its content -and whereas the presented text omits banning the use of religious or doctrinal slogans, symbols or performing religious or doctrinal activities in campaigning, it undermines the national unity and contradicts the citizenship concept and infringes the right to election, candidacy and exercise of political rights, and refrains the voter from determining his/her opinion of candidates and comparing among them with respect to their electoral platforms. Furthermore, it infringes the principles of equal opportunities and equality among the candidates themselves. Accordingly, the text referred thereto violates articles (5), (6), (9), (33) and (55) of the constitution. The same defect applies to the beginning of article (61) of the presented draft law.

Sixth: clause 7 of article (10) stipulates HEC's jurisdiction to set the rules on the distribution of the available time - particularly in the prime time - for TV and radio broadcast for electoral campaigning in the state and private media on absolutely equal basis.

Whereas what is stated in the presented text on obliging private media to apply absolute equality in the electoral campaigning of all candidates contradicts the text of articles (45) and (48) of the constitution on ensuring the freedom of thought and opinion, freedom of press, publication and all mass media, since such entities are owned by persons of divergent ideological orientations, thus they may not be obliged to allocate equal times to show candidates' platforms which contradict with their orientations. This is not affected by the challenge that this obligation shall achieve equality among candidates; since ensuring such equality is the duty of the state and its formal media bodies according to articles (6), (8), (33) and (55) of the constitution.

Seventh: clause 8 of article 10 vested HEC with announcing election and referendum general results.

Whereas article (228) of the constitution stipulates that "The High Elections Commission, existing at the time the Constitution comes into effect, shall undertake full supervision of the first parliamentary elections", the entrustment of referendum general result to HEC stipulated in the aforementioned clause 8 infringes article (228) of the constitution. The same defect applies to paragraph 1 of article (33), the end of article (37), article (45), paragraph 1 of article (46) and (47) of the presented draft law.

Eighth: paragraph 4 of article (12) of the draft law stipulates that "If the court – prior to the start of the polls – rules that the name of the candidate be expunged, the voting process shall proceed after excluding the candidate whose name was expunged. However, if the voting process starts before the court decides on the request, the polling process shall proceed provided that HEC suspends the announcement of the results of the elections in which the candidate in question is contesting in case he/she has received sufficient votes that allow them to win or to enter into a run-off vote against another candidate. In the event that the court rules that such candidate be removed, the election shall be re-run with the other candidates.

Since the foregoing paragraph 4 omits facing the case in which the polling process starts before the High Administrative Court issues a ruling on expunging the name of a candidate, if the polling process does not result in his/her winning or entering into the re-run, and he got a number of votes that would affect the elections result within the constituency, so that if he/she is excluded from the candidates before the beginning of the poll, such votes or most of them would be distributed among the other candidates, affecting the result of who wins or stands for the re-run. Hence, such omission resulted in the infringement of the constitutional rights included in article (55) of the constitution as it affects the voter's right to choose and that is the essence of the right to election.

Ninth: article (16) of the presented draft law stipulates that "Polling and vote counting processes for the Egyptians living abroad shall start before the scheduled

date in Egypt and under full judicial supervision. Mail voting shall take place in accordance with the rules, conditions and regulations by which a decision from HEC shall be issued".

Whereas article (56) of the constitution stipulates that "The State shall safeguard the interests of Egyptians living abroad, protect them and protect their rights and freedoms, help them perform their public duties toward the Egyptian State and society, and encourage their contribution to the development of the nation. The law regulates their participation in the elections and referendums".

Whereas the constitution introduced a new system for the supervision of the general elections and referendums and vested it in HEC in accordance with article (208) and determined its formation in article (209) thereof and article (210) stipulates that "Voting and counting of votes in referendums and elections run by the Commission shall be administered by its affiliated members under the overall supervision of the Commission's Board. Members shall be furnished with the necessary guarantees that enable them to perform their job with impartiality and independence. As an exceptional measure, the Commission shall delegate the supervision of voting and counting of votes to members of the judiciary for at least 10 years from the date the constitution came into force, all as regulated by law". Furthermore, article (228) of the constitution stipulates that "The High Elections Commission, existing at the time the Constitution comes into effect, shall undertake the full supervision of the first legislative elections. The funds of the Committee and of the High Presidential Elections Committee are transferred to the National Electoral Commission, as soon as the latter is formed".

Based on the above mentioned texts the participation of the Egyptians living abroad in the poll should be under full judicial supervision, which is asserted in the beginning of article (16) of the presented draft law, while the end of this text which stipulates that mail voting shall take place in accordance with the rules, conditions and regulations by which a decision from HEC shall be issued infringes this principle adopted by the constitution, which stipulates that if the constitutional legislator vested the legislative authority with regulating a specific subject, the legislator may not disclaim this jurisdiction and vest it in HEC to set the rules and regulations governing mail voting. Thus, this article infringes the provisions of articles (55), (56) and (115) of the constitution.

Tenth: article (22) of the presented draft law stipulates that "No modifications may be made to the voters' database after calling the voters for the election or referendum". Also article (30) of the same draft law stipulates that "The court clerk department shall notify the Security Director, the election committee in the governorate and the registration committees of the rulings issued on the modification of the voters' database within five days subsequent to the issuance thereof. All stated heretofore shall be subject to article (22).

Based on the above and whereas the presented draft law provided relevant stakeholders with methods for reviewing the restrictions found in the voters' database, through a request to the Commission mentioned in article (26) of the law. It also allows them to appeal against the decisions issued by such Commission before the Administrative Court (Article 27 bis) and the Court decides on the appeal with a

ruling that shall be unchallengeable by any means of appeal (article 29 bis). Whereas article (22) and the end of article (30) stipulate that no modifications shall be made to the voters' database after calling on the voters to the election or the referendum. If the Administrative Court issues a ruling on modifying the voters' database, it hinders the achievement of the judicial compromise which the relevant stakeholders sought. This voids the rescission action of its content and such ban represents an encroachment from the legislative authority on the judicial authority jurisdiction, in infringement of the principle of power separation and also infringes – first of all – the right to election which is considered suspension and derogation of political rights exercise. Thus, such two texts lie in the core of violating articles (6), (55), (75), (81), (82) and (115) of the constitution.

Eleventh: article (31) of the presented draft law stipulates that "The date of general elections shall be set in accordance with a decree of the President of the Republic, whereas the date of by-elections shall be set by a decision by HEC president. Such a decree or decision shall be made at least sixty days before the date specified for elections."

For referenda, the decision shall include the dates stipulated in the cases of referenda stated in the Constitution.

The President of the Republic may issue a decree, in case of necessity, to postpone the date fixed for general elections or referendum, or one of its rounds or elections in some electoral constituencies. Such decree shall be issued without being restricted to the date stipulated in the paragraph 1, and to be announced as set out by Article (32) of this law".

Whereas article (150) of the constitution vest the President of the Republic with calling for a referendum and articles (6), (55), (200), (208) and (228) of the constitution states that the constitutional legislator vested the law with the regulation of election and candidacy rights and tasked NEC solely with managing the electoral process from its beginning to the end by result announcement, provided that HEC – existing at the time the constitution comes into effect – undertakes full supervision of the first legislative elections following the constitution enforcement, and ensured independence to the independent bodies. Furthermore, article (132) of the constitution stipulated that "The Republic's President shall exercise his jurisdiction as prescribed in the constitution" as the Head of State and chief of the executive authority, which means that the jurisdiction of managing the electoral process is assigned – as a general basis – to NEC, and as an exception, to HEC in accordance with a transitional provision, without the intervention of the Republic's President as the chief of the executive authority to achieve integrity and impartiality of elections which the constitution obliged all the state's authorities to ensure. Whereas the foregoing article (31) allowed the Republic's President to manage the electoral process by calling for holding elections and, in exceptional cases, postpone the dates set for holding the general elections in one of its rounds or in some constituencies, in case such jurisdiction is assigned – currently – to HEC only. Thus, such text infringes the principle of integrity and impartiality of elections and lessened NEC and HEC's jurisdiction of managing the electoral process. Accordingly, the aforementioned text infringes articles (6), (55), (132), (150), (200), (208) and (228) of the constitution.

Twelfth: the end of paragraph 3 of article (33) stated that "If the sub-committee is allocated for women or joint, a member of the personnel should be a woman to help the committee's head in verifying the identity of the full-veiled women".

So that such text complies with article (210) of the constitution, the presence of women in the membership of the Committee should be limited only to assist the Committee's president in verifying the identity of full-veiled women without possibility of carrying out such activity solely.

Thirteenth: paragraph 5 of article (38) of the presented draft law stipulates that "the blind and other voters with disabilities who cannot record their opinions on the election or referendum ballot papers without assistance may express their choice verbally in a manner such that only the committee's members can hear. The secretary of the committee shall record the voter's choice on his ballot paper, and the head shall sign it and mark next to the voter's name on the voters' list that the voter expressed his opinion according to this procedure".

Whereas the text as advanced violates the constitution's provisions stated in articles (113) and (128) thereof; since according to these two texts, the elections procedures shall be carried out via direct secret vote. Vote secrecy supposes that the voter's opinion should be viewed by the voter only and when necessary a member of the judicial entity or body who heads the polling committee may join him/her. Thus, what is stated in the presented text on the necessity that the committee's members should listen to the opinion of the disabled voter or that the committee's secretary proves such opinion in the ballot paper and the committee's head should sign the ballot paper represents a violation of the constitutional guarantee with respect to vote secrecy.

Fourteenth: paragraph 1 of article (69) of the presented draft law stipulates that "This law shall be published in the Official Gazette and shall go into effect since the date of issuance".

Whereas article (223) of the constitution stipulates that "Laws shall be published in the Official Gazette within 15 days from the date of issuance, to be effective 30 days from the day following the date of publication, unless the law has specified a different date."

Provisions of the laws shall apply only from the date of enforcement and shall have no retroactive effect. However, with the approval of a two-thirds majority of the members of the House of Representatives, provisions to the contrary may be made in articles pertaining to non-criminal and non-tax-related matters".

Whereas such text indicates that the constitution stipulates that the laws should be published in the Official Gazette 15 days from the date of issuance, to be enforced – as a general principle – 30 days from the day following the date of publication, unless the laws specified another date for enforcement, which the day following the date of publication of the law is its minimum date; based upon the foregoing general principle; which signifies that any other date – as a minimum limit – specified by the laws for their enforcement should be the day following such date, this in case the legislator's will tends to enforce the law in the shortest time from date of publication.

Based on the above mentioned and whereas paragraph 1 of article (69) stipulates that "This law shall be published in the Official Gazette", therefore this text infringes article (223) of the constitution.

For Such Reasons

The Court has decided:

First: not to accept the request with regard to articles (14) and (15) of the presented draft law in the manner demonstrated with reasons.

Second: last paragraph of article (1), clauses (2 and 3) of article (2), clauses 6, 7 and 8 of article (10), paragraph 4 of article (12), the end of article (16), articles (22) and (31), paragraph 5 of article (38) and article (69) infringes the constitution's provisions in the manner demonstrated with reasons.

Third: paragraph 1 of articles (5) and (6), paragraph 2 of article (7), article (9), paragraph 1 of article (13) and article (33) regarding pointing to judicial entities and bodies, article (10) regarding international organizations and CSOs and paragraph 3 of article (33) on full-veiled women voting comply with the constitution's provisions according to the interpretation specified by this court in the manner demonstrated with reasons.

Secretary

President of the Court

In the name of the people

Supreme Constitutional Court (SCC)

In its meeting held on Saturday, May 25, 2013 A.D., corresponding to Rajab 15, 1434 A.H.;

Headed by Justice Maher Al-Behiry **Court President;**

In membership of chancellors: Adly Mahmoud Mansour, Abdel Wahab Abdel Razeq, Dr. Hanafy Aly Gebaly, Mohamed Abdel Aziz Al-Shennawy, Maher Samy Yusef; and Saied Marey Amr **Court Vice-presidents;** and

In presence of Justice Hamdan Hassan Fahmi.....**Chairman of Board of Commissioners**

And Mr. Nasser Emam Mohamed.....**Secretary**

Has Decreed the Following

In reference to the request registered in SCC's schedule under No 3/1935-Judicial "pre-control"

Proceedings

On April 14, 2013, letter No. 426, dated 11/04/2013, from Shura Council Speaker, was referred to the SCC. Attached thereto was a draft law on the House of Representatives (HoR), to be presented to the SCC pursuant to article No. 177 of the constitution.

Upon the preparation of the request, the Board of Commissioners reported opinion thereof.

The request was examined as required by the minutes of the session and the Court decided to issue a decision thereon in today's meeting.

The laws referred to in the first paragraph are not subject to the subsequent control stipulated in Article 175 of the Constitution”.

Court

Having reviewed the Constitution and the presented draft law and after deliberation;

Whereas article (177) of the constitution issued in December 25, 2012 stipulates that “The President of the Republic or the House of Representatives shall present draft laws governing the exercise of political rights as well as presidential, legislative or local elections before the Supreme Constitutional Court, to determine their compliance with the Constitution prior to dissemination. The Court shall reach a decision in this regard within 45 days from the date the matter is presented before it; otherwise, the proposed law shall be considered approved.

If the Court deems one or more parts of the text non-compliant with the provisions of the Constitution, decision thereof shall be implemented.

The laws referred to in the first paragraph are not subject to the subsequent control stipulated in Article 175 of the Constitution”.

Whereas the aforementioned text determines the bodies which have the right to present draft laws regulating the exercise of political rights as well as presidential, legislative, and local elections to the Supreme Constitutional Court to apply pre-control procedures thereto; and whereas it stipulates that only two bodies are entitled to do such, namely: President of the Republic and the House of Representatives; thus, the presented draft law was supposed to be presented to the stated court by one of these two bodies. However, since article (230), Section (3), Chapter (5), of the constitution, which includes Final and Transitional Provisions, says that “the existing Shura Council, in current formation thereof, shall assume full legislative authority starting the date on which the constitution is in place until the new House of Representatives is formed.....”. This means that the Shura Council shall undertake full legislative authority during the transitional period which starts from the date on which the constitution comes into effect until the new House of Representatives is formed. Based on that, the stated court decided to accept the submitted request.

Whereas this court, in reviewing the presented draft law, asserts that the pre-control procedures thereof are limited to comparing the text of the draft law with the constitution to determine whether or not such texts conform to the constitution provisions, the following are excluded from the said control:

1. Reviewing the legal wording of the draft law.
2. Examining whether the provisions of the draft law are contradictory or contradict other legal texts, unless such contradiction is not deemed as a constitutional violation.
3. Determining the conformity of some of the provisions included in the draft law, since such matter falls within the legislator estimated authority.

Whereas the provisions of article (177) mentioned above states that the scope of the "pre-control" carried out by the SCC is limited to draft laws governing the exercise of political rights as well as the laws regulating presidential, legislative, and local elections. Hence, all legislative texts not directly related to such areas shall not fall within the scope of the "pre-control" of the constitutionality of the draft laws in this

Court, according to article (177) of the constitution. Hence, articles (23) through (41) of the presented draft law do not fall within the scope of the "pre-control" exercised by the SCC, even though they are included within the texts of the stated draft law, since they are related to the membership of the House of Representatives, member's duties and financial and in-kind rights, HoR personnel regulation, in addition to other matters related to HoR's financial and administrative affairs and not related to the regulation of the legislative elections. Hence, any request submitted with regards to such texts shall be rejected.

Having reviewed the present draft law, the Court hereby concludes the following:

First: article (1) of the draft law stipulates that "The House of Representatives shall be composed of 546 (five hundred and forty six) members, elected by universal, secret, and direct ballot; provided that at least half of them are workers and farmers."

The abovementioned text includes a special provision for electing the first House of Representatives under the constitution, as required by the first paragraph of article (229) thereof, which was a part of the Transitional Provisions in Section (3), Chapter (5), of the constitution. Paragraph (2) of such article specifies that workers and farmers must have at least-fifty percent representation in the first House of Representatives. As for the general provision related to the formation of the House of Representatives, paragraph (1) of article (113) of the constitution covered the formation of the House of Representatives without specifying the above-mentioned representation percentage. This means that the condition stipulating the representation percentage to be met by workers and farmers, which is stated in the last part of article (1) of the draft law as well as other articles thereof setting such condition (i.e. articles 2, 3, 17, 18, 20, and 21), is limited to the first House of Representatives elected following the ratification of the constitution. Thus, it shall be interpreted as illustrated above.

Second: article (3) of the draft law says: "In the elections of the House of Representatives, two thirds of the seats are to be filled through the closed-list system, while one third is to be filled through the single-winner system. Parties and independent candidates may run under either of the two systems.....".

This text, also, includes a special provision related to the legislative elections held following the adoption of the constitution. This is reflected in article (231) which stipulates "In the legislative elections that follow the adoption of the Constitution, two thirds of the seats are to be filled through the list system, while one third is to be filled through the single-winner system. Parties and independent candidates may run under either of the two systems." As for the general provision, it was mentioned in article (224) which says: "Elections of the House of Representatives, Shura Council, and local councils shall be conducted based on a single-winner system, a list system, a combination thereof, or any other electoral system specified by law." This means that the regulation stated in article (3) of the draft law, which is mentioned in articles (6, 7, 8, 10, 12, 14, 15, 17, 18, 19, 20, 21, and 22), shall be limited to the first House of Representatives elected following the ratification of the constitution. Thus, it shall be interpreted as illustrated above.

Third: paragraph (6) of article (3) of the draft law says that "the scope and components of each list/single-winner system district shall be determined according to the attached tables".

Whereas article (113) of the constitution says: "The House of Representatives shall be composed of a number not less than 350 members, elected by universal, secret, and direct ballot.

To be eligible for membership in the House of Representatives, a candidate must be.....

The law specifies other conditions for membership, the voting system, and the delimitation of electoral districts in a way that ensures fair representation of population and governorates."

Whereas the abovementioned constitutional text established two main controls for electoral district delimitation, which are the fair representation of population and governorates;

Whereas the fair representation of population means that a Member of Parliament (MP) at any electoral district shall represent the same number of voters represented by other MPs at other districts, ensuring the equal representation of voters in parliamentary councils. However, such principle does not mean that the number of persons represented by MPs at each district shall be arithmetically equal on an absolute basis, since such is practically impossible. Instead, to fulfill such principle, differences between such numbers and the general average of the number of voters represented by an MP at the state level shall be reasonable. Also, district delimitation should be proportionate to the number of population at each district taking into consideration the geographical distribution thereof. Moreover, districts should not be delimited unjustly or without taking public interest into consideration.

In addition, fair representation of governorates requires the representation of all state governorates in the House of Representatives, regardless of the number of population thereof.

Tables attached to the presented draft law show that allocation of seats of the House of Representatives among governorates has rather violated the principle of equal representation of voters in each governorate, especially that the preparations of the presented draft law adopted such principle as a basis for such allocation. The most serious violations were as follow:

1. Minya governorate has 2,718,947 voters and has been assigned 24 seats; 16 party-list seats and 8 individual seats. However, Sohag governorate, in which number of voters are less than Minya (2,393,672 voters), has been assigned 30 seats were allocated; 20 party-list seats and 10 individual seats.
2. Alexandria governorate has 3,347,770 voters and has been assigned 30 seats; 20 party-list seats and 10 individual seats, while Sharqiya governorate, in which the number of voters is almost the same like Alexandria (3,565,351 voters), has been assigned 36 seats; 24 party-list seats and 12 individual seats.
3. Ismailia governorate has 713,963 voter and has been assigned 6 seats; 4 party-list seats and 2 individual seats, while Damietta governorate, in which number

of voters is almost the same like Ismailia (868,773 voters) has been assigned 12 seats; 8 party-list seats and 4 individual seats.

4. Aswan governorate has 872,740 voters and has been assigned 12 seats; 8 party-list seats and 4 individual seats; while Luxor governorate, in which number of voters is almost the same as Aswan (685,009 voters), has been assigned 6 seats; 4 party-list seats and 2 individual seats.

Based on what is previously mentioned, paragraph (6) of article (3) of the draft law and the tables attached thereto violate article (113) of the constitution. This requires re-consideration of seats allocation as well as increase/decrease of the number of seats allocated for governorates with the aim of achieving the required equality.

Fourth: article (8) of the presented draft law stipulates that "candidacy applications shall be registered and shall be submitted in accordance with procedures set out by the Higher Election Commission by virtue of a decree thereof".

The text, as previously described, includes a provision on HEC's supervision of the first legislative elections following the enforcement of the constitution; in application of the provision of article (228) thereof that is included among the transitional provisions in Section III of Chapter VI of the constitution. The general provision is stated in article (208) of the constitution; where it authorized the National Elections Commission (NEC) solely to manage the referendums, presidential, parliamentary and local elections, indicating the limitation of HEC's supervision on the first legislative elections following the enforcement of the constitution. Hence, article (8) of the draft law as well as the other articles which tackle HEC's jurisdictions and the procedures followed before it (articles 9, 10, 11, 13, 14, 15 and 22) must be interpreted in a manner that limits their provisions on the first legislative elections following the enforcement of the existing constitution.

Fifth: Article (13) of the draft law stipulated that "conducting electoral campaigning shall be subject to the principles of the constitution, law and the following rules:

1.
2. National unity should be preserved and using any slogan that would lead to religion, gender or origin distinction should be banned.
3.
4.
5.

The foregoing rules shall exist in addition to the rules concerning the means and methods regulating the election campaign, including the maximum campaign expenditure limit that may not be exceeded and on which a decision shall be issued by the HEC and published in two widely-circulated dailies.

The competent governor may order removing posters and all other campaigning means used in contravention to any of the said rules, at the expense of the person who contravened the rules.

Whoever contravenes the provisions of clause (6) of the rules referred to in the present article shall be punished...

A penalty of confinement to jail for a period of no less than three months and a fine of no less than five thousand pounds and no more than twenty thousand pounds or either penalty shall be inflicted on whoever violates the other rules referred heretofore".

There are 4 remarks about this text:

- 1- Paragraph 1 of article (13) of the draft law in clause (2) thereof stipulated preserving national unity and refraining from using any slogan for electoral campaigning that leads to distinction based on religion, gender or origin, and whereas article (6) of the constitution builds the state's political system on the basis of citizenship which treats all citizens equally in the public rights and duties and in respect of human rights and freedoms; to preserve the national unity emphasized in article (5) of the constitution, and which is also protected by principles 5 and 7 of the constitution's preamble. Whereas using religious slogans in itself leads to religious distinction among citizens; since the followers of each religion will use the slogan that glorifies their religion which destroys the essence of citizenship principle and adds a new reason for spreading and deepening disunity and split among citizens. Whereas the organization of the electoral process shall not be possible unless it is reasonable; and this is achieved only when it is neutral in its content. Whereas the presented text omits banning the use of religious or doctrinal slogans or symbols in themselves, it undermines national unity, contrasts the concept of citizenship, infringes the citizen's right to election, candidacy and political rights exercise and hinders voters from determining his/her opinion of candidates and comparing among them with respect to their platforms. It also infringes the principles of equal opportunities and equity among candidates themselves; which makes such text contradictory to articles (5, 6, 9, 33 and 55) of the constitution.
- 2- The second paragraph of article (13) of the draft law vested HEC with determining the maximum campaign expenditure limit that may not be exceeded.

Whereas article (228) of the constitution tasked HEC with full supervision of the first legislative elections following the enforcement of the constitution, without HEC's entitlement to determining a maximum campaign expenditure limit, violating this maximum limit is criminally punished in accordance with the last paragraph of article (13) of the draft law. Whereas article (76) of the constitution stipulates that the penalty shall be personal, and since there shall be neither crime nor penalty unless according to a constitutional or legal text, indicating that the determination of the stated maximum limit must be included in the framework of the legislator's power solely, the text shall be contrary to the constitution from this view, as well as violating article (55) of the constitution considering that the electoral campaigning is a method to introduce candidates and their platforms to voters, which is closely related to the rights of election and candidacy. This requires electoral campaigning to be regulated by a law according to what is stipulated by this constitutional text. Accordingly, paragraph 2 of such article, concerning HEC's determination of the stated maximum limit, violates articles (55), (76) and (228) of the constitution.

- 3- Also, paragraph 2 of the aforementioned article (13) tasked HEC with setting the rules on the means and methods regulating electoral campaigning. Whereas the decrees issued by HEC in this regard are mere executive regulations according to

article (162) of the constitution; fall - based on the ruling of this court - within "Laws" with objective meaning thereof. Hence, the said decrees must be published in the Official Gazette in application of article (223) of the same constitution, this shall not cancel what is included in the presented text stipulating the publication of such decrees in two widely-circulated dailies; since such publication is not considered an alternative for publication in the Official Gazette as stipulated by the constitution. Therefore, since the aforementioned text omitted the obligation to publish in the Official Gazette, it shall be in violation of articles (162) and (223) of the constitution.

- 4- Paragraph 3 of article (13) of the draft law allowed the competent governor to impose a criminal penalty represented in ordering the removal of the posters and all the other campaigning means used in violation of the provisions of the rules stated in article (13) of the draft law; at the expense of the person who contravened the rules. Hence, such text has infringed the principle of power separation and stipulated the intervention of one of the executive authority bodies in the works of the judicial authority which lessens the independence thereof and wasted the bases of justice in managing the matters relevant to the citizens' rights and freedoms. Accordingly, the text referred thereto is in violation of articles (6), (55), (168) and (228) of the constitution.

Sixth: article (16) of the draft law stipulated that "the President of the Republic may, in exceptional circumstances, shorten the time limit stipulated in articles 7, 10 and 15 of the present law".

Whereas articles (55), (200), (208) and (288) of the constitution stipulate that the constitution legislator has vested the law with regulating the exercise of the rights of election and candidacy, tasked the NEC solely with managing the electoral process from A to Z by result announcement, provided that HEC undertakes full supervision of the first legislative elections following the enforcement of the constitution, and ensured the independence of the independent bodies. Furthermore, article 132 of the constitution stipulates that "The President of the Republic shall exercise his powers in the manner stated in the constitution" as he is the president of the state and the head of the executive authority. This indicates that the task of managing the electoral process is entitled, as a general basis, to HEC – as a transitional provision – without the intervention of the President of the republic, as the head of the legislative power, to achieve election's integrity and impartiality which the constitution obliged all the state's bodies to ensure. Since article (16) of the draft law allows the intervention of the President of the Republic in managing the electoral process, by shortening the aforementioned dates, which is among the matters relevant to such management. Thus, the present text has violated the principle of the election's integrity and impartiality and lessened the independence of each of the NEC and HEC in the electoral process management. Accordingly, the aforementioned text violates articles (55), (132), (200), (208) and (228) of the constitution.

Seventh: Last paragraph of article (19) of the draft law stipulated that "If a candidate's position becomes vacant in the list..., if the outcome of the elections results in an incomplete party list winning a number of seats exceeding the number of the remaining seats therein, the required number shall be completed through a by-election using party lists, in accordance with paragraph 5 of article (3) hereof".

Whereas such text in its last part included "in accordance with paragraph 5" and the context of such text does not lead to its intended right meaning; due to its connection with article (3) of the draft law, such statement should be therefore amended to be "in accordance with paragraph 7".

Eighth: Article (44) of the draft law stipulated that "The present law shall be published in the Official Gazette and shall come into force from date of publication thereof."

The present law shall receive the Seal of the State and shall be enforced as a state law".

Whereas article (223) of the constitution stipulates that "laws shall be published in the Official Gazette within fifteen days from the date of their issuance and shall come into force thirty days from the day following the date of publication, unless a different date is specified.

Provisions of the laws shall apply only from date of enforcement thereof and shall have no retroactive effect. However, with the approval of a two-thirds majority of the members of the House of Representatives, provisions to the contrary may be made in articles pertaining to non-criminal and non-tax-related matters".

Whereas the constitutional text indicates that the laws should be published in the Official Gazette fifteen days from the date of issuance thereof, to be enforced – as a general principle – after thirty days from the day following the date of publication thereof, unless the laws specified another date for enforcement thereof, which is the day following the date of publication of the law is its minimum date; based upon the foregoing general principle; which signifies that any other date – as a minimum limit – specified by the laws for enforcement thereof should be the day following such date, this in case the legislator's will tends to enforce the law in the shortest time from the date of publication.

Based on the above and whereas article (44) of the draft law stipulates that the law shall be enforced from the date of its publication in the Official Gazette, thus the text of this article infringes article (223) of the constitution.

For Such Reasons

The Court has decided

First: Non-acceptance of the request with regard to articles from (23) to (41) of the draft law as stated with reasons.

Second: Paragraph 6 of article (3) of the draft law, the attached tables, clause (2) of paragraph 1, paragraph 2 and 3 of article (13), article (16) and article (44) thereof infringes provisions of the constitution as stated with reasons.

Third: the last part of article (1) of the draft law, articles (2), (3), (17), (18), (20) and (21) thereof with regard to the registration of workers and farmers representation,

articles (3), (6), (7), (8), (10), (12), (14), (15), (17), (18), (19), (20), (21) and (22) with regard to HoR election system, articles (8), (9), (10), (11), (13), (14), (15) and (22) thereof with regard to HEC, comply with the constitution's provisions according to the interpretation specified by this court as stated with reasons.

Fourth: Correcting the phrase mentioned in the last part of the last paragraph of article (19) of the draft law as stated with reasons;

Secretary

President of the Court

Deposit no. 65/2013 at Dar El Kotob, General Organization for Government Printing
Offices, 25626 S 2012 – 1642