

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



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In the name of the people

Supreme Constitutional Court (SCC)

In the meeting held on Sunday, February 17, 2013 A.D., corresponding to Rabee Al-Akhir 7, 1434 A.H.;

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

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

In presence of Chancellor Mohamed Emad Al-Naggar.....**Head of Board of Commissioners**

And Mr. Nasser Emam Mohamed **Secretary**

Proceedings

On January 20, 2013, letter No. 146, dated 19/01/2013, from Shura Council Speaker, was referred to the SCC. Attached thereto was a draft law amending some provisions of Law No. 38/1972 on the People's Assembly and Law No. 73/1956 on the Exercise of Political Rights, to be presented to the SCC pursuant to Article (177) of the Constitution.

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

The request was examined as stated in 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 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 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 this court, in reviewing the draft law hereof, asserts that 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 authority.

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

I: Article (2) replaced by Article (1) of the draft law says: "In applying the provisions of the present law, the word “*farmer*” refers to anyone who has taken agriculture as a

profession for a minimum of 10 years prior to seeking the membership of the House of Representatives.

On the other hand, the word “*Worker*” refers to any person working for another in return for a wage or salary, and depending mainly on the income yielded by his physical or intellectual work in agriculture, industry, or services.

A person’s status as a worker shall not change after the end of his service as long as he fulfills the foregoing requirements."

The aforementioned text repeats the definition of “*workers*” and “*farmers*” stated in Article (229) of the Constitution. Furthermore, it adds another condition to the definition of “*workers*”, since it stipulates that a “*worker*” be mainly depending on the income yielded by his physical or intellectual work in agriculture, industry, or services. Such condition is not deemed to be among the controls and criteria which the legislator established for considering a candidate as a worker, pursuant to Article (229) of the Constitution. Instead, it adds a constraint to the definition given by the Constitution to workers as it excludes from candidacy each worker depending mainly on a main source of income other than his wage/salary. Moreover, the condition requiring a worker to be working in agriculture, industry, or services means that anyone hired by an employer in other fields shall be excluded from candidacy. Therefore, the part of the text that says “and depending mainly on the income yielded by his physical or intellectual work in agriculture, industry, or services” violates Article (229) of the Constitution.

II: The first paragraph of Article (3), replaced by Article (1) of the draft law, says “Should an HoR member change the status under which s/he was elected, membership of the HoR shall be terminated”.

To be in line with the provisions of the Constitution, the said text should be extended to stipulate that the membership of the HoR shall be terminated if an HoR member changes the status under which s/he was elected, whether such status is a worker or a farmer, or if s/he changes their partisan affiliation, or if s/he leaves the party and becomes an independent member, or if an independent member joins a party. Only this way voters’ right to selection is asserted and their will is respected, ensuring participation in public life as targeted by Article (55) of the Constitution. A text stating otherwise would be curbing the citizen’s right set forth in the said article, violating the Constitution.

III: The fourth paragraph of Article (3), replaced by Article (1) of the draft law, says that "The scope and components of each district shall be determined according to the attached tables"

Whereas Article (113) of the Constitution says: "The House of Representatives shall be composed of no fewer 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 the fair representation of the population and the 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 shall ensure that the number of population at each district is proportionate to the geographical distribution thereof. Moreover, districts shall not be delimited using a despotic method nor 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.

The review of the tables attached to the presented draft law revealed that such tables violate Article (113) of the Constitution. For example, Damietta governorate, of which number of population is 1,254,971 people, according to statistics produced by CAPMAS on July 1, 2012, was allocated 8 party-list seats and 4 individual seats, with a total of 12 seats; while Aswan, which has a population of 1,430,279 people, was allocated 4 party-list seats and 2 individual seats, with a total of 6 seats. Also, South Sinai, which has a population of 160,647 people, was allocated 4 party-list seats and 2 individual seats, with a total of 6 seats; while Luxor, which has a population of 1,079,219 people, was allocated the same number of seats, i.e. 4 party-list seats and 2 individual seats, with a total of 6 seats, although the population thereof is way larger than this of South Sinai.

IV: The sixth paragraph of Article (3), replaced by Article (1) of the draft law, says that "A single list may be composed of candidates of several parties, may be formed of independent candidates not representing any parties, or may comprise both of them". To be in line with the Constitution provisions, this text shall include an additional part saying that 'in case a single party-list comprises both party candidates and independent candidates, the capacity of each candidate as an independent or party candidate shall be displayed next to the candidate's name, so that voters get to know the capacity thereof before deciding who will get their vote', which is provided for by Article (55) of the constitution.

V: Article (5) of law 38/1972 determined the requirements that shall be fulfilled by whoever is nominated for the membership of the House of Representatives. Article (1) of the proposed draft law amends items No. 1, 3, 4, 5, and 6. Item (1) of such requirements stipulates that a candidate shall be of Egyptian nationality. However,

Article (113) of the Constitution says that not only shall a candidate be of Egyptian nationality, but also he shall be "enjoying civil and political rights as well". So, in order for this text to conform to the provisions of Article (113) of the Constitution, the phrase "enjoying civil and political rights" shall be added.

Furthermore, item (5) of the same article says that a candidate should have fulfilled the obligatory military service, or have been exempted from it according to the law. Whereas Article (6) of the law on Military and National Service, promulgated by law 127/1980, sets forth that the provision of Article (1) thereof – fulfillment of military service – does not apply to categories of which exclusion terms and conditions are determined by virtue of a decree by Minister of Defense, according to public interest or national security requirements. Hence, the present text allows whoever was exempted from fulfilling the obligatory military service according to national security requirements to be nominated for the House of Representatives. However, as long as the latter is exempted from the fulfillment of the military service due to the abovementioned reason, it shall not be acceptable to allow such person to be nominated for the House of Representatives which is responsible for drafting legislation and supervising the work of the executive authority. Therefore, the condition stated in item (5) shall be limited to those who fulfilled the obligatory military service or have been exempted therefrom according to law.

VI: The first paragraph of Article (9-bis“b”), replaced by Article (1) of the draft law, stipulates that “any appeal against a decree issued by the committee established by Article (8) of this law shall be brought before the Court of Administrative Justice within seven days from the day marking the end of the nomination period for a candidate, party, or list representative. The Court shall decide on the appeal within no longer than seven days, without presenting it to the State Commissioners Authority.”

Clearly, this text aims at accelerating the process of deciding on appeals against decisions made by committees formed according to Article (8) of the same law which cannot be challenged. However, the stipulation requiring that the court decides on the appeal without presenting it to the State Commissioners Authority interferes in the work of the administrative justice body and violates independence thereof required by Article (174) of the Constitution; where such body, upon considering the appeal, may wish to refer it to State Commissioners Authority, while adhering to the timeline required by the text for deciding on appeals presented thereto, i.e. seven days.

VII: Item (7) of Article (5), added to Article (2) of the draft law, stipulates that “...He shall not be one of the leaders of the dismantled National Democratic Party (NDP), where the word *leaders* here refers to whoever was a member of the NDP's Secretariat General, Political Office, or Policy Committee on January 25, 2011, or was a member of the People's Assembly or Shura Council during any of the two legislative terms preceding the revolution...”

The wording of such text violates Article (232) of the Constitution which stipulates that a candidate shall not be a leader of the dismantled National Democratic Party. Leadership includes everyone who was a member of the Secretariat of the Party, the Policies Committee or the Political Bureau, or was a member of the People's Assembly or the Shura Council during the two legislative terms preceding the 25 January revolution. Hence, stipulating that a candidate be a member during any of the

two legislative terms violates Article (232) of the Constitution which stipulates that the candidate be a member during both legislative terms.

VIII: Article (18-bis), added to Article (3) of the presented draft law, stipulates that (The counting process and the announcement of results shall take place in sub-committees, in presence of representatives of individual and party-list candidates. Head of each sub-committee shall deliver a copy of the counting results to representative of the Ministry of Interior, where the latter puts it on a signboard designated for such in the competent department. Also, an official copy thereof shall be delivered to any candidate requesting such. Moreover, head of sub-committee shall stick a copy of the results of the counting results on the door of such sub-committee and write that down in the minutes.

Head of the general committee shall announce the number of valid votes cast for each candidate and each list.

Representatives of media and civil society organizations (CSOs) are entitled to be present to monitor elections, counting, and result announcement).

Whereas each sub-committee shall announce counting results, and the general committee shall announce results in a way illustrating the number of valid votes cast for each candidate at all sub-committees; and whereas the announcement of the general results of the legislative election is the responsibility of –according to item (8) of Article (3-bis "f") of law No 73/1956 – the High Elections Commission (HEC) alone, the announcement of results by sub-committees and general committees is actually an announcement of the initial number of votes cast for each candidate at such committees and shall not indicate the winning of a candidate or the loss of another.

Based on the above, and whereas the announcement of the results by the sub-committees and general committees according to what was previously mentioned is one of the phases of the legislative election process which starts with opening the floor for nominations for the membership of the legislative council and ends with the announcement of election results by HEC according to Article (228) of the Constitution. Hence, the term '*result announcement*' mentioned in Article 18-bis shall be interpreted as an announcement of the initial number of votes and shall not be interpreted as an indication of a winning of a candidate or the loss of another, so that the text would comply with Article (228) of the Constitution.

As for the part of the text that allows representatives of media and Civil Society Organizations (CSOs) to monitor elections, counting, and result announcement, the term "CSOs" has no definite or clear significance. However, it is a generic term that may refer to a wide range of non-governmental and non-profit organizations that exist in public life and bear the task of expressing the interests and values of members thereof depending on moral, cultural, political, scientific, religious, or charity considerations. For example, it includes political parties, trade unions, and community associations. Thus, a definite and accurate criterion should be set out for such organizations, so that unauthorized organizations are prohibited from attendance according to law. Also, a maximum number of CSO representatives allowed to be present in each electoral committee shall be determined so that large numbers do not

hinder or disturb the work of such committees, breaching the constitutional guarantees of the rights to elect and be elected. Also, only organizations authorized by HEC shall be allowed to participate in the work of the stated committees. Similarly, this applies to media, where only media outlets authorized by HEC are allowed to attend.

IX: The second paragraph of Article (29) of law 73/1956 on the Exercise of Political Rights, replaced by Article (6) of the presented draft law, says: "The committee head shall hand out an open ballot paper to each voter, bearing on the back the committee's stamp and the election or referendum date. The sub-committee head may replace the committee's stamp with his signature. The voter shall take aside to one of the assigned places for balloting within the same election room. After indicating his choice on the ballot paper, the voter shall hand the ballot back folded to the head of the committee to insert it into the ballot box. Then, the voter dips his finger in indelible ink removable only after at least 24 hours, and either signs or puts their fingerprint next to their name in the voters' attendance list."

Whereas Article (28) of the same law stipulates that the election/referendum be held over two consecutive days, exceeding the durability period of the mentioned ink, this method cannot be considered as a guarantee for vote duplication. Thus, the text must be amended through authorizing HEC to set the appropriate method for achieving such purpose, pursuant to the election-related constitutional rule related that says: "One Man, One Vote".

X: The second paragraph of Article (36), replaced with Article (6) of the draft law, says "As for the districts designated for closed-list system, head of the general committee shall announce the number of the present voters as well as the number of both invalid and valid votes cast for each list..."

The same note stated in item 7 applies to this text with regards to the announcement of results and that it is only an announcement of the initial number of votes and shall not indicate the winning of a candidate or the loss of another since the announcement of the final result is the responsibility of HEC.

XI: Article (7) of the presented draft law stipulates that a new article numbered (3-bis "L") be added to law No. 73/1956 on the Exercise of Political Rights to be as follows:

"Every Egyptian living abroad and holding a national ID card, or a valid passport and has previously held a national ID card, is eligible to vote in general elections and referenda.

Every Egyptian living abroad, registered in voter database and willing to exercise the right to vote should express such desire through submitting an application to the Arab Republic of Egypt's consulate in the country where he lives, or to HEC by hand, or send it via email. Applicants shall write down the application submission date, place of residence in the country where they currently live, and their electoral domicile (i.e. the place of residence in Egypt stated on the national ID card) in the application.

The application submission date shall be stated in the application registration record in diplomatic missions/consulates. Each mission/consulate shall prepare a list of voters registered therein as well as their voting domicile and post it in a visible place.

Electoral venues shall be established within the jurisdictions of diplomatic and consular missions and places thereof shall be pinpointed. A number of sub-polling stations shall be established within such venues, with each receiving no more than 1000 voters. Also, a general committee composed of a number of the members of diplomatic or consular corps shall be established within the headquarters of each mission and a secretary from the Ministry of Foreign Affairs personnel shall be appointed for each committee.

HEC president shall issue a decision to form such committees from members of diplomatic and consular corps according to a proposal by the foreign minister..."

Whereas Article (56) of the Constitution says "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. Their participation in elections and referenda is regulated by law."

The Constitution promulgated in December 2012 introduced a new system for monitoring general elections and referenda, entrusted the National Elections Commission therewith (Article 208), and stated the formation of such commission in Article (209). In Article (210), the Constitution stipulates that "Members affiliated to the National Elections Commission shall be responsible for the voting and counting processes in referenda and elections managed by the Commission. Safeguards shall be taken to ensure the members integrity and independence under the general supervision of the Commission. With the exception of these members, members of the judicial authority shall be responsible for the voting and counting processes for a period of 10 years, starting from the date this constitution takes effect, provided that all of that takes place in the manner prescribed by law". Also Article (228) of the Constitution stipulates that "The High Elections Commission, existing at the time this Constitution comes into effect, shall undertake the full supervision of the first coming 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".

Hence, the aforementioned texts stipulate that the participation of Egyptians living abroad in the upcoming House of Representatives elections be under full judicial observation, particularly polling and counting processes, according to the second paragraph of Article (210) of the Constitution. Although the participation of Egyptians living abroad in the People's Assembly, Shura Council, and presidential elections as well as the constitutional referendum held in 2011 and 2012 was supervised by sub-committees and general counting committees composed of members from the diplomatic/consular corps, this process was constitutionally backed by Article (39-bis) of the Constitutional Declaration promulgated on March 30, 2011, added by the Constitutional Declaration issued on November 19, 2011. This article says "Notwithstanding the provisions of Article (39) of the declaration hereof, the provisions of the voting of Egyptians living abroad in elections and referenda shall be regulated by a special law". Also, the second paragraph of Article (39) stipulates that "Polling and counting shall take place under the supervision of members of a judicial body. Such members shall be nominated by higher councils thereof and selected by virtue of a decision by the Higher Commission".

Whereas Article (236) of the Constitution stipulates that "All 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 enforcement of the Constitution are hereby repealed...." Thus, the constitutional basis that allowed the assignment of the polling and counting processes to members other than those of judicial bodies was annulled as of the enforcement date of the new constitution. Therefore, the provisions of the new constitution should be applied, taking into consideration that they do not include such exception.

**Based on the Aforementioned Reasons,
The Court Has Hereby Decided:**

First: Article (2), paragraphs (1) and (4) of Article (3) replaced by Article (1) of the draft law, item (7) of Article (5) added by Article (2) of the draft law, and Article (3-bis" L") added by Article (7) of the draft law contradict the provisions of the Constitution as illustrated in the reasons stated above.

Second: paragraph (6) of Article (3) replaced by Article (1) of the draft law, items (1) and (5) of Article (5), paragraph (1) of Article (9-bis" B") replaced by Article (1) of the draft law, Article (18-bis) added by Article (3) of the draft law, and paragraph (2) of Article (29) of law No. 73/1956 as well as paragraph (2) of Article (36) of the same law replaced by Article (6) of the draft law comply with the Constitution provisions according to the interpretation provided by this Court in the abovementioned reasons.

Secretary

Court President

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