

**State of Libya**  
**The Superior Committee of Justice**  
**In the name of the people**  
**Albayda Court of Appeal**  
**The Administrative Circuit**

All the pages of this Judgment is stamped & contained the following

Albayda Court of Appeal

Certified true copy

Date: 19/12/2016

The Administrative Registrar of the Court: Mohamed Omar Hajj-Signature

In the public court session held on Wednesday, 7/12/2016.

**Chaired by: Khadijah Mohamed Salem.**

**And the panel consisted the followings:**

**Faraj Khalifah Idrees- Judge**

**Anwar Attia. Moftah. Ismael- judge**

**Hanan Mabrook- Public Prosecutor**

**Ahmed Suleiman. Musa- Clerk**

**The court passed the following Verdict**

In the Administrative Lawsuit registered in the court's public record under No. 65/2016.

**Raised by:**

1- Mr. Mustafa Abdel-Hamid Mohammed Younis Dlaf, member of the Constitution Drafting Assembly.

2- Ibtisam A. Bah, member of the Constitution Drafting Assembly.

3- Siddiq Mabrouk Drisi, member of the Constitution Drafting Assembly.

All of which resides in Albayda city, which they took Lawyers Office of Aljiash and Alaokly as their chosen domicile, located in Boatiq building-Albayda city.

**Against**

1- The President of the Libyan Constitution Drafting Assembly.

2- The States Lawsuits Authority-Aljabal Akhdar branch, represented by Lawyer Ali Mohamed Bogharsah.

### **The contested decision**

The decision issued by the Libyan Constitution Drafting Assembly concerning the amendment of Section 60, of decision no. 1 of 2014, pertaining to the issuance of the internal regulation of the Assembly dated on: 16/4/2016, which stated as follows: ‘Subject to sections 2, 16 and 53, the Assembly shall pass its decisions on the mentioned matters in this section as follows:

(a) Two-thirds of the attended members in the following circumstances;

1- Approve and amend the internal regulation.

2- Dismissal the President, Deputy or one or both of the rapporteurs, or reformation of the Presidential Office.

3- Lift the Immunity.

(b) In regard to sections related to the Parts, Chapters and Sections of the Draft Constitution, the decisions shall be taken as follows:

1- Two-thirds majority plus 1 of the active members, provided that approved members from the three areas.

2- If this was impossible, the debate will be open again in the sections concerned in the same manner stated above. Taken into consideration sub-section (b) supra in regard to the compatibility with the representative of the Libyan Society, such as Culture and Linguistic privacy of the members of the Constituent Assembly with the provisions related to them.

While the wording of section (60), referred to before the amendment was as follows: ‘subject to the provisions section 16, the Constituent Assembly shall take its decisions in accordance with the following:-

- Approve and amend the regulation by two-thirds majority + 1 of attended members in the following cases:

- Parts, Chapters and Sections of the Constitution.

- The final draft of the constitution.

- Dismissal of the President, Deputy or the rapporteur.

- Dismissal of any member of the Constitution Assembly.

- Lift the immunity.

And to take into account the compatibility with the representative of the Libyan Society, such as Culture and the Linguistic privacy of the members of the Constituent Assembly in the provisions related to them. The Assembly shall issue a decision to form a committee to define the concept and mechanism of compatibility referred to.

**Requests:** To accept the appeal in the form and in the merit, to invalidate the challenged decision and to hold the respondent in his capacity, liable to pay for the court expenses and the estimated five thousand dinars lawyer’s fees pursuant to the bylaws on the lawyers’ fees.

### **Facts & Reasoning of the Appeal**

Whereas the petitioners disagree with the said decision pertaining to the amendment of Section 60, passed by the Constitution Drafting Assembly in 2014, which mentioned in the reasoning of this verdict. They have decided to challenge it according to a petition on 17/4/2016, signed by a registered Lawyer before the Administrative Circuit of Albayda Court of Appeal. The required legal fee was paid and, the appeal was registered under number: 65/2016. Once the Appeal was submitted to the registrar of the court, it means that the Appeal is raised.

The facts of the appeal are that a twenty seven (27) members of the Constituent Assembly met on 16/4/2016, where they voted by a majority of 21 to amend the first paragraph of section (60), and by a majority of 25 to amend the last paragraph of the same section. The said amendment was not published. The petitioners came to know about these amendments when it was issued and, decided to challenge it.

However, the petitioners contest that such decision is contrary to the law as it violates section (30) sub (10-b) of the Constitutional Declaration, which affirms that the decisions of the Constituent Assembly shall be issued by two-thirds majority<sup>1</sup>, with the necessity of compatibility of the Libyan Civil Society of culture and linguistic privacy in the provisions related to them.

Moreover, the petitioners stated that such decision is in contrary to the norms, which in itself is a violation of the law. They also stated that the members passed the said decision during their meeting to amend section (60), did not have justification for adopting such a decision either in law or logic. Because this decision has erased the work of the Constituent Assembly and that its objectives were unheeded. Furthermore, the most important objectives of the Constituent Assembly is the principle of equality between the three regions, and that this amendment will devote the interest of specific region and waste the interests of the other regions. Thus, it violates the principle of equality that is considered as a core of the Constitution Drafting Assembly, which leads to the legitimacy of the decision as invalid as violating the law and the legality of its cause.

### **Court Procedures**

Whereas the petitioners filed five copies of the appeal before the **Administrative Circuit of Albayda Court of Appeal** on 17/4/2016. The respondent was notified accurately as required by law on 18/4/2017. Whereas the petitioners included in their appeal urgent claim to halt the challenged decision until the court deliver its verdict on the subject of the said appeal. Whereas the court in a previous panel considered the said request on 2/5/2016, where it had ruled on 9/5/2016, as follows: ‘the court ruled to accept the appeal in the form, and at the urgent request to halt temporarily the contested decision until delivering the final judgment on the part pertaining to its merit.

Furthermore, the court did not decide on the court expenses, but ordered to lodge the case with the registrar of the court and to move the appeal documents to the clerk of the court to prepare the case on the merit’.

Whereas after the previous court of appeal passed its decision on the urgent request, the respondent requested the Chief Judge to disqualify the panel ‘the judges’ through the State Lawsuits Authority. The Chief Judge ordered the case to be decided by the Civil, Circuit on 9/11/2016, before the investigative judge.

Whereas the respondent submitted a dossier included the power of attorneys and copies of the old and amended section (60) of decision no. 1 of 2014, passed by the Constitution Drafting Assembly ‘subject of this appeal’, as well as a memo. The appellant claimed non-specialty jurisdiction by virtue of section 2 of Law No. 88/1971, which decided the decisions that can be challenged before the Administrative Circuit. Further, they stated that the current decision did fall within the limits prescribed in section 2 supra, and affirmed that the Administrative Circuit cannot decide on laws and decisions passed by the House of Representatives. Moreover, the main objective of the Constitution Drafting Assembly is the drafting of the Libyan permanent Constitution and to move the State from the transitional phase to the final stage of stability. Thus, the Constituent Assembly has its own legal and financial personality by virtue of Article 30 sub 10, of the Constitutional Declaration No. 17 of 2013. Therefore, the work of this Constituent Assembly is a legislative work focuses on drafting the constitution and its laws and, therefore, its decisions cannot be challenged before the Administrative Judiciary. Because, the latter can only consider administrative decisions passed by the executive branch, represented in civil servants. While those who work in the Drafting Assembly does not have the status, which is why this court has no jurisdiction to review the appeal.

Furthermore, the appellant claimed that the respondents have no direct and personal interest in raising this appeal, because their claim meant to ensure the public interest. And what this decision contains was contrary to the task of the Constituent Assembly and losing the balance and the harmony of the three regions. This in itself what makes their appeal baseless and have no personal interest and therefore their claim can be inadmissible.

On the other hand, the Public Prosecution handed to the court its opinion in a memo requesting the annulment of the contested decision. However, in the court session, the respondents were presented by their Lawyer Mr. Yahya Awkali, and the State Lawsuit Authority was presented by Ali M Bogharsa, the lawyer from the Jabal Akhdar branch. The lawyer of the respondents referred to the appeal, its requests, and documents and submitted to the court a plea memo including a previous Administrative Circuit of the High Court. He affirmed the jurisdiction of the court to review the appeal, because what it counts is that the decision is an administrative decision and it’s subject to be invalidated by an appeal, and not by whom it was issued. Furthermore, what is decisive is that the subject of the decision and, that the contested decision is an administrative one by both standards of form and merit. Because the body who passed the decision is not a legislative nor judicial, and that the decision according to the merit criteria is legislative but an administrative regulatory.

Moreover, the appellant’s lawyer affirmed that his clients have an interest in their appeal as they are members of the Drafting Assembly. Because they represent the interests of their voters and it’s at the heart of their interest to defend the rights of their constituents, and that the contested decision violates their rights. Further, he affirmed that the decision was not in accordance with section 30 sub (10-b), of the Constitutional Declaration, which is a violation of the norms in force and law. He also stressed that the cause of the decision is flawed since it

has no grounds to justify it in terms of fact or law. He requested the court to implement the requests made in the appeal and to move the appeal for pleading. On the other hand, the appellant's lawyer did not contest to refer the appeal for pleading.

Consequently, the investigating judge made his summary report on the current appeal where he decided to refer it for pleading. The case was set for the court session of 23/11/2016, before this panel. Whereas both attorneys attended the summing appeal report. The attorney of the respondent affirmed to the court the requests in their appeal, memos and the documents submitted to the court. Whereas the appellant's lawyer referred to his previous claims and submitted to the court a defense memo, which included a copy of an appeal verdict with the same court No. 10/2016, dated 24/10/2106. Further, the appellant's lawyer claimed that this appeal should be annulled according to section 10 of Law No. 88 of 1972, due to lack of the place of residence of the appellants provided by the respondents, as such it will render the appeal invalid. Further, the appellant affirmed his previous plea concerning the non-specialty of jurisdiction of the court, and added in this context that the appeal is rather a constitutional appeal and not administrative, because the Constituent Assembly was created by the Constitutional Declaration which is elected and equivalent power to those three powers of the state. Further, it's not traditional nor permanent, and it is in a higher position than those of powers supra because, it creates its own governing provisions. And that its decision pertaining to the constitution, mission, which is taken by vote was subject to the supervision of the Administrative Judiciary, but to constitution, judiciary in accordance with the provisions of law No. 6/1982, amended by law No. 17/1994, regarding the reorganisation of the Supreme Court. He also provided definitions of the administrative decision from both jurist and judiciary prospective and, stated that all of it emphasize that the administration is part of the executive branch and, its decisions is not subject to the supervision of the administrative court. Furthermore, he gave some provisions of the comparative judiciary that supports this view. Accordingly, he affirmed his plea not to accept the appeal for lack of direct and personal interest and, added the making of such amendment on the internal regulation was due to apply by 12 members of the drafting assembly among them were the first and second appellants. Thus, he affirmed that this amendment did not change the legal positions of the appellants in the assembly, which deny their interest in this appeal.

Moreover, the respondent denied the merit plea of the appellant by stating that the issuance of the internal regulation of the assembly, or alteration is a regulatory action, which the jurisdiction of the assembly only subject to section 46 of law No. 17/2013, a regulatory framework, but falls short of the administrative decision aims to organise its work and is in conformity with the law.

Consequently, the respondent's attorney stated that the legislator stressed on to prejudice the principle of consensus through the presence of representatives of the three areas when stressed that the vote within the Assembly by a majority of two-thirds plus one. But this does not necessarily mean that a number of 41 members as mentioned in the appeal, because it was not stated in the text of the constitutional declaration. The said text is likely be intended as a number of those present plus one, with the necessity of the presence of representatives of the three provinces, which do not contradict at all with the text contained in the constitutional declaration. However, this mechanism does not rule out any one of the assembly members.

In addition, there are a number of members boycotted the meeting on baseless grounds and personal demands, which had nothing to do with the public interest. This has led to a lack of a quorum of the assembly. Besides, the vote of the assembly member is either being right in which any boycotted or absentee member cannot appeal against the contested decision that's made by the assembly vote, because they waived their right to not to vote for reason of absence and cannot appeal the assembly's output before the judiciary. The other instance is that where the vote will be the duty of every member. In this case absentees and dropouts have actually committed a criminal offense according to sections (122-155 of Law No. 12/2010). The continuation of dropouts led to the absence of a quorum for the meetings of the assembly, due to the security chaos situation the state faces. However, after all the attempts were exhausted to convince the boycotters to join the Constituent Assembly, the latter found the purpose for opening the way for it to accomplish its entrusted mission to prepare the draft constitution to present it to the people for a referendum. Indeed, this what happened directly after the amendment.

Beside the above argument, the respondent's attorney has rejected to bear the lawyer fees because, the respondents can resort to Popular Law Practice to defend them, but instead choose a private lawyer which make them bear the legal fees according to the Supreme Court ruling. The appellant requested the nullity of the appeal and, if the court decided otherwise to rule non-specialty of jurisdiction and, if the court decided otherwise to rule not to accept the appeal for not having interest and, if the court decided otherwise to rule to reject the appeal and uphold the contested decision and, to bind the respondents to pay expenses and lawyer fees and, in all cases to reject the appellant's request that the respondents pays the lawyer fees.

On one other hand, the Public Prosecutor submitted to the court another memo opinion in which stressed that, the members of the assembly, conducting their task on a full-time base, according to (section 47 of Law No. 17/2013), which means assuming all of their attendance. However, if the legislator wanted otherwise would have been expressly stated that two-thirds of attendees. Moreover, the decisions of the Constituent Assembly to be taken must have the votes of two-thirds + 1, which passed as a provision of the Constitutional Declaration, of the total number of the members. The Constituent Assembly was committed by this in its internal regulation to the existence of the amendment of this appeal in one of its meetings that was attended by 27 members in violation of the quorum required, which is two-thirds +1. The Constituent Assembly should before approving this amendment stick to the quorum required by law which did not happen.

On the other hand, the fact the Constituent Assembly is a public body established according to the Constitutional Declaration that sets out its governing rules for its function. This means that if the Constituent Assembly violated its function, then, it conducts will be placed as deflection of power. Further, the amendment subject of this appeal is in breach and contrary to all the rules governing the work of the Constituent Assembly that has breached the principle of equality between the three regions, and that the purpose of this appeal is to pass the draft of the constitution in breach to the provision of the Constitutional Declaration and the provisions of Law No. 17 of 2013. The Public Prosecutor concluded to abolish the contested decision because it breaches the law.

The attorney for the appellants requested the court to postpone the appeal for final judgement with allowing him to deposit his defense memo. The court held the appeal for final judgement in today's session and, allowed the litigants to exchange their defense memos within seven days from this date. However, none of the litigants have deposited his memos within the time limit granted, the court ruled in the case in today's session and after deliberation for the following reasons.

### **Reasoning**

Whereas all litigants in this case were represented as required, which means the verdict is passed in their presence, according to the provisions of section 192 of the Civil & Commercial Procedure Act.

Whereas the contested decision passed on 16/4/2016, and the appellants contested it through an appeal paid the required legal fee and, signed by a certified lawyer before this court. The appeal was lodged on 17/4/2016, which means that the appeal is in compliance with the form prescribed by law according to sections 8 and 9 of Law No. 88 of 1971, concerning the Administrative Law, which has led to the acceptance of this appeal.

To begin with, the court must respond to some of the pleas raised in this case among them is the invalidity of this appeal for not stating the residence of the respondent in breach of section 10 of the Civil Procedure Law No. 88 of 1971. The court found that this plea is inaccurate because, section 88, stated that 'if the error or the missing information in the lawsuit may make the court, the defendant, and claimant the date of the court session or the requests of the lawsuit unknown....' Whereas the appellant is a public body and its address is well known and, represented by a legal representative, the State Lawsuit Authority then, the lack of information related to its address does not make the appellant unknown. In addition, this lack of information does not cause the respondent any harm and it's not significant because, the request to invalidate this procedure work which is not significant would exaggerate the right of the respondent from means of protecting the rights to unbearable, and therefore to deny this plea.

With regard to the request that the court has non-speciality of jurisdiction to review the appeal, the court did not agree with this plea as it will be seen through the reasoning of the verdict.

The other plea raised by the respondent is that not to accept the appeal, because the appellants do not have direct and personal interest, the court also did not agree with it as it did not comply with the law, because the appellants are members of the Constitution Drafting Assembly and, the amendment of section 60 of the internal regulation is a direct prejudice to them. Because it changes the quorum for adopting decisions entrusted to them with other members of the assembly concerning the parts, chapters, constitution provisions and the final draft of the constitution. Besides, the dismissal of the president, or his deputy, or the rapporteur and to dismiss any of its members and to lift the immunity, because they are representatives of the people. The reason for their presence in the assembly is to perform these tasks in accordance with the provisions of the constitutional declaration. Thus, the amendment to its procedural mechanism for adopting the resolution is considered as interfering with the direct personal interest of the members, and affects their legal positions nor the signatures of the first and second appellants on the request for the amendments of the

internal regulation of the Constituent Assembly, which can be altered by the member of the assembly in accordance with the mechanism set out that is not contrary to the highest legislation, this what makes this plea unacceptable.

Whereas Article (30) paragraph (10-b) of the Constitutional Declaration amended by Constitutional Amendment No. (7) Which stated the following:

10. Within a maximum of 90 days from its first session, the General National Congress shall:

b- Reconstitute the High National Election Commission to elect a constituent assembly, called the Constitutional Drafting Assembly (CDA), through direct free ballot from among non-members, in order to draft a permanent constitution for the country. It shall be composed of sixty members after the model of the Committee of Sixty, which was established to draft the constitution of Libya's independence in 1951. Pursuant to a special law, the GNC shall be responsible for setting the criteria and rules for its election, taking into account the distinct linguistic and cultural components of Libyan society (Amazigh – Tuareg – Tubu). Decisions of the CDA require a majority of two-thirds plus one, and it is necessary to come to an agreement with the distinct linguistic and cultural components of Libyan society in provisions that concern them.....)

Whereas Article 46 of Law No. 17/2013, on the Election of the Constituent Assembly in charge of Drafting the Constitution stated that

‘Only the Constituent Assembly shall be responsible for developing the by-laws regulating its functions’.

And Article 3 of the same law stated that ‘The Constituent Assembly shall be mandated to draft the permanent constitution of the country and shall have a separate legal entity and financial position’.

And Article 47 of the same law stated that ‘Members of the Constituent Assembly shall operate on a full-time basis, in accordance with the provisions of this law. They shall not exercise any other activities during their tenure’.

Whereas the Constitution Drafting Assembly has issued its decision No. 1 of 2014, on the issuance of the internal regulation, which stated in its Article 60 that ‘Subject to the provisions of Article 16, the Constituent Assembly shall take its decisions in accordance with the following:

1- Two-third +1 of the members present in the following cases:

- Approve and amend the regulation by two-thirds majority + 1 of attended members in the following cases:

- Parts, Chapters and Sections of the Constitution.
- The final draft of the constitution.
- Dismissal of the President, Deputy or the rapporteur.
- Dismissal of any member of the Constitution Assembly.
- Lift the immunity.



And it is necessary to come to an agreement with the distinct linguistic and cultural components of Libyan society in provisions that concern them, and the Constituent Assembly shall issue a decision to form a committee to define the concept and mechanism of compatibility referred to’.

On 16/4/2016, twenty seven out of sixty member of the assembly met and passed decision No. 1 of 2014, in which was approved by twenty one members to amend the first paragraph of Article 60. And by a majority of 25 members to amend paragraph two of the same Article. The amended paragraph reads as follows: ‘Subject to the provisions of articles 2, 16 and 53 the Assembly shall take its decisions in matters mentioned in this article in accordance with the following:

a) Two-third majority of those present in the following cases;

1- Approving and amending the internal regulation.

2- Dismissal the president, deputy or one or both of the rapporteurs, or reformation of the Presidential Office.

3- Lift the Immunity.

(b) In regard to sections related to the Parts, Chapters and Sections of the Constitution Drafting, the decisions shall be taken as follows:

1- Two-thirds majority + 1 of the active members, provided that approved members from the three areas.

2- If this was impossible, the debate will be open again in the Articles concerned in the same manner prescribed by the commission, and presented for a vote again and approved by two-third + 1 majority, and required to be approved by member of the three elected areas taken into consideration with connection to paragraph (b) the compatibility with the representative of the Libyan Society, such as Culture and Linguistic of the members of the Constituent Assembly with the provisions related to them. The commission shall pass a decision to identify the concept and mechanism of compatibility as well as identifying the components’.

Consequently, it’s clearly evident that the Constituent Assembly was derived from Law No. 17 of 2013, which was passed on the basis of Article 30 para (10-b), of the Constitutional Declaration of the seventh Constitutional Amendment. As a result, the Constituent Assembly is a separate legal entity that was incorporated by the State and mandated to draft the permanent constitution of the country. Thus, it has its own legal personality in which it can sue, be sued, assumes obligations, and has a legal representative to represent it before others, the judiciary as well as it has its own financial position.

Additionally, the nature task of the Constituent Assembly is to manage a public body where all of its staff are civil servants and its correspondents are officially within the limits assigned to it including, works related to its bylaw and daily conduct. Hence, the work of the assembly divided into two parts, the first, which includes drafting the constitution set by the internal regulation as parts and chapters. And the second part includes the work related to rules of procedure, which shows the mechanism of action and the rights of members, duties, rewards and dismissal as well as to maintain order within the Office of the Constituent Assembly or in meetings.

Therefore, the work of the Constituent Assembly related to drafting the permanent constitution is one of the tasks conducted without control by the administrative judiciary. Because, its work in relation to drafting the parts and chapters of the constitution will be subject to the supervision of the people as the source of all powers, which exercised when viewing the draft of the constitution to a referendum, and it's left to the people to decide whether to approve, or reject it.

However, with respect to decisions issued by the Constituent Assembly by virtue of its daily work, including by regulation or implementing regulations to conduct its work, and to set a mechanism or a statement detailing the basic and total provisions contained in the law governing its work, in order to facilitate its implementation. These are in fact only the provisions of complementary regulation of Law No. 17 of 2013.

Nonetheless, the bylaws of the Constituent Assembly in fact are merely an administrative decisions by nature, because it did not add any new provision to the law or the Constitution, Declaration and its amendment. And this what has been settled by jurists and the judiciary, since they are subject to the supervision of the administrative judiciary, to determine whether if they are in compliance or violating to higher rules, and subject to be challenged.

This is what makes the challenge of the amended Article 60 subject of this appeal falls within the jurisdiction of this court, because it was merely an administrative decision that amended and established legal positions.

Whereas the adoption of the internal regulation of the Constituent Assembly have been approved by two-thirds, which means that it had created a legal position for the Constituent Assembly members that it cannot be amended as it requires their presence and approval. Nevertheless, the original bylaws before the amendment decided that, the vote on the sections, chapters and provisions of the final draft of the constitution. Besides, the dismissal of the president, deputy, rapporteur and any member, and lift the immunity is on the basis of two-thirds plus one. This means that the amendment can only be completed by attendance and the approval of two-thirds plus one.

Furthermore, the sixty members of the Constituent Assembly have a legal position, in which their approval and the attendance of two-thirds plus one in a plenary session is required to approve this amendment, on the assumption that the process of the amendment was accurate. Because it's amendment pertaining to a legal status which concerns them. While the number who attended the session where the amendment took place did not reach even half of the Constituent Assembly when the amended took place. Whereas the amended first para of article 60 was by a majority of 21 members, and by a majority of 25 members for the second para of the same Article. Therefore, that's what makes this amendment null and void, because the members consented in the vote process before approval.

On the other hand, the alteration of the legal position was settled by the bylaws of the Constituent Assembly initially approved and not challenged, however, it cannot be amended except according to legal rules, or it will be subject of appeal before the administrative judiciary. Because, it's not immune from appeal, and that the interpretation rules of the provisions are not subject to the wishes of the Constituent Assembly's members, but it's subject to the sources of those governing rules. Further, when the legislator has assigned the Constituent Assembly to set its internal regulation, it meant that it shall not touch on the

decisions pertaining to the part, chapters and sections of the constitution, but only to those related to the conduct of the Constituent Assembly's work.

However, the aim of the legislator in drafting article 30 of the Constitutional Declaration according to the Seventh Constitutional Amendment, which sets the rules governing the existence of the Constituent Assembly was that, its establishment derives from the historical source of the 1951, constitution, when it was mentioned that they arise along the lines of the Sixty Members Committee. Moreover, the other para of the same article determined the voting system by two-thirds plus one, and that the legislator stated the voting system after the quorum configuration which makes the voting system of actual members. Thus, if the legislator wanted the voting to be of the attendees then, it would be explicitly stated, but since it was not stated it shall be taken generally.

Moreover, the wording of article 47 of Law no. 17 of 2013, affirmed that the members of the Constituent Assembly shall operate on a full-time basis. This means the general principle is that the presence of members of the Constituent Assembly is permanently to carry out this task, which means that the quorum in attendance in cases of vote on parts, chapters and the provisions of the constitution is out of the question.

Furthermore, the amendment subject of this appeal had been amended the legal status in the voting system. Thus, what is the cause behind altering the voting to the quorum of the attendees for two-thirds plus one. In other words, what is the reason of the existence of the vote that is required plus one, as the two-thirds quorum is sufficient to achieve the result, the required majority.

Thus, the conclusion reached by the assembly in relation to the contested appeal did not provide an accurate characterisation to the facts and breached it in a manner conducive to the invalidity of the result reached. Further, it was not derived in a way that is compatible with the objectives of the decision, which was supposed to comply with the ruling of the article set by the Constitutional Declaration.

Furthermore, what was done by the assembly through its attended members who voted on the amendment subject of this appeal was that, an interpretation of the constitutional rule which decided the voting system contrary to the general principle. The constitutional rules provided that, no one whosoever may interpret those rules except the judiciary, because the constitutional rules is above all the legal rules. Therefore, based on the above, the court concludes the annulment of decision No. 1 of 2014, passed by the Drafting Constitution Assembly dated 16/4/2016, concerning the amendment of article 60, as in the court's verdict below.

As with regard to the request of the appellants to hold the respondents liable to pay the estimated lawyer's fees of five thousand dinars. The court rejected it, because the essence of article 1 of Law No. 4 of 1981, concerning the establishment of the Popular Law Practice, which stated that, 'any citizen may request the department of law practice to commission a lawyer to defend him for free in any case either raised by him or against'. Thus, if the defendant chooses not to rely on the above law, but instead decided to hire a private lawyer, then he shall be liable to pay the legal fees. Therefore, the court rejected the appellant's request related to the legal fees.

Since the respondent has lost the appeal, he shall be obliged to pay the court expenses pursuant to Article 287 of the Civil & Commercial Procedure Act.

**Therefore:**  
**In the name of God, In the name of the people**

The court held in its open session to accept the appeal in the form, and in the merit to invalidate the contested decision of the Constitution Drafting Assembly issued on 16/4/2016, to amend of Article 60 of its decision No: 1 of 2014, concerning the issuance of the internal regulation of the Constituent Assembly, and rules to hold the respondent to pay the court expenses and refused other requests.

	<b>Signatures of the panel</b>		
<b>Court President</b>	<b>Member Judge</b>	<b>Member Judge</b>	

Seal of Albayda Court of Appeal: In the name of the people: Ministers & Heads of Public Bodies Execute this verdict. Date: 19/12/2016.
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The Administrative Registrar of the Court: Mohamed Omar Hajj-Signature
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