

# LEGAL ADAPTATION AND GOVERNANCE OF CONSTITUTIONAL DECLARATIONS DURING TRANSITIONAL PERIODS

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## Abstract

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Egypt has gone through many transitional periods over the past 100 years, during which time multiple constitutional declarations have been made. In this paper, the authors focused on the legal adaptation of constitutional declarations during transitional periods that can pose particular challenges as these periods are often characterized by political instability, uncertainty, and lack of an established legal framework. However, to ensure that the principles of democracy, human rights, and the rule of law are upheld, there is a need to ensure that the constitutional declaration is adopted and effectively implemented during the transition period. However, the authors used a historical-analytical approach to address the question of governance of constitutional declarations during Egypt's transitional period (Saleh, 2020). The relevance of this paper includes drafting and adopting a new or revised constitutional declaration that reflects the changing political landscape and the aspirations of the people, ensuring that the principles of democracy and the rule of law are upheld during the transitional period (Elsaadani, 2020). The main findings of the paper are establishing clear and defined constitutional rules and procedures for constitutional declarations and ensuring compliance with these rules.

**Keywords:** Governance, Constitutional Declaration, Constitution, Transitional Periods, Annulment of Constitutional Declaration, Judicial Oversight via Annulment, Constitutional Claim

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## 1. INTRODUCTION

Studying the governance of constitutional declarations is critical for several reasons, especially since constitutional declarations are the most important legal instruments that establish the fundamental principles, values, and norms of a country's political system. They are often used to establish or reestablish constitutional order in times of crisis, such as after a revolution or a *coup d'état*. Understanding how these declarations are drafted, implemented, and enforced is crucial for understanding the functioning of a country's political system.

Moreover, the governance of constitutional declarations is important for democratic governance and the rule of law. The process of drafting and implementing constitutional declarations can have a significant impact on the legitimacy of the political system, the protection of human rights, and the accountability of government institutions. Therefore, studying the governance of constitutional declarations can help identify best practices and improve the democratic quality of governance.

In addition, the study of the governance of constitutional declarations is particularly relevant in light of recent global trends toward authoritarianism and populism. In many countries, constitutional declarations have been used as a means of consolidating power and limiting democratic checks and balances. Therefore, understanding the governance of constitutional declarations can help identify potential threats to democratic governance and the rule of law.

Transitional periods witness major political and constitutional changes resulting in revoking or amending the Constitution. That is to say, during these periods, those in power always seek the swift adoption of new constitutional principles and standards to ensure political and constitutional stability so that the state may resume the establishment and organization of all institutions (Elsaadani, 2020).

On this basis, since the state Constitution usually gets suspended or revoked during these transitional periods, the transitional authority often has no choice but to issue constitutional declarations to act accordingly (Firmian & Mirghani, 2022). In this regard, a constitutional declaration may be defined as follows: "It is several constitutional articles issued by the authority ruling at the time of issuing this declaration (known as the Real Power); thus, it is an interim document passed to determine some constitutional principles, upon which the State shall function until the end of these exceptional circumstances; and that is to maintain the State's unity, stability, and security; i.e., it is a brief constitution consisted of a few numbers of articles that legally enable the ruling transitional authority to pass some legislations that shall pave the way for the end of this transitional period and the enactment of a new constitution" (Fekkri, 2013, p. 25).

In this context, a major problematic issue might be raised. It is established that the constitution is passed by those who have the real power in society (i.e., the people); nonetheless, the constitutional declaration is not issued by the people, but rather by a transitional

authority. In other words, this constitutional declaration represents a political commitment by the ruling transitional authority, which covers all principles and provisions of the interim transitional period, until the enactment of a new constitution under the applicable constitutional procedures (Elhawari, 2017).

In light of the above, major questions could be raised as follows: *In the event that the constitutional declaration has included some provisions which are contradictory to the stated constitutional principles (e.g., the principles of equality, justice, or public freedoms), or which may prevent some state institutions from performing their constitutional roles, may this constitutional declaration be subject to judicial review? Does it acquire constitutional immunity against any judicial review?*

The study of the governance of constitutional declarations is approached from various theoretical perspectives, such as political science, constitutional law, and comparative law. Political science theories that can be applied include institutionalism, democratic theory, and governance theory. Institutionalism focuses on the role of institutions in shaping political behavior and decision-making. The democratic theory concerns the norms and principles underpinning democratic governance, such as popular sovereignty, representation, and accountability. Governance theory emphasizes the importance of collaborative and participatory decision-making processes in ensuring effective and legitimate governance.

The study of the governance of constitutional declarations was organized around several key concepts, such as legitimacy, constitutionalism, judicial review, and separation of powers. Legitimacy refers to the acceptance and support of a political system by its citizens. Constitutionalism refers to the principles and norms that govern the exercise of power and the protection of individual rights and freedoms. Judicial review is the power of courts to interpret and enforce constitutional provisions. Separation of powers refers to the division of powers among different branches of government to ensure checks and balances and prevent abuses of power.

Based on the existing literature on the governance of constitutional declarations, some of the literature gaps or areas that require further research include the role of constitutional courts in checking the abuse of constitutional declarations. While some studies have examined the impact of constitutional declarations on the separation of powers and the rule of law, there is a need for research that focuses on the role of constitutional courts in checking the abuse of constitutional declarations by the executive branch. This research could help to identify the factors that facilitate or hinder the independence and effectiveness of constitutional courts in safeguarding constitutional democracy.

The main findings and contributions of this article are identifying the best practices for drafting and implementing constitutional declarations to promote democratic governance and the rule of law, analyzing the impact of constitutional declarations on the legitimacy of the political system, and the protection of human rights, identifying potential threats to democratic governance and the rule of law posed by the misuse or abuse of constitutional

declarations, and exploring the role of courts and other actors in interpreting and enforcing constitutional declarations.

First, we will briefly describe the history of the Great Transition in Egypt, and then proceed to an analytical study of the legal effects of constitutional declarations made during these transitional periods, and, finally, deal with the issue of judicial oversight of these declarations in Egypt. In this study, we used a historical-analytical approach to address the question of the legal effects of constitutional declarations during Egypt's transitional period.

In this paper, we will answer the following research questions:

*RQ1: What is the history of constitutional declarations in Egypt?*

*RQ2: How does the issuing authority handle constitutional declarations (on application-amendment-cancellation)?*

This paper is organized as follows. Section 1 provides an Introduction. Section 2 discusses the relevant literature. Section 3 analyzes the methods used in the work. Section 4 describes the results obtained from the research. Section 5 deals with the case of a constitutional declaration during the transition period in Egypt. Section 6 concludes the paper.

## 2. LITERATURE REVIEW

The legal effect of constitutional declarations during transitional periods in Egypt has been the subject of much debate and discussion in recent years. In particular, there is a question about whether constitutional declarations issued by the president during transitional periods have the force of law and can be subject to judicial review.

There are many articles focused on this topic, such as Firmian and Mirghani (2022) where the authors focused on Sudan's democratic transition in 2019. It was an uphill struggle. Three decades of Islamist military dictatorship, multiple internal conflicts, widespread poverty, and depleted state coffers all weighed heavily on the political authorities tasked with forging a new democratic system. Yet, there was hope in Sudan, at least for a time, particularly after the United Nations helped broker the historic 2020 Sudanese peace agreement between a coalition of rebel groups and the interim authorities. Then, between September and October 2021, Sudan's transition unraveled. Why did Sudan reach this point? And can its transition still be salvaged? This paper reviews the latest developments and argues that the October 2021 military coup was not a surprise but instead the foreseeable culmination of a power grab long in the making. The study also lays out the steps that could improve the likelihood of a democratic transition in Sudan and offers a cautionary note about the many challenges.

Grinin and Korotayev (2022), in their research, analyze conditions in the Middle East and North Africa (MENA) countries on the eve of the Arab Spring wave of revolutions from the world system perspective, as well as the causes (internal and external, general and specific) and certain consequences of this revolutionary wave, both in the MENA region and in the world system.

Gaily (2021), in his paper, focused on the Sudanese transitional government, which came to power after the fall of the Al-Bashir regime, that faces many challenges related to the nature of its composition and the ongoing conflicts between its parties, the poor economic conditions, the continuous external interference in Sudan's affairs, and the difficulties in sustaining peace. On the other hand, it has many opportunities, including a broad popular base, in addition to international and regional support. The future of the democratic transition in Sudan depends on the ability of the transitional government to take advantage of the opportunities, and its ability to overcome difficulties and face the challenges.

Khahil (2019), in his research, analyzed constitutional declarations since 2011.

These articles collectively contribute to the ongoing discourse on constitutional declarations, democratic transitions, and the challenges faced by countries like Egypt and Sudan. They provide valuable insights into the complexities and dynamics surrounding transitional periods and the implications for governance and democracy.

## 3. RESEARCH METHODOLOGY

In this research paper, the historical-analytical approach was employed to address the issue of the legal effect of constitutional declarations during transitional periods in Egypt.

During the initial phase of preparing this research paper (i.e., in the first half of 2022), all relevant data and sources concerning the issue in question were collected. That is to say, we collected a number of highly significant sources, as well as several court rulings issued by Egyptian judiciaries; in addition to other data acquired from some websites.

After the completion of data collection, we analyzed all relevant legal provisions collected from previous legislation. In addition, we addressed all explanations and interpretations available for these legal provisions in the various jurisprudential publications, whether they are general publications or specialized ones in the field of constitutional declarations during transitional periods in Egypt.

Case studies are an alternative method to study the governance of constitutional statements. Conducting case studies on specific constitutional declarations and their impact on Egyptian governance can provide valuable insights. Examining the context, parties, and results of a particular case in a constitutional declaration can help researchers gain a more nuanced understanding of the issues at stake.

## 4. RESULTS

After completing the study and analysis, the following results have transpired.

Constitutional declarations may not raise the rank of the Constitution, taking into account that they are mostly issued by the executive authority; not to mention that the provisions of these declarations were not put to a popular referendum.

During transitional periods, the constitutional declaration may be amended by its issuing authority

without any specific due process. It may also be annulled by its issuing authority who may replace it with a new constitutional declaration.

Constitutional declarations might involve some provisions that might impose restrictions on individual rights and freedoms. Hence, these provisions shall be subject to judicial oversight via annulment, as well as the supervision of the constitutional judiciary.

## 5. DISCUSSION

### 5.1. History of constitutional declarations in Egypt

There is no doubt that the past Egyptian experience with constitutional declarations is an experience of a special and unique nature. In fact, over the last hundred years, Egypt has witnessed many transitional periods, under which several constitutional declarations have been issued (Alsenousi, 2013, Saleh, 2020).

#### 5.1.1. Royal Decree No. 70 of 1930

On October 22, 1930, a royal decree was issued, which would be considered at that time as a constitutional declaration, stating the annulment of the Egyptian Constitution of 1923, the dissolution of the parliament with its two councils, and the enactment of a new constitution issued by this royal decree (i.e., the Egyptian Constitution of 1930). In this context, this royal decree may not be considered a complete constitution, but rather a constitutional declaration issued by the governing authority by a royal decree; taking into account that this period was described later as a coup against the legally acknowledged constitutional life during the period before the Egyptian Constitution of 1930.

In this regard, this royal decree has introduced several disadvantages for constitutional declarations. For instance, it placed many restrictions on public freedoms; it prevented several constitutional institutions from exercising their authority (e.g., the dissolution of the parliament with its two councils); not to mention that by Article 156 of this constitutional declaration, it is not permissible to propose any amendments to this constitution for the next ten years following the enactment of this new constitution. In other words, it provided a constitutional provision prohibiting the amendment of any constitutional articles at all for ten years, as of the enactment of the new constitution. In turn, this new constitution was met by a wide societal rejection to the point that Royal Decree No. 70 of 1930 was issued for the annulment of the Egyptian Constitution of 1930. Afterward, Decree No. 118 of 1935, issued on December 12, 1935, was issued for the reinstatement of the Egyptian Constitution of 1923 (Khalil, 2019).

#### 5.1.2. The constitutional declarations issued in the wake of the Egyptian Revolution of 1952

The Egyptian Revolution of 1952 led directly to the abolition of monarchy in Egypt, as the state was transformed into a republic regime for good. In the aftermath of this revolution, the Egyptian Constitution of 1923 was annulled; then, the first constitutional declaration was issued on

December 10, 1952, confirming the beginning of a specific transitional period, starting from the date of issuing this constitutional declaration till the enactment of a new constitution for the state; as the government shall perform its duties and functions during this transitional period in light of the general constitutional principles, commonly known within the framework of constitutional life (Abouzeid, 2007).

Moreover, a second constitutional declaration was issued on January 17, 1953, in which the transitional period was specified as the duration of three years that shall end on January 16, 1956. Afterward, a more detailed third constitutional declaration was issued on February 10, 1953, comprising general constitutional principles that shall be applied during the transitional period till the enactment of a new constitution. In this regard, this constitutional declaration included some general constitutional articles, for example, all authorities shall be derived from the nation; all Egyptians shall be equal before the law; personal freedom and freedom of speech shall be granted to all within the limits of the law, and judiciary shall be independent of any superior authority other than law (Inter-governmental Organisation, 1953).

Furthermore, the ruling regime during this transitional period was identified through four constitutional articles as mentioned hereinafter. By Article 8, the revolution leader along with the Revolutionary Command Council shall practice all works of supreme sovereignty, especially with procedures deemed as necessary for the protection of this revolution and its regime, so that the desired goals and objectives could be achieved successfully; hence, they shall be entitled to appoint and dismiss all ministers of government. In addition, by Article 9, the Council of Ministers shall assume their legislative authorities; by Article 10, the Council and its ministers shall assume their respective executive works; and by Article 11, a conference to be constituted of members of both the Revolutionary Command Council and the Council of Ministers, considering public policy, as well as other relevant issues concerning the actions of each minister at its ministry.

#### 5.1.3. The legal characterization of the 1953 Constitutional Declaration

Some believe that the Constitutional Declaration issued in 1953 may be considered an interim constitution limited to a specific period, until the enactment of a permanent constitution (Dayer, 2004). Nonetheless, this view was criticized widely, as most jurists believe that the said constitutional declaration cannot be considered a constitution at all. They firmly believe that a constitution shall be passed by those who are entitled to exercise such sovereignty in a modern country (i.e., the people); not to mention that prior to be for evolution, the people had indeed enjoyed this sovereignty by the principle of the rule of people; hence, the nation shall reserve the right to enact the constitution, rather than any other authorities. Furthermore, since the revolution does not entitle its leaders to control such sovereignty, but rather to exercise some aspects of public authority (i.e., they represent an established dependent authority, not a constituent

authority); hence, a constitutional declaration may only be considered a political commitment taken by the revolution leaders before the people, to the principles that shall govern a transitional interim period, until the enactment of a permanent constitution by those who are entitled to this right, i.e., the people (Abouzeid, 2007).

## 5.2. The constitutional declarations issued in the wake of the Revolution of January 2011

In the aftermath of the Revolution on January 25, 2011, several constitutional declarations were issued successively (Gabrial, 2012) till the enactment of the Egyptian Constitution of 2012, followed by the enactment of the Egyptian Constitution of 2014. First, a constitutional declaration was issued on February 13, 2011, stating the suspension of the provisions of the Egyptian Constitution of 1971. Then, a second constitutional declaration was issued on March 30, 2011, including 63 constitutional articles. That is to say, this second constitutional declaration has stipulated some constitutional principles, as well as an explanation for the method through which power shall be transferred to an elected civil government, starting from parliamentary elections that shall be followed by presidential elections, according to Article 61 of this constitutional declaration.

### 5.2.1. Regulations of parliamentary elections by the constitutional declaration

In light of the above, it is remarkable to see that the constitutional declaration has played a new role in Egypt, which is regulating the parliamentary elections; not to mention that it has transformed the regular system of individual elections into a closed list system. Afterward, on September 25, 2011, a third constitutional declaration was issued which consisted of just one article concerning an amendment to the provision of Article 38 of the Constitutional Declaration issued on March 30, 2011 (Supreme Council of the Armed Forces of Egypt, 2011).

The original article stated the following: By law, the right to run for the People's Assembly and the Shura Council shall be regulated according to any election system as stipulated by law; and it is permissible to determine a minimum participation rate for women in both councils. Then, the said amendment to this article came to state the following: By law, the right to run for the People's Assembly and the Shura Council shall be regulated under an election system that shall combine between the parties closed list and the individual systems (i.e., two thirds for the first system and one third for the latter one).

Furthermore, during the preparation for the Egyptian parliamentary elections of November 28, 2011, an appeal was submitted before the Administrative Judiciary Court against the negative administrative decision concerning the prohibition of establishing electoral headquarters at Egyptian consulates and embassies abroad that shall enable Egyptian citizens living abroad to cast their votes at the parliamentary elections. In this regard, the court has issued the following ruling: "All Egyptian citizens residing abroad shall be

enabled to cast their votes at all elections and referenda held by the Egyptian State" (Case No. 2662, 2011).

In this sense, a major constitutional problem was raised regarding the fact that the Constitutional Declaration of 2011 stipulated complete judicial supervision of the electoral process. Taking into account the circumstances of the state at that time, it was impossible to send judges to all electoral headquarters around the world within this short period, the Constitutional Declaration of 2011 was subject to another amendment, excluding Egyptian citizens residing abroad from the stipulation of judicial supervision, so that the election results may not be subject to any appeal of unconstitutionality on legal grounds of being contradictory to the constitutional declaration.

On this basis, a new Article 39 was added to the Constitutional Declaration of 2011 as follows: As an exception to the provision of Article 39 of this Constitutional Declaration, the votes of Egyptian citizens residing abroad in all elections and referenda shall be regulated pursuant to the legal system. Afterward, the Military Council issued Decree-Law No. 130 of 2011, regarding the votes of Egyptian citizens residing abroad in public elections and referenda; as the fifth and sixth articles of this decree-law have stated that electoral headquarters shall be held at Egyptian consulates and embassies abroad, constituted from a sufficient number of members of the diplomatic corps.

Afterward, on March 24, 2012, the parliament (including both the People's Assembly and the Shura Council) assembled to select members of the First Constituent Assembly of 2012. Then, on April 10, 2012, the Administrative Judiciary Court issued a ruling for the dissolution of this First Constituent Assembly tasked with the preparation of the new constitution (Case No. 26657, 2012).

### 5.2.2. Regulations of the Constituent Assembly elections by the constitutional declarations

In Egypt, the Supreme Council of the Armed Forces played a significant role in the drafting and issuing of constitutional declarations during the transitional period following the 2011 revolution that ousted former President Hosni Mubarak.

After assuming executive power in Egypt, the Supreme Council of the Armed Forces formed a committee to draft the constitution and the proposed constitution was presented to the people for a general referendum in March 2011. The referendum results were announced, and the constitution was adopted later that same year.

In November 2012, the Supreme Council of the Armed Forces issued a constitutional declaration that specified the procedures for electing a constituent assembly to draft a new constitution. This assembly was formed and drafted a new constitution, which was announced in December 2013.

In addition to the above, the constitutional declarations in Egypt had another major effect that could be considered even more critical; and that is by issuing constitutional declarations stating the rules and standards of selecting members of the Constituent Assembly responsible for the enactment of a new constitution. This constitutional

declaration is contradictory to the original public rules stipulating that only a parliament elected by the people may choose members of the Constituent Assembly tasked with the enactment of a new constitution.

In this regard, on March 24, 2012, the elected parliament (which was dominated by an Islamist majority in both the People's Assembly and the Shura Council) assembled to select members of the First Constituent Assembly. After that, on April 10, 2012, the Administrative Judiciary Court issued a ruling for the dissolution of the constitution's First Constituent Assembly, due to the overwhelming dominance of Islamists hence failing to represent all sects of Egyptian society equally and fairly, not mention that most selected members were actors of the People's Assembly and the Shura Council. That is to say, the legal grounds of this ruling have stated that Article 60 of the constitutional declaration has not stipulated explicitly that members of the People's Assembly and the Shura Council shall participate in the constitution's Constituent Assembly (Case No. 26657, 2012).

Afterward, on June 13, 2012, members of the People's Assembly and the Shura Council elected a Second Constituent Assembly, following the said court ruling issued for the dissolution of the First Constituent Assembly. In the meantime, the Egyptian Supreme Constitutional Court was hearing an appeal referred to them by the Administrative Judiciary Court, without the dissolution of the People's Assembly; and the same month, on June 2012, the Supreme Constitutional Court ordered the dissolution of the People's Assembly due to the unconstitutionality of some articles in its Elections Law (Case No. 57, 2012).

After that, on June 17, 2012, the Military Council issued a supplementary constitutional declaration; and by then, it was pretty much accustomed to using the term "Supplementary" to the Constitutional Declaration of 2011. In this declaration, the Supreme Council of the Armed Forces expanded its authorities, including the jurisdiction to constitute the constitution's Constituent Assembly with an emphasis that in case of any impediments that might suspend the work of the Constituent Assembly, the Supreme Council of the Armed Forces shall be entitled to form a new Constituent Assembly representing all sects of society within one week.

In addition, this declaration also added that the Constituent Assembly shall prepare the new draft constitution within three months of the date of its formation. Then, the draft constitution shall be put to a popular referendum within 15 days of the date of concluding its preparation. Afterward, the legislative elections shall be initiated within one month of the date of approving the new constitution by the people.

On the other hand, on June 30, 2012, the presidential elections were held in Egypt; and Mohamed Morsi was elected as the new President of the Arab Republic of Egypt. Then, in the wake of his win, the new president abolished the supplementary constitutional declaration issued on June 17, 2012; instead, President Morsi issued a new constitutional declaration on August 12, 2012 (Maged, 2013). Interestingly, this new constitutional declaration, issued by President Morsi, stated that in case of

any impediments that might suspend the works of the Constituent Assembly, the president shall be entitled to form a new Constituent Assembly within 15 days, to prepare a new draft constitution within three months of the date of its formation; then, the draft constitution shall be put to a popular referendum within 30 days (Fekkri, 2012).

Nonetheless, a claim was initiated before the Administrative Judiciary Court, demanding the dissolution of the Second Constituent Assembly; and on October 23, 2012, the Administrative Judiciary Court issued their ruling on Claim No. 45931 of 2012; as the court decided that Law No. 79 of 2012, concerning the standards of electing a Constituent Assembly, shall be referred to the Egyptian Supreme Constitutional Court for adjudication on its constitutionality (Case No. 45931, 2012).

### *5.2.3. Preventing the judiciary from performing its role by constitutional declarations*

Based on the previously mentioned multiple appeals, the Supreme Constitutional Court decided to hear the submitted claim challenging the constitutionality of the standards of electing a Constituent Assembly on a hearing on December 2, 2012. As a result, President Morsi decided to issue a new constitutional declaration on November 21, 2012, providing immunity to all constitutional declarations, laws, and decrees issued by him; and that by granting them the legal capacity of being final, decisive, and non-appealable through any means of appeal. In this context, Article 5 of this new constitutional declaration states the following: It is not permissible for any judicial authority to decide the dissolution of Shura Council or the Constituent Assembly tasked with the enactment of a new draft constitution. In this way, the president has immunized both the Shura Council and the Constituent Assembly against any dissolution by a court ruling, hence causing several angry reactions and violent protests.

Afterward, the new Egyptian Constitution of 2012 was issued on December 25, 2012. However, after a while, specifically on July 3, 2013, the Armed Forces issued a public statement proposing a roadmap for some future actions as follows (Elhawari, 2017, p. 28):

- a. The current constitution shall be suspended temporarily.
- b. The president of the Supreme Constitutional Court shall take oath before the court's general assembly as the new Interim President of Egypt.
- c. An early presidential election shall be held as soon as possible; as the president of the Supreme Constitutional Court shall assume the duties of the State's President during this transitional period, till the election of a new Egyptian President.
- d. The president of the Supreme Constitutional Court shall be entitled to issue constitutional declarations during this transitional period.
- e. A new government shall be formed from powerful and capable national cadres, and this government shall have all required authorities to run this critical period of transition.
- f. A committee shall be formed from all sects and fields of expertise, to review the proposed constitutional amendments to the temporarily suspended constitution.

#### 5.2.4. The constitutional amendment by constitutional declarations

In light of the above, President Adli Mansour, the Interim President of Egypt, issued a constitutional declaration on July 8, 2013. It consisted of 33 articles. In this regard, this constitutional declaration stated that by a Presidential Decree, a committee of 10 experts shall be formed within the maximum period of 15 days of the date of issuing this declaration; as this committee shall be responsible for proposing the required amendments to the temporarily suspended Egyptian Constitution of 2012, and this committee shall conclude their works within 30 days of its date of formation (Elsaadani, 2020).

In this context, the said committee shall submit their proposals for the required constitutional amendments to a larger committee formed of 50 members representing all sects, categories, and groups of society. Afterward, based on the submitted proposals, the committee shall conclude all works of preparing a final draft for the required constitutional amendments within 60 days at most; that is to say, during this period, the committee shall present their proposed amendments for social dialogue. In this regard, the interim president shall issue all necessary decrees concerning the committee's formation and venue; while the committee shall determine its own regulatory rules and procedures in a way that shall ensure the fulfillment of the said social dialogue about the proposed amendments.

In this sense, the interim president shall put the proposed constitutional amendments for a popular referendum within 30 days of the date of receiving them; as these amendments shall take full legal effect as of the date of their approval by the people. Afterward, the interim president shall declare elections for the House of Representatives within 15 days of this date of approving the new amendments; as these elections shall be held within no less than one month and no more than two months. Then, within one week at most of the first assembly of the new House of Representatives, the presidential elections shall be declared; as the competent Supreme Elections Committee shall be responsible for the complete supervision of this process.

On this basis, on July 20, 2013, Presidential Decree No. 489 of 2013 was issued for the appointment of the said committee of 10 experts as set forth by the constitution. Then, on September 1, 2013, Presidential Decree No. 570 of 2013 was issued, where Article 2 stated the following: The appointed committee shall examine the draft constitutional amendments delivered by the expert's committee as outlined in Article 28 of the Constitutional Declaration; then, they shall present those amendments for a social dialogue, and receive any proposals or suggestions submitted to them in this regard by any citizens or authorities; and that is to prepare the final draft constitutional amendments within the period of (60) days as of the date of their first meeting.

In this regard, Fekkri (2013) has expressed his belief that the constitutional declaration issued on July 20, 2013, was meant, in the beginning, to amend the suspended constitution cautiously and carefully;

however, it was in the interest of the nation to abolish the Egyptian Constitution of 2012 entirely by issuing a new constitutional declaration that shall alter the previously declared purpose of making new amendments into the enactment of an entirely new constitution; i.e., an action that shall entirely annul the Egyptian Constitution of 2012. As a result, the new constitution was issued under the designation the Egyptian Constitution of 2014; and that is after adding Article 246 as follows:

As of the date of issue of this constitutional document, all of the following shall be considered as abolished and annulled: the constitutional declaration issued on July 5, 2013; the constitutional declaration issued on July 8, 2013; as well as any other constitutional texts or provisions stated in the Egyptian Constitution of 2012, but not in this current constitutional document; however, any resulting legal effects in this regard shall remain as valid and enforceable.

#### 5.3. The amendment and addition of new articles in the constitutional declaration

During transitional periods, may the ruling authority be entitled to amend or add new articles to the constitutional declaration issued by this authority? Usually, a constitutional declaration is issued to take command of all matters during transitional periods; and that is to avoid any major troubles that might ravage the country during this critical time. Nonetheless, with the prolongation of this transitional period, several political and constitutional issues and situations may burst; which in turn requires quick solutions that might drift away a little from the constitutional provisions stated by the constitutional declaration. Therefore, the ruling authority may choose to take swift action by amending or adding new articles to the constitutional declaration, so that they could keep up with the new developments.

##### 5.3.1. The amendment of articles in the constitutional declaration by its issuing authority

In the aftermath of the Revolution in January 2011, Egypt witnessed several transitional periods with numerous conflicting visions and views for the future roadmap, concerning the end of these transitional periods and the return to a permanent constitution (Elassar, 2011). Therefore, several constitutional declarations were issued, raising many questions as follows: *May the ruling authority be entitled to amend its constitutional declaration? Are there certain procedures that shall be followed duly, when amending the constitutional declaration?* The declaration's issuing authority used to introduce new amendments without any due process; a fact evident frequently several times (e.g., the amendment of the adopted system for parliamentary elections from individual elections to the closed list system) (Supreme Council of the Armed Forces of Egypt, 2011).

Furthermore, the amendment could also be introduced through the addition of new articles to the issued constitutional declaration. For example, on November 19, 2011, a new article was added to the constitutional declaration for the regulation of voting by Egyptian citizens residing abroad in

parliamentary and presidential elections as well as all public referenda. That is to say, this new article was meant to facilitate all procedures of their voting, as well as procedures of supervision on all electoral headquarters at Egyptian consulates and embassies.

### *5.3.2. The annulment of a constitutional declaration by the issuance of a new declaration*

During transitional periods, may the ruling authority be entitled to annul the constitutional declaration, and issue a new declaration? This actuated several times when former President Moursi annulled the constitutional declaration issued by the Supreme Council of the Armed Forces on June 17, 2012, just before the announcement of the results of the presidential elections then issued a new constitutional declaration after taking office on August 12, 2012.

In this regard, Article 53 of the Constitutional Declaration issued on June 17, 2012, stated the following: The Supreme Council of the Armed Forces, with its same formation during the validity of this Constitutional Declaration, shall be entitled to the following authorities: to decide on all matters of the Armed Forces, to appoint their commanders, and to extend their service periods; thus, until the approval of a new constitution, the chairman of the Supreme Council of the Armed Forces shall be entitled to all authorities of the Commander-in-Chief of the Armed Forces (i.e. the Minister of Defense), as stated by all relevant laws and regulations.

In addition, Article 56 stated the following: The Supreme Council of the Armed Forces shall exercise all authorities stated in Clause (1) of Article 56 of the Constitutional Declaration issued on March 30, 2011; and that is till the election of a new People's Assembly with full jurisdiction in this regard. Moreover, Article 60 stated the following: In case of any impediment that might suspend the works of the Constituent Assembly, the Military Council shall be entitled to form a new Constituent Assembly representing all sects of society within the period of one week; and that is to prepare the new constitution within the period of 3 months. Then, the draft constitution shall be put to a popular referendum within the period of 15 days of the date of concluding its preparation. Afterward, the legislative elections shall be initiated within the period of one month as of the date of approving the new constitution by the people.

Nonetheless, once President Moursi won the elections, he annulled this constitutional declaration, and issued a new constitutional declaration on August 12, 2012, stating the following: After having access to the Constitutional Declaration issued on February 13, 2011, as well as the Constitutional Declaration issued on March 30, 2011, the President, has decided the following: Article 1: The Constitutional Declaration issued on June 17, 2012 is hereby annulled" (Fekkri, 2013, p. 12).

Furthermore, in another similar case, after numerous political disputes with the opposition factions, former President Moursi repeated the same action by annulling the constitutional declaration issued on November 21, 2012, and issuing a new constitutional declaration on December 8, 2012.

Hence, it is evident that this case of annulling a constitutional declaration and replacing it with

another one was repeated more than once; and that is to the point that even the elected president followed the same approach several times. Therefore, it is safe to say that there was a clear confusion between the de facto authority and the legitimate authority; a fact which represented a regression back to revolutionary legitimacy, after achieving constitutional stability and electing a president (Fekkri, 2013).

### **5.4. Judicial oversight of works of transitional authorities**

It is common for constitutional declarations issued during transitional periods to include some constitutional principles that shall ensure the protection of individual rights and freedoms against any potential aggressions or violations by any authorities. These constitutional principles may include the principles of equality, justice, right to litigation, freedom of belief, freedom of speech, etc. Interestingly, these principles are not subject to judicial oversight; as they have been adopted by the Egyptian state as constitutionally stated principles a long time ago.

On the other hand, some constitutional declarations may comprise texts and provisions that might impose restrictions on individual rights and freedoms, might prevent some State authorities from performing their constitutional roles, might be contradictory to the principle of equality, or might even exclude some segments of society from political participation. Therefore, such texts and provisions shall be subject to judicial oversight as well as constitutional judiciary as mentioned in detail herein below.

#### *5.4.1. Judicial oversight via annulment against constitutional declarations*

##### *The constitutional declaration causing the Attorney-General's removal from office*

On November 21, 2012, the elected president issued a constitutional declaration, in which Article 3 stated the following: The Attorney-General shall be appointed amongst other members of the Judicial Authority by a presidential decree; as he shall be appointed for the tenure of Four Years, starting from the date of taking office. In this regard, the appointed Attorney-General shall fulfill all general requirements of his judicial position; and he may not be younger than the age of Forty Years old. In addition, this provision shall take immediate legal effect against the current appointee of this position. On this basis, Presidential Decree No. 386 of 2012 was issued for the discharge of Counsel Abdel Meguid Mahmoud, and the appointment of Counsel Talaat Ibrahim as an Attorney-General for 4 years.

In turn, Counsel Abdel Meguid Mahmoud, the discharged Attorney-General at that time, submitted an appeal before the judiciary on December 22, 2012, demanding his reassignment to his position and the annulment of the said presidential decree issued for his removal from office. In this regard, this appeal was based on legal grounds that this presidential decree is contradictory to the stated legal and constitutional



rules; as it does not fall within the jurisdiction of the president to issue constitutional declarations. In addition, this constitutional declaration is contradictory to what is legally stated by Articles 21, 46, and 47 of the constitutional declaration issued on March 30, 2011; as well as being contradictory to the provision of Article 119 of the Judicial Authority Law, concerning the impermissibility of removing the Attorney-General from office.

In this sense, an interesting question may be raised as follows: *Is it permissible to appeal against constitutional declarations and their resulting decrees in this regard?* Most jurists believe that it is indeed permissible to appeal against constitutional declarations which do not involve general principles, hence failing to be characterized as public and abstract (e.g., the abovementioned issue with the Attorney-General). In other words, a constitutional declaration may not be contradictory to the legally stated texts and provisions, including the provision of the Judicial Authority Law, stating the impermissibility of the Attorney-General's removal from office. That is to say, despite issuing a constitutional declaration that enables the elected president to discharge the Attorney-General, this action cannot be accepted; taking into consideration that constitutional declarations are mainly meant to manage transitional periods, not to prevent the state institutions from performing their constitutional roles.

In this sense, constitutional declarations do not rise to the rank of the Constitution, taking into account that they are mostly issued by an executive authority, not to mention that the provisions of these declarations were not subject to any popular referendum. On this basis, in their ruling on the previously mentioned issue, the Cairo Court of Appeal did indeed support this view by stating the following: Regardless of any relevant points of view, the decrees issued by the contested constitutional declaration were not put to any popular referendum; hence, the provisions stated in this constitutional declaration — concerning the current dispute during their period of validity — may not rise to the rank of being constitutional provisions (i.e., the top rank on the legislative scale), nor have their immunity (Case No. 3980, 2013).

#### *Judicial oversight of the constitutional declaration*

Under Article 2 of the Presidential Decree issued by the Constitutional Declaration dated November 21, 2012, it is not permissible to appeal against any declarations, laws, or decrees issued previously by the president, as of June 30, 2012, till the enforceability of the constitution and the election of a new People's Assembly; as these declarations, laws, and decrees shall be considered as final, decisive, enforceable, non-appealable through any means of appeal or before any authority, and not subject to any suspension.

In this context, this constitutional declaration was subject to harsh criticism. That is to say, by Constitutional Jurisprudence (Alsenousi, 2013). Some constitutional principles shall be included within the constitutional document. For instance, these principles may include the right to litigation; in addition to the prohibition of immunizing any actions or decisions against appeal before a judicial

authority with full immunity and independence to exercise their role of adjudication on disputes, to reach a just and true judicial settlement, through which society may achieve stability, and freedoms and rights shall be protected. Hence, a constitutional declaration may not immunize any action against judicial oversight.

On this basis, the Cairo Court of Appeal has confirmed that certain constitutional principles shall be considered legally stable and acknowledged, and that may not be breached by any constitutional declarations; as these principles may include the right to litigation and the prohibition of granting immunity to any actions or decisions against appeal before a judicial authority with full immunity of its own. Therefore, the court has ordered the annulment of the constitutional declaration concerning the prohibition of the right to litigation.

#### *Judicial oversight of the formation of the First Constituent Assembly*

In a court ruling issued by the Administrative Judiciary Court, an adequate interpretation was provided for the legal nature of the decree issued by both the People's Assembly and the Shura Council, regarding the formation of the constitution's First Constituent Assembly. In this regard, the court has clarified that this decree is an Administrative Decision; hence, it falls within the jurisdiction of the State Council Courts. On this basis, the court ruling has stated the following: "In fact, the appealed decree may not be considered as a parliamentary decision; taking into consideration that to acknowledge some action as legislative — or parliamentary — it shall be issued by the competent legislative authority, in their legal capacity and accordance with their jurisdiction. Moreover, by the provisions of Articles 23, 37, and 59, of the Constitutional Declaration, if the appealed decree was not issued by either one of those two councils in a such legal capacity and within their jurisdiction, as outlined in the constitution, then, the issued decree may not be considered as a parliamentary action; however, it shall be considered as just an administrative action or decision that is subject to the oversight of legitimacy by the State Council Courts" (Case No. 26657, 2012).

In this regard, it is legally stated that the actions of the legislative authority may vary to include any of the following types.

**Legislative actions:** They refer to all proposed laws that get acknowledged by the legislative authority, then approved and issued by the president; and they may not be appealed before State Council Courts; however, the Supreme Constitutional Court is the competent court concerned with hearing any issues concerning their legitimacy.

**Parliamentary actions:** They are mainly concerned with the management of the parliament's internal affairs, such as the election of a chairman for the People's Assembly and a chairman for the Shura Council, the elections of the committees of each council, as well as all activities of supervision on works of the executive authority; and these parliamentary actions do not fall within the jurisdiction of State Council Courts.

*Administrative actions:* They are represented in the issuance of administrative decisions, such as decisions issued for the administrative matters stated in the two regulations of both the People's Assembly and the Shura Council; and all of these decisions are subject to the oversight of legitimacy before the State Council Courts (Elsaadani, 2020).

Moreover, the same meaning was confirmed once again in another court ruling; as the Administrative Judiciary Court has stated the following: "As a matter of fact, selecting the members of the Constituent Assembly by elected members of the People's Assembly and the Shura Council shall be considered as an administrative action that is taken in the form of an administrative decision, whose legal nature may not be altered merely because it was issued by elected members of the People's Assembly and the Shura Council" (Case No. 45931, 2012).

#### *5.4.2. Constitutional judiciary's oversight of constitutional declarations*

##### *The procedures preceding the referral to the constitutional judiciary*

On October 23, 2012, the First Circuit of the Administrative Judiciary Court in Cairo referred the file of Claim No. 45931 of 2012, concerning the referral of Law No. 79 of 2012, to the Egyptian Supreme Constitutional Court. That is to say, the court suspended this claim and referred its documents to the Supreme Constitutional Court, to adjudicate on the constitutionality of the provision of Article 1 of Law No. 79 of 2012, concerning the standards of electing members of the Constituent Assembly, tasked with the preparation of a new draft constitution for the Egyptian State.

In this regard, on June 7, 2012, the chairman of the People's Assembly at that time issued a decree, initiating the receipt of applications for the candidacy of membership of the Constituent Assembly on the two days June 9 and 10, 2012. After that, the People's Assembly was called for an emergency session on June 11, 2012, to discuss the enactment of a law stipulating the standards required for the formation of the Constituent Assembly. Then, after approving this law by the assembly at this same session, the draft law was sent to the Supreme Council of the Armed Forces, to be approved and passed officially.

In this sense, this decree shall be considered null and void for two reasons as follows:

First, the said decree initiating the candidacy for membership of the Constituent Assembly on June 9 and 10, 2012 was issued in contradiction to the ruling of the Administrative Judiciary Court, regarding the nullity of forming the First Constituent Assembly (Gabrial, 2012).

Second, the law passed for the regulation of the process of electing members of the Constituent Assembly was issued on July 12, 2012; i.e., it was issued after issuing the said decree initiating the candidacy for membership of the Constituent Assembly on June 9 and 10, 2012. In other words, the said decree was issued before passing the law concerning the regulation of the members' election process, i.e., the law which is concerned with

determining the requirements that shall be duly fulfilled by all candidates for membership of the Constituent Assembly tasked with the preparation of a new draft constitution; which is contradictory to the natural order of things and legal logic.

On this basis, a claim was initiated before the Administrative Judiciary Court, demanding the suspension of this decree, as well as the annulment of the decree issued by the joint meeting of non-appointed members of both the People's Assembly and the Shura Council on June 12, 2012, regarding the election of members of the Second Constituent Assembly tasked with the preparation of a new draft constitution. Consequently, the Administrative Judiciary Court found out that the said decree in question, issued by the non-appointed members of both the People's Assembly and the Shura Council for the election of members of the Constituent Assembly, may not be considered a parliamentary action; and it may not be considered as legislation in the objective meaning which enables judicial oversight by the Supreme Constitutional Court; however, it is an administrative decision whose legitimacy shall be heard and adjudicated before an administrative judicial board at the State Council.

On the foregoing, at the hearing of October 23, 2012, the Administrative Judiciary Court ordered the claim's suspension and referral to the Supreme Constitutional Court, to adjudicate on the constitutionality of the provision of Article 1 of Law No. 79 of 2012, stating the following: "Taking into consideration the provision of Article 60 of the Constitutional Declaration, the non-appointed members of the People's Assembly and the Shura Council shall elect a Constituent Assembly consisted of one hundred members, to prepare a new draft constitution for the Egyptian State; in addition to electing fifty reserve members; thus, their decisions in this regard shall be subject to the oversight of constitutionality of the parliamentary decrees and laws".

In this context, the Administrative Judiciary Court believed that the provision of Article 1 of Law No. 79 of 2012 was contradictory to the provision of Article 48 of the Constitutional Declaration issued on March 30, 2011, stating the following: "The State Council shall be considered as an independent judicial authority; and they shall be concerned with adjudication on administrative disputes and disciplinary claims, as well as their other jurisdictions as set forth by law".

In addition, the same article is also contradictory to the provision of Article 21 of the same constitutional declaration, especially the last clause of this article stating the following: "Litigation shall be considered as a guaranteed right that is granted to all people equally, as every citizen shall be entitled to resort to his/her natural judge; and the State shall guarantee both the approximation between judicial authorities and all litigants, as well as the swift adjudication on claims. In addition, it is prohibited to pass any laws stipulating the immunity of any administrative action or decision against judicial oversight.

Moreover, the State Lawsuits Authority has clarified before the court that this legislative text represents an act of sovereignty (i.e., a political action); hence, the Supreme Constitutional Court may not be concerned with its oversight.

### *Constitutional judiciary oversight of constitutional declaration*

In the said court ruling, the following is stated: “According to the judiciary of this court, the legal characterization of Political Actions shall be based on the nature of the action itself, not on its descriptions as stated by the legislator, whenever this nature is contradictory to these descriptions. Hence, when it comes to the adjudication on the nature of matters regulated by contested provisions, the Supreme Constitutional Court solely may decide whether the submitted actions are political (hence being out of their jurisdiction of oversight of constitutionality), or not (hence being within the jurisdiction of oversight)” (Case No. 166, 2013).

In this sense, the court shall characterize a legislative action by its nature and essence, rather than its description by the legislator. In other words, when classifying this legislative action, the court has adopted the objective standard, hence enabling their jurisdiction of oversight; which is justifiable as mentioned herein below.

By law, the nature and essence of any administrative action shall be identified by the objective standard stated for the actual nature of this action, regardless of the authority that has taken this action. In this regard, the Administrative Judiciary Court has stated the following in their ruling: “A legislative authority may take some administrative actions, including the issuance of administrative decisions such as those issued by the competent offices at both the People’s Assembly and the Shura Council regarding the different administrative issues as outlined in the regulation of each council. In addition, each council may issue administrative decisions based on voting taken by its members. In this context, for example, they used to issue decisions concerning the selection of members of the Higher Committee for Parliamentary Elections as well as the Presidential Elections Committee; in addition, the Shura Council used to issue decisions concerning the selection of chairman and members of the National Council for Human Rights, under the provision of Article 2 of Law No. 94 of 2003 concerning the establishment of the National Council for Human Rights. Therefore, as a rule, all administrative decisions issued by the legislative authority shall be subject to the oversight of legitimacy by the State Council Courts” (Case No. 26657, 2012).

In other words, the nature of the decree issued by members of the People’s Assembly and the Shura Council is entirely administrative; therefore, it is an administrative decision whose nature may not be changed just because it was issued by the legislative authority.

On this basis, Law No. 79 of 2012, concerning the standards of electing members of the Constituent Assembly tasked with the preparation of a new draft constitution for the Egyptian state, was issued in violation of the limits of the jurisdiction of its issuing legislative authority; as it has stipulated legal provisions that fall within the jurisdiction of the constituent authority, not the legislative authority; hence, this law may be subject to oversight by the Supreme Constitutional Court.

Furthermore, Article 115 of the Egyptian Constitution of 2012 has stated the following: “The Parliament shall assume the legislative authority; as well as determining the State’s public policy, the general plan for economic and social development, and general budget; in addition to supervising all actions of the executive authority; and that is by what is stated in the Constitution”.

Therefore, after reviewing the contested legislative text, the court found out that the legislative authority has exceeded its jurisdiction to impose its views and provisions on another authority (i.e., the constituent authority); hence, the Supreme Constitutional Court had to review this legislation and to issue a ruling of its lack of constitutionality. In this context, the court has clarified the following in their ruling: Whereas by Article 115 of the Constitution, the legislative authority is concerned with the enactment of laws, then, they may not intervene in actions of the constituent authority responsible for the preparation of a new draft constitution; as this constituent authority solely may set the controls and standards required for the regulation of performing the mission assigned to them (Gabrial, 2012, p. 11).

The provision of Article 60 of the Constitutional Declaration issued on March 30, 2012, has stated the following: The non-appointed members of the first elected People and Shura Councils shall meet at a joint meeting upon a call by the Supreme Council of the Armed Forces during the period of 6 months as of the date of their election, and that is to elect a Constituent Assembly consisted of 100 members that shall assume the task of preparing a new draft constitution for the Egyptian State within the maximum period of 6 months as of its date of formation; then, within the period of 15 days as of the date of concluding this task, this draft constitution shall be put to a popular referendum; and the new Constitution shall take full effect as of its date of approval by the People.

In this sense, a careful reading of this legal provision would show that the constitutional legislator has completely distanced the formed constituent authority from all three authorities of the State (i.e., the legislative, executive, and judicial authorities). In other words, the formed constituent authority, tasked with the enactment of a new constitution, shall be completely isolated from any actions or dictations of the executive or legislative authorities; as they may not be subject to any supervision other than that of the people in their full sovereignty in this regard (Fadel, 2018).

Consequently, the said court ruling has stated the following: The constitutional legislator has meant to isolate all stages of preparing the new draft constitution, starting from the convening of the electoral body assigned to select members of the Constituent Assembly (represented in the non-appointed members of both the People’s Assembly and the Shura Council); down to selection of the members of this assembly and the initiation of their tasks in accordance with the controls, set by those selected members themselves without any interference from any of the State’s three authorities (i.e. the legislative, executive and judicial authorities); until the conclusion of this mission by the enactment of a new draft constitution; taking into consideration that the entire works of this

constituent authority through all of its stages shall be subject to the supervision of the people in their legal capacity as the source of all authorities; as the people shall exercise such supervision by putting the draft constitution to popular referendum, so that they could either accept or reject this constitution (Case No. 166, 2013).

The provision of Article 1 of the law concerning the standards of electing members of the Constituent Assembly, tasked with the preparation of a new draft constitution for the state, has stated the following: Taking into consideration the provision of Article 60 of the Constitutional Declaration, the non-appointed members of the People's Assembly and the Shura Council shall elect a Constituent Assembly consisted of 100 members, to prepare a new draft constitution for the Egyptian State; in addition to electing 50 reserve members; thus, their decisions in this regard shall be subject to the oversight of constitutionality of the parliamentary decrees and laws. In this regard, it is noticeable that in the second clause of Article 1, the legislator has stipulated that the decisions of this assembly shall be subject to judicial oversight of the constitutionality of laws and regulations. In this way, the legislator has moved away from the requisite, for which this legislation is enacted; that is to say, the legislator has turned away from its purpose, to stipulate a regulation for another matter that is irrelevant to the title of this law; i.e., attributing the jurisdiction of reviewing the decisions issued by the joint meeting of the non-appointed members of the People's Assembly and the Shura Council (tasked with the election of members of the Constituent Assembly) to the authority concerned with judicial oversight of the constitutionality of parliamentary decrees and laws; which is considered as a breach of the limits of his legislative authority.

Therefore, in their legal grounds, the court has stressed that this legal provision is contradictory to the provision of Article 115 of the Constitution of 2012.

Finally, the articles of this legislation are fully associated with each other through an indivisible integration; hence, the entire law shall be deemed unconstitutional. Therefore, the court has clarified the following in their ruling: In this sense, it is contradictory to the provision of Article 115 of the Constitution; hence, Law No. 79 of 2012, including its entire provisions, is hereby considered as unconstitutional; taking into consideration that the constitutional flaws have surrounded the entire legislative structure of the said law, due to the close association of its provisions to each other through an indivisible integration; as it is not conceivable to acknowledge any of its provisions as valid separately, nor to acknowledge its legal effect with its nullity (Gabrial, 2012, p. 35).

#### *The ruling of the Supreme Constitutional Court concerning the Political Isolation Law*

In the aftermath of the January 25 Revolution, Law No. 17 of 2012 was issued for the amendment of some provisions in Law No. 73 of 1956, regarding the regulation of exercising political rights. In this regard, this law added the fourth clause to Article 3, stating the suspension of exercising any political

rights for ten years for any person who has held any of the following positions for ten years before February 11, 2011: President of the Republic, Prime Minister, or President, Secretary-General or Member of the dissolved National Party (including both its political office and general secretariat).

Afterward, on April 25, 2012, the Presidential Elections Committee ordered the referral of this new Fourth Clause of the said law to the Supreme Constitutional Court, due to suspicions of the presence of constitutional flaws in this regard. Then, the Egyptian Supreme Constitutional Court has indeed issued a ruling for the unconstitutionality of Article 1 of Law No. 17 of 2012; as all clauses of the article were associated with each other through an indivisible integration (Case No. 57, 2012).

In this context, some jurists (Khalil, 2019) have clarified that the referred provision has included an arbitral distinction that is not based on any objective grounds that may provide any justifications in this regard. In addition, this legal text has adopted a legislative division between citizens, which is not based on any logical standards or foundations; not to mention that its provisions are separated from their purposes through a very poor connection. In other words, the said distinction stated by this provision is attributed to some irrelevant facts, hence making up a lot of unreal differences between people with similar legal positions. Therefore, it could be considered contradictory to the two principles of equality and equal opportunities, as stated by Article 7 of the Constitutional Declaration.

In light of the above, it is safe to say that the State's compliance with the law is enacted on a general democratic perception with the ultimate goal that no legislation may ever violate any of the basic rights, which are considered primary requisites for the establishment of the rule of law in democratic countries; as all legislations shall function as a basic guarantee for the preservation of human rights, dignity, and independent personality, including all rights which are closely related to personal freedom, and which are guaranteed as natural undisputed rights by Article 8 of the Constitutional Declaration. In this sense, it would be contradictory to the concept of the rule of law, if the state decided to enforce a penalty retroactively, whether this penalty was criminal, disciplinary, or of a civilian nature; and that is by enforcing such penalty for actions which were not considered as criminal offenses, administrative crimes or even compensable violations at the time of committing such actions.

In this sense, the referred legal provision has specified the deprivation of exercising any political rights for ten years as a penalty for the mere act of holding any of the positions mentioned exclusively in this provision, without any further requirements for the justification of this stipulation as a penalty against those who had held those positions for committing some action or following certain behavior. Hence, it is safe to say that this provision is based on false assumptions that are contradictory to the nature of things, the definition of justice, and the rule of law; not to mention that determining such penalty for all who had held those positions during ten years before February 11, 2011, is considered as retroactive enforcement of the law,

which is contradictory to the provisions of Articles 8 and 19 of the Constitutional Declaration.

Therefore, the Supreme Constitutional Court has issued a ruling confirming the unconstitutionality of the provision of Article 1 of Law No. 17 of 2012, issued for the amendment of some provisions in Law No. 73 of 1956, regarding the regulation of exercising political rights, as well as ordering the annulment of the provision of Article 2 of the same law.

## 6. CONCLUSION

In light of the above, we have reached some conclusions as follows.

Constitutional declarations are considered a very important tool that could be used for the management of transitional periods. In this regard, the provisions of constitutional declarations are mainly divided into two sections: provisions concerned with the major constitutional principles and provisions concerned with public freedoms; all of which shall enable the ruling authority to govern the country during transitional periods (e.g., the principles of justice and equality, freedom of speech, freedom of belief, etc.); as these provisions represent higher principles that may not be subject to judicial oversight.

During transitional periods, the constitutional declaration may be amended by its issuing authority, without any specific due process. This case has occurred frequently in Egypt, especially in the aftermath of the Revolution on January 25, 2011; e.g., the amendment of the adopted system for the Egyptian parliamentary elections from the individual elections to the closed list system.

During transitional periods, the constitutional declaration may be annulled by its issuing authority who may replace it with a new constitutional declaration; and once again, this case of annulment and replacement has occurred frequently in Egypt during the different transitional periods.

Constitutional declarations might involve some provisions that might impose restrictions on individual rights and freedoms, might prevent some State authorities from performing their constitutional roles, might be contradictory to the principle of equality, or might exclude some segments of society from political participation. Hence, these provisions shall be subject to judicial oversight via annulment, as well as the supervision of the constitutional judiciary.

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In case of involving some provisions that prevent State authorities from performing their constitutional roles or that are not characterized by being public and abstract, these constitutional declarations shall be considered as merely administrative decisions that may be appealed and annulled.

About the legal characterization of constitutional declarations, it shall be based on the nature of the action itself, not on its descriptions as stated by the legislator, whenever this nature is contradictory to these descriptions. Hence, when it comes to the adjudication on the nature of matters regulated by contested provisions, the Supreme Constitutional Court solely may decide whether the submitted actions are political (hence being out of their jurisdiction of oversight of constitutionality), or not (hence being within the jurisdiction of oversight).

This research paves the way for other researchers to delve into the study of topics that discuss the legal effects of constitutional declarations during transitional periods. Future research could focus on the following areas.

While some scholars argue that constitutional declarations can facilitate democratic transitions, others are skeptical of their ability to promote democratic governance in the long term. Future research could examine the impact of constitutional declarations on the consolidation of democracy, focusing on cases where constitutional declarations have been implemented and their long-term impact on democratic governance, and the relationship between constitutional declarations and transitional justice. Constitutional declarations often play a role in transitional justice processes, particularly in contexts where there have been human rights abuses. Future research could examine the relationship between constitutional declarations and transitional justice and the impact of constitutional declarations on the pursuit of justice in transitional periods.

Our study has certain limitations. First, we have collected a number of highly significant sources, as well as several court rulings issued by the Egyptian judiciary. Second, we have limited our study to the field of the governance of constitutional declarations. Third, we have analyzed all relevant legal provisions collected from legislation, jurisprudential interpretations, and court rulings. Fourthly, we have included several significant results. It shall open horizons for future research works for similar future studies.

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