
Decision No 7/2014

Date: 28/11/2014

Complainants: The Members of Parliament Messrs Michel Aoun, Edgard Maalouf, Ibrahim Kanaan, Hikmat Dib, Simon Abi Ramia, Nagi Gharios, Ziad Assouad, Fady al-Asmar, Nabil Nicolas, Alain Aoun.

The challenged law, with demand for stay of execution and invalidation: Urgent Law No 16 dated November 11, 2014 on the extension of the mandate of the Parliament coming to force ipso jure published in the Official Gazette issue no 48 dated 11/11/2014.

The constitutional council met in conference on November 28, 2014 and was presided over by President Issam Sleiman in the presence of the Vice-President Tarek Ziadeh and the members: Ahmad Takkieddine, Antoine Messarra, Antoine Khair, Zaghoul Atiyah, Toufic Soubra, Souheil Abdel Samad, Salah Moukhaiber, and Muhammad Bassam Murtada.

Persuant to article 19 of the Constitution;

After having studied the briefs relating to the challenged law, and its attachments, and the report of the rapporteur dated November 19, 2014;

Considering that the aforementioned MPs have lodged a complaint with the Constitutional Council registered on November 13, 2014;

(Facts omitted)

On the basis of the above:

a. As to the form:

The application lodged by ten MPs, registered within the period provided for in the last paragraph of article 19 of the law no 250/1993 and in compliance with all terms and conditions, is admissible in form.

B. As to the merits:

1. Stay of execution of the challenged Law:

The Council met in conferences on November 13, 2014, the same day that the challenged law for review was lodged, and did not consider this request justified.

2. On the claim that the Law Referred for Review violates the Principles of the Preamble of the Constitution

Considering that the Preamble of the Constitution hereto shall form an integral part of the Constitution;

Considering that the Preamble stipulates that Lebanon shall abide by the Universal Declaration of Human Rights and by the Covenants of the United Nations Organization. The Government shall embody these principles in all fields and areas without exception;

Considering that the article 21 of the Universal Declaration of Human Rights provides that the will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free procedures;

Considering that the International Covenant on Civil and Political Rights, to which Lebanon has signed up, provides that every citizen has the right and the opportunity to vote and to be elected at genuine and periodic elections which shall be by universal and equal suffrage;

Considering that the principle of periodic elections is confirmed in the Constitutional Council decisions, in particular the decisions 2/97 and 1/2013;

Considering that the principle of periodic elections is a constitutional principle tied to the principle of popular sovereignty and to the requirement of popular control to exercise power through elections;

Considering that supervision through electoral procedure is a pillar of the democratic systems and the Preamble of the Constitution provides that Lebanon is a parliamentary democratic republic based on respect for public liberties, especially the freedom of opinion and belief, and respect for social justice and equality of rights and duties among all citizens without discrimination;

Considering that parliamentary elections are the fundamental way to achieve parliamentary democracy;

Considering that elections pave the way for citizens to express their will to choose their representatives;

Considering that the Preamble of the Constitution provides that the people are the source of authority and sovereignty, they shall exercise these powers through the constitutional institutions;

Considering that in its Decision 1/2013, the Constitutional Council has confirmed that free and fair elections are the primary means for the emergence of power derived from the people, the basis of parliamentary democracy;

Considering that the principle of electoral competition, a principle of constitutional value, is the pillar and the basis of democratic systems;

Considering that the two articles 22 and 24 of the Constitution provide that the parliament is composed of elected members;

Considering that the Parliament, from which is derived the executive power, and which represents the people in the exercise of powers, is vested with the right of electing the Head of State;

Considering that the legitimacy of the Parliament is the basis of legitimacy of powers in the State.

Considering that the basis of parliament legitimacy lies in free and fair elections, the respect of elections deadlines, through which people express their will, supervise parliamentary performance and determine their choices, and, which consequently, requires the strict observance of periodic elections and of its terms of office;

Considering that the Preamble of the Constitution provides that the political system is established on the principle of separation of powers, their balance and cooperation;

Considering that the respect of this principle requires all powers to respect the performance of duties' timeframe that means the observance by the parliament of its term of office, the respect by the Government of the Parliament's motion of confidence and the resignation of the Government in case of vote of no confidence;

Considering that the extension by the parliament of its mandate while the functional life of the government depends on the Parliament as

well, leads to disturb the balance between the two powers, legislative and executive, in favor of the first;

Considering that the violation of the balance of powers, inconsistent with the constitution, leads to the violation of parliamentary legitimacy during the extended mandate, leading to challenge the legitimacy of everything that comes with it;

The extension of the parliament's mandate for two years and seven months, after a previous extension, is in principle inconsistent with the Constitution;

3. On the claim founded on violation of Article 27 of the Constitution

Considering that article 27 of the Constitution provides that a member of the Chamber shall represent the whole Nation. No restriction or condition may be imposed upon his mandate by his electors;

Considering that this unrestricted mandate is to be exercised by a member of the Chamber should he consider it appropriate;

Considering that the unrestricted nature of the parliamentary mandate requires the specification of its term of office;

Considering that the balance in the unrestricted parliamentary mandate is based on two fundamental items: the unrestricted nature of the mandate and the absolute right of the MP to act in accordance with his convictions throughout his term of office and, on the other hand, to resort to the people, who are the source of authority, in order to express their will through elections;

Considering that the extension by the parliament of its own term of office disturbs the balance on which is based the parliamentary mandate, it is thereby inconsistent with the concept of this mandate in virtue of the article 27 of the Constitution;

Considering that the Constitutional Council had already invalidated through its decision 4/96 the text setting out the mandate of the Parliament to four years and eight months, thereby failing to comply with the parliamentary principles and customs in Lebanon;

Considering that the extension of the parliamentary mandate, subsequent to holding elections, is more dangerous than the extension of the mandate by an electoral law and prior to the organization of elections;

Considering that the article 44 of the Constitution stipulates that the Chamber may two years after the election of the President and the Vice-President, and in the first session it holds, withdraw its confidence from the President or the Vice-President, which constitutes an indicator that the mandate of the Chamber, according to the Constitution, is limited to four years.

Considering that Lebanon has always limited the mandate of the Chamber to four years;

Consequently, the extension of the parliamentary mandate is inconsistent with the Constitution.

4. On the claim founded on The Violation of Article 32 of the Constitution

Considering that article 32 of the Constitution stipulates that the meetings of the second session shall be reserved for the discussion of, and voting on the budget before any other issue;

Considering that this text is not worded in a restrictive and mandatory way, but gives priority and pre-eminence to this issue that shall be at the top of the agenda of the Parliament before any other issue, but does not prevent the Parliament from legislating on other necessary and urgent issues prior to the consideration of the Budget;

Considering that, by reference to various provisions of the Constitution, we notice a hierarchy regarding the violation, as in article 31 that stipulates: "Meetings of the Chamber outside those set for legal sessions shall be unlawful and ipso facto null and void" and the article 34 stipulates as well: "The Chamber shall not be validly constituted unless the majority of the total membership is present;"

The article 78 of the Constitution stipulates: "When a bill dealing with a constitutional amendment is submitted to the Chamber, it must confine itself to its discussion before any other work until a final vote is taken. It may discuss and vote only on the articles and the questions clearly enumerated and defined in the bill submitted to it;"

Considering that this provision is imperatively formulated with the expression "must" followed by the expression "may only", forbidding explicitly the discussion of any other matter that falls outside the project scope.

Considering that these imperative, compelling and compulsory expressions are found in several articles (art. 38, 40, 47, 79, 84, 85, 89), but not in article 32, which clearly shows that article 32 is not imperative, but gives priority and preference to the consideration of the Budget; without thereby violation or invalidation of any other legal act before discussing and voting on the Budget;

Consequently, this reason raised within the appeal was rejected.

5. The claim of Violation of Article 57 of the Constitution

Considering that article 57 of the Constitution vests in the President of the Republic the power to demand the reconsideration of a law once during the period prescribed for its promulgation, which demand may not be devied.

Considering that the article 62 stipulates: “should there be a vacancy in the Presidency for any reason whatsoever, the Council of Ministers shall exercise the authorities of the President by delegation;”

Considering that the same article stipulates that if the time limit expires without the law being issued or returned, the law shall be considered automatically operative and must be promulgated.

Considering that the law referred for review shall not be promulgated by the Government that exercises the authorities of the President of the Republic by delegation, within the time-limit prescribed, and that the law shall become enforceable at the deadline;

Consequently, the law referred for review is not incompatible with article 57 of the Constitution.

6. On the subject of The Extraordinary Circumstances

Considering that the law referred for review stipulated in a sole article: “the mandate of the current parliament expires on June 20, 2017,” without mentioning the extraordinary circumstances that were only found in the Explanatory Memorandum;

Considering that the extraordinary circumstances are not ordinary, but are a threat to security, public order and national entity;

Considering that extraordinary circumstances imply extraordinary measures to safeguard public and constitutional order;

Considering that an extraordinary legitimacy that emerges from these circumstances, supersedes the legitimacy in normal time and as long as these circumstances continue;

Considering that in extraordinary circumstances resulting from unforeseeable and dangerous events, the legislator may within the limits laid down, deviate from the provisions and the principles of the Constitution in order to safeguard public order, the continuity of the institutions, and the protection of general public interest; as reiterated by the constitutional council;

Considering that the implementation of the theory of extraordinary circumstances shall request objective, concrete, and clear reasons keeping from securing public order through ordinary laws;

Considering that extraordinary circumstances are determined in time and space;

Considering that the state of necessity shall be defined within a timeframe;

Considering that the legislator should assess whether these circumstances exist and whether they require emergency laws as long as they persist; the exercise of its right remains subject to the supervision of the constitutional council;

Considering that if these circumstances are currently extraordinary in some areas of Lebanon, upon the declaration of the Minister of the Interior, it shall not be assumed that these circumstances shall persist two years and seven months;

Considering that the extraordinary circumstances may uphold the postponement of the elections that shall be held in due date, and prior to the end of the Parliament's term, on November 20, 2014, which has been already extended once, but should not justify the extension of the mandate again for two years and seven months;

Considering that the extension of the mandate is inconsistent with the requirements; thus, when extensive, it shall not be justified by factual and current data; besides, future and uncertain considerations shall be founded neither in fact nor in law;

Considering that exceptional measures shall be temporarily limited in order to safeguard public order;

Considering that shortening the duration of the extension is not under the jurisdiction of the Constitutional Council that may not replace the Parliament;

Considering that periodic elections are the foundation of public order, a foundation that shall not be infringed under the pretext of exceptional circumstances;

Thus, the exceptional circumstances shall only justify the postponement of the elections for a limited time as long as the exceptional circumstances dictate, but shall not be delayed for two years and seven months;

7. On the subject of Correlation between Elections and the consensus to hold elections

Considering that the minutes of the parliamentary session, during which the extension was approved, included the statements of members of parliament and the reasons of extension which contained the agreement on a new electoral law;

Considering that the legislative elections constitute a constitutional deadline that shall be held at the time fixed;

Considering that the elections shall not be tied to a new electoral law;

Considering that the National Pact is an integral part of the Constitution and that the norms of the Pact imply the observance of the Constitution and the holding of elections on time;

Considering that the National Pact should not be an excuse to postpone the elections and to extend the mandate of the Parliament, because such practice shall lead to undermine the foundations of the national Pact, the national commitments, constitutional order and state entity;

Thus, tying legislative elections to an agreement on a new electoral law or an agreement on the electoral process shall be incompatible with the Constitution;

8. On the subject of Crippling the Constitutional Institutions

Considering that regulating constitutional institutions shall be the foundation of public order;

Considering that this regulation shall imply that each institution, without delay, carries out the functions delegated to it within the limit of

the powers that are conferred upon by the Constitution, and within the framework of the principles and norms provided by the said Constitution;

Considering that extraordinary circumstances shall require the constitutional institutions to fulfill their obligations and to strengthen their efforts in order to tackle these circumstances, to protect the national entity and the highest interests of the Nation;

Considering that power vacuum in an institution, especially the presidency, disturbs the functioning of all institutions and of public order;

Considering that the extension of the parliamentary mandate should not be motivated by the void in the presidency, especially that the responsibility of this void lies within the Parliament itself;

Considering that the vacuum in the presidency and the delegation to the Government to exercise the authority of the President have a negative and dangerous impact on the functioning of the executive and on the whole national entity;

Considering that the Government did not set up the Electoral Supervisory Commission and did not undertake any necessary measures for the elections;

Considering that the deterioration of political and security conditions and the presidential void shall lead to void in the Legislative if the law of extension is rejected after the termination of the parliamentary mandate on November 20, 2014 and shall not be at all feasible to provide the Parliament with the possibility to abridge its extended term;

Considering that the void in the constitutional institutions shall contradict the purpose of the Constitution, lead to undermine the Constitution principles and plunge the country into the unknown;

Considering that the law related to the extension of the parliamentary mandate was published nine days before the termination of this mandate, and, accordingly, the challenge was filed a week prior to the termination, reducing thereby to the extreme the alternatives of the Constitutional Council;

Considering that the invalidation of the law on the extension of the mandate of the Parliament in the current situation shall lead to vacuum in the Legislative besides the vacuum in the Presidency, which shall be a flagrant violation of the Constitution;

Thus, in order to prevent further vacuum in the constitutional institutions and to avoid impeding the holding of presidential election, the extension shall be considered a fait accompli (amran waqi'an);

After deliberation, the Constitutional Council unanimously asserts the following:

1- Periodic elections are an absolute constitutional principle that shall not be breached;

2- Tying the imperative periodic elections to an agreement on electoral law or any consideration is incompatible with the Constitution;

3- Extraordinary circumstances shall be limited only to the period of these extraordinary circumstances;

4- The imperative periodic elections shall be held as soon as the extraordinary circumstances end and shall not wait for the expiry of the extended mandate;

5- Crippling constitutional institutions, especially at the level of the head of the State, shall constitute a flagrant violation of the Constitution.

Wherefore, premises considered

The Constitutional Council decides unanimously that:

1- The complaint is admissible in form.

2- The complaint is dismissed in order to prevent further power vacuums in state institutions.

3- This decision shall be published in the official Gazette

Decision rendered on November 28, 2014

The members

Muhammad Bassam Murtada

Salah Moukheiber

Suheil Abdel Samad

Toufic Soubra

Zaghloul Atiyah

Antoine Khair

Antoine Messarra

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