

Decision No 1/2013

Applicants: A referral was made by the MPs, Messrs. Walid Jumblatt, Farid Makari, Nehmeh Tohmeh, Elie Aoun, Ghazi Aridi, Ala'Eddine Terro, Akram Chehayeb, Wael Abou Faour, Henri Helou, Ahmad Karameh, and Marwan Hamadeh.

Law subject to appeal: Law No 245 of April 12, 2013 published in the Official gazette, no 16 of April 13, 2013.

The law was deliberated by the Constitutional Council, as its sitting of May 13, 2013, presided over by Mr. Issam Sleiman, and attended by the vice-president Mr. Tarek Ziadeh and the members Antoine Kheir, Zaghlul Attieh, Toufic Soubra, Antoine Messarra, Souheil Abdel Samad, Salah Moukheiber, and Mohammad Bassam Murtada.

Pursuant to article 19 of the Constitution,

Having regard to the filed review documents, having regard to the rapporteur report dated May 5, 2013,

Considering that the abovementioned deputies seized the Constitutional Council in view of the foregoing referral, registered the 26th of April 2013 aiming at ending the application of the law no 245 of April 4, 2013, published in the Official Gazette no 16 of April 13, 2013 in relation to the suspension of candidacy timeframes and to the invalidation of the electoral law no 25 of October 8, 2012.

Firstly: The Form

Considering that the eleven applicants Members of Parliament have referred to the Constitutional Council within the time-limits prescribed in the last paragraph of the article 19 of the law no 250/1993. This referral that meets all required conditions is admissible in the form. 48

Secondly: The Content

1. Violation of Article 42 of the Constitution

Considering that the article 42 of the constitution allows to hold general elections in order to renew the Chamber within sixty days prior to the expiration of its mandate.

Considering that the bringing to an end of a parliament is at the conclusion of its four years term, ending the 20th of June 2013.

Considering that the law subject to appeal did not postpone the fixed date of election that shall be held on June 16, 2013, but confirms as follows: “the date of registration of candidacy shall end three weeks prior to the fixing election date”, besides, the law provides : “the article 52 of the law 25/2008 sets out the timeframes that are reduced to two weeks prior to the election date”, this date

being determined by the convocation decree of the electoral candidates, fixed for June 16, 2013, with no postponement by the law subject to appeal.

Considering that the notion of deadlines mentioned within the law subject to appeal is distinct from the one of parliamentary mandate.

Considering that the law no 25/2008 sets the maximum duration of a parliament at four years and is not altered by the law subject to appeal.

Considering that the suspension of the deadlines in the law subject to appeal does not keep from holding elections on the date fixed for the 16th of June 2013 and does not deprive any citizen who is eligible for candidacy from his constitutional right to be voter and elected.

Considering that it is not judicious to judge intentions and to put forward that the law that suspends the deadlines reflects a desire for the adjournment of elections. Considering that the adjournment of elections requires an act that prorogates the parliament mandate, while the law subject to appeal does not raise this possibility.

Consequently, the law subject to appeal is in compliance with the Constitution and its article 42.

2. Violation of Article 27 of the Constitution

Considering that the article 27 of the constitution stipulates that “the member of parliament shall represent the whole nation. No restriction or condition may be imposed upon his mandate by his electors.”

Considering that the article 27 of the constitution fixes the nature of the parliamentary representation, and the nature and the conception of the parliamentary mandate.

Considering that the law subject to appeal is not related, in any way, either to the nature of parliamentary representation in the constitutional Lebanese system, or to the nature and conception of the parliamentary mandate applied in Lebanon.

3. Violation of article 19 of the Constitution.

Considering that the article 19 of the constitution provides for the creation of the constitutional council and determines the powers and authorities entitled to appeal.

Considering that, although the grounds of the law inform the legislator during election time and are of major importance in lawmaking, the lack of explanatory memorandum does not constitute an impediment for performing their duties according to article 19. The proof has been provided by this appeal. The law subject to appeal is compatible with the constitution.

4. Violation of paragraphs b, c, d of the preamble of the constitution and breach of civil and political rights.

Considering that the paragraph “b” of the preamble of the constitution stipulates that Lebanon “is a founding and active member of the League of Arab States and abides by its pacts and covenants. Lebanon is also a founding and active member of the United Nations Organization and abides by

its covenants and by the Universal Declaration of Human Rights. The Government shall embody these principles in all fields and areas without exception”. 50 Décisions

Considering that the paragraph “c” of such preamble stipulates: “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 the paragraph “d” states: “The people are the source of authority and sovereignty; they shall exercise these powers through the constitutional institutions”. Considering that the Preamble is an integral part of the Constitution.

Considering that the universal declaration of human rights and the international conventions, of which the International Covenant on Civil and Political Rights states that “the people’s will shall be the source of power. This will shall be expressed through periodic and fair elections held by secret ballot and within the respect of the principle of equality or of any other respective arrangement which safeguards the freedom of choosing representatives. Every citizen shall have the right to vote or be elected at genuine periodic elections”.

Considering that free and fair elections are the best vehicle for the emergence of an authority derived from the people, as the foundation of a parliamentary democracy.

Considering that electoral competition is the rule allowing voters to choose their representatives and to express their own will.

Considering that the principle of electoral competition, regarded as a basis and a rule in every democratic system, is a principle of constitutional value.

Considering that the election by acclamation, which is not established in the constitution or developed in the constitutional jurisprudence, and is not raised to the principle of constitutional value, is the exception. Thus, the constitutional council does not consider that it rises to this rank.

Considering that the Declaration of Human Rights and International Covenants shall not provide that the election by acclamation constitutes a principle in electoral operations as noted in the appeal. Conseil constitutionnel 51

Considering that the principle of democratic competition requires the MP’s election success thanks to the confidence and vote of the electors and not to a formal provision.

Considering that the election by acclamation constitutes a presumption of unanimity in favor of any candidate, a presumption that shall be effective.

Considering that the repeal of the election by acclamation does not deprive the candidate from his civil and political rights guaranteed by the constitution, by the Declaration of Human Rights and International Covenants.

Considering that the repeal of the election by acclamation does not deprive the candidate from any possibility to win the elections determined within the timeframes set by the constitution.

Considering that it shall not be judicious to consider that the repeal of article 50 of the law subject to appeal constitutes a violation of the constitution.

For these reasons stated above and after deliberations, the decision of the constitutional council was taken by a majority of vote:

1. The form: the admissibility of the appeal is lodged within the legal period and meets the form requirements.

2. The content: the constitutional council dismisses the appeal related to the repeal of the law no 245 of April 12, 2013 published in the official gazette no 16 of April 13, 2013.

3. The decision of the constitutional council is notified to the competent authorities and published in the official gazette.

Deliberated by the Constitutional council in its session of May 13, 2013, sat on by the members: Muhammad Bassam Murtada, Salah Moukheiber, Souheil Abdel Samad, Toufic Soubra, Zaghloul Attieh, Antoine Kheir, Antoine Messarra (**dissident**), Ahmad Takieddine, Vice President: Tarek Ziadeh, President: Issam Sleiman.