A legal Study: The Unconstitutional Constitutional Amendments

The Constitutional amendments that are void Constitutionally, procedurally and objectively, explicitly and implicitly, not subject to the control of the judiciary, and under no protection except from the people.

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A legal study based on the suggested amendments to Egyptian Constitution 2014, reasons for their procedural and subject violations, both explicit and implicit for the text of article 226 of the Constitution which regulates the conditions and procedures of amending the Constitution, and their violation of several other Constitutional principles, with the response to all problematic issues raised regarding Constitutional amendments.

Contents

Preface:

The Supreme Constitutional Court has established in its rulings the agreed upon philosophy regarding interpreting the principle of the supremacy of the Constitution over the other legislation, and the authorities that emerge from it to structure the regime. This Constitution is what legislations are based on, and without which do not exist. Hence, it is not allowed for such authorities to approach the Constitution with what violates it or contradicts its rulings, but rather authorities must follow what is called "Constitutional legitimacy" which the Court interpreted in many of its rulings saying:

> ***Constitutional legitimacy presupposes a rigid and solid Constitution whose provisions are based on the lower and higher legal rules, since the Constitution is originally represented – The closer it is to the development of democratic systems, aimed at protecting individual freedom and supporting its launching into open horizons, which are in themselves independent from the limits of power or deviation – is a key guarantee for enforcing popular will in its direction towards its ideals, especially in the area of its establishment of a system of government that is not based on the hegemony and authority of the Authority, but is working to distribute them in a democratic framework between the different branches that they undertake, to ensure their balance and transfer of control among themselves. And that the elements be responsive to development, committed to the will of all people, as the responsibility of those working in public work before it, restricted up to the intrusion of the logical limits of their inherent rights and liberties, deterring with punishment any violation or acquiescence. It is decided that whether the Constitution has reached the ultimate hopes in the field of regulating the relationship between the State and its citizens, or has overlooked or avoided some aspects, the Constitution is always above all, at the top of all degrees and layers of the legal organization, considering its limits as those of each rule that is beneath it hence can't contradict it, which is what gave the Constitution its sovereignty as a stable fact in the collective conscience and awareness, making it an insurmountable fact echoed in the preamble of the Constitution by the Arab republic of Egypt (ARE) by proclaiming the determination of the popular will that it has given itself to defend, protect and ensure respect for, Thus, no one is to contradict the Constitutional Court's rulings, reject, deny them "***[1]

The House of Representatives has spared no effort – since its convening to violate the texts of the new Constitution and both explicit and implicit ignoring its provisions.

Starting from issuing Constitutionally faulty legislations that constraints the simplest Constitutional rights like The Protest or The Terrorism legislations, to purposeful manipulation of direct orders and new rulings in the new Constitution like the right of return to Nubians and supporting the right of Copts to build their own churches where they practice their own religion,

[1] ARE - Supreme Constitutional Court - Constitutional - Case No. 23 for the year 15 - Session on 5/2/1994 - Office of the technician 6 Part No. 1 - Page 140 - Non-competence

ending with suggesting amendments to some of its texts while it is still a new Constitution that has not been effective for more than just a few years; this House of Representatives has not once seriously tried to obey its provisions and monitor their implementation where needed.

On February 3rd ,2019, 150 members of the House of Representatives – more than 5th the members – presented a request to amend a number of the current Constitution, based on their right given to them by Article 226 of the Constitution which grants them – alongside the President of the Republic – the right to request amending some of its texts, and they based such request of amendments on them responding to legal and realistic reasons which clause to the direction of revising some of the provisions of the Constitution aiming to adopt some reformations in organizing the authorities of the state.
They presented also with the request to suggest amendments to some provisions[2], the preliminary phrasing of the new provision[3] suggested to substitute the original ones. In within 2 days, on Feb. 5th 2019, a report from the General Committee of the House of Representatives issued a report approving the request of the suggested amendments to some provisions in principle and its abidance by the procedural and subjective conditions required by Article 226 of the Constitution.

The report stated the same argument on which the request was based, justifying the approval by clauseing out that the realistic experimentation of some of the Constitutional provisions that were newly presented in Constitution 2014 needed some revision and that that was neither a shame nor a defect, that the experiments of some surrounding countries have proved that.
The committee presented some out of context rulings issued by the Supreme Constitutional Court in describing the Constitution by being a flexible progressive document that should keep up with the time and its spirit, which was used to justify why it should be amended after the exceptional times when it was issued – which was affected in their opinion by the revolutionary state[4] that the country witnessed after Jan. 25th revolution– were over.

Two full months; through which the whole content suggested amendments for the provisions were completely obscured to both media and people, and in a political atmosphere of oppression and under the umbrella of Emergency law; the voices opposing the process of amendments were constrained in many ways; from defaming opponents, accusing them of treason, and preventing protesting against it or even arguing the agreeing voices that were given all sorts of portals through all governmental media outlets, ending by widening the circle of political arrests and enforced disappearance for several citizens who declared the explicit opposition to the suggested amendments using social media platforms or individually protesting in streets and squares according to reports issued by ECRF and many other human rights organizations during the that time.

[2] Appendix 1 - Members request to amend some articles of the Constitution - Attached to the report of the General Committee of the House of Representatives with the initial approval to amend some articles of the Constitution - the first legislative term - the fourth regular session - issued on 5/2/2019
[3] Appendix 2 - Drafting of the proposed draft articles proposed by the members - Attached to the report of the General Committee of the House of Representatives with the preliminary approval of the amendment of some articles of the Constitution - First Legislative Chapter - The Ordinary Session of the Fourth - P1 - Issued on 5/2/2019
[4] Report of the General Committee of the House of Representatives on the initial approval of the amendment of some articles of the Constitution - the first legislative term - the role of the fourth ordinary meeting - p 1 - issued on 5/2/2019

On April 14th 2019, the Committee of Legislative and Constitutional Affairs in the House of Representatives issued its final report[5] on considering the request presented with the amendments and the results of its research of such amendments including the final phrasing of the suggested-to-be-amended provisions, using in such the phrasing used in the suggestions included in the request from the Members of the House of Representatives; though the report has introduced a few simple edits on some of the suggested provisions like the transitional article related to the benefit of the amendments to the current President regarding the Presidential terms and his eligibility to run for presidency for two terms after the end of the current term, around which a lot of controversy has recently been spurred for its Constitutional flagrant anomalies, which in turn grabbed public opinion's attention to the even more important suggested amendments such as those related to the Armed Forces and Judiciary, and in the end the edit was restricted to the increase of the current Presidential term with 2 more years and the eligibility of the current President to run for a consecutive term of 8 more years ending in 2030 rather than 12 years ending in 203 which were suggested in the request presented by the Members of the House of Representatives, as well as backing off from some suggested amendments of provisions regarding the Judiciary authority such as omitting the independent budget for Judiciary bodies and entities which was among the suggested amendments with others related to the provision regarding the Judiciary authority.

After the announcement by Egypt State Information Service (SIS) for the final phrasing intended for referendum for the people on April 17th 2019, the National Elections Authority issued the next day a decision asking citizens for a referendum to the amendments of the Constitution starting from Saturday April 20th – 3 days after announcing them to the people – which are supposed to be reviewed and analyzed by the people to reach a final decision about in the referendum in only 3 days. It's worth mentioning that the obscurity practiced by the House of Representatives regarding the suggested amendments and closing all sorts of ports for exchanging opinions, opposing, or discussing them is a flagrant violation to both rights of freedom of opinion and expression according to the Constitution regarding amending it not to mention violating all international obligations to guarantee the right to participate in the management of public affairs stated in Article 25 of the International Covenant on Civil and Political Rights, as well as a blast to the requirements of societal dialogue which is supposed to be a main item in the conditions of the procedural conformity of the process of amendment.

In this paper, we try to discuss and analyze the request presented including suggested amendments by Members of the House of Representatives, and discuss and analyze the report by the General Committee of the House of Representatives approving in principle such request through rebottling the reasons of its falsity, hence considering what is based on it – both procedures and decisions – as false also which in turn concludes to the falsity of the whole process of amendment till the people say their word.

[5] Report of the Constitutional and Legislative Affairs Committee of the House of Representatives with the final approval of the proposed amendments to some articles of the Constitution and the final draft of the amended articles - the first legislative term - the fourth ordinary session - issued on 5/2/2019

Executive Summary:

In this study, we address the proposed amendments to the texts of the Constitution based on the requested presented by Members of the House of Representatives which included an attachment of the preliminary texts suggested to replace the originals ones. Also we address both reports issued by the General Committee of the House of Representatives approving the request in principle and the Legislative and Constitutional Affairs Committee with the final phrasing to the proposed texts, as well as analyzing them while showing their explicit and implicit violation to the procedural and subjective conditions of amending the Constitution stated in Article 226, whether that previously mentioned Article could be considered inflexible and not modifiable, and how the proposed amendments contradict it explicitly and implicitly.
Afterwards, we move to discussing several problems raised around the process of amendments including; the extent of allowing the appeal against any of its procedures, the decisions issued about them in front of the judiciary and their relation to the provisions of Article 157 of the Constitution granting the President of the Republic the right of asking the people to a referendum concerning the important affairs provided they do not contradict the provisions of the Constitution on which some legal opinions opposing the amendments are based as a method to appeal judiciary to the waited upon decision to ask the people to a referendum.
Also, the study reflects on the issue of the method of strategic litigation for judicial engagement with the process of amendments based on the rights to participate in the management of public affairs, freedom of opinion, and expression in matters of amending the Constitution of the State.

The study reaches several conclusions, of which the most important are; the falsity of amending Article 226 of the Constitution which regulates the right to amend being a guardian protecting specific provisions of the Constitution prohibiting amendment, the manipulation of the proposed amendments and their explicit and implicit violation to the provisions of the article and others principles of the Constitution in many ways such as including unannounced and unjustified amendments in the request presented and the report issued by the General Committee of the House of Representatives approving it in contradiction the 2nd condition in Article 226 of the Constitution which necessitates the specification of the Articles intended to be amended and the detailed of each proposed amendment, as well violating the prohibition – stated in the same Article – of the explicit amendment of the Articles immune to amendments, plus the obscurity surrounding the whole process of amendment with not announcing its content through the whole past period and its violation to the rights of opinion and expression needed to guarantee the environment of participation of the citizens in the public life and expressing opinions in the important matters which was stressed on in the Constitution and affirmed by international covenants and treaties.

Also, the study presented an analysis to the threat by the proposed Constitutional amendments to the judiciary independence and expanding the jurisdiction of the military trials (hence, threatening the right to a fair trial).

The study also addressed the proposed amendments regarding the expansion of the role of the Armed Forces in the political life making it an institution of a special stature.

The study confirms the invalidity of the current Constitutional amendment process with all related procedures and decisions even the decision to ask the people for a referendum which will acquire full legitimacy according to what the rulings of the Egyptian Supreme Courts have settled on if the people agreed on the amendments in the referendum and this is in case the process of referendum is not tarnished with any doubt of falsifying the will of the people and the process of voting.

The study then moves to discussing the problems raised around and among the proposed amendments including the extent of allowing appeal to any of their procedures in front of Courts which the study concluded to its incompetence, and according to what the rulings of the Supreme Courts have settled on in that matter. The study also addresses the opinions regarding the amendments contradicting Article 157 of the Constitution regulating the right of the President of the Republic to ask the people for a referendum provided the matters in question do not violate the provisions of the Constitution and the necessity to ask the people regarding every matter of the proposed on its own, which the paper confirms to be incorrect legally proving the irrelevance of the scope of application of the previously mentioned Article to the Constitutional amendments, as well as proposing an indirect legislative method for the judicial engagement with the amendments which is far beyond its time considering the speed of considering the legal appeals to the process of amendments within days of its announcement and asking people for a referendum regarding them.

Methodology

The study adopted in its methodology both legal analysis and criticism of the request presented by the Members of the House of Representatives with the proposed amendments, using collective legal research in the judicial rulings, legislations and Constitutions issued by the Supreme Constitutional Court, Egyptian State Council and Egyptian Court of Appeals.

The methodology of analysis was to draw the problems raised regarding the process of amending the Constitution and the extent of the Constitutionality of procedures and decisions issued by the House of Representatives through addressing all legal grounds for our responses to those problems.

First Matter of Research: organizing the right to request amending the Constitution and its procedures and conditions according to Article 226 of the Constitution, and the difference between it and its equivalents in previous Constitutions and Constitutional declarations:

Article 226 of 2014 Constitution[6] regulates and specifies the procedures and conditions of amending the Egyptian the Constitution, without which there is no amendment.

And it is the article that identifies the nature of the Constitution being a relatively inflexible Constitution, meaning it is not to be amended by the conventional legislative procedures as or flexible Constitutions, neither is it completely prohibited to be amended as absolutely inflexible Constitutions; as the Article forms a Constitutional basis to the right to amend the Constitution of the State according to the Constitutional Legitimacy.

Hence amending it according to the Constitutional frames, procedures, and conditioned stated in its provisions, that differ from other methods of phrasing and amending the Constitutions which could happen during revolutions or military coups and are based on the logic of power, which allows the dominator to issue Constitutional Declarations with power equal to that of a

[6] Constitution of 2014 issued on 18/1/2014 and published on 18/1/2014 in the Official Gazette, Article 226: The President of the Republic, or five members of the House of Representatives, may request the amendment of one or more articles of the Constitution. The request shall include the articles to be amended and the reasons for the amendment. In all cases, the House of Representatives shall discuss the request for amendment within thirty days from the date of its receipt. The Council shall issue its decision to accept the request for amendment in whole or in part by a majority of its members. If the application is rejected, the same articles may not be re-ordered before the next session. If the Council approves the amendment request, the texts of the articles to be amended shall be discussed sixty days after the date of approval. If the amendment approves two-thirds of the number of members of the Council, it shall be submitted to the public for its appeal within thirty days from the date of such approval, and the approval of the majority of the valid votes of the participants in the referendum. In all cases, the texts relating to the re-election of the President of the Republic, or the principles of freedom or equality, may not be amended unless the amendment relates to further guarantees.

Constitution that has been brought to a referendum, enforcing a new Constitutional reality based in its core on the revolutionary legitimacy not the Constitutional one and presenting an implicit inclination for the enacted Constitution with all its provisions with the intention of starting constructing a different one and bringing it to a referendum for the people or assuming its approval in some cases. Such methods are different from those stated in Article 226 which assumes abiding by its provisions as a condition to ask for the right based on it, and considering it the necessary condition that must be abide to fulfill the required Constitutional standards for the conformity of the process of amendment.

Article 226 of the Constitution gives the President of the Republic or 5th the members of the House of Representatives the right to ask for amendment of one or more of the Constitution articles, and regulated the conditions and procedures required to propose such a request as follows;

A- The request should specify the articles to be amended and the reasons for the amendments.
B- In all cases, the House of Representatives will debate the request within 30 days from the date of its receipt.
C- The House issues its decision to accept the request in whole or in part by a majority of its members.
D- If the request is rejected, the same amendments may not be requested again before the next legislative term.
E- If the amendment request is approved by the House, it discusses the text of the articles to be amended within 60 days from the date of approval.
F- If approved by a two-thirds majority of the House's members, the amendment is put to public referendum within 30 days from the date of approval.
G- The amendment is effective from the date on which the referendum's result and the approval of a valid majority of the participants in the referendum are announced.
H- In all cases, texts pertaining to the re-election of the president of the republic or the principles of freedom and equality stipulated in this Constitution may not be amended, unless the amendment brings more guarantees.[7]

It's worth mentioning that the last clause prohibiting amending specific Articles in the current Constitution is a newly added one that was not included in Constitution prior to 2014 one, like Article 189 in 1971 Constitution[8], and Article 217 of 2012 Constitution[9] which were – just as Article 226 – regulating the conditions and procedures of amending the Constitution, even though the Constitutions prior to the era of the Republic included similar clauses prohibiting amending specific provisions and putting them in immunity as absolutely inflexible provisions that may be amended.

[7] Article 226 of 2014 Constitution
[8] 1971 Constitution issued on 11/9/1971 and published on 12/9/1971 in the Official Gazette
[9] 2012 Constitution issued on 25/12/2012 and published on 25/12/2012 in the Official Gazette

As for amending Constitutions in times of revolutions or military coups;

> ***It is legally decided in those circumstances that the revolution government issue a Constitutional declaration or more, to regulate the country until a Constitution is established that regulates the state authorities and all the rights and freedoms of citizens. The Constitutional declaration of the permanent Constitution is issued by the ruling authority and does not require a referendum by the people. It includes specific articles that include the Constitutional issues necessary to manage the affairs of the country without the preferences that are usually left to the Constitutions. The Supreme Council of the Armed Forces, which took over the country during the transitional period following the revolution of Jan. 25th 2011, issued a Constitutional declaration on Feb. 13th 2011, which stipulated the 1971 Constitution and dissolved the People's Assembly and Shurra Council and took over the country, the political institutions that were running the state, and replaced by the Supreme Council of the Armed Forces already the revolution and the force of the political reality of the country in case of necessity, with the establishment of new State institutions, a referendum was held for the people on Mar. 19th 2011 on the method of forming these institutions, starting with the People's Assembly and Shurra Council and then the Presidency of the Republic and the establishment of the new Constitution through the amendment of some articles of the Constitution of 1971. The Supreme Council of the Armed Forces decided in a statement issued on Mar. 23rd 2011 to issue a Constitutional declaration to regulate the authorities in the interim period until the legislative elections and the election of the President of the Republic were completed. So, on Mar. 30th 2011, the Constitutional Declaration promulgated the provisional regime of the State Administration until the establishment of its institutions"***[10]

And so the Constitutional Declaration of 2011 – together with its amendment by an another consecutive declaration in November 2012 – included different Articles regulating the mechanism and procedures of constructing the new Constitution for the country, so Article 60 came to extend the jurisdiction to the other designated members of the first House of Representatives and Shurra Council, by electing a Constituent Assembly of 100 members to undertake the task of preparing the new draft Constitution. Article 60 bis also granted the Supreme Council of Armed Forces the authority of forming a new Constituent Assembly in case the one mentioned in Article 60 was not able to continue its work for any reason.

The judicial view of the validity and power of Constitutional declarations varies according to the continuation of dominance of the issuer and expansion of its power on the regime.

> ***"The president was elected and took office on Jun. 30th 2012, on the basis of the provisions of the Constitutional declaration issued on Mar. 30th 201, which set its terms***

[10] ARE - Unpublished provisions - Court of Cassation - Civil – Requests by Judges - Appeal No. 654 of 1983 - Date of Trial 2/7/2013 - Refusal

of reference and which does not include the power to issue Constitutional declarations, the Constitutional declarations issued on Nov. 21st and Dec. 8th 2012 were issued by those who do not have the mandate to issue them, after the revolutionary situation had ended and the President of the Republic had assumed legitimate authority by virtue of his election as President of the Republic with specific powers that would not enable him to issue such declarations; hence, it does not qualify as a Constitutional declaration, which brings them down from the ranks of political actions that are immune to judicial control to be under the umbrella of the administrative decisions that are subject to judicial control over the administration, which is based on the support of the rule of law and the submission of the state to its provisions to uphold the legitimacy"[11]

According to the previous interpretations of the states of revolutionary legitimacy and the Constitutional legitimacy and the difference between them; and according to the end of the state of revolutionary legitimacy, the current House of Representatives does not have any option but to abide by the rulings of the Constitutional legitimacy which gives it the right to request amending the Constitution's provisions and which requires it to abide by the subjective frameworks and operative procedures stated in Article 226, otherwise its work becomes a coup against the Constitution and a violation of its provisions which overthrows its legitimacy coming from considering its authority to be based primarily on the overthrown Constitution.

Second Matter of Research: Is Article 226 immune to amendment?

Legal opinions have been different regarding the legality of amending the provisions of Article 226 and repealing the text mandating prohibiting amending the Articles of the Constitution that are related to re-electing the President of the Republic or to the principles of freedom and equality, with one exception of increasing guarantees.
For the Constitution – of which amendment is prohibited – to be amended, many of those opinions saw that there was nothing that stated holding the exact text of the Article immune from the right to be amended.
In our opinion, we see that the text of Article 226 should not be amended and that there is no way to do that except by repealing the whole Constitution, working on preparing a new one, and asking the people for a referendum regarding it, which is an actual probability; but forms a violation of the Constitutional legitimacy and going back to the revolutionary legitimacy and presenting a new political reality that is expected to be unstable and unsustainable for a while which is the case both the Presidency and the Parliament fear going back to; since it threatens their existence and legitimacy as entities formed under the umbrella of a Constitution they had overthrown themselves.
And as we explained before, the Article 226 protects some specific provisions from the possibility of amendment, and this is a new condition presented a subjective prohibition that protects other provisions making only them absolutely inflexible not susceptible to amendments

[11] Ibid

in a relatively flexible Constitution, which logically protects Article 226 itself from amendment, otherwise there is no clause of its existence, since how is it possible for a provision that prohibits other provisions from amendments to be itself susceptible to amendment or violation?
Also, the text of Article 226 is the basis used by those who requested the amendment – whether it was presented by the President or the members of House of Representatives – to prove their right for requesting the amendment.
Plus, the phrasings; "as per the text of Article 226 of the Constitution" or "after reviewing Article 226 of the Constitution" or "taking into consideration Article 226 of the Constitution"; were mentioned in both reports issued by the General Committee, the Legislative Committee, and all other relevant reports issued by the House of Representatives in that matter to ask people for a referendum, making it the legal and fundamental grounds and reference for the right of amendment; so how do you rely on a right to ask for denying it?

Although the newly presented protection in 2014 Constitution was not included in the previous Constitutions of the Republic like those of 1971 and 2012 before amending it in 2014; still the mere idea of prohibiting specific Articles from amendment is not a new idea, but rather has precedents in the Constitution in the era of the Egyptian Kingdom, and also the Constitutions of other countries.
In 1923 Constitution, Article 156 prohibited amending the Articles related to the Parliamentary structure of the government, the succession system, and also the principles of freedom and equality.[12] Also, Article 158 of the same Constitution prohibited any edits to the Articles related to the rights of title deed[13], which was included also in Article 147 in Constitution no. 70 for 1930.
None of those protected provisions were amended but rather were repealed or suspended by the king back then and other new Constitutions were prepared away from the assumed Constitutional legitimacy.[14]

The Constitutions of many countries have included protected provisions that are immune to protect the Constitutional regimes from the spread of the authorities granted the power of amending them, like the French Constitution which – according to Article 89 – protects the Republican regime for the state from amendment or approaching it, as well as the absolute prohibition for performing – or preparing for performing – any procedure to amend the Constitution if this approaches the safety of the French Nation[15].

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[12] The Constitution of the ARE - Constitution No. 43 of 1923 - issued on 19/4/1923 - published on 30/41923 - in the Egyptian facts - on the establishment of the Constitutional regime of the Egyptian state - Article 156 Section VI: "The King and each of the two councils may propose to revise, amend or delete one or more of the provisions of this Constitution, or add other provisions. However, provisions concerning the parliamentary government, the throne system and the principles of freedom and equality guaranteed by this Constitution cannot be proposed to be revised.
[13] The Constitution of the ARE - Constitution No. 43 of 1923 - issued on 19/4/1923 - published on 30/41923 - in the Egyptian facts - on the establishment of the Constitutional regime of the Egyptian state - Article 158: "No revision of the Constitution regarding Ownership Period of custody of the Throne
[14] The Constitution of the ARE - Constitution No. 70 of 1930 - issued on 22/10/1930 - Published on 23/10/1930 - in the Egyptian facts - the establishment of the Constitutional regime of the Egyptian state - Article 147: ??
[15] France - Constitution of 1958 - issued on 04/10/1985 - Published on 04/10/1985 on the establishment of the French Constitution - Article 89 Section XVI (Revision of the Constitution):" The President of the Republic, on the recommendation of the Prime Minister, and Members of Parliament alike shall have the right to initiate amendments to the Constitution. A Government or a Private Member's Bill to amend the Constitution must be considered within the time limits set down in the third paragraph of article 42 and be passed by the two Houses in identical terms. The

Also, the Italian Constitution prohibits amending the Republic nature of the State[16].
The Romanian Constitution also prohibits amending provisions related to the independent national nature which is united and not to be divided, the republic nature of the government, independence of judiciary, the official language of the state, the political diversity, and regional safety; and then added prohibiting any amendment of which result represents oppressing the citizens, their fundamental rights, or the guarantees of such rights and freedoms; as well as the absolute prohibition of any amendment in cases of war, emergency or siege.[17]
Among Arab countries of which Constitutions include provisions prohibiting amending, the Moroccan Kingdom; where all its consecutive Constitutions prohibited reviewing or amending provisions related to the monarchy state of the country and Islamic religion[18], then in Constitution 91 in 2011, new provisions were added for the democratic choice of the nation and on the gains in the field of fundamental rights and freedoms set out in this Constitution ".[19]
Many countries in their Constitutions go in the direction of including provisions that absolutely prohibit amending them in cases of emergencies or wars, which is a direction agreed upon in the Constitutions of 20 different countries both ideologically and systematically.

All previously mentioned explains the numerous examples of protecting the Constitutional provisions and prohibiting amending some of them in several comparative regimes, and that what prevails in the democratic countries is abiding by the prohibition and not violating it in consistence with respecting and following the Constitutional legitimacy which regulates the process of amendment, since approaching such provisions or manipulating them are not in any way Constitutional, so, the attempt to amend such provision – if it happened – would be an exceptional procedure and inconsistent with the assumed Constitutional legitimacy, but rather an overthrow for the Constitution itself, which in turn, means the overthrow of this Constitution's institution starting by the executive one represented by the President of the Republic and the

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amendment shall take effect after approval by referendum. However, a Government Bill to amend the Constitution shall not be submitted to referendum where the President of the Republic decides to submit it to Parliament convened in Congress; the Government Bill to amend the Constitution shall then be approved only if it is passed by a three-fifths majority of the votes cast. The Bureau of the Congress shall be that of the National Assembly. No amendment procedure shall be commenced or continued where the integrity of national territory is placed in jeopardy. The republican form of government shall not be the object of any amendment."

[16] Italy - Constitution of 1946 - published on 27/12/1947 on the Constitution of the Italian Republic - Article139 Constitution of the Republic of Italy - Part II (Republic) Part VI (Constitutional Guarantees) - Chapter II (Amendment of the Constitution): "The republican state is not subject to any Constitutional amendment"

[17] Romania - Constitution of 1991 - published on 08/12/1991 on the Constitution of Romania - Article152 - Part VII (Amendment of the Constitution): "The limits of Revision are; (1) The provisions of this Constitution with regard to the national, independent, unitary and indivisible character of the Romanian State, the republican form of government, territorial integrity, independence of justice, political pluralism and official language shall not be subject to revision. (2) Likewise, no revision shall be made if it results in the suppression of the citizens' fundamental rights and freedoms, or of the safeguards thereof. (3) The Constitution shall not be revised during a state of siege or emergency, or in wartime."

[18] The Kingdom of Morocco - Constitution No. 61 of 1972 - published on 15/03/1972 on the issuance of the order to implement the 1972 Constitution - Article 101 - Part XI (Revising the Constitution): "The monarchy of the state as well as the texts related to the Islamic religion cannot be covered by the review"

19 The Kingdom of Morocco - Constitution No. 91 of 2011 issued on 07/07/2011 and published on 30/07/2011 in the Official Gazette - on the implementation of the Constitution Article 175 - Part 13 (Revision of the Constitution): " On the Islamic religion, on the monarchy of the state, on the democratic choice of the nation and on the gains in the field of fundamental rights and freedoms set out in this Constitution "

legislative represented by the House of Representatives, according to which requested the amend.

Third Matter of Research: Was amending Article 226 included in the Constitutional amendments? How did those amendments violate Article 226 subjectively and procedurally?

Many legal opinions see the ban provided for in article 226 of the Constitution can be manipulated by amending the article itself and deleting the clause containing the prohibition, which is incorrect, as the proposed amendments did not contain any proposal to amend the article; however, its provisions have been manipulated in a number of explicit and implicit, subjective and operative manners; as the statement followed will discuss in details and analyze the proposed texts.

Most probably those who proposed the amendments – which were phrased professionally – understand very well that there is no way to amend Article 226 itself except by overthrowing or suspending the Constitution, which means violating the Constitutional legitimacy and overthrowing all institutions under its umbrella including firstly the House of Representatives as one of the authorities formed according to it and that would not exist if it had been overthrown. Also, they are certain that such step's consequences cannot be predicted as it – as previously mentioned – would lead us to the state of revolutionary legitimacy which the State strongly fears its return after trying for the recent years to abolish all its impact and go back to what was before it.
What is settled up in that matter – from a Constitutional clause of view – is that "the authority formed according to Constitutional legitimacy cannot function otherwise as it cannot deny the origin of its existence, since going back to the revolutionary legitimacy after following Constitutional legitimacy throws away any step taken in the pursuit of the fundamental goal of the revolution which is the rule of the law, with what is related to it regarding elongating the transitional period with its unsustainabilities and instabilities on all fronts."[20]
The request presented by the members of House of Representatives with the Constitutional amendments, included a proposal of amending (12) Articles of the Constitution, forming (8) new ones, and adding 1 transitional Article. In the matter of the extent of the request's consistency with the procedural and Constitutional requirements, the General Committee of the House of Representatives concluded, after discussion and reviewing, and according to its final report of preliminary approval, to the fulfillment of the conditions stated in Article 226 of the Constitution, the fulfillment of the required number of signatures of the members of the House of Representatives, as well as specifying the Articles requested to amended and the justification of each amend with its acceptance in terms of form and theme.

Before refuting and analyzing in details the matter of Constitutional amendments, we can say that both the request of Constitutional amendments and the report issued by the General Committee with its preliminary acceptance have violated – in terms of procedures – the provisions of Article 226 and its conditions in many ways which are;

[20] ARE - Unpublished provisions - Court of Cassation - Civil – Requests by Judges - Appeal No. 654 in 1983 - Date of Trial 2/7/2013 - Refusal

1- Undisclosed and unjustified amendments in the proposed request of Constitutional amendments and the report issued by the General Committee of House of Representatives accepting it, which violates the 2nd condition in the Article 226 of the Constitution which requires the specification of Articles proposed to be amended with the justification of each amendment, which was violated by the proposed request in more than detail, since the proposed request suggested substituting paragraphs of the provisions to be amended with phrases and paragraphs with different subject and phrasing with no indication to that or its explanation or justification.
2- Violating the prohibition stated in the last clause of Article 226 regarding the provisions related to re-election and principles of freedom and equality, which was violated by the proposed request explicitly and implicitly, as follows;
   A- Explicit and implicit violation to the prohibitions stated in the last clauses of Article 226 in more than one detail.
   B- Implicit contradiction by the whole amendments with several Constitutional principles and provisions, starting by the principles of the democratic state and what it entails of transition of power, rule of law, separation of authorities and balance between them, the right to litigate, and the independence and neutrality of judiciary.
   C- The preliminary acceptance by the General Committee of the proposed amendments in violation of clause A in Article 226 which requires the fulfillment of the proposed request of the conditions prior to accepting it by the House of Representatives which is the General Committee's task when it issued a report of the preliminary acceptance though the request were faulty with many explicit and implicit, procedural and subjective Constitutional violations.
   D- The violation of the intended obscurity regarding the amendments for 2 whole months, preventing protesting against them or opposing them, and making the societal dialogue exclusive for those approving them; with the freedom of opinion of expression in the issue of Constitutional referendums; as well as wasting the right of the citizens to participate in public life as stated in international Constitutions and covenant.
   E- The assumed falsity of all procedures and decisions related to the process of referendum since it was based on a faulty request and a faulty preliminary acceptance.

In the Next Matter of Research: We address and analyze the proposed Constitutional amendments while explaining in details the previously mentioned reasons of its invalidity

The Article Proposed for Amended	The Original Text of the Article in 2014 Constitution	The Text Proposed in the Request by the Members of House of Representatives	The Text as accepted by the Legislative Committee of the House of Representatives
Article 140 Paragraph 1	The President of the Republic is elected for **a period of 4 calendar years,** commencing on the day the term of his predecessor ends. **The President may only be reelected once.** The procedures for electing the President of the Republic begin at least 120 days before the end of the presidential term. The result is to be announced at least 30 days before the end of term. The President of the Republic may not hold any partisan position for the duration of the presidency.	The President of the Republic is elected for **a period of 6 calendar years,** commencing on the day the term of his predecessor ends. **The President may only be reelected for 2 consecutive Presidential terms.** The procedures for electing the President of the Republic begin at least 120 days before the end of the presidential term. The result is to be announced at least 30 days before the end of term. The President of the Republic may not hold any partisan position for the duration of the presidency.	The President of the Republic is elected for **a period of 6 calendar years**, commencing on the day the term of his predecessor ends. **The President may only be reelected for 2 consecutive Presidential terms.** The procedures for electing the President of the Republic begin at least 120 days before the end of the presidential term. The result is to be announced at least 30 days before the end of term. The President of the Republic may not hold any partisan position for the duration of the presidency.
Adding a Transitional Article in regards of the current President, named Article 241 bis		**The current President of the Republic may not, after the end of his current term of office, rerun for Presidential elections, as provided for in the amended article 140 of the Constitution**	**The current Presidential term ends after 6 years since his election as a President of the Republic in 2018, and he may be reelected as President for another Presidential term.**

Fourth Matter of Research: What do the proposed amendments state? What is their content? What is the criticism against them? How are their wholesome violation with the procedures and conditions in Article 226 of the Constitution?

Hereafter, an analysis will be provided for the proposed amendments as per the request presented by the members of the House of Representatives attached with the preliminary phrasing of the proposed provisions, the report issued by the General Committee of the House of Representatives giving its preliminary acceptance of the request, and the final provisions for the amendments to be asked about in a referendum according to the report by the Legislative and Constitutional affairs Committee in the House of Representatives:

Reorganization of the provisions of electing the President of the Republic:

The proposed amendment in the referendum:

- Increasing the Presidential term from 4 – 6 years, which violates the prohibition implicitly stated in the last clause of Article 226 of the Constitution.
- Amending the reelection which is prohibited from amendment, and allowing one President to be elected more than 2 terms and with no time interval after every Presidential terms (which was an undisclosed and unjustified proposed amendment in violation of the requirement of specifying articles requested for amendments with detailed justification of that as per Article 226 of the Constitution plus an explicit violation to the prohibition of amendment stated in the last clause of the Article).
- At the beginning, the request proposed by members of the House of Representatives included the addition of a new transitional Article in benefit of the current President from the proposed amendment on Article 140 in retrograde allowing him to be reelected after the end of his term for 2 more terms counting for 12 years with the possibility of running for elections again with no maximum time limit, and that article was amended according to the final report by the Legislative and Constitutional Committee with the end of the current Presidential term after the end of 6 year since his election in 2018, adding 2 more years to his current term plus allowing reelecting for a 3rd term, meaning the possibility of his stay for 8 more years after the original end of his current term which was supposed to last for only 4 years according to the original Constitution (which is an amendment that violates the condition of generality and abstraction assumed in the Constitutional rule since it is applied for a certain person and no one else, and explicitly and implicitly violates the prohibition stated in the last clause in Article 226 of the Constitution and completely overthrown both principles of democracy and transition of power and equality).

Analysis & Criticism:

What have been disclosed and justified in the request to amend some Constitutional provisions and the report issued by the General Committee accepting them; amending the 1st part of 1st paragraph of Article 140 regarding the duration of the Presidential term increasing it from 4 – 6 years, the 3rd part was amended regarding reelecting which is prohibited from amendment according to Article 226 in the attached proposed substitution without pointing out to or disclosing this or justifying it in the request by the members or the General Committee's report accepting it.
The text of Article 140 which is one of the directly impacted Articles by the prohibition stated in Article 226, since it addresses the details of the position of the President of the Republic including the provisions regarding reelection which are prohibited to be amended, which protects such provisions completely from being amended.
The requested proposed by members of the House of Representatives in the matter of amending that specific Article stated aiming to only partially amending the Article in terms of the duration of the Presidential term increasing it from 4 – 6 years, which – according to the justification presented – proved in practical life to be very short and unsuitable for the Egyptian reality. The request did not address in any way any other amendments to that same article except mentioning adding a new transitional Article in benefit of the current President after the end his current Presidential term.

As per the prohibition stated in Article 226 of the Constitution regarding not allowing amending the provisions related to reelection of the President of the Republic, the General Committee becomes obligated in its report of preliminary acceptance of the proposed amendments to consider the consistency of the proposed amendment to Article 140 with the Constitutional requirements, which is why the report mentioned in this regard; "regarding the prohibition of amendment stated in Article 226 of the Constitution, the committee concluded that the pointed-out-to prohibition focuses on the increase of the Presidential terms by more than 2, not on increasing the number of years in one term, which is supported by the opinions said by some Constitutional law scholars, plus the real life and practical experience which has proved that a Presidential term of only 4 years is not sufficient or realistic on any level for meeting the dimensions of human and sustainable development which require a long time especially in an era of rebuilding the country after the revolutions and in light of the unstable regional situation." which was not covered by the report issued by the General Committee in terms of reviewing the form or content of the amendment that has been done for the 2nd part of the 1st paragraph of the Article in its attached copy with the request with amendments.

If we look to the difference between the original and the proposed texts, we'll find that the amendment has not just addressed the duration of the Presidential term as in the number of years, but rather also the form and content of the 3rd part of the paragraph related to increasing the number of the Presidential terms for more than 2, which directly impacts the clause regarding reelection that is under prohibition according to Article 226. All this happened without disclosing or pointing out to it in what proves the intention to conceal such amendment without shedding light on it and discussing it.

The 3rd part of the 1st paragraph of Article 140 in 2014 Constitution states: "**The President may only be reelected once**." which means that what is allowed is a maximum of 2 Presidential terms and whoever ends both of them can absolutely not be reelected making the maximum duration for someone to be in the office of Presidency of ARE is only 8 years according to the original Constitution – or 12 years if the proposed increase of the duration of the single Presidential term is accepted – which makes this text one of the most relevant ones to the prohibition stated in Article 226 regarding reelection since its content is focused on specifying the number of Presidential terms with a maximum of 2 after which no one can ever be in the office. Also, it is noted here that the mentioned text literally states the words "**reelection**" both directly and explicitly which makes it the most relevant Constitutional provision to the prohibition stated 226 when it prohibited the amendment of provisions related to "**reelection**", and this is in case we agreed on the literal interpretation of the Article 226 and that it focuses only on the matter of increasing the presidential terms and nothing else.

But if we look at the 3rd part of 1st paragraph of the proposed Article, attached in the proposed Articles together with the request from the members of the House of Representatives including the content of the amendment, plus the report of acceptance on such amendment by the General Committee; we'll find to be as follows; '**The President may only be reelected for 2 consecutive Presidential terms.**"; and whoever looks at the text for the first time without reading the original one will not feel any difference, but there is a huge one; since the text of the proposed – undisclosed and unjustified – amendment means that whoever holds the office for 2 consecutive terms may run for more with no maximum limit if his Presidency was interrupted between each 2 Presidential terms with another one taking the office in the middle as a mediator , which means that someone could remain the President forever if his Presidency was interrupted after each 2 terms which will be 12 years, according to the amendment proposed for the 1st part of the paragraph making the term 6 years.

It's beyond doubt that the expansion of the Presidential term with no time limit explicitly violates the prohibition stated in the previously mentioned Article 226, contrary to the rest of the violations inclined to in the proposed request by the members of the House of Representatives or the report issued by its General Committee that are characterized by being implicit and subject to manipulation in interpretation and diversity of opinions.
No doubt that the members of the House of Representatives who presented the proposed request of Constitutional amendments and the members of the General Committee know very well that that specific proposed and undisclosed provision is a clear explicit violation for article 226 and would not have been accepted if it had been disclosed or pointed out to, since there would be no way to justify the explicit violation of the prohibition of amendment; and may be if it was brought to a referendum, another request of amendment would have been presented later to what would be even more flagrant than 2 consecutive Presidential terms.
But in that case it would not be hard; since the term "**reelection**" would be erased in the new amendment which would then circle it around the prohibition stated in Article 226, after it had been directly impacted by it; and may be even then those who presented the request would respond that the prohibited reelection was in a term that had been erased with the agree of the people in a referendum; which would mean then that the amendment would be an implicit rather explicit violation, and subject to interpretations and perspectives.

Away from the content of the amendment and its violation for the provision stated in the last clause of Article 226, the mere nondisclosure of the amendment related to reelection in that matter and its non justification either in the proposed request of the report issued by the General Committee with its preliminary acceptance is yet a second violation to the requirements and procedures of Constitutional amendments stated in Article 226 which requires the disclosure of all proposed amendments with detailed justification of each one, which makes both the request for amendments and the General Committee report accepting them procedurally faulty from a Constitutional point of view, which raises the demand to the members of the House of Representatives to clearly explain whether that was a mistake and an overlook from the members who presented the request and those of the General Committee, or was it a deliberate and manipulative to pass the amendment? In either case, the General Committee of the House of Representatives is responsible for explaining their position and whether it was negligence in research and attention to details while comparing to the original provisions or collusion with those who presented the request in an attempt for pass what should not have been amended to being with.

A transitional Article was added allowing reelection for the current President of the Republic after the end of the current term according to the amendment proposed to Article 140; meaning that the already over 2 terms are not counted and he could run for 2 more terms each is of 6 years, allowing reelection for more terms with a time interruption between each 2 terms by another President, according to the proposed amendment in the request by the members of the House of Representatives; however, after revisions and discussions, the final amendment was issued by the Legislative and Constitutional Committee of the House of Representatives stating the end of the current Presidential term after 6 years of the date of electing him as a President of the Republic in 2018, **meaning that his current term will increase by 2 years plus allowing reelection for a 3rd term leading to him staying for more 8 years after the end of his original 4-years-term as per the original Constitution**.

Many legal opinions that criticized the transitional Article being an inclination to amend Article 140 in retrograde and that this is not allowed Constitutionally according in accordance with the rule of immediate effect of the legal rule which states the immediate inaction of the legislation – whatever its type – on the matters that follows its inaction and not on those before it.
Also, many opinions considered specifying the current President and no one else to benefit from the newly proposed to be a violation of the conditions of generality and abstraction assumed in any legal rule which states not specifying it to a certain person or matter.

And we while agree in conclusion with such opinions – in terms of the wholesome refusal of the provision and considering it an overthrow to the principles of democracy and transmission of power as stressed on in 2014 Constitution – still, legally and in relation to the extent to which a Constitutional text is effective retroactively; both the Supreme Constitutional and Appeal Courts have agreed on that legal rules in the original nature and all their types including the Constitution are all immediately and directly effective but not on matters and legal positions that were prior to them, however, going around such rule is possible if the rule clearly stated that the legislative or Constitutional provision is to be effective in retrograde on legal matters before it, which is the

purpose of adding a transitional Article which will add a retrograde effect for article 140 according to the proposed amendment[21].[22]

The exceptions of the principle of retrograde in legislations are legally and judicially frequent and established in the successive Egyptian Constitutions since 1923 – 1971 which is; "Affairs of legislation require a specific majority to be established as a fundamental guarantee to limit the retrograde and stress on its danger in most cases considering it a waste of rights and violation of stability, so a majority of the members of the legislative authority is required in unanimous manner not the absolute majority that is normally practiced[23],[24]" as for the Court of Appeal, it has established that; "it is allowed for the judiciary authority, away from provisions related to criminal and public benefit affairs that are reached and whose motivation and context is put into consideration, to go around the principle of no retrograde of legislation and clearly states its application on the past[25],[26]". Those who presented the request have justified their inclusion of the transitional Article to be based on public benefit that calls for keeping the current President for more terms aiming to achieve stability which justifies their desire to increase the 4 years terms that were not enough for the current President to continue working on his agenda.

And it is beyond doubt that gathering the votes of the majority of members of the House of Representatives was not at all impossible, not to mention unnecessary in the Constitutional provisions such as the legislative ones, since if the amendments are agreed on in the referendum of the people it becomes an order from the people and it is not allowed to be stigmatized by

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[21] Arab Republic of Egypt - Supreme Constitutional Court - Constitutional - Case No. 205 in year 83– trial on 10/01/2015 -non-Constitutional – "The main rule in applying the law is that it applies to the facts under which it is carried out, i.e. during the period from the date of its issuance until its cancellation. If it was canceled and replaced by a new legal rule, the new one is effective from the time specified for its entry into force. The time range for the validity of the two rules is determined. The legal positions that have arisen and whose effects have been established under either old or new rule are subject to their rule. What has been created and arranged under the old rule remains subject to its rule and its legal status and its effects under the new rule alone. Therefore, as regards the determination of the Constitutional document to be invoked as a reference to the Constitutional guardianship in the slanderous case, the Court's judgment has established that the control of the Constitutionality of laws and regulations, in conformity with the substantive rules contained in the Constitution, is subject to the provisions of the existing Constitution. This censorship is aimed at the soundness of the Constitution, and protecting it from breaking its rules, which are always the bases and foundations of the system of government. It has a leading position among the rules of public order which must be observed and respected and the laws enacted in violation thereof, as a nominal jus cogens. However, if the existing Constitution does not have retroactive effect, the provisions of the previous Constitution must be enforced. As long as this legislation has been followed by its repeal or replacement of another text during the term of that Constitution, once it is yours, and the contested text was issued and concluded under the Constitution of 1971, and therefore the consideration Its Constitutionality is subject to the provisions of that Constitution"

[22] ARE - Supreme Constitutional Court - Constitutional - Case No. 114 of in year 05 trial on 06/04/1985 Technical Office 03 Part No. 01 - Page No. 176 - Refusal

[23] ARE - Supreme Constitutional Court - Constitutional - Case No. 143 of the year 19 on 12/11/2006 Technical Office 12 Part No. 01 - Page No 127– Rule: Rejection

[24] ARE - Supreme Constitutional Court - Constitutional - Case No. 30 of the year 09 on 07/12/1991 Technical Office 5 Part No. 01 - Page No 46 – Ruling: unConstitutional

[25] ARE -Court of Cassation - Civil (personal conditions) - Appeal No. 108 of the year 55 on 28/04/1987 session Technical Office 28 Part No. 01 - Page No 656 - Ruling: Appealing the rule and referral

26 ARE - Court of Cassation - Civil - Appeal No. 04 of the year 34 on 22/11/1966 Technical Office 17 Part No. 03 - Page No 1518 - Ruling: Rejection of the application

being unConstitutional and in turn the text the transitional Article an explicit Constitutional provision that states and allows retrograde which will be applied on Article 140 after amending it on the current President allowing reelection according to its provision for terms of 6 years each and with no time limit with a time interruption of another President between each 2 terms, and may be in that case there will be an exchange of roles with a newly appointed vice-President according to the amendments.

When it comes to how the newly added transitional Article contradicts with the contradicts with the conditions of generality and abstraction assumed in legal rules, we think that the added Article is not general not is it explicitly abstract since it is in the mere benefit of a specific person only and no one else who is the one who holds the office of current President and there was nothing left excepting actually mentioning his name.

The rulings of the Supreme Constitutional Court have established that;

> ***The general rule of law does not mean that it goes out to all those present on the territory of the state or spread over all the acts that are issued by them. However, the legal rule has its constituents by the absence of allocation. This is achieved if the legislator establishes it devoid of any particular person or object, in the principle of equality before the law, which does not mean that the different categories of citizens are treated with equal legal status in their legal positions, and is not based on opposition to all the forms of the revolution, including that which is based on objective grounds and therefore does not violate the text of the Constitution, Which means that the discrimination that is terminated by it is that what is governing"***[27]

It is beyond doubt that specifying the benefit for only the current President and not anyone before him inclines a judiciary discrimination that contradicts with the Principle of equality before the law and makes it void of both conditions of generality and abstraction in a very clear undeniable manner.

Those who presented the request could object that generality and abstraction are applied here it is only one President and so in nature the rule will only be applied on one person which does not contradict the principle of equality that assumes that those of legal positions equivalent to the current President with no discrimination between them, and that in the case of the mentioned provision there is no on who legal position equivalent to the current President of the Republic. Also, the fact that the position of the resident is unique negates equating him with anyone else regarding wither the provisions related to the position or otherwise, which is an opinion worth appreciating if those who presented the request use it in their justification, though specifying someone whoever and whatever his position is with a specific Constitutional rule included in the highest legal document in the country is kind of beneath a country of which history that is full of precedents of rich pioneer experiences in phrasing and preparing written Constitutions, and gets us closer to the example of fascist dictatorships where there is no shame in mentioning a specific

[27] ARE - Supreme Constitutional Court - Constitutional - Case No. 04 of the year 34 dated 19/06/1993 Technical Office 05 Part No. 02 - Page No 359 - Rejection

name considering him the educator, inspiration and editor of the Constitution putting him as the holder and protector of the conduct with the people[28].[29]

May be it was expected for the Transitional Article to be rejected by the House of Representatives during discussing it. And in that case, the current President of the Republic would not be allowed to run for the next Presidential elections when the newly added provisions related to the office of Vice-President would be used, which could be filled by the current President keeping him in charge of affairs during the Presidential term of another President as a mediator so the current President would be allowed to run for elections for 2 more terms. This scenario is close to the last Russian Presidential elections, which is better than prohibiting the current President from running for election as per Article 140 which absolutely prohibits reelection for the President except for one i.e.; 2 terms in total through all his life, which are already used up by the current President by the end of the current term.

It's worth mentioning that while the amendments related to expanding the chance for reelection of the current President and the maximum number of times of reelection is dangerous; it is still not the most important, that we could even call it marginal next to the more pivotal and dangerous amendments which are the ones related to the Armed Forces, appointing the Minister of Defense, and the Military trials, which in reality won't care for any significance for the office of Presidency or the value of Judiciary and Legislative authorities, since they would lead the army to be the protector and interpreter of the Constitution granting it more power than the Constitution itself or any other authority resulting from it, which will be discussed in details in analyzing the proposed amendments to the provisions related to the Armed Forces.

[28] North Korea - Constitution 1984 - published on 1 January 1984 on the Constitution of North Korea - Preamble: The Democratic People's Republic of Korea is the socialist motherland of Juche which has applied the idea and leadership of the great leader Comrade Kim Il Sung. The great leader Comrade Kim Il Sung is the founder of the Democratic People's Republic of Korea and the father of socialist Korea. Comrade Kim Il Sung authored the immortal Juche idea and, by organizing and leading the anti-Japanese revolutionary struggle under its banner, created the glorious revolutionary traditions and achieved the historic cause of national restoration. On the basis of laying a solid foundation for the building of an independent and sovereign State in the political, economic, cultural and military fields, he founded the Democratic People's Republic of Korea. Having put forward Juche-oriented revolutionary lines, Comrade Kim Il Sung wisely led various stages of social revolution and construction work, thus strengthening and developing the Republic into a socialist country centered on the masses, into a socialist State which is independent, self-sufficient and self-reliant in defense. Comrade Kim Il Sung elucidated the fundamental principles of the building and activities of the State, established the best State and social system, the best mode of politics and system and methods of administering society, and laid solid foundations for the prosperity of the socialist motherland and for the inheritance and consummation of the revolutionary cause of Juche. Regarding "The people are my God" as his maxim, Comrade Kim Il Sung always mixed with the people, devoted his whole life to them and turned the whole of society into a large family which is united in one mind by taking care of the people and leading them through his noble benevolent politics. The great leader Comrade Kim Il Sung is the sun of the nation and the lodestar of national reunification.

[29] Iran - Constitution of 1979 - published on 24/10/1979 on the Constitution of the Islamic Republic of Iran - Article No. 107 - Chapter VIII (The Leader or Leadership Council): After the honorable source of emulation, the great leader of the global Islamic Revolution, and the founder of the Islamic Republic of Iran, the venerated Grand Ayatollah, Imam Khomeini, may his noble character be sanctified, who was acknowledged and accepted by the undisputed majority of the people as the marja'and the leader, the responsibility for designating the leader shall be with the Experts who are appointed by the people. The Experts consider all the qualified jurisprudents as discussed in Articles 5 and 109, and consult with one another about them. If they find one of them the most knowledgeable about the rules and subjects of jurisprudence, or political and social issues, or acceptability by the public, or significance in any one of the qualifications indicated in Article 109, that person shall be selected as the leader; otherwise, one of the Experts is chosen and declared as the leader. The leader who is appointed by the Experts is in charge of the sovereignty of the command and all the responsibilities that derive from it. Before the law, the leader is equal to other people in the country.

II- The introduction of the post of Vice-President, the possibility of appointing more than one, taking over specific tasks when replaces the President of the Republic, and his exception of the ban on candidacy for the post of President:

The Article Proposed for Amended	The Original Text of the Article in 2014 Constitution	The Text Proposed in the Request by the Members of House of Representatives	The Text as accepted by the Legislative Committee of the House of Representatives
Article 160; (Substituting clauses 1 and last)	**If on account of a temporary impediment, the President of the Republic is rendered unable to carry out the presidential functions, the *Prime Minister acts in his place*.**	**If on account of a temporary impediment, the President of the Republic is rendered unable to carry out the presidential functions, the *Vice President acts in his place, or the Prime Minister if the Vice-President seat is vacant or unavailable*.**	**If on account of a temporary impediment, the President of the Republic is rendered unable to carry out the presidential functions, the *Vice President acts in his place, or the Prime Minister if the Vice-President seat is vacant or unavailable*.**
	If the Presidential office becomes vacant, due to resignation, death, permanent disability to work or any other reason, the House of Representatives announces the vacancy of the office.	If the Presidential office becomes vacant, due to resignation, death, permanent disability to work or any other reason, the House of Representatives announces the vacancy of the office.	If the Presidential office becomes vacant, due to resignation, death, permanent disability to work or any other reason, the House of Representatives announces the vacancy of the office.
	If the vacancy occurs for any other reason, the House announces it with a two-thirds majority. The House notifies the National Elections Commission, the Speaker of the House of Representatives temporarily assumes presidential powers.	If the vacancy occurs for any other reason, the House announces it with a two-thirds majority. The House notifies the National Elections Commission, the Speaker of the House of Representatives temporarily assumes presidential powers.	If the vacancy occurs for any other reason, the House announces it with a two-thirds majority. The House notifies the National Elections Commission, the Speaker of the House of Representatives temporarily assumes presidential powers.
	In the event the House of Representatives is dissolved, the General Assembly of the Supreme Constitutional Court and its chairman replace the House of Representatives and its Speaker.	In the event the House of Representatives is dissolved, the General Assembly of the Supreme Constitutional Court and its chairman replace it and its Speaker.	In the event the House of Representatives is dissolved, the General Assembly of the Supreme Constitutional Court and its chairman replace the it and its Speaker.
	In all cases, a new president	In all cases, a new president must be elected during a period not	In all cases, a new president must be elected during a period not

	must be elected during a period not exceeding 90 days from the date the office becomes vacant. In such a case, the presidential term commences as of the date the result of elections is announced. **The interim President is not allowed to run for this office**, request any amendment to the Constitution, dissolve the House of Representatives or dismiss the government.	exceeding 90 days from the date the office becomes vacant. In such a case, the presidential term commences as of the date the result of elections is announced. Whoever **takes place of this President, or The interim President** is allowed to request any amendment to the Constitution, dissolve the House of Representatives or the Senate of dismiss the government. **The interim President is not allowed to run for this office.**	exceeding 90 days from the date the office becomes vacant. In such a case, the presidential term commences as of the date the result of elections is announced. Whoever **takes place of this President, or The interim President** is allowed to request any amendment to the Constitution, dissolve the House of Representatives or the Senate of dismiss the government. **The interim President is not allowed to run for this office.**
Adding a new transitional Article no. 150 bis Regarding the newly proposed position of Vice-President President of the Republic and the provisions in force therein shall be established		The President of the Republic may appoint one or more Vice-Presidents, determine their competence, relieve them of their posts and accept their resignations. The provisions of the Constitution shall apply to the Vice-Presidents of the Republic by articles 141, 144, 145 and 173	The President of the Republic may appoint one or more Vice-Presidents, determine their competence, relieve them of their posts and accept their resignations. Before taking office, the Vice-Presidents shall take the oath provided for in article 144 of the Constitution before the President of the Republic. The provisions of the Constitution shall apply to the Vice-Presidents of the Republic by articles 141, 145 and 173

Analysis & Criticism:

- Under the title "**In the spirit of reform of the system of government and balance between the parliamentary and presidential systems**", the report of the General Committee of the House of Representatives mentioned the amendment in consideration alongside the amendment concerning the election of the President of the Republic.
  The report stated that the amendment above is justified as; "**It's consistent with the Egyptian regime, which combines the features of the presidential and parliamentary systems, and which assumes the dual authority of the executive; through the institution of the presidency on the one hand and the institution of the Council of Ministers on the other, and that it is preferable to have one or more Vice-President to the President of the Republic to replace him if he is unavailable rather than the Prime Minister as per the existing system.** "

The proposed amendment focuses on the first and last clauses of the Article 160 concerned with who takes over instead of the President in temporary situations, prohibiting the Vice-President from running for elections, and adding a new provision for the appointment of one or more Vice-Presidents to help him according to those who proposed the justifications of the amendments.
As for the provision governing the new appointment, the second paragraph of the new provision states the application of **Articles (141,144,145,173)**[30] **of the Constitution**, which are the provisions governing the conditions of running for the Presidency of the Republic, the Constitutional oath, and trial according to the general rules, as well as accusing them of treason and in turn referring to such provisions rather than introducing new ones to govern the rules, terms, conditions, and limitations of the authorities of the office of Vice-President intended to be added.

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30 ARE- Egypt 2014 Constitution - ***Article 141***: Conditions for candidacy "A presidential candidate must be an Egyptian born to Egyptian parents; him, his parents or his spouse may not hold other citizenship. He must have civil and political rights, must have performed the military service or have been exempted therefore by law, and cannot be younger than 40 years on the day that candidacy registration is opened. Other requirements for candidacy are set out by law". ***Article 144***: Oath "Before assuming the functions of the presidential office, the President of the Republic takes the following oath before the House of Representatives: "I swear by Almighty God to loyally uphold the republican system, to respect the Constitution and the law, to fully uphold the interests of the people and to safeguard the independence and territorial integrity of the nation." In case of the absence of the House of Representatives, the oath is to be taken before the General Assembly of the Supreme Constitutional Court." ***Article145***: Remuneration "The salary of the President of the Republic is stipulated by law. The President cannot receive any other salary or remuneration. No modification to the salary may come into effect during the presidential term during which it is approved. The president may not engage throughout the presidential term, whether in person or through an intermediary, in an independent profession or commercial, financial or industrial activity, nor is the President allowed to buy or rent any piece of state property, public-law legal persons or public sector companies, nor lease, sell or barter with the state any part of his own property, nor conclude a contract with the state as vendor, supplier, contractor or other as set out by law. Any such actions shall be considered null and void. The President must submit a financial disclosure upon taking office, upon leaving it, and at the end of each year. The disclosure is to be published in the Official Gazette. Throughout the presidential term, the President of the Republic may not award himself any orders, badges or medals. If because of or in relation to the presidential post, the President receives, in person or through an intermediary, cash or in-kind gifts, ownership thereof reverts to the state treasury. ***Article 159***: Prosecution "A charge of violating the provisions of the Constitution, high treason or any other felony against the President of the Republic is to be based on a motion signed by at least a majority of the members of the House of Representatives. An impeachment is to be issued only by a two-thirds majority of the members of the House of Representatives and after an investigation to be carried out by the Prosecutor General. If there is an impediment, he is to be replaced by one of his assistants. As soon as an impeachment decision has been issued, the President of the Republic ceases all work; this is treated as a temporary impediment preventing the President from carrying out presidential duties until a verdict is reached in the case. The President of the Republic is tried before a special court headed by the president of the Supreme Judicial Council, and with the membership of the most senior deputy of the president of the Supreme Constitutional Court, the most senior deputy of the president of the State Council, and the two most senior presidents of the Court of Appeals; the prosecution to be carried out before such court by the Prosecutor General. If an impediment exists for any of the foregoing individuals, they are replaced by order of seniority. The court verdicts are irrevocable and not subject to challenge. The law organizes the investigation and the trial procedures. In the case of conviction, the President of the Republic is relieved of his post, without prejudice to other penalties. ***Article 173***: Investigation and trial "The Prime Minister and members of the government are subject to the general rules organizing investigation and trial procedures if they commit crimes while exercising the functions of their posts or because of them. The end of their term of service does not preclude the start or resumption of prosecution. In case of a charge of high treason against any member of the government, the provisions stipulated in article 159 of the Constitution apply.

The first paragraph of the Article 160 according to its original current form regulates the provisions of taking over Presidency temporarily which handles it to the Prime-Minister in case the President is for any reason unavailable to function. The newly proposed amendment substitutes the Prime-Minister with the Vice-President, giving him the original right and responsibility of taking over the President in case of temporary unavailability, followed by the Prime-Minister If the Vice-President is not unavailable.

The original text of the Article assumes that there is a difference between taking over Presidency temporarily and interim-Presidency in cases of vacancy of the office of Presidency by resignation or death or permanent inability to work; as in the second case, the President of the House of Representatives takes over the authorities of the President temporarily till a new one is elected, followed by the President of the Supreme Constitutional Court in case the House of Representatives was inactive.

And according to the last paragraph of the original text of the Article; the interim-President is prohibited from running for the Presidential election to be held while he is active as interim-President, requesting any amendments to the Constitution, dissolving the House of Representatives or dismissing the government. Nothing is included or even mentioned regarding whoever temporarily takes over the Presidency who is supposed to be the Prime-Minister according to the first paragraph of the original text.
Looking into the proposed amendment to the last paragraph, we could see the addition of the phrase "**whoever takes over instead of the President**" alongside the interim-President in terms of the prohibitions upon him as per the original text except for running for the office of Presidency; it was specific for only the interim-President while allowed for whoever takes over instead of him whether he is the Vice-President or the Prime-Minister according to the proposed text, and the General Committee's report stated in its justification for the amendment that it "considers what is introduced newly by the first paragraph regarding appointing one or more Vice-Presidents and in turn regulates the cases of prohibition stated in case of taking over instead of the President so it only prohibits the interim-President from running for Presidential elections".
Here we raise the question of which consideration the report means? And what is the need for regulating the cases of prohibition which was not in any case remotely relevant to the question of who takes over instead of the President in case of choice?

The study stipulates that introducing the office of Vice-President and putting it as a substitute for the President is related to the previously mentioned amendment in Article 140 and the added transition Article, which mostly aims to support the provisions related to the Presidency especially in case the transitional Article – that allows the current President to benefit from the faulty amendment of Article 140 – is rejected, so may be in that case the display of a candidate from the State to take the office of Presidency for a mediator term during which the current President acts as Vice-President so he could run for elections again. It is obvious that it was not clear which are the cases of the temporary unavailability of the President that could lead him to not being able to function at his office allowing his deputy to take over; although there are specific cases for the vacancy of the office of the President; besides the non-clarity of the specific time frame of this temporary unavailability which hinders the President from functioning

in his office leading the Vice-President to take over, which in turn could remain the situation with no time constraints during the whole Presidential term and with no seeking to the provisions of the vacancy of the office of President in the next paragraphs of the Article which assumes appointing the President of House of Representatives as interim-President till a new President is elected.
And according to the proposed amendment on the last paragraph of the Article, the Vice-President is allowed to run for the Presidential elections in the following term.

III- The proposed amendments on the Articles related to the Judiciary authority is nothing but a massacre (overthrowing the independence and neutrality of Judiciary which is a fundamental guarantee for Constitutional freedoms and rights:

The general attribute of the Articles related to the judiciary authority with all its sides is the attempt to completely constraint and control it in a way that overthrows its assumed independence making it only a subsidiary to the executive authority.
In spite of the issuance of amendments on the laws of judiciary entities and choosing their leaders, the original provisions that are proposed to be amended would have made them subject to being ruled as unConstitutional in case they were appealed.
The new amendments will make such laws Constitutionally non-contradictory, but rather provisions that are consistent with an explicit Constitutional text.
This makes the Constitutional amendments provide Constitutional coverage for newly introduced laws that establish violating the independence of the judiciary, which would act as a threat to the rights of citizens in fair trials in the future, sine the independence and neutrality of judiciary are the only guarantee for the right of a fair trial, as pleading to the judiciary authority is considered the last resort for a person who is under any violation of his human rights and Constitutional freedoms.
That's why the amendments on the Articles related to the judiciary authority are considered violation for the right of equity (which means the right to plead for justice from the judiciary) for any person whose rights or freedoms have been violated, as well as threat for the right of a fair trial which is stated in Article 14 of the International Covenant on Civil and Political Rights.

The report issued by the General Committee of the House of Representatives listed the justification behind the proposed amendments to Articles related to the Judiciary authority in 3 concise points;

a- Regulating a unified mechanism to appoint the presidents of the judicial entities, the prosecutor general, and the President of the Supreme Constitutional Court.
b- Establishing the High Council for Common Judiciary Affairs.
c- Specifying the State Council with reviewing legal bills.

However, though analyzing the new proposed provisions to substitute the originals ones; we found out that they have included what was much further than the previously enlisted 3 points; according to the amendments to the provisions in section V of the Constitution entitled the regime and specifically chapter 3 which related to the judiciary authority, explained as follows:

A-Cancelling the independent budget of the judiciary at the beginning and moving away from it in the final formulation, granting the President of the Republic the authority to select the heads of judicial bodies and entities and not only appointing them, and the establishment of a Higher Council of the judiciary headed by the President of the Republic:

The Article Proposed for Amended	The Original Text of the Article in 2014 Constitution	The Text Proposed in the Request by the Members of House of Representatives	The Text as accepted by the Legislative Committee of the House of Representatives
Article 185 (Substitution)	All judicial bodies administer their own affairs. **Each has an independent budget, whose items are all discussed by the House of Representatives after approving each budget, it is incorporated in the state budget as a single figure**, and their opinion is consulted on the draft laws governing their affairs.	All judicial bodies administer their own affairs. And their opinion is consulted on the draft laws governing their affairs.. **The President of the Republic shall appoint the heads of the judicial bodies and entities out of the 5 nominated by their higher councils among the oldest of their 7 deputies, for a period of 4 years or for the remainder of the term until the retirement age - whichever is the closest - and for one time throughout his term of office, a s regulated by law.** For common affairs; A Higher Council of judicial bodies is established to be headed by the President of the Republic, and **in his absence is replaced by the Minister of Justice.**	All judicial bodies administer their own affairs. And their opinion is consulted on the draft laws governing their affairs, **and each entity shall have an independent budget.** **The President of the Republic shall appoint the heads of the judicial bodies and entities out of the oldest of their 7 deputies, for a period of 4 years or for the remainder of the term until the retirement age - whichever is the closest - and for one time throughout his term of office, a s regulated by law.** For common affairs; A Higher Council of judicial bodies is established to be headed by the President of the Republic and the membership of the

			President of the Supreme Constitutional Court and the heads of the judicial bodies and bodies, the President of the Court of Appeal of Cairo, and the Prosecutor General. The council will have a President whose appointment is a decision from the President of the Republic for the period specified by law and alternating among the members of the Council. **In his absence, the President of the Republic is Replaced by one he appoints from the heads of judicial bodies and entities.**
		It shall be competent to consider the conditions of appointing, promoting and assigning members of judicial bodies and entities and shall take its opinion in the draft laws regulating the affairs of these bodies and entities. The law shall specify the composition of the council and its other functions and rules of operation. .	The Council shall be competent to consider the conditions of appointing, promoting and assigning members of judicial bodies and entities and shall take its opinion in the draft laws regulating the affairs of these bodies and entities. Decisions of the Council shall be issued with the approval of a majority of its members, including the President of the Council

The Amendment Proposed for a Referendum:

- Cancelling the independence budget of the judiciary by deleting the phrase" **whose items are all discussed by the House of Representatives after approving each budget, it is incorporated in the state budget as a single figure"** and that is in the request of preliminary amendments which was taken off them kept in the report of the final formation of the draft amended provisions which was issued by the Legislative and Constitutional Committee.
- Adding 2 new paragraphs regarding granting the President of the Republic he authority to select and appoint the heads of the judiciary bodies and the president of the Higher Council of Judiciary Entities.

Analysis & Criticism:

It's noted in reviewing the proposed provisions according to the request of the amendments and comparing them with the original ones, that the original was edited by erasing the phrase "**whose items are all discussed by the House of Representatives after approving each budget, it is incorporated in the state budget as a single figure"** which would overthrow the financial independence of the judiciary authorities which is considered one of the guarantees of the independence and neutrality of the judiciary, plus adding 2 new paragraphs the first of which regards selecting and appointing the heads of the judiciary entities by the President of the Republic after all his authority was to only issue the decision of their appointment, and the second regarding re-establishing the Higher Council of Judiciary Entities which controls the judiciary and headed by the President of the Republic followed by the Ministry of Justice as per their executive stature which was suggested according to the request presented by the members of the House of Representatives, taken back while being discussed in the House of Representatives and its president refused appointing the Ministry of Justice in such authority following the president in heading the Higher Council as he is a representative of the executive authority which would be a violation of the judiciary authority since the authority of the President in such matter is different as he is a represents the head of the whole state and not the executive authority; which is frail argument with no grounds anyway.
This amendment is considered a complete invasion on the judiciary authority and its independence and neutrality that are assumed and stated in many rulings of the Supreme Constitutional Council that have engraved well established principles that necessitate the full financial and administrative independence of the judiciary and its immunity and neutrality which in turn grants the fundamental guarantees for protecting the rights and freedoms according to the Constitution.[31]

[31] ARE- 2014 Constitution - Chapter 4: Rule of Law - Article 94: Rule of law "The rule of law is the basis of governance in the state. The state is subject to the law, while the independence, immunity and impartiality of the judiciary are essential guarantees for the protection of rights and freedoms."

Reviewing the proposed amendments and their justification, we see that there was no mention of cancelling the independent budget for the judicial entities and bodies, neither was any form of mention included in the justification of the amendments to that specific Article, while the new additions were justified that the practical reality enforces the need for the existence of the Higher Council of Judicial Bodies to consider common affairs of Judicial bodies and entities headed by the president as his stature of head of the state, while establishing a clear procedural mechanism to select the heads of the Judicial bodies and entities from 5 candidates for that post elected by their higher councils, and the General Committee stated in its report that:

> "The proposed amendments have adopted a group of reformations that supports improving the elements of balance between authorities, the need for establishing a new mechanism to select the heads of the judicial bodies and entities according to the principles of independence of judiciary and balance of jurisdiction and supervision, and all that occurs in a constructive environment that establishes strong balanced and democratic institutions that handle the Constitutional affairs effectively without jeopardizing the fundamental guarantees supported by the Constitution. The committee accepted what was stated in the proposed request that the practical reality has clearly shown the need to establish a Higher Council that is dedicated to consider common affairs of the judiciary bodies."

As previously mentioned, the Articles related to judiciary are generally a flagrant overthrow of the principles of the independence and neutrality of the judiciary that are assumed as a guarantee for freedoms and rights and hence their amendments violates the provision stated in Article 226 related to Articles that implicitly consider equality and freedom. It is beyond doubt that such amendment is intended to generally control the judiciary oversight over the executive and legislative authorities so that the decisions of the executive authority do not collide with judicial ruling being cancelled or supervised as what happened before in the case of Tiran and Sanafir.

Although several laws have been issued before related to amending the laws of the judiciary authority and the intrusion of the executive authority in it, all this looks to be non sufficient and what guarantees more is amending all provisions related to the independence of the judiciary in the Constitution to prevent ruling that such amendments are unConstitutional.

B-Granting the President of the Republic the right of selecting and appointing the Prosecutor General:

The Article Proposed for Amended	The Original Text of the Article in 2014 Constitution	The Text Proposed in the Request by the Members of House of Representatives	The Text as accepted by the Legislative Committee of the House of Representatives
Article 189 (Substituting the 2nd paragraph)	The public prosecution is an integral part of the judiciary. It is responsible for investigating, pressing charges and prosecuting all criminal cases except what is exempted by law. The law establishes the public prosecution's other competencies. Public prosecution is carried out by a Prosecutor General **who is selected by the Supreme Judicial Council** from among the Deputies to the President of the Court of Cassation, the Presidents of the Court of Appeals or the Assistant Prosecutor Generals, by virtue of a presidential decree for a period of four years, or for the period remaining until retirement age, whichever comes first, and only once during a judge's career.	The public prosecution is an integral part of the judiciary. It is responsible for investigating, pressing charges and prosecuting all criminal cases except what is exempted by law. The law establishes the public prosecution's other competencies. Public prosecution is carried out by a Prosecutor General **who is selected by the President of the Republic from 3 candidates recommended by the Supreme Judicial Council** from among the Deputies to the President of the Court of Cassation, the Presidents of the Court of Appeals or the Assistant Prosecutor Generals, by virtue of a presidential decree for a period of four years, or for the period remaining until retirement age, whichever comes first, and only once during a judge's career.	The public prosecution is an integral part of the judiciary. It is responsible for investigating, pressing charges and prosecuting all criminal cases except what is exempted by law. The law establishes the public prosecution's other competencies. Public prosecution is carried out by a Prosecutor General **who is selected by the President of the Republic from 3 candidates recommended by the Supreme Judicial Council** from among the Deputies to the President of the Court of Cassation, the Presidents of the Court of Appeals or the Assistant Prosecutor Generals, by virtue of a presidential decree for a period of four years, or for the period remaining until retirement age, whichever comes first, and only once during a judge's career.

Analysis & Criticism:

The amendment of the 2nd paragraph by adding the phrase "**selected by the President of the Republic from 3 candidates recommended by the Supreme Judicial Council** "makes the selection of the prosecutor general under the authority of the President of the Republic and not the Higher Council of judiciary as per the original text leading the role of the Higher Council to be only recommending 3 for the president to chose from, which violates the role of the prosecution general as a trustee of the general prosecution moving it to be only a subsidiary of the executive authority and the ruling regime and a main player in politicizing the judiciary while opening the field for referring opposition directly to being prosecuted by order which overthrows the assumed role of prosecution general as a part of the judiciary and one of its elements of independence and guarantee of freedoms and rights which is the mere content on which the prosecutors and deputies of prosecutor general objected when the former president Mohammad Morsi issued a Constitutional declaration dismissing the prosecutor general Abdel Meguid Mahmoud from his office.

C-Granting the President of the Republic the right of selecting and appointing the President of the Supreme Constitutional Court, his deputies and the members:

The Article Proposed for Amended	The Original Text of the Article in 2014 Constitution	The Text Proposed in the Request by the Members of House of Representatives	The Text as accepted by the Legislative Committee of the House of Representatives
Article 193 (Substituting the 3rd paragraph)	The Court is made up of a president and a sufficient number of deputies to the president. The Commissioners Authority of the Supreme Constitutional Court is composed of a president and a sufficient number of presidents in the authority, advisors and assistant advisors. **The General Assembly chooses the Court's President from among the most senior 3 vice-presidents of the court. It also chooses the vice-presidents and the**	The Court is made up of a president and a sufficient number of deputies to the president. The Commissioners Authority of the Supreme Constitutional Court is composed of a president and a sufficient number of presidents in the authority, advisors and assistant advisors. **The President of the Republic chooses the Court's President from among the most senior 5 vice-presidents of the court. He also chooses the vice-president from 2**	The Court is made up of a president and a sufficient number of deputies to the president. The Commissioners Authority of the Supreme Constitutional Court is composed of a president and a sufficient number of presidents in the authority, advisors and assistant advisors. **The President of the Republic chooses the Court's President from among the most senior 5 vice-presidents of the court. He also chooses the vice-president from**

	members of its Commissioners Authority, who are appointed by a decree from the President of the Republic. The foregoing takes place in the manner defined by the law.	**recommendations; one from the General Assembly and the other from the Court's President. The head and members of the Commissioners Authority are selected and appointed by a decision from the President of the Republic from recommendations from the Court's President and after considering the opinion of the General Assembly.** The foregoing takes place in the manner defined by the law.	**2 recommendations; one from the General Assembly and the other from the Court's President. The head and members of the Commissioners Authority are selected and appointed by a decision from the President of the Republic from recommendations from the Court's President and after considering the opinion of the General Assembly.** The foregoing takes place in the manner defined by the law.

Summary of the Amendment:

Amending the 3rd paragraph grants the President of the Republic the authority to select and appoint the President and his deputy after his original role was only issuing the decision of appointment.

Analysis & Criticism:

The Supreme Constitutional Court represents the highest judicial entity of which rulings according to the Constitutional obligatory to all authorities of the State; of course in the direction of constraining the independence and neutrality of the judicial bodies, the Supreme Constitutional Court's front had to be handled by appointing its president and his deputy from the General Assembly being chosen by the President of the Republic just like the other judicial entities after his role was only issuing a decision to appoint them after being chosen by the General Assembly.

B- Constraining the Authority of the State Council:

The Article Proposed for Amended	The Original Text of the Article in 2014 Constitution	The Text Proposed in the Request by the Members of House of Representatives	The Text as accepted by the Legislative Committee of the House of Representatives
Article 190 (Substitution)	The State Council is an independent judicial body that is exclusively competent to adjudicate in administrative disputes, disciplinary cases and appeals, and disputes pertaining to its decisions. It also **solely** competent to issue opinions on the legal issues of bodies to be determined by law, review and draft bills and resolutions of a legislative character, and review draft contracts **to which the state or any public entity is a party**. Other competencies are to be determined by law.	The State Council is an independent judicial body that is exclusively competent to adjudicate in administrative disputes, disciplinary cases and appeals, and disputes pertaining to its decisions. It also competent to issue opinions on the legal issues of bodies to be determined by law, review and draft bills and resolutions of a legislative character, and review draft contracts **that are referred to it.** Other competencies are to be determined by law.	The State Council is an independent judicial body that is exclusively competent to adjudicate in administrative disputes, disciplinary cases and appeals, **decisions of the Disciplinary Board**, and disputes pertaining to its decisions. It also competent to issue opinions on the legal issues of bodies to be determined by law, review and draft bills and resolutions of a legislative character, and review draft contracts **that are identified and of which value is identified by the law and to which the state or any public entity is a party**. Other competencies are to be determined by law.

Summary of the Amendment, according to the proposed request from the members:

- Pulling the solely given power to State Council in terms of issuing opinions in legal matters in an inclination to constraint it. (non-clarified and unjustified)
- Shifting the power of the State Council regarding reviewing and drafting bills and resolutions of a legislative character to what is only referred to it.
- Cancelling the power of the State Council to review draft contracts to which the state or any public entity is a party (non-clarified and unjustified)

The Final Phrasing according to the Report by the Legislative and Constitutional Committee:

- Adding specifying it with final decisions regarding the disciplinary boards
- Keeping the proposed amendment regarding the state council issuance of opinions.
- Taking back the "**referred to it**" phrase with cancelling the phrasing that specialized it in regards to the authority of the state council on drafting laws, legislative decisions and keeping only the reviewing.
- Taking back the cancellation of specialization of the state council to review the contract where the state is a party and adding the phrase "**that is identified and of which value indentified by the law**" which means constraining the authority of state council in that concern.

Analysis & Criticism:

- The report issued by the General Committee of the House of Representatives with the preliminary acceptance on the proposed amendments, stating concerning that amendment that it was only related to rephrasing Article 190 of the Constitution shifting the competence of the state council as regards to reviewing law drafts to become only the ones referred to it, and the report did not mention any justification of omitting the term "**solely**" from the extent of authority of the state council in regards to issuing opinions in legal matter or of pulling the true competence to review draft contracts in which the state or one of its entities is a party.
- Omitting the term "**solely**" from the extent of authority of the state council in regards to issuing opinions in legal matters means the possibility of granting this specialization to another entity or sharing it which makes it totally ineffective and neutralizes the state council regarding that role especially that its competence in that regard was already specific to what was referred to it from requests of issuing opinions related to legislations that caused diversity in application of needed interpretation.
- In the request of proposed amendments presented by the members; the phrase "**referred to it**" has been added in regards to reviewing and drafting draft laws and decisions of legislative nature, which was concerned with the concept of pulling off such power from the state council and limiting its role in what only be referred to it from laws after the original text obligated the legislative authority to do so as a condition that if not fulfilled became grounds for appealing the resulting laws as being procedurally unConstitutional.
  This new amendment will make the House of Representative not obligated to refer laws to the state council before issuing them, however, the report issued by the Legislative and Constitutional Committee took back the addition of the "**referred to it**" phrase as well as omitted the term "phrasing" to limit the role of the state council in this regard according to the final amendment to reviewing the legislations later and not interfering in the prior phrasing process.
- The request presented by the members of the House of Representatives also included omitting the phrase "**reviewing draft contracts in which the state or one of its general entities is a party**" without pointing out to it or justifying in the request which was also not mentioned in the preliminary acceptance report issued by the general committee, the competence to review the state contracts is considered in the original true scope of the state council and such amendment means the full cancellation of its authority in this matter, however, such phrasing was taken back in the final draft issued by the Legislative and Constitutional Affairs Committee which kept the

phrase "**that is identified and of which value is identified by the law**" which means specifying a specific type of state contracts that is allowed for the state council to appeal. Such move inclines to the intended limitations of the authority of the state council in this matter which forms a limitation to its supervision on such type of contracts, of which judiciary had settled on its judicial jurisdiction on it. This will definitely lead to introducing new Constitutional provision that flagrantly constraints the state council's supervision on the legitimacy of the executive authority's work, giving it carte blanche in signing its contracts with no interference, especially after the Administrative Court had repeatedly cancelled faulty contras that the state signed, which was followed by attempts to prevent the state council from revewing such kind of contrats, the last of which was the issuance of a faulty law in 2014 that prevents appealing contracts of the state[32]; which was appealed as unConstitutional as per the lawsuit no. 120 in 36 – Judiciary/Constitutional, and which according to the proposed amendment becomes Constitutional becoming a new Constitutional reality pulling out this kind of administrative work from the legitimate supervision scope of the state council, and the matter becomes out of its judiciary supervision scope whether by the former reviewing of draft contracts or the latter reviewing appeals on them.

It's beyond doubt that the stance of state council regarding the case of the border demarcation between Egypt and Saudi Arabia; known as Tiran and Sanafir; as well as its issuance of a ruling of the falsity of the state's representative signing the demarcation treaty back then, has defined a lot of the attributes of the relation between the state council and the head of the executive authority which is the reason behind the attempts to limit its authorities and overthrowing the authenticity and legislative value of rulings while reshaping those who heading it all through the past period , until the last amendments that completely overthrows its authorities with no regard to the philosophy of the great legislative judiciary or the long history of the Egyptian state council in fighting intrusions of the executive authority in the Constitutional rights and freedoms.

[32] ARE – Law no. 32 in 2014 - Organizing some procedures for appeal against state contracts - issued on 22/04/2014 - Published in the Official Gazette 22/04/2014 - Implemented 23/04/2014

IV- The Armed Forces, the Military Judiciary, and the Office of Minister of Defense:

According the request of amendments and the preliminary acceptance report issued by the General Committee, the group of amendments of Articles (200/1 – 200/2 – 234) target reframing the authority of the Authority of the Armed Forces making it the protector of the Constitution, democracy, and the fundamental basis of the State and its civility. This was justified in both the request and the report by the fact that the Armed Forces have always been the protector and guardian of the civility and democracy of the country and that this evident from their alignment with the choices of the people.

The proposed amendments enforces a new Constitutional position for the army setting it up to be an institution that is above the Constitution, a guardian to it, and an interpreter for its provisions. We could say that this officially makes it a state inside the state, granting the supreme council of Armed Forces complete administrative and executive independence of the president who is given the power of selecting and appointing the minister of defense permanently and not for 2 presidential terms as per the Constitution, plus the expansion of applying the military trials and the jurisdiction of the military judiciary in what violates the Constitutional freedoms and rights of which the right of seeking legislation and equality in front of the law come on top, as well as the implicit violation of the prohibition stated in Article 226.

A-The Constitutionality and Legitimacy of Military Coups, in claims of Protecting the State, the Constitution and Democracy:

The Article Proposed for Amended	The Original Text of the Article in 2014 Constitution	The Text Proposed in the Request by the Members of House of Representatives	The Text as accepted by the Legislative Committee of the House of Representatives
Article 200 (Substituting 1st paragraph)	The Armed Forces belong to the people. Their duty is to protect the country, and preserve its security and territories. The state is exclusively mandated to establish Armed Forces. No individual, entity, organization or group is allowed to create military or para-military structures, groups or organizations. The Armed Forces have a Supreme Council as regulated by law.	The Armed Forces belong to the people. Their duty is to protect the country, and preserve its security and territories, **guarding the Constitution and democracy, the preserving the basic elements of the state and its civility and the gains of the people and the rights of individuals.** The state is exclusively mandated to establish Armed Forces. No individual, entity, organization or group is allowed to create military or para-military structures, groups or organizations. The Armed Forces have a Supreme Council as regulated by law.	The Armed Forces belong to the people. Their duty is to protect the country, and preserve its security and territories, **guarding the Constitution & democracy, the preserving the basic elements of the state & its civility and the gains of the people & the rights of individuals.** The state is exclusively mandated to establish Armed Forces. No individual, entity, organization or group is allowed to create military or para-military structures, groups or organizations. The Armed Forces have a Supreme Council as regulated by law.

Summary of the Amendment:

- Restructuring the role of the Armed Forces by adding new missions concerning guarding and protecting the Constitution, democracy and civility of the state with no justification or a clear image of how the military institution would handle such missions which would lead to legitimizing military coups in claims of protecting the Constitution, democracy and civility of the state according to the Armed Forces' interpretations of such concepts.
- It implicitly and indirectly contradicts with the prohibition stated in the Articles related to the freedom and equality since it contradicts with the principle of the democratic state and what results from in such as – at first – the principles of separation of authorities and balance between them which guarantee the freedoms and rights.

Analysis & Criticism:

Adding the phrase" **guarding the Constitution and democracy, the preserving the basic elements of the state and its civility and the gains of the people and the rights of individuals."** to the 1st paragraph of the Article officially makes the army a state inside the state, gives it guardianship over its institutions Constitutionally, makes it a supervisor on implementing and interpreting the Constitution and its provisions while being a guardian on the people, grants it enforced power and jurisdiction over the three authorities of the state, and even gives it the right of military coup on any elected president empowered by a Constitutional provision and not by force as before which implies legitimizing military coups and granting the military regime in Egypt a Constitutional cover.

Also, the words; "**guarding the Constitution and democracy, the preserving the basic elements of the state and its civility and the gains of the people and the rights of individuals." ;** are generally vague with no specific unified interpretation on which a specific limit of the extent of authority of the Armed Forces could be based. Of course, the Armed Forces itself will be the sole interpreter of which interpretation shall be obligatory while stating what is a threat to those principles and what is contradictory.

It's worth mentioning that the Supreme Constitutional court itself – while being the original guardian of Constitutional supervision – does not have the authority to interpret the provisions of the Constitution, is prohibited – as per the Constitution[33] and the rule of the court with the explanatory document[34] attached

[33]ARE- 2014 Constitution – issued on 18/01/2014 – published in the Egyptian gazette on 18/01/2014 Chapter Five: The Ruling System-Section Four: The Supreme Constitutional Court - Article 192: Jurisdiction
The Supreme Constitutional Court is exclusively competent to decide on the Constitutionality of laws and regulations, interpret legislative texts, and adjudicate in disputes pertaining to the affairs of its members, in disputes between judicial bodies and entities that have judicial mandate, in disputes pertaining to the implementation of two final contradictory rulings, one of which is issued by any judicial body or an agency with judicial mandate and the other issued by another body, and in disputes pertaining to the implementation of its rulings and decisions. The law defines the Court's other competencies and regulates the procedures that are to be followed before the Court.

[34] Report of the General Committee of the House of Representatives and the Explanatory Note to the Law of the Supreme Constitutional Court No. 48 issued on 29/08/1979 and published in the Official Gazette on 06/09/1979: "The Court does not have the authority to interpret the provisions of the Constitution. This is the proper application of the Constitution. The Constitution is approved by a referendum by the people. It is amended by a rigid Constitution in a specific manner, which is regulated by Article 189. It is not permissible to grant the authority of Constitutional interpretation of the Court because the interpretation by its nature includes a report of provisions supplementing the provisions of the Constitution in the light of the understanding of the Court. For which He alone is right For approval to amend the provisions of the Constitution decree in which the road "

to it – from issuing rulings that explain its provisions, cannot enforce its Constitutional supervision or guardianship to be implemented on any law viewed as contradictory to it with very specific exceptions. Its Constitutional supervision is not connected but to certain specific and indirect conditions and procedures, however, the amendment proposed on the Article related to the Armed Forces would make the army's authority to be above the Constitution; gives the army the power to interpret the Constitution according to its own agenda, implement it without being asked, and interfere accordingly in the work of the three authorities of the state enforcing its supervision on them.

Although what is common in the civilized countries and several comparative regimes that the supreme Constitutional court or its equivalent is given the authority to interpret the provisions of the Constitution and issue interpreting rulings that enforce the Constitution and fights contradicting it, however what has been added to the missions of the Armed Forces gives it that role in a way that is close to the role of the armies in the Constitutions of the military dictatorships.

A- The Military Trials, and Expanding the extent of its Implementing its Crimes and referring Civilians to the Military Judiciary :

The Article Proposed for Amended	The Original Text of the Article in 2014 Constitution	The Text Proposed in the Request by the Members of House of Representatives	The Text as accepted by the Legislative Committee of the House of Representatives
Article 204 (substituting the 2nd paragraph)	The Military Judiciary is an independent judiciary that adjudicates exclusively in all crimes related to the Armed Forces, its officers, personnel, and their equals, and in the crimes committed by general intelligence personnel during and because of the service. Civilians cannot stand trial before military courts **except** for crimes that represent a **direct** assault against military facilities, military barracks, or whatever falls under their authority; stipulated military or border zones; its equipment, vehicles, weapons, ammunition, documents, military secrets, public funds or military factories; crimes related to conscription; or crimes that represent a direct assault against its officers or personnel because of the performance of their duties.	The Military Judiciary is an independent judiciary that adjudicates exclusively in all crimes related to the Armed Forces, its officers, personnel, and their equals, and in the crimes committed by general intelligence personnel during and because of the service. Civilians cannot stand trial before military courts **except** for crimes that represent an assault against military facilities, military barracks, or whatever falls under their authority, **or establishments that protect them**; stipulated military or border zones; its equipment, vehicles, weapons, ammunition, documents, military secrets, public funds or military factories; crimes related to conscription; or crimes that represent a direct assault against its officers or personnel because of the performance of their duties.	The Military Judiciary is an independent judiciary that adjudicates exclusively in all crimes related to the Armed Forces, its officers, personnel, and their equals, and in the crimes committed by general intelligence personnel during and because of the service. Civilians cannot stand trial before military courts **except** for crimes that represent an assault against military facilities, military barracks, or whatever falls under their authority, **or establishments that protect them**; stipulated military or border zones; its equipment, vehicles, weapons, ammunition, documents, military secrets, public funds or military factories; crimes related to conscription; or crimes that represent a direct assault against its officers or personnel because of the performance of their duties.

	The law defines such crimes and determines the other competencies of the Military Judiciary. Members of the Military Judiciary are autonomous and cannot be dismissed. They share the securities, rights and duties stipulated for members of other judiciaries.	The law defines such crimes and determines the other competencies of the Military Judiciary. Members of the Military Judiciary are autonomous and cannot be dismissed. They share the securities, rights and duties stipulated for members of other judiciaries.	The law defines such crimes and determines the other competencies of the Military Judiciary. Members of the Military Judiciary are autonomous and cannot be dismissed. They share the securities, rights and duties stipulated for members of other judiciaries.

Summary of the Amendment:

- Expanding the scope of the implementation of military trials by expanding the concept of assault on the military institution to include indirect assault.
- Adding a new provision for the possibility of the putting the civilian establishments of the state under the protection of the Armed Forces to which any direct or indirect assaults are grounds for military trials leading to more civilians being referred to the unjust military trials.

The amendment inclines a complete overthrow to the rule of the law and the right of seeking legislation from the natural judge which falls under the principle of equality, which also violates the prohibition of amendment stated in Article 226.

Comment:

- The 2nd paragraph was amended by omitting the term "direct" to expand the scope and definition of assault which would lead to expanding the scope of criminalization in a way where any assault even verbal would fall under the military trials that lack the simplest guarantees of a fair trial and represent an exceptional judiciary out of the order which should not be expanded to include more civilians. Such trials violates the right in fair trial of which the most important attribute is being trialed in front of an independent, neutral and impartial court which are the attributes that are not fulfilled in the military trials as they are directly under the executive authority, which forms a direct threat to that right and a violation to Egypt's international obligations in accordance with Article 14 of the International Covenant on Civil and Political Rights in 1966.
- The second amendment is adding the phrase; "**or establishments that protect it**" which of course would lead to the introduction of new crimes and referring more civilians to the previously mentioned military trials. It's expected that if such amendment is passed, it will be followed by executive legislations and decisions that puts the civilian establishments of the state to protect the army and then necessarily referring any regular problem in any government facility to military trials, which forms an explicit threat on Constitutional rights and freedoms that are prohibited from being approached according to the provisions of Article 226 of the Constitution which the military trials contradicts.

B-Appointing the Minister of Defense :

The Article Proposed for Amended	The Original Text of the Article in 2014 Constitution	The Text Proposed in the Request by the Members of House of Representatives	The Text as accepted by the Legislative Committee of the House of Representatives
Article 234 Amending it by omitting the second paragraph	The Minister of Defense is appointed upon the approval of the Supreme Council of the Armed Forces. **The provisions of this article shall remain in force for two full presidential terms starting from the date on which this Constitution comes into effect.**	The Minister of Defense is appointed upon the approval of the Supreme Council of the Armed Forces.	The Minister of Defense is appointed upon the approval of the Supreme Council of the Armed Forces.

Summary of the Amendment:

- Granting the Higher Council of Armed Forces the right of prior approval regarding appointing the Minister of defense or objecting on him permanently rather than transitionally as it is currently.

Analysis & Criticism:

The whole amendment to the Article 234 focuses on amending its transitional provision to grant the Higher Council of Armed Forces the power to approve the appointment of the Minister of Defense and the effectiveness of such provision for the next 2 presidential terms; to make it a permanent, general and continuous provision which means specializing the Higher Council of Armed Forces with a unique stature different from all the authorities of the state.

The members who presented the amendment request has justified amending Article 234 that they aimed harmonizing it with the stable state that the country lives. We cannot see how this is relevant to making the provision continuous and general rather than for only 2 presidential terms as per the transitional provision in the original text. This inclines the full legalization of the complete power of the Higher Council of Armed Forces making it an institution that is not under the state, but rather the actual ruler of the state which makes the president of the republic nothing but an administrative post that falls under its authority and consistency, considering it the preserver of the Constitution and civility of the state.

V- Formation of the House of Representatives and the Division of Electoral Districts:

The Article Proposed for Amended	The Original Text of the Article in 2014 Constitution	The Text Proposed in the Request by the Members of House of Representatives	The Text as accepted by the Legislative Committee of the House of Representatives
Article 102 Substituting the 1st and 3rd paragraphs	The House of Representatives is composed of no less than four hundred and fifty members elected by direct, secret public balloting. A candidate for the membership of the House must be an Egyptian citizen, enjoying civil and political rights, a holder of at least a certificate of basic education, and no younger than 25 years old on the day that candidacy registration is opened. Other requirements of nomination, the electoral system, and the division of electoral districts are defined by law, taking into account fair representation of population and governorates and **equal representation of voters**. The majoritarian system, proportional list, or a mixed system of any ratio may be used.	The House of Representatives is composed of no less than four hundred and fifty members elected by direct, secret public balloting, **provided that at least a quarter of the seats are allocated to women.** A candidate for the membership of the House must be an Egyptian citizen, enjoying civil and political rights, a holder of at least a certificate of basic education, and no younger than 25 years old on the day that candidacy registration is opened. Other requirements of nomination, the electoral system, and the division of electoral districts are defined by law, taking into account fair representation of population and governorates. The majoritarian system, proportional list, or a mixed system of any ratio may be used.	The House of Representatives is composed of no less than four hundred and fifty members elected by direct, secret public balloting, **provided that women are allocated at least a quarter of the total number of seats** A candidate for the membership of the House must be an Egyptian citizen, enjoying civil and political rights, a holder of at least a certificate of basic education, and no younger than 25 years old on the day that candidacy registration is opened. Other requirements of nomination, the electoral system, and the division of electoral districts are defined by law, taking into account fair representation of population and governorates. The majoritarian system, proportional list, or a mixed system of any ratio may be used.

	The President of the Republic may appoint a number of members that does not exceed 5%. The method of their nomination is to be specified by law.	The President of the Republic may appoint a number of members that does not exceed 5%. The method of their nomination is to be specified by law.	The President of the Republic may appoint a number of members that does not exceed 5%. The method of their nomination is to be specified by law.
Adding New Article No. 244 bis		**Was not included in the request of Constitutional amendments proposed by members of the House of Representatives**	**The provision of the 1st paragraph of amended article 102 shall apply from the next legislative term to the following one.**

Summary of the amendment:

- The amendment of the formation of the House of Representatives by allocating quarter the number of seats for women without any real guarantees for a proper representation which is an amendment that targets the votes and presenting the amendments as empowering women to distract everyone from the pivotal amendments meant to be passed.
- Cancelling the principle of the fair representation of voters claiming the issuance of provisions ruling the unConstitutionality of some provisions in the law of parliamentary elections and the division of electoral districts.

Analysis & Criticism:

- **Adding a final section to the first paragraph allocating at least quarter the seats for women:**

Those who presented the request have based this amendment on targeting women empowerment in the House of Representatives and guaranteeing a Constitutional allocation of at least the quarter.
The preliminary acceptance report issued by the General Committee stressed on the amendment; considering it correspondent to the rule of positive discrimination on one side, and consistent with the Article 11 of the Constitution concerned with taking all measures needed to guarantee the proper representation of women in parliamentary councils. The report issued by the Legislative and Constitutional Committee of the House of Representatives has added a new Article that was not included in the proposed amendment regarding the effectiveness of the 1st paragraph of the amended Article 102 of the Constitution starting from the legislative term that follows the next one. The measures stated in Article 11 of the Constitution are supposed to be implemented by the executive authority according to laws that were supposed to be issued by the House of Representatives as per its legislative authority considering them the measures needed for women rights and empowerment, and implementing women Constitutionally guaranteed rights. There was no need for the House of Representatives to practice its exceptional authority regarding this specific amendment, as there are already many provisions that support women rights in 2014 Constitution and empower women equality with men, but they have always been under consideration and unimplemented, which is the same for the proposed provision as it was phrased without any realistic guarantees of the proper representation and empowerment of women in the House of Representatives, which means that all this will end up eventually into being one more unimplemented Constitutional provision just like all the other provisions related to the right of women equality with men. It looks like those who presented the request tried to

promote for the amendments by adding some provisions that provide imaginary guarantees for women representation. This is not the first time since it already happened before in 1971 Constitution that promised granting women Constitutional entitlements that enforces women right to equality with women while such provisions remained unimplemented and without any real guarantees of application. The closest example of such provisions that enforce women empowerment in the original 2014 Constitution is the provisions guaranteeing her right in appointment in judiciary entities; however, the state council still refuses to implement the law in that matter and the House of Representatives did not issue any implementation for the Constitutional provisions that enfrorce implementing it. All that leads us to believe that this amendment is nothing but a nice looking cover of women empowerment for the amendments meant to be passed.

- **Omitting the phrase "the equal representation of voters" from the third paragraph:**

The phrase "equal representation of voters" included in the third paragraph of the original provision was the issue of many judicial rulings from the supreme Constitutional court before the previous parliamentary elections[35]., that ruled for the unConstitutionality of many provisions related to the laws of division of electoral districts as well as a provision in the law of House of Representatives because both violated the equal representation of voters related to the implementation of the equitable representation of the population, especially those residing abroad and in border governorates. It is known that the division of electoral districts has been being formed since Mubarak's era through intermediaries and exchanges of influence and interests to form constituencies and administrative boundaries in benefit of certain persons whom the regime wanted in the House of Representatives. The mentioned term has been used as a reason of repeating the division of electoral districts one more time as per the mentioned Constitutional rulings. We believe that this omission intended taking those rulings back by enforcing a new Constitutional reality that allows repeating the division of electoral districts without fearing being ruled unConstitutional after omitting the term that was used to appeal the Constitutionality. Those who presented the amendments justified the phrase "fair representation of voters" that it has caused problems in the practical application. The report issued by the general committee confirmed that statement by stating that the supreme Constitutional court's use of both phrases – "the equal representation of voters" and "the equitable representation of the population" – while trying to keep both of them has cause conflict and obscurity in interpretation and problems in the practical application. Here we wonder; in what country where a law ruled unConstitutional for contradicting the Constitution does the legislative authority amend the Constitution rather than the faulty law?

In our opinion, the house of representative would have better practiced its original authority to amend the faulty lower unConstitutional law rather than practicing its exceptional authority to amend the Constitution so it becomes consistent with such law. Also, the rulings by the supreme Constitutional court which are obligatory to all authorities of the state and are related to that matter; have not included what would cause conflict in interpretation as mentioned in the General Committee report, but rather it was the interpretation of the supreme Constitutional court for the 2 phrases that caused the unConstitutionality of the issued law.

35 ARE - Supreme Constitutional Court – Constitutional (Case No. 18 - year 37 - Date of the TRIAL 01/03/2015) and (Case No. 15 - for the year 37 - Date of the TRIAL 01/03/2015)

VI- The Fake Positive Distinction by Generalizing Appropriate Representation of the Population and Marginalized Minorities Permanently in Future Houses of Representatives:

The Article Proposed for Amended	The Original Text of the Article in 2014 Constitution	The Text Proposed in the Request by the Members of House of Representatives	The Text as accepted by the Legislative Committee of the House of Representatives
Article 243 Omitting the 2nd paragraph	The state grants workers and farmers appropriate representation **in the first House of Representatives to be elected after this Constitution is adopted**, in the manner specified by law.	The state grants workers and farmers appropriate representation, in the manner specified by law.	The state grants workers and farmers appropriate representation **in the House of Representatives**, in the manner specified by law.
Article 244 Substituting by Omitting the 2nd paragraph	The state grants youth, Christians, persons with disability and expatriate Egyptians appropriate representation **in the first House of Representatives to be elected after this Constitution is adopted**, in the manner specified by law.	The state grants youth, Christians, persons with disability and expatriate Egyptians appropriate representation, in the manner specified by law	The state grants youth, Christians, persons with disability and expatriate Egyptians appropriate representation **in the House of Representatives**, in the manner specified by law

Comment:

The proposed amendment focuses on omitting the phrase "**in the first House of Representatives to be elected after this Constitution is adopted**" from both articles proposed to be amended making their texts general and not transitional as they were in the original texts. In the same way regarding the amendments of provisions related to women representation, these amendments are nothing but an attempt to promote the amendments showing them as adding more guarantees for the representation of the marginalized sectors that suffer from discrimination and violence such as Christians, but we can see no any new guarantees in these amendments for the benefit of the representation of Christians and not marginalizing them. The final form of both provisions was issued with adding "in the House of Representatives" which shows no desire to generalize such guarantees for all entitlements and not just parliamentary elections, and no desire from the members who proposed the amendments to open the door for demands that would be unachievable and were not originally targeted by the amendments.

VII- Request for Cancelling of The National Press and Media Association and the Keeping of the Supreme Media Council, and was Repealed in the Final Report issued by the Final Draft of the Amended Articles:

The Article Proposed for Amended	The Original Text of the Article in 2014 Constitution	The Text Proposed in the Request by the Members of House of Representatives	The Text as accepted by the Legislative Committee of the House of Representatives
Article 212 Cancellation	The National Press and Media Association is independent, manages state-owned press and media institutions, and undertakes the development of them and their assets, and ensures their development, independence, neutrality and their adherence to sensible professional, administrative and economic standards. The composition of the association, its system of operation, and the conditions of employment of its staff are specified by law. It is to be consulted about bills and regulations pertaining to its field of operation.	Cancellation	Neither the amendment nor cancellation was included in the final draft of the amended draft articles issued by the Constitutional and Legislative Affairs Committee of the House of Representatives
Article 212 Cancellation	The National Press and Media Association is independent, manages state-owned television, radio and digital media outlets, and undertakes the development of them and their assets, and ensures their development, independence, neutrality and their adherence to sensible professional, administrative and economic standards. The composition of the association, its system of operation and the conditions of staff employment are specified by law. It is to be consulted about bills and regulations pertaining to its field of operation.	Cancellation	Neither the amendment nor cancellation was included in the final draft of the amended draft articles issued by the Constitutional and Legislative Affairs Committee of the House of Representatives

Comment:

The proposal of cancelling the 2 Articles claiming finding difficulties during practical implementation was suggested while media institutions owned by the state have been facing all sorts of problems. The General Committee in its report stated that it was enough to have the role of the Supreme Media Council stated in Article 211 of the Constitution[36].

The Supreme Media Council mentioned was newly introduced in 2012 Constitution then amended in 2014 Constitution by adding more details into their provisions, as in it was supposed to be a substitute to the Ministry of Media and the Media supervision institutions that used exist during Mubarak's era, then establishing new institutions and bodies that work in supporting freedom of press and the independence of media and journalism institutions in a way that ensures the freedom of the press, expression and opinion.

However, since introducing the supreme media council and all bodies under it, many decisions and provisions have been issued that limit such freedoms including closing many newspapers and media institutions, and blocking opposing websites, which overthrows he freedom of media and press in a way that is even worse than how it was when there was a Ministry of Media.

The cancellation of both Articles was not mentioned in the final draft of the amended draft articles issued by the Constitutional and Legislative Affairs Committee of the House of Representatives, which stipulates that it was decided to take them back during the discussion by the members of the House of Representatives.

The cancellation of 2 Articles appears to be a marginal amendment with neither realistic justification nor there is a point to it except for distracting the focus from the other more important amendments. And may be the state men in the media field have been successful in intermediating in the concealed sessions of societal dialogue which lead to deciding to not going through with cancelling them and shifting the focus of the discussion among the proposed amendments.

[36] ARE- 2014 Constitution – issued on 18/01/2014 – published in the Egyptian gazette on 18/01/2014 Chapter Five: The Ruling System- Section Ten: The National Media Council-Article 211: Mandate, composition: "The National Media Council is an independent entity that has a legal personality, enjoys technical, financial and administrative independence, and has an independent budget. The Council is regulates the affairs of radio, television, and printed and digital press, among others. The Council is responsible for guaranteeing and protecting the freedom of press and media stipulated in the Constitution; safeguarding its independence, neutrality, plurality and diversity, preventing monopolistic practices; monitoring the legality of the sources of funding of press and media institutions; and establishing the controls and regulations necessary to ensure the commitment of press and media outlets to adhere to professional and ethical standards, and national security needs as set out by law. The law determines the composition of the Council, its system of operation, and stipulates the conditions of employment for its staff. The Council is to be consulted on bills and regulations related to its field of operation."

VIII- Introducing the Senate: (the return of the Cancelled Shurra Council) - (Adding 7 New Articles):

The Article Proposed	The Text Proposed in the Request by the Members of House of Representatives	The Text as accepted by the Legislative Committee of the House of Representatives
Article 248	The Senate has a mandate to study and propose what it deems necessary to preserve **the principles of the January 25th and June 30th revolutions**, and to support national unity, social peace and the foundations of society.	The Senate has a mandate to study and propose what it deems to **achieve the entirety** to the basis of democracy, support of the social peace, the foundations of society **and its supreme values, rights, freedoms and public duties, and the deepening and expansion of the democratic system**.
Article 249	The opinion of the Senate shall be taken as follows: - Proposals for the amendment of one or more articles of the Constitution. - **Draft laws supplementing the Constitution**. - Draft general plan for social and economic development. - Treaties of reconciliation and alliance and all treaties relating to the rights of sovereignty. - **Draft laws referred to it by the President of the Republic.** - What the President of the Republic refers to the Senate of topics related to the general policy of the state or its policies in Arab and foreign affairs. - The Senate shall inform the President of the Republic and the House of Representatives of its opinion on these matters. -	The opinion of the Senate shall be taken as follows: - Proposals for the amendment of one or more articles of the Constitution. - … - Draft general plan for social and economic development. - Treaties of reconciliation and alliance and all treaties relating to the rights of sovereignty. - … - What the President of the Republic refers to the Senate of topics related to the general policy of the state or its policies in Arab and foreign affairs. - The Senate shall inform the President of the Republic and the House of Representatives of its opinion on these matters.
Article 250	The Senate is composed of a number of members determined by law that shall not be less than **250** members. The term lasts for 5 years.	The Senate is composed of a number of members determined by law that shall not be less than **180** members. The term lasts for 5 years. **The term shall commence from the date of its first meeting. The new**

	2/3 of the members are elected by direct, secret public balloting, and the rest are appointed by the President of the Republic. The method of their nomination is to be specified by law.	**Senate shall be elected during the 60 days preceding the end of the term** 2/3 of the members are elected by direct, secret public balloting, and the rest are appointed by the President of the Republic. The method of their nomination **and election** is to be specified by law.
Article 251	A candidate – appointee – in the Senate must be an Egyptian citizen, enjoying civil and political rights, a holder of at least a certificate of university education or its equivalent, and no younger than 35 years old on the day that candidacy registration is opened. Other requirements of nomination, the electoral system, and the division of electoral districts are defined by law, taking into account fair representation of population and governorates and equal representation of voters. The majoritarian system, proportional list, or a mixed system of any ratio may be used.	A candidate – appointee – in the Senate must be an Egyptian citizen, enjoying civil and political rights, a holder of at least a certificate of university education or its equivalent, and no younger than 35 years old on the day that candidacy registration is opened. Other requirements of nomination, the electoral system, and the division of electoral districts are defined by law, taking into account fair representation of population and governorates and equal representation of voters. The majoritarian system, proportional list, or a mixed system of any ratio may be used.
Article 252	The membership of the House of Representatives and the Senate shall not be combined	The membership of the House of Representatives and the Senate shall not be combined
Article 253	The Prime Minister, his deputies, ministers and other members of the government are not accountable to the Senate	The Prime Minister, his deputies, ministers and other members of the government are not accountable to the Senate
Article 254	The provisions of articles (102-103-104-105-106-107-108-109-110-111-112-113-114-115-116-117-118-119-120-121<1/2> 132-133-136-137) of the Constitution shall apply to the Senate	The provisions of articles (102-103-104-105-106-107-108-109-110-111-112-113-114-115-116-117-118-119-120-121<1/2> 132-133-136-137) of the Constitution shall apply to the Senate, **in**

		a manner not inconsistent with the provisions of this section, and that the provisions mentioned in these articles shall be exercised by the Senate and its President

Comment:

This is introducing a new legislative room represented as the Senate and introducing an imaginary role to it that is neither needed nor guaranteed to be achieved.
The phrasing of the amendments itself shows clearly that this would only be a consolatory council with neither jurisdiction not effective impact in reality, and for which the state treasury would carry out new burdens that contradict the repeated calls for austerity by the President of the Republic and the House of Representatives in every occasion.

The report issued by the legislative and Constitutional affairs committee has not included in its final draft for the proposed amendments except some minor changes in the phrasing and the sequence of the provisions with adding some loose terms like "**achieve the entirety to the basis of democracy, support of the social peace, the foundations of society and its supreme values"** and other phrases that are both non quantifiable and non qualitative, and of which interpretations would differ and there would be no guarantee for effectiveness or mechanisms of achievement especially that the newly introduced council's role is merely consolation with no effectiveness and mostly will just be used to add a fake glimpse of legitimacy for the intrusive decisions of the executive authority or the unConstitutional laws issued by the House of Representatives.

IX- Delete the Titles of Sections I and II of Chapter VI of the Constitution; (General Provisions - Transitional Provisions):

The Article Proposed for Amended	The Original Text of the Article in 2014 Constitution	The Text Proposed in the Request by the Members of House of Representatives	The Text as accepted by the Legislative Committee of the House of Representatives
Deleted Article	Chapter Six: General and Transitional Provisions Section One: General Provisions Section Two: Transitional Provisions	Was not proposed within the amendments proposed by members of the House of Representatives	The titles of first and second sections of Chapter 6 of the Constitution are deleted

Comment:

According the final draft report for the draft amended provisions issued by the legislative and Constitutional committee of the House of Representatives, the addition of deleting the titles of sections 1 and 2 from chapter 6 of the Constitution which are **General Provisions** and **Transitional Provisions**, which is an amendment that was not included in the requested amendment by the members of the House of Representatives, but it is an evident amendment since some amendments shifted some transitional provisions to be general like the selection of the Minister of Defense after the prior approval of the supreme council of Armed Forces, and the proper representation of workers, farmers, people with disabilities, living abroad, youth, and Christians, hence the deletion of the titles of the previously mentioned sections was necessary to avoid contradiction between the title of the section and the provisions underneath it, so, it is a marginal amendment of no importance and does not approach the content of the provisions.

Fifth Matter of Research: Is it permissible to challenge any of the decisions or procedures of the process of amending the Constitution before the judiciary? Is the prohibition introduced in Article 226 to establish judicial control over it?

Although how clearly the requested Constitutional amendments are invalid and faulty, as does the report issued by the House of Representatives accepting them, still there is no way to appeal any of their decisions or procedures in front of any judiciary entity.
In this concern, the rulings of the supreme Constitutional court have settled on that the Constitution with its higher stature and by considering it the higher and fundamental law and with what is prior to it of amendments and issuance; is out of the scope of the judicial supervision of the whole courts, confirming that those provisions are not to be the issue of a law suit, also the Constitution as a document is above all authorities of the State considering it the basis of establishing them, hence the supreme Constitutional court is not competent to supervise it. The supreme Constitutional court has also settled that the decision of the president of the republic to ask for a referendum is consider an action of sovereignty that is absolutely out of the court's scope.[37]

The state council also has confirmed – in rulings that have been issued regarding previous appeal to the procedures of the process of Constitutional amendments – its incompetence to consider such appeals, to stress on that all stages and procedures of the process of amendment starting from proposing it moving though the House of Representatives and ending by the referendum, with all what it includes of contents and forms, are equivalent to issuing laws, hence considered among the legislative work that is out of the scope of judicial supervision. Also, the decision of the president of the republic to call for a referendum on amendments to some Constitutional provisions is out of competence and jurisdiction of the state council courts, since it is considered a legislative matter.[38]
Other rulings even considered the decisions issued by the minister of defense to announce the results of previous amendments according to 1971 Constitutional, to be a work related to sovereignty of the state and out of the jurisdiction of the state council[39]; and that announcing the results of amendments is the final procedure of the process of Constitutional amendment, and that such announcement is a confirmation of achieving such amendments as an inseparable part of the process that is a general activity report announcing its completion and listing all its facts. So, from the moment of announcing the results of the Constitutional amendments, it becomes effective and obligatory, hence approaching the decision of announcing the completion of the procedures of the Constitutional amendments necessarily includes approaching the amended Constitutional provisions and suspending their effectiveness.

[37] ARE - Supreme Constitutional Court - Constitutional - Case No. 112 - for the year 34 - Date of the trial 02/06/2013 - Ruling: UnConstitutional
[38] ARE – Administrative Judiciary Court - Case No. 18434 - for the year 61- Date of the trial 25/03/2007 –Page 586 - Ruling: Incompetence
[39] ARE – Administrative Judiciary Court - Case No. 29574 - for the year 59- Date of the trial 30/01/2007 –Page 318 - Ruling: Incompetence

Plus, approaching the legitimacy of the decision to announce the results of the referendum is an approach to the provisions of such amendment and a question to its legitimacy, hence, the whole process of issuing or amending Constitutions with they include of provisions, is a matter that is out of the scope and jurisdiction of the administrative judiciary for its incompetence to appeal the decision to announce the results of the referendum[40].[41]

What has been settled on that even if the process of Constitutional amendments had been doubted to be invalid, rushed, or inclusive of Constitutional violations, it would still be out of the scope of the judiciary supervision and the assumed political responsibility would fall on those who prepared the faulty amendments and those who approved presenting them in their faulty form to the people; the real bearer of sovereignty; to say their last decisive word, as in what the citizens express of a real participation and clear opinion to the call to vote and have a say. Such matters in their totality are beyond any supervision considering seeking to the people practicing for their real participation of their role as the source of authorities, i.e. the matter of invalidating the Constitutional amendments and their Constitutional contradictions is the people's responsibility that they agreed on and so by accepting them they become Constitutional regardless of what was prior to it of unConstitutional procedures and decisions.[42]

The role of the House of Representatives in the process of Constitutional amendments will probably end by the issuance of the final draft of the amendments by the Legislative and Constitutional Affairs Committee in the House of Representatives and the acceptance of the required percentage of members. It is also probable that the decision to call the people for a referendum and what follows of procedures till the announcement of the result will be in the scope of the National Elections Authority which the 2014 Constitution puts it exclusively responsible to manage both referendums and elections with all their procedures till the announcement of their results.[43]

[40] ARE – Undisclosed Rulings - Administrative Judiciary Court - Case No. 32124- for the year 59- Date of the trial 12/06/2007 - Ruling: Incompetence

[41] ARE – Undisclosed Rulings - Administrative Judiciary Court - Case No. 9862- for the year 61- Date of the trial 19/02/2008 - Ruling: Incompetence

[42] ARE – Administrative Judiciary Court - Case No. 18434 - for the year 61- Date of the trial 25/03/2007 –Page 586 - Ruling: Incompetence

[43] ARE- 2014 Constitution – issued on 18/01/2014 – published in the Egyptian gazette on 18/01/2014 - Chapter Five: The Ruling System - Section Nine: The National Elections Commission - Article 208: Mandate: "The National Elections Commission is exclusively responsible for managing referenda and presidential, parliamentary and local elections, which includes the preparation and update of a database of voters, proposal and division of constituencies, setting regulations for and overseeing electoral campaigns, funding, electoral expenditure declaration thereof, and managing the procedures for out-of-country voting by expatriate Egyptians, and other procedures, up to the announcements of results. The foregoing is regulated by law.

Although the current Constitution extends the supervision of the supreme administrative court over the body designated for referendums and obligates the effectiveness of its final rulings regarding them within 10 days starting from the date of the appeal[44], we think that if the court considered the appeals on the decisions of the management of such body to the amendment process, it would not extend its supervision on the process of Constitutional amendments or parliamentary procedures that preceded it and would not amend that has been settled on in this matter, but rather the looking over the appeal would be limited to the legitimacy of the decision of the body and its administrative decisions starting from calling citizens for a referendum till announcing the results.

As a result, appealing the procedures or decisions of the Constitutional amendments intended to occur by the end of April, will be ruled with incompetence without getting into the subject of the amendments or the preceding parliamentary procedures, regardless of how questionable they are in terms of legitimacy procedurally and subjectively, and unConstitutionality; with no regard to the numerous violations of the conditions and procedures stated in Article 226 of the Constitution as we have discussed before in details.

[44] ARE- 2014 Constitution – issued on 18/01/2014 – published in the Egyptian gazette on 18/01/2014 –Article 210: "Voting and counting of votes in referenda and elections run by the Commission is administered by its affiliated members under the overall supervision of the Board. It may use the help of members of judicial bodies. The voting and counting of votes in elections and referenda in the 10 years following the date on which this Constitution comes to effect are to be overseen by members of judicial bodies and entities in the manner set out in the law. The Supreme Administrative Court adjudicates challenges against the Commission's decisions pertaining to referenda, presidential and parliamentary elections, and their results. Challenges against local elections are to be filed before the Administrative Court. Dates to file challenges against these decisions are specified by law, provided that challenges are finally adjudicated within ten days from the date of filing them.

Sixth Matter of Research: Are the Constitutional amendments related to Article 157 of the Constitution? Is it possible to use it to appeal calling the people for a referendum in claims of violating the Constitution?

The first section of Article 157 of the Constitution states that; "The President of the Republic may call for a referendum on issues relating to the supreme interests of the country without prejudice to the provisions of the Constitution."[45]
Some legal opinions use this provision as legal grounds to challenge the President's possible decision to call the people for a referendum on the Constitutional amendments based on its violation of the Constitution, and we say that to be wrong for 2 reasons:

First: The text of Article 157 in the current Constitution which is comparative to the text of Article 152 of 1971 Constitution which was concealed into only one paragraph stating that: **"The President of the Republic may call a referendum of the People on important matters related to the supreme interests of the country"**, and while the Court of Appeals had decided in its ruling that the decisions to call for referendums which were issued in application of the mentioned text were considered to be the work of sovereignty which are out of the scope of the judiciary[46]; the supreme Constitutional court issued a final rule regarding extending its supervision on laws that have been issued according to it and considered the authority granted to the president of the republic according to the provision:

> **"Does not go beyond being a license for the President of the Republic, to present issues he considers to be of importance and relevance to vital national interests, to the election commission for its political opinion. Therefore, this referendum – which was authorized by the Constitution and defined by its nature and purpose – may not be used as an excuse to waste its rulings or violate it"[47]**

The court also stressed on differentiating between the mentioned referendums in the Article and the referendum on Constitutional amendments that was regulated by Article 189 of 1971 Constitution – **which is comparative to Article 226 of 2014 Constitution – and decided that the people acceptance to any principles could be called for in a referendum, does not elevate such principles to the rank of being Constitutional provisions which are prohibited to be amended except through specific procedures stated in Article 189, and in turn such acceptance does not correct the wrong in the legislatively faulty provisions that legalized those principles, but rater such provisions remain as they are as a legislative work of lower stature than the Constitution, ruled by it, and subject accordingly to what the court's Constitutional supervision.**[48]

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[45] ARE- 2014 Constitution – issued on 18/01/2014 – published in the Egyptian gazette on 18/01/2014 – Chapter Five: The Ruling System – Section Two: Executive Authority – Subsection 1: The President of the Republic -Article 157: "The President of the Republic may call for a referendum on issues relating to the supreme interests of the country without prejudice to the provisions of the Constitution. If the call for a referendum relates to more than one issue, the people must vote on each individual issue."
[46] ARE - Court of Appeals- Civil - Appeal No. 1596 in year 48 trial on 06/01/1983 Technical Office 34 Part No. 01 - Page No. 134 - Refusal
[47] ARE - Supreme Constitutional Court - Constitutional - Case No. 56 of in year 06 trial on 21/06/1986 Technical Office 03 Part No. 01 - Page No. 353 – Ruling: UnConstitutional
48 Ibid

It's worth mentioning that 2012 Constitution has included a comparative provision for the previously mentioned ones, which is Article 150; but it added to both of them a third paragraph stating: "**The result of the referendum is binding for all state powers and the public**[49]"which meant not extending the judicial supervision to the principles voted on in referendums as per the provision, whether they were legislations or decisions, however, this paragraph was deleted from Article 157 of 2014 Constitution which confirms the intention of the Constitutional legislator to extend the judicial supervision on the administrative work or legislations issued through the president of the republic using the power given to him as per the provision.

Second: we previously pointed out that the national election authority would handle the decision to call for a referendum on the Constitutional amendments, and even if this does not happen and the president handled the decision to call the people to vote, it will not be according to the power given to him as stated in Article 157, but in fact the referendum will remain based only on Article 226 which regulates its procedures and conditions, and of which – as cleared before in terms of the possibility of appealing to it – all procedures and decisions including the call for a referendum if handled by the president is considered underneath the legislative work which is absolutely out of the scope of the judiciary supervision. And in case the national election authority handles the mission of calling for and announcing the results of the referendum, still, the judiciary supervision will be limited to the legitimacy of the administrative procedures related to managing the referendum process and will not in any way extend to the Constitutionality of the content of the amendments or legitimacy of the procedures and decisions issued by the house of the representatives concerning it.

[49] ARE- 2012 Constitution – issued on 25/12/2012 – published in the Egyptian gazette on 25/12/2012

Seventh Matter of Research: Freedom of opinion and expression in the field of Constitutional referendums, and the only way to engage with judicial amendments through which:

The freedom of opinion and expression as a Constitutional right is considered the only window to indirectly engage – from a judiciary point of view – with the amendments, since many rulings by the supreme Constitutional court stated the obligation of the state to guarantee the citizens the right of expressing their opinions about the Constitutional amendments. This is why every Egyptian citizen has the right to express his opinion in the referendum regarding issuing, amending, or changing the Constitution. A citizen also is entitled to express his opinion – accepting or rejecting – before voting in the election card, and even the full right to have all media outlets – in case he is an opponent – just the same as the other side to achieve equal chances for both and expanding the field of societal dialogue and public discussion as a fundamental condition for the process to be complete.
This is what the Constitution preserves through the guarantee of the right of expression – and what the supreme Constitutional court has settled on is:

> **By seeking opinions and ideas, while receiving and transferring them to and from others, that are not limited to sources that limit its channels, but intended to meet their expectations, and to multiply its resources and tools in the pursuit of multiple views and for each direction.**
> **Freedom of expression, for sure, has been its deepest impact in the area of public affairs and the presentation of its conditions in order to clarify its shortcomings. The Constitution wanted to ensure that it dominated the manifestations of life in the depths of its morale, in such a way as to prevent power from being imposed on the public mind. And their criteria shall not be a reference to the assessment of opinions related to its composition and no impediment to its flow.**
> **Hence, it is no longer possible to restrict the freedom of expression and the interaction of opinions that result in shackles that hamper their exercise by imposing pre-publication restrictions, as citizens should transcend through them - publicly – the ideas that roam in their minds and assertively express them, even if they were opposed by the public authority - on their part and by peaceful means - a change may be required and therefore it must be said that the freedom of expression guaranteed by the Constitution is the rule in every democratic organization. For this reason, the Constitution is safeguarded and untouchable.**[50]

In a law suit filed in front of the administrative court in 2010, citizens appealed the negative decision of the Real Estate & Documentation Authority to with-hold issuing authorization documents through which the citizens would authorize specific public figures including law experts and professors to form a preparatory committee with the aim of preparing a new Constitution or amending the existing one at the time, in preparation for presenting the result of the committee's work to the Constitutionally competent bodies to finalize the proposed amendments. Those bodies were the president of the republic and the House of Representatives.

[50] ARE – Supreme Constitutional Court – Constitutional – Case no. 25 in 22 – trial 05/05/2001

In its merits of ruling, the court stated that the matter itself had not implied any violation of the Constitution or the laws or the public order, considering that the citizens originally had their right to express their opinion in the referendum on amending or issuing the Constitution and in turn demanding issuing a new Constitution or amending the exiting one. Also, that this in turn expands to their right to authorize other citizens who have more expertise and experience to demand their opinions in the proper form and formality.
Looking into the point that they had no authority to force any entity to perform the demanded amendment or change, but rather only putting the summary of their opinion and ideas in the sight of the authorities. The ruling included the reasons on which it was based by stating;

> **"The Constitution – as the culmination of legal norms – has been always keen to assert the sovereignty of the people and the right of the citizen to freedom to express opinions by all means. Constructive self-criticism ensures the safety of national construction, the right of the citizen to vote and to nominate and express opinions in the referendum, that their involvement in public life is a national duty. It also ensures that these rights were protected with limited and strict exceptions, to achieve the ultimate goal which is the integration of these texts and their direction to achieve the same purposes.**
> **Freedom of opinion comes at the top of public freedoms, as the basis of democratic construction which ensures the progress and prosperity of society.**
> **With regard to the request to amend the Egyptian Constitution, the Constitution explicitly limits the right to request the amendment of one or more Articles to both the President of the Republic and the House of Representatives, in accordance with the provisions and procedures specified therein. If some citizens develop their ideas through the request to transfer them to other citizens in public and under the ears and sight of the competent official authorities, while discussing the Articles of the Constitution and the purpose of changing or amending some of them; this does not, in and of itself; include any infringement of the jurisdiction of the authority legally mandated to amend the Constitution, as this is a matter of freedoms and public rights guaranteed by the Constitution[51]"**

According to what the court has stated in the merits of the previous rule; each citizen is entitled to appeal in front of the administrative judiciary the decision to call for a referendum if this decision was issued by the National Election Authority in order to speed the process of issuing it and setting a date early in the 30 days frame following the approval of the House of Representatives to the amendments, which is not enough for citizens to express and exchange opinions and visions in the matter of final draft laws that have been only announced a few days before by the issuance of the final approval from the House of Representatives.
Both elements; seriousness and hurry; are fulfilled in the appeal on the decision and the demand to cancel, suspend, or postpone it. Since the continuation in the process of amendments and not

[51] ARE – Administrative Judiciary Court – Undisclosed Rulings – Ruling no. 4983 in 64 – Trial date 24/06/2010 – Ruling: Suspension of executing the appealed decision.

postponing it will result in effects which cannot be stopped of which the most important is not allowing the appeal to proceed after the announcement of the results whether with approval or rejection.
The appeal is also allowed against the decisions of an administrative entity represented by the Estate & Documentation Authority; and whether the decisions were positive with explicit rejection or negative, with-holding empowering people from issuing authorization documents for public figures and legal experts who adopt the opinions that rejects the Constitutional amendments and enforcing it to express their opinions regarding the amendments then presenting them to the 2 competent authorities; the explicit rejection or implicit abstaining, concerning allowing the opposition to express their view on the proposed Constitutional amendments.
Here; it is expected of the Administrative Court to issue a ruling that is consistent with its before-mentioned previous one which is confirmed by all settled principles that the supreme courts – the supreme Constitutional court to begin with – have repeated based on the principles of the Constitution that establishes democracy, equality, the rights of opinion and expression, and the right of each citizen to express his opinion regarding the referendum of the Constitutional amendments.

Also, such idea is supported by the provisions of Article 138 of 2014 Constitution concerning the right of each citizen to present his written proposals to the House of Representatives concerning the public affairs, and also his right to present complaints to the same council which is supposed to refer it to the competent ministers while obligating them to present their explanations concerning the complaints if the council requests that, and then the citizen who presented the complaint should be informed with the result.[52]
It's beyond doubt that the referendum on the Constitutional amendments is considered one of the most important public affairs of which each citizen is entitled to question, comment, justify rejecting or demand explaining; while the House of Representatives must abide by that being responsible for informing the citizen with the answers and results as stated in the previously mentioned provision.

[52] ARE - Constitution of 2014 issued on 18/1/2014 and published on 18/1/2014 in the Official Gazette,

Conclusion

The unConstitutional amendments become Constitution by order of the people

This study concluded settled that the proposed amendments violate many Constitutional principles and rights that have been already established and confirmed; at the top is the principle of democratic country and what results from it of principles of rule of the law, transmission of power, balance and separation between authorities, and the independence of judiciary that is related to the guarantees of fair trials, plus what it implies regarding the complete violation of Egypt's obligations as per the international covenants and treaties related to human rights.
The study specified the most dangerous amendments as follows:

- The amendments related to reelecting the president of the republic that expanded to open the time frame of the number of times of reelections with time intervals between each 2 terms which means the continuation of one president in the office for more than 2 terms, in contradiction to the original provision that limits it to only 2 terms after which the president is not allowed to be in the office; plus adding a specific provision in benefit of the current president to add 2 more years to his current term and allowing him to run for one more term.
- The amendments to the Articles related to the judiciary authority by granting the president of the republic the authority to select and appoint the heads of the judicial entities plus his presidency to the Higher Council of judicial bodies, in a full intrusion into the judiciary authority and a complete overthrow to its assumed independence.
- Limiting the authority of the state council and withdrawing a lot of its jurisdiction making it weaker than to be able to perform its administrative duties and decisions which is the competence to form the power of ruling legitimacy and confronting any administrative deviations from the executive authority.
- Expanding the jurisdiction of the military judiciary and its extent of implementation to involve more civilians, making the Armed Forces a higher authority preserving the Constitution and interpreting its principles, plus specifying the minister of defense with a special position that puts him out of the administrative authority scope of the president of the republic while making approving his appointment solely for the Higher Council of Armed Forces; which permanently grants the military institution the reins of ruling the state.

After explaining – with grounds and basis before opinions – the reasons of falsity of the process of the amendments procedurally and subjectively, and the limitation of the judiciary supervision on it to expect a rule of incompetence for any appeals on them in a way that cuts off all judicial methods to suspend or confront it; we can say that the unConstitutional amendments planned for a referendum with all its procedures will become Constitutional if the referendum ends with accepting them. According to Article 226 in regards to concluding the procedures of the amendments; it will become effective from the next day of announcing the result.

The amendments; in spite of the assumption of contradicting its content with the original provisions and principles included in 2014 Constitutions; will become Constitutional provisions that are to be interpreted in harmony with the rest of the provisions of the Constitution, "**and do not conflict or contradict or dissonance among themselves, but they are harmoniously integrated and associated with community values. These provisions must always be regarded as intertwined and not eroded, but rather with the homogeneity of meanings and concerted directions. There is therefore no place to cancel each other as much as they collide, and that the enforcement of the Constitutional document and the imposition of its provisions on the applicants, are assumed to work in their entirety. This is conditioned by their consistency and interdependence and referring to each provision as a self-contained content which is not isolated from, contradicts or overthrows other provisions, but rather stands by it and being supported by it, while all being bound by the ultimate purposes which it engenders**," which is a concept adopted by the Supreme Constitutional Court in many of its provisions[53], and the interpreter of Article 227 of the current Constitution, as follows: "**The Constitution, in its preamble and all its provisions, is a coherent and indivisible form and its provisions are integrated into a coherent organic unit**."

[53] ARE – Supreme Constitutional Court – Constitutional – Case no. 23 in 15 – trial 05/02/1994 – Technical Office 06 Part No. 01 - Page No 140 – Ruling: Incompetence

In the end; Constitutions are only contracts subject to the consent of both parties ;the people and ruler, and whatever they agree upon and regardless of how flagrant it is; becomes a higher law, subject to all the systems and relations of the state, and is applied to all its residents and institutions in a manner that must be respected, even if the gravity of the Constitutional amendment reached a Constitutional provision that provides for the right of the first night of the President, for example.

We have many examples of dictatorship Constitutions – such as China[54], Iran[55] and North Korea[56] – of which the provisions contradict each other conceptually and in more than one location. Still; they remain the Constitutions worthy of respect and implementation upon their people and their relations with their rulers; where they agree to deal with their rulers as holy and sacred subjects. They have also approved including their leaders whose names are explicitly mentioned in the Constitutions, which are the highest legal documents and which are – like any law supposed to be general, abstract and applied to everyone, and not to rely on a specific person in his stature or name.

In the end, no one can prevent this but the people; who will decide – by either approving or rejecting them – the extent of the Constitutionality.
If the referendum takes place fairly and the people agree to these amendments, they become a higher Constitution governing a nation that accepted it.
In such case, the people - as the source of authority and sovereignty - become fully responsible for the political responsibility for that choice.

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[54] China - Constitution 1982 - published on 04/12/1982 on the People's Republic of China - Chapter I: General Principles – Article 1: "The People's Republic of China is a socialist state under the people's **democratic dictatorship** led by the working class and based on the alliance of workers and peasants. The socialist system is the basic system of the People's Republic of China. Sabotage of the socialist system by any organization or individual is prohibited."

[55] Iran - Constitution of 1979 - published on 24/10/1979 on the Republic of the Islamic Republic of Iran - Chapter 1: General Principles - Article 1: "The form of government of Iran is that of an Islamic Republic, endorsed by the people of Iran on the basis of their 98.2 percent affirmative vote of all the eligible voters in a referendum that was held on the 10th and the 11th of Farvardīn in the year 1358 of the solar Islamic calendar, agnate to the first and the second of jumādī al-awlā' in the year 1399 of the lunar Islamic calendar. based on its long-held belief in the rule of the truth and the justice of the Qu'ran, and after its victorious Islamic revolution, under the leadership of marja'-e taqlīd **the exalted Grand Ayatollah Imam Khomeini**"

[56] North Korea - Constitution 1984 - published on 1 January 1984 on the Constitution of North Korea - Preamble: The Democratic People's Republic of Korea is the socialist motherland of Juche which has applied the idea and leadership of the great leader Comrade Kim Il Sung. The great leader Comrade Kim Il Sung is the founder of the Democratic People's Republic of Korea and the father of socialist Korea. Comrade Kim Il Sung authored the immortal Juche idea and, by organizing and leading the anti-Japanese revolutionary struggle under its banner, created the glorious revolutionary traditions and achieved the historic cause of national restoration. On the basis of laying a solid foundation for the building of an independent and sovereign State in the political, economic, cultural and military fields, he founded the Democratic People's Republic of Korea. Having put forward Juche-oriented revolutionary lines, Comrade Kim Il Sung wisely led various stages of social revolution and construction work, thus strengthening and developing the Republic into a socialist country centered on the masses, into a socialist State which is independent, self-sufficient and self-reliant in defense. Comrade Kim Il Sung elucidated the fundamental principles of the building and activities of the State, established the best State and social system, the best mode of politics and system and methods of administering society, and laid solid foundations for the prosperity of the socialist motherland and for the inheritance and consummation of the revolutionary cause of Juche. Regarding "The people are my God" as his maxim, Comrade Kim Il Sung always mixed with the people, devoted his whole life to them and turned the whole of society into a large family which is united in one mind by taking care of the people and leading them through his noble benevolent politics. The great leader Comrade Kim Il Sung is the sun of the nation and the lodestar of national reunification.

[56] Iran - Constitution of 1979 - published on 24/10/1979 on the Constitution of the Islamic Republic of Iran - Article No. 107 - Chapter VIII (The Leader or Leadership Council): After the honorable source of emulation, the great leader of the global Islamic Revolution, and the founder of the Islamic Republic of Iran, the venerated Grand Ayatollah, Imam Khomeini, may his noble character be sanctified, who was acknowledged and accepted by the undisputed majority of the people as the marja'and the leader, the responsibility for designating the leader shall be with the Experts who are appointed by the people. The Experts consider all the qualified jurisprudents as discussed in Articles 5 and 109, and consult with one another about them. If they find one of them the most knowledgeable about the rules and subjects of jurisprudence, or political and social issues, or acceptability by the public, or significance in any one of the qualifications indicated in Article 109, that person shall be selected as the leader; otherwise, one of the Experts is chosen and declared as the leader. The leader who is appointed by the Experts is in charge of the sovereignty of the command and all the responsibilities that derive from it. Before the law, the leader is equal to other people in the country.

Although this does not negate the stigma of their contradiction with and flagrant violation of Egypt's international obligations to promote democracy, protect the fundamental freedoms of citizens and respect human rights under international human rights law.