Supreme Constitutional Court Confirms the Termination or Continuation of Treaties as 'Acts of Sovereignty'

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Supreme Constitutional Court

Case No. 135 of Judicial Year 35

4 January 2025.

On 4 January 2025, the Supreme Constitutional Court confirmed that the termination of an international treaty falls within the category of “acts of sovereignty,” which, by their nature, lie beyond the scope of judicial review. The same principle likewise applies where the President determines that an international treaty by which the State is bound shall remain in force notwithstanding a breach of its provisions by another State party or that State’s repudiation thereof.

The decision was issued in the context of a constitutional challenge concerning Article 60 of the Statute of the Arab Organization for Industrialization (AOI), which conferred exclusive jurisdiction over administrative and labour disputes on the Organization’s Judicial Committee. In addressing that challenge, the Court considered whether it could review the constitutionality of the Presidential Decree-law No. 30 of 1979, which preserved the AOI’s international legal personality and continued existence despite the withdrawal of three of the four state parties to its constituent agreement.

The case originated before the Administrative Court (Second Circuit) in Case No. 4566 of Judicial Year 55, in which the claimant sought annulment of several decisions issued by the Judicial Committee of AOI, as well as decisions of the Chairman of the AOI’s Board of Directors, including that referring him to early retirement. Central to the dispute was the claimant’s attempt, during proceedings before the AOI Judicial Committee, to seek the recusal of its members on grounds of serious procedural irregularities. That request was effectively precluded by Decision No. 3 of 2001 of the AOI Board of Directors, which confirmed that the Committee’s governing regulations contained no mechanism for judicial recusal.

Against this background, the claimant challenged the constitutionality of Article 60 of the AOI Statute—issued pursuant to Decision No. 6 of 1975 by the Organization’s Supreme Committee—which conferred exclusive jurisdiction over administrative and labour disputes on the Organization’s own Judicial Committee. The constitutional challenge also extended to decisions

issued by the Supreme Committee establishing the regulations governing those Judicial Committees, as well as to Article 1 of Presidential Decree-law No. 30 of 1979, insofar as it provides that the AOI shall remain subject, in its existence and activities, to the provisions set forth in its Statute.

The Administrative Court found that the Article (60) of the AOI Statute gave rise to a potential violation of Articles 75 and 174 of the 2012 Egyptian Constitution. Thus, the Court stayed the proceedings and referred the matter to the Supreme Constitutional Court to rule on the constitutionality of the provision.

On that, the Supreme Constitutional Court decided that it lacked jurisdiction to hear the case.

In that context, the Supreme Constitutional Court clarified that

> The AOI was established under an international agreement signed in 1975 between four countries—Egypt, Saudi Arabia, Qatar, and the United Arab Emirates—and promulgated in Egypt by Law No. 12 of 1975, with the aim of building an advanced industrial base that would serve the economic interests and national interests of the Arab world. It further emphasized that the AOI was established, pursuant to the agreement, as a “specialized regional organization” and an “open treaty” allowing other Arab states to join, and that the agreement contained no provision conditioning its continuation on the maintenance of a specific number of members.

> Following the withdrawal of Saudi Arabia, Qatar, and the UAE, due to circumstances they considered, the President issued Decree-law No. 30 of, whose first article provides for the preservation of the AOI’s legal personality and the continuation of its enjoyment of all its established powers, privileges, and immunities. Following this, Presidential Decree No. 326 of 1994 provided that the AOI would continue exercising its activities and that its Statute would continue to apply.

Based on that, the Court stated that

The international legal personality of the AOI continues to exist by virtue of the unilateral acts of Egypt reflected in the Presidential Decree-Law No. 30 of 1979 and Decree No. 326 of 1994, and in accordance with the established rules of international law. Since Egypt had maintained in force this agreement without altering its international character, as expressly stipulated in its provisions, the body established by this constituent international agreement continued to retain the attributes of international legal personality. Such personality was not affected by the withdrawal of the three state parties to the agreement so long as one state party had preserved it in force. Consequently, the AOI had not ceased to exist or been dissolved during any period of time.

The Court then stated that, whereas the AOI Statute, containing the challenged Article 60, constituted the legal instrument designated by the constituent agreement to regulate all matters relating to the Organization, the Statute was therefore inseparably linked to the constituent agreement itself. **In this respect, the adoption of the Statute and the Organization's operation pursuant to its provisions constituted acts of a political nature rather than legislation in the substantive sense. Consequently, such acts fell outside the scope of constitutional judicial review, requiring the Court to declare that it lacked jurisdiction to hear the case.**

On that, the Court emphasized that judicial review of the constitutionality of laws is generally founded upon the principles of legality and the rule of law enshrined in the Constitution. However, it recognized an established exception concerning "acts of sovereignty" (or political acts), which by their nature fall outside the scope of judicial scrutiny. The Court explained that, although the doctrine originated in French administrative jurisprudence, in Egypt it derives from an explicit legislative basis reflected in successive laws governing the judiciary and the State Council, including the Judicial Authority Law No. 46 of 1972 and the State Council Law No. 47 of 1972, both of which exclude acts of sovereignty from the jurisdiction of ordinary and administrative courts alike.

The Court emphasized that the rationale for excluding such acts from judicial review lies in their substantial connection with the State's political system, sovereignty, foreign relations, and supreme national interests. The Court further held that the characterization of an act as political depends on its intrinsic nature rather than the label attached to it by the legislature. Because such acts require access to information, standards, and evaluative criteria unavailable to the judiciary, the competent political authorities must enjoy broad discretionary powers free from judicial review. The Supreme Constitutional Court therefore retains sole authority to determine whether the challenged provisions

constitute political acts excluded from constitutional review.

The Court then held that

> the termination of an international agreement constitutes a political act inherently immune from judicial review. The same principle applies where the President determines that an international agreement remains in force despite breach or repudiation by another state party. In such matters, constitutional review bodies shall neither contest the President's assessment nor substitute their own judgment regarding the conduct of foreign policy, since international agreements form an essential component in shaping and directing that policy. Accordingly, presidential determinations concerning the continuation of treaties are final and the constitutional review bodies must refrain from adopting measures that could obstruct or burden the implementation of the State's foreign policy.

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