

THE RETURN OF JUDICIAL SUPERVISION OF THE EGYPTIAN ELECTIONS BETWEEN THE CONSTITUTION AND THE LAW



المركز العربي لاستقلال القضاء والمحاماة
THE ARAB CENTER FOR THE INDEPENDENCE OF
THE JUDICIARY AND THE LEGAL PROFESSION
(ACIJP)



مؤسسة دعم العدالة
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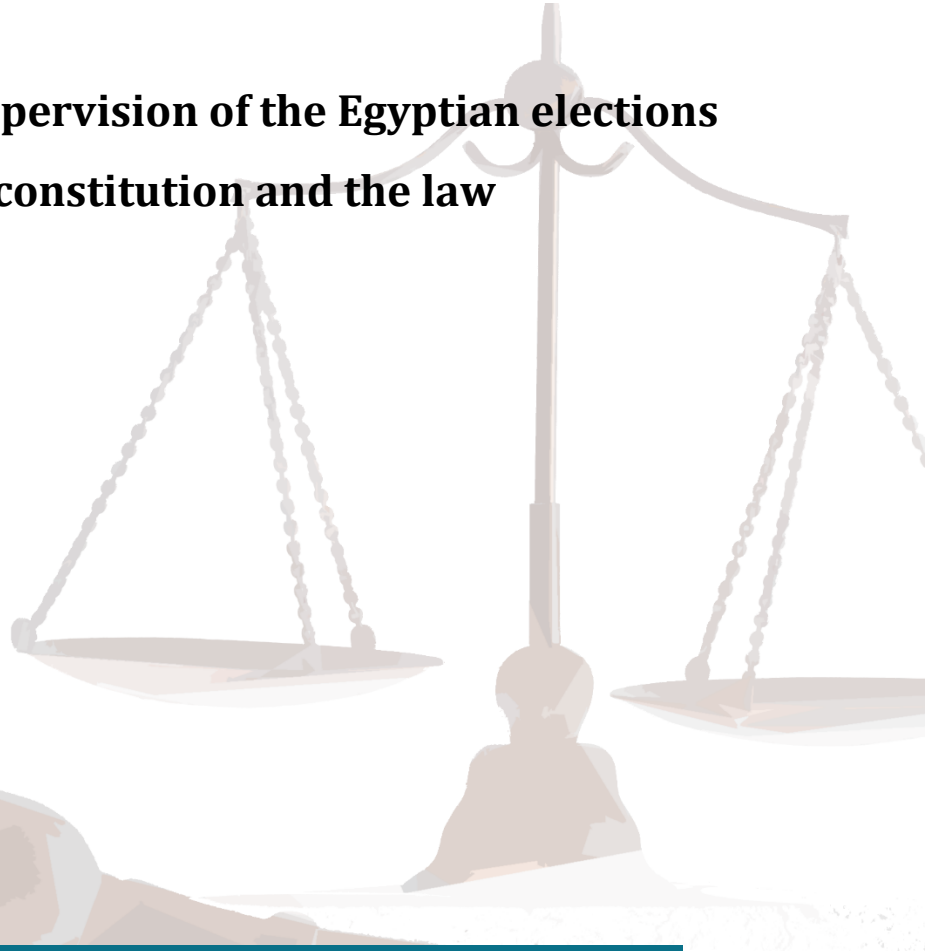
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Legal Paper

The return of judicial supervision of the Egyptian elections Between the constitution and the law



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Conclusion:

- The 2014 constitution adopted, for the first time in Egyptian political history, the system of independent electoral management bodies, instead of government agencies managing elections (Ministry of Interior - Ministry of Justice).
- Implementing this, the Constitution singled out a separate chapter consisting of three articles (208-210) in which it explicitly stipulated the establishment and composition of the Independent Election Management entity, defining its jurisdiction, assigning its establishment details to a law to be issued.
- The constitution specified only 10 years, starting from January 16, 2014, during which elections and referendums are allowed to be held according to the old system (under the supervision of Judicial committees). After that, running elections & referendums are abided to be under the supervision of the independent commission, after having the necessary transitional period enabling its formation and preparation to be able to manage and supervise all elections in the country, starting from presidency and parliament elections to syndicate and university elections, up to students' elections.
- On August 1, 2017, the Egyptian Parliament passed a law establishing an independent commission called (the National Elections Commission), specifying its jurisdiction, bodies formation, member selection criteria, in which the board of directors was dominated by the judicial component (judicial authority), lacking non-governmental components. The law also entitled the President of the Republic (the representative of the executive authority) the right to appoint the leaders of the executive body auxiliary to the board of directors of the concerned committee, which is considered interference by the executive authority in the formation and work of the committee in contradiction with the will of the legislator, the constitution, which was intended an independent entity from the government.
- Although no elections or referendums have been held since 2014 until now under full judicial supervision, the constitution has explicitly decided not to return to work with this system except in the ten years following its approval on January 16, 2014, after which the elections and referendums are to be held by the National

Commission under its supervision alone with no one else. This was stipulated in Article no. 34 of the National Election Commission Law, regarding the limitation of judicial supervision after ten years.

- The deadline specified in Article 210 of the Constitution is considered one of the procedural deadlines, the violation of which results in nullity, and it is similar to the periods stipulated in the articles related to the term of the Presidency of the Republic (six years (Article 140)) and those related to the five-year term of the Representative Council (Article 106) .
- Accordingly, the legal legislator (Parliament), by amending Article 34 of the National Elections Commission Law, does not have the right to extend the deadlines during which the old judicial supervision system is allowed to be applied, because specifying that period came in the text of Article 210 of the Constitution, Otherwise, Parliament would have placed the legislative text in a higher position than the constitutional text, where the claim becomes unconstitutional, and its procedure requires amending Articles 208-209-210 of the Constitution.
- By January 17, 2024, the National Elections Commission Authority will become the only constitutional body that has the right to administer and supervise all elections and referendums in the Arab Republic of Egypt, which urgently requires the issuance of a new law for the commission that guarantees its formation as an independent authority from the government (civilian, non-governmental) and guarantees its financial, administration independence, impartiality, and transparency of the methods and criteria of selecting and appointing its members, which is the most important legislative entitlement to ensure the legitimacy of its future work.