
**THE NEW CONSTITUTION
OF THE ARAB REPUBLIC OF EGYPT OF 2014
IN THE LIGHT OF THE FORMER CONSTITUTION OF 2012
AND INTERNATIONAL HUMAN RIGHTS STANDARDS**

A.Kh. Abashidze¹, O.V. Ocheretyanaya²

¹ Department of International Law
FGBOU VPO «Peoples' friendship university of Russia» Russian Federation Ministry
6, Miklukho-Maklaya st., Moscow, Russia, 117198

² Department for the examination of criminal law matters
Office of the Representative of the Russian Federation
at the European Court of Human Rights — deputy Minister of Justice
of the Russian Federation Ministry of Justice of the Russian Federation
14, Zhitnaya st., Moscow, Russia, 119991

The present article focuses on the political and legal situation with regard to human rights and freedoms in the Arab Republic of Egypt after the overthrow of the President Mohammed Mursi. The article analyzes the new Constitution of the Arab Republic of Egypt of 2014, the basic human rights and freedoms enshrined therein, the hypothetical difficulties of its implementation, as well as contains a comparative analysis of its provisions with those of the previous Constitution of the Arab Republic of Egypt of 2012 and international human rights standards.

Key words: human rights and freedoms, Constitution, Arab Republic of Egypt, Islam.

Failure to implement electoral promises, attempts to revive the regime of dictatorship and the adoption of the 2012 Constitution aimed at gradual Islamisation of the Egyptian society have caused public confidence in the Islamist party of Muslim Brotherhood, as well as its leader, President Mohammed Morsi, to reduce dramatically in the Arab Republic of Egypt (hereinafter — Egypt). Existing utter disappointment and growing indignation among the people of Egypt at the pursued policy resulted in putting an end to a yearlong triumph of the Islamists.

After the removal of President Mohammed Morsi on 4 July 2013 [5], the declaration of the Muslim Brotherhood party a terrorist organization [1], the suspension of the 2012 Constitution and the transfer of the guidance of the State monitored by the military to Adly Mansour, the Chairman of the Supreme Constitutional Court [12], a new Egyptian Constitution was developed and adopted in a referendum held on 14–15 January 2014 [6].

According to official data, 98,1% of those taking part in the vote supported the specified project, while the draft 2012 Constitution was approved by only 64% of the voters. However, the voter turnout was not much higher than in 2012 and amounted to only 38,6% (compared with 33% in 2012) [6]. Although the results of the referendum to some extent suggest that the draft 2014 Constitution was supported by the majority of the Egypt electorate, by adopting it the population of Egypt has mainly expressed disapproval of the policy of the Muslim Brotherhood party [10].

However, the referendum on the new Egyptian Constitution did not go on without casualties: at least eleven people — mostly supporters of the Muslim Brotherhood party opposing the military government [3] — were killed confronting the police, which show a high degree of tension between the military and their supporters and followers of a Sharia-based State.

Despite the expectations that the 2014 Constitution may appear as a fundamentally new document, revolutionary in many ways, it was based on the text of the controversial 2012 Constitution, which, in turn, borrowed the equally problematic provisions of the 1971 Constitution. However, the text of the 2012 Constitution was considerably revised and supplemented.

After a committee of 10 lawyers introduced amendments to the text of the 2012 Constitution, it was referred to the Committee of 50 members consisting of politicians, the military, heads of educational institutions, members of human rights organizations and representatives of the majority of Egyptian political forces and religious trends, including two Islamists [11].

Thus, in contrast to the 2012 Constitution, the drafting process of which was dominated by the Islamists, while the majority of the opposition resigned and refused to participate in the vote in protest, the current committee included representatives of the entire Egyptian society dominated by the supporters of a secular State.

The Egyptian Constitution of 2014 consists of 247 articles, 40 of which are completely new provisions, 100 articles are amended articles of the 2012 Constitution, and the remaining articles were included into the new Constitution unaltered.

The 2014 Constitution proclaims the Arab Republic of Egypt as a sovereign united and indivisible State with a democratic system based on citizenship and rule of law. The people are the source of powers and the sole holder of sovereignty (Article 4).

In accordance with Article 5 of the 2014 Constitution, the political system is based, *inter alia*, on political pluralism and peaceful transfer of power, separation and balance of powers, as well as respect for human rights and freedoms.

It should be noted that human rights and freedoms are not contained in a separate section of the 2014 Constitution, as it used to be in the 2012 Constitution, but are spread over several chapters.

The role of Islam to a large extent has been rethought in the new 2014 Constitution. This is primarily stemming from the fact that certain steps were taken during the recent reign of the Islamists which forced the people of Egypt to become seriously concerned about the toughening of application of religious norms in the State. Given the traditionally significant weight of Islam in the history of Egypt, most Egyptians still continue to be of the view that Islam plays a positive role in the politics of the State. Nevertheless, the number of people who are convinced that the role of Islam is negative increased from 2% in 2010 to 25% in 2012. In turn, there has been increase from 1 to 20% in the number of citizens who believe that religion impacts the State too much, and this is a negative factor. Meanwhile, according to the statistics, the majority of population in Egypt prefers democracy to any other form of government [9].

Thus, despite the fact that the new 2014 Constitution has preserved Article 2 of the 2012 Constitution, which proclaims Islam as the State religion and the principles

of Islamic law (the Sharia) as the main source of legislation, it is rather seen as a tribute to tradition. It should be noted that the 1971 Constitution also contained a similar Article, but it was not actually applied, because the very interpretation of «the principles of Sharia» was not developed, whereas the freedom of its interpretation was conferred to the courts that tried to depart from the idea of a religious State and used the most liberal interpretations.

In order to reduce the role of Islam, the 2014 Constitution has not envisaged the prior Article 219 of the 2012 Constitution, which explained the concept of the principles of the Islamic Sharia law, including the Koran and the Sunnah, «qiyas» (reasoning by analogy) and «ijma» (the consensus of scientists) as interpreted by the respected Sunni schools. The above Article offered a kind of problem: firstly, because it discriminated the Shia schools, and secondly, due to the fact that four recognized Sunni schools rely on different variations of the mentioned sources of Sharia and often disagree with each other. Thus, Article 219 of the 2012 Constitution offered opportunities for an extremely broad interpretation of the Islamic law, including its ultra-conservative forms, and its use as an instrument of political expression, which, in turn, could lead to a significant restriction of human rights and freedoms, including the use of corporal punishment and the introduction of the death penalty for apostasy.

Moreover, the new 2014 Constitution excluded the provision whereby expertise of the scientists of the Muslim Theological Academy, the Al-Azhar University, had to be sought in all the issues related to the Sharia law. It should also be noted that the existence of the above provision authorised the specified religious institution, which is not an elected public body, to take part in the legislative process which could have subsequently led to its politicization. In accordance with the 2014 Constitution, the right to interpret the Sharia law was delegated to the Supreme Constitutional Court, a traditionally secular court.

The 2014 Constitution has not incorporated Article 44 of the former 2012 Constitution that prohibits insulting religious messengers and prophets. At the same time, it has introduced a ban on the formation of political parties based on religion (Article 74).

Finally, the 2014 Constitution has not reflected a provision whereby human rights and freedoms enshrined therein shall be implemented in such a way which would not be contrary to the principles of the Sharia, as well as the prescribed rules of morality and ethics. At the same time, Article 92 has been included into the 2014 Constitution instead, according to which the exercise of the citizens' rights and freedoms may not be suspended, and their scope may not be limited.

Thus, preservation of Article 2 and exclusion, however, of other Articles of the 2014 Constitution, strengthening the role of Islam significantly, is a kind of attempt to achieve reconciliation between the secular and religious segments of the society.

At the same time, the 2014 Constitution has preserved Article 3 of the 2012 Constitution, according to which the principles of Christian and Jewish religious laws of Egyptian Christians and Jews shall be the main source of legislation that regulate their respective personal status, religious affairs and the selection of spiritual leaders. At the same time, the 2014 Constitution keeps silent with regards to who will be responsible for the adoption of such legislation and which courts shall adjudicate dis-

putes of religious minorities and on what provisions. Nor did the Constitution provide an answer what provisions shall apply to the followers of other religions.

The freedom of religion remains under threat in the new 2014 Constitution. While according to the 2012 Constitution the specified freedom was inviolable, it has become absolute from now on. However, freedom of practicing religious rituals and establishing worship places still applies to the followers of the «divine» (Abrahamic) religions only and, consequently, concerns only the followers of Islam (of course, Sunni), Christianity and Judaism, while such religious minorities as, for example, Baha'is, Shias, Quranists living in Egypt, as well as the followers of other religions, are, in fact, deprived of their right to openly practice their religion.

The matter is aggravated by the fact that practising a religion is regulated by the domestic laws which do not traditionally provide the necessary protection against discrimination on religious grounds.

Touching upon the issue of gender equality, one should note that, while a number of provisions of the 2012 Constitution were expressly discriminatory against women and were aimed at de-emphasizing their role in the society, the new 2014 Constitution is a complete opposite of its predecessor to this effect. Even its Preamble states that the provisions of the Constitution are aimed at achieving equality in the rights and responsibilities without discrimination. Moreover, the new Constitution contains provisions ensuring equal opportunities for all citizens (Article 9), as well as the equality of all citizens before the law in their rights and duties without discrimination. In this case, in contrast to the 2012 Constitution, the 2014 Constitution lists grounds for discrimination, including gender-based discrimination, while discrimination is declared a crime. However, the mentioned provisions apply only to the citizens of the State and shall not be expanded to such persons as refugees, asylum seekers and immigrants.

Besides, Article 6 of the 2014 Constitution in fact grants the right to Egyptian women to confer nationality on their children, including those born to a citizen of any foreign country.

Truly revolutionary are the provisions of Article 11 of the new Constitution, which establishes an obligation of the State to protect women against all forms of violence, to ensure the achievement of gender equality in civil, political, economic, social and cultural rights, as well as to ensure representation of women in parliament. Women are provided with the right to hold public office and be appointed to judiciary bodies without discrimination.

Pursuant to the above Article of the 2014 Constitution, the Government of Egypt approved amendments to the Criminal Code in May 2014 to criminalize perpetrators of sexual harassment. Obscene gestures, words and hints of a sexual nature shall be deemed to violate the law. Previously, the Criminal Code provided the criminal responsibility for only «indecent assault» and «rape», therefore the perpetrators were rarely held criminal liability [2].

In light of widespread sexual harassment, abductions, restrictions on rights and freedoms and other attempts to keep women who have played a significant role in the revolutionary protests from participation in social activities, the inclusion of the

specified Article into the 2014 Constitution — and, what is more, its subsequent implementation — are of extreme importance for stabilizing the situation.

As it was mentioned above, the 2014 Constitution has also included the provisions which were not provided by the 2012 Constitution. Thus, the new Constitution lays down an obligation of the State to protect intellectual property and institute a special supervisory body for this purpose (Article 69); the obligation to guarantee the independence of State-run media (Article 72); a ban on trafficking in human beings is imposed, a ban of arbitrary displacement of citizens (Article 63). The 2014 Constitution has also clarified and expanded the list of rights of the children and disabled, the right to education and the right to health care.

Criminal punishment is henceforth determined solely by the Criminal Code and not by the Constitution and the Criminal Code, as it used to be in the 2012 Constitution (Article 69), which actually allowed the courts to impose a penalty based on the Sharia.

Article 237 of the 2014 Constitution proclaims the duty of the State to combat all types and forms of terrorism. However, the introduction of the specified article carries a risk as the Constitution does not contain a definition of «terrorism» as such, which gives the ruling party an opportunity to fight its unwanted opponents and to restrict human rights and freedoms.

Moreover, despite the criminalization of torture (Article 52) and confirming additional rights in the 2014 Constitution for the persons accused of crimes (such as the right against self-incrimination, the right of access to a lawyer), in practice an alarming increase has been noted in the number of cases of arbitrary detention, disappearance, ill-treatment and rape of persons in command of the law enforcement officials, which often prove fatal, as well as unfair trials [7].

Nor has the provision that ensures the right to life and introduces a ban on the use of the death penalty been reflected in the new 2014 Constitution. Thus, after the Muslim Brotherhood party was declared a terrorist organization, hundreds of its supporters were sentenced to death. And, despite the sustained chorus of international criticism, the court of appeal upheld death sentences for 183 persons [8].

Despite the fact that the freedom of expression and freedom of the press and mass media (Articles 65 and 70) have been proclaimed in the 2014 Constitution, in practice the situation remains different. Thus, a law was adopted in November 2013, which prohibited the participation in public protests without prior permission, in which connection many liberal and Islamist activists and journalists were detained for having participated in unsanctioned protests.

In spite of the requests of the population of Egypt, an Article that allowed conducting trials of civilians before military tribunals has been preserved in the 2014 Constitution. Notwithstanding the fact that the list of crimes within the jurisdiction of military courts has been clarified, as compared to the 2012 Constitution, their precise wording is being elaborated by the law. However, given that the trials of civilians before military courts have been a serious problem in Egypt for a long time and also taking into account the dominant position which is currently held by the military, preserving of a specified provision as a constitutional principle may negatively contribute to such practices to an even greater extent.

Thus, since the adoption of the 2014 Constitution, thousands of civilians, including journalists, have been tried in military courts. Therefore, such a right as freedom of press and information, which is also enshrined in the 2014 Constitution, was restricted.

Despite the fact that for a long time Egypt has been a party to such international human rights instruments as International Covenant on Civil and Political Rights of 1966, International Covenant on Economic, Social and Cultural Rights of 1966, International Convention on the Elimination of All Forms of Racial Discrimination of 1966, Convention on the Elimination of All Forms of Discrimination against Women of 1979, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, Convention on the Rights of the Child of 1989 and three Optional Protocols to it, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families of 1990, Convention on the Rights of Persons with Disabilities of 2006 etc., as well as actively participates in the Universal Periodic Review, only now the authority of international human rights instruments has been recognized in the 2014 Constitution. Thus, it is indicated in the Preamble to the 2014 Constitution that its provisions are in conformity with the Universal Declaration of Human Rights of 1948.

Furthermore, Article 93 of the 2014 Constitution provides that the State is bound by the international human rights treaties ratified by Egypt. The specified instruments shall have the force of law after being published, respectively. However, the 2014 Constitution has still failed to reflect the provision proclaiming the primacy of international law over the domestic legislation. Furthermore, in view of numerous violations of human rights and freedoms, as specified in the reports of well-known international non-governmental human rights organizations, it is doubtful whether Egypt is really committed to those international human rights treaties to which it is a party.

Concluding the above said, one should note that the expansion of the list of human rights and freedoms is a definite achievement of the 2014 Constitution. However, the implementation of most of the rights and freedoms provided therein is regulated by law which has not provided adequate protection traditionally. Thus, a great deal of flexibility allowed for the legislator shall make it possible, *inter alia*, to restrict the outlined rights and freedoms in the future.

Moreover, the lack of a mechanism for implementing and safeguarding the rights and freedoms contained in the 2014 Constitution is its serious drawback: thus, the judicial system characterized by drastic corruption has remained unreformed, whereas the new 2014 Constitution introduced no new mechanisms. In this regard, giving effect to the implementation and protection of the rights and freedoms remains a challenge.

Finally, the 2014 Constitution as a whole does not contain any fundamental amendments that pave the way for sweeping changes allowing solving the vital problems faced by the Egyptian society. It is mainly a response of the current Egypt authorities to the prior policy pursued by the Muslim Brotherhood party.

However, it seems premature to reach any final conclusions, and the efficiency of implementation of the provisions contained in the 2014 Constitution remains to be seen.

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**НОВАЯ КОНСТИТУЦИЯ
АРАБСКОЙ РЕСПУБЛИКИ ЕГИПЕТ 2014 г.
ЧЕРЕЗ ПРИЗМУ ПРЕЖНЕЙ КОНСТИТУЦИИ 2012 г.
И МЕЖДУНАРОДНЫХ СТАНДАРТОВ
ПО ПРАВАМ ЧЕЛОВЕКА**

А.Х. Абашидзе¹, О.В. Очеретяная²

¹ Кафедра международного права Юридического института
ФГБОУ ВПО «Российский университет дружбы народов» Минобрнауки России
ул. Миклухо-Маклая, 6, Москва, Россия, 117198

² Отдел рассмотрения жалоб по уголовно-правовым вопросам
Аппарат Уполномоченного Российской Федерации
при Европейском Суде по правам человека —
заместителя Министра юстиции Российской Федерации
Министерства юстиции Российской Федерации
ул. Житная, 14, Москва, Россия, 119991

Статья посвящена политико-правовой ситуации, связанной с правами и свободами человека в Арабской Республике Египет после свержения Президента Мохаммеда Мурси. В статье анализируется новая Конституция Арабской Республики Египет 2014 г., закрепленные в ней основные права и свободы человека, предполагаемые трудности в ее реализации, а также производится сравнительный анализ ее положений с положениями предыдущей Конституции Арабской Республики Египет 2012 г. и международными стандартами по правам человека.

Ключевые слова: права и свободы человека, конституция, Арабская Республика Египет, ислам.