In the Name of God the Merciful, the Compassionate

In the name of the People

State Council

Court of Administrative Justice

First circuit

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In the public session held on Thursday the 4th of September 2008

Presided by Justice Ahmad Muhammad Saleh al-Shadhili

Vice Chair of the State Council

And with membership of Justices:

Abu Bakr Gom`ah al-Gindi Vice Chair of the State Council

Magdi Mahmud al-`Agrudi Vice Chair of the State Council

And with the presence of Judges

Muhammad Ali Soliman State Commissioner

And with the Secretariat

Al-Sayyid Sami Abdallah

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The following decision was made

In case no. 21550 for the 61st judicial year

Filed by:

Nabieh Taha Muhammad al-Bahy

And in case no. 21665 for 61st judicial year

Filed by

1- Ragya Muhammad Shawki al-Gerzawy

2- Medhat Kamal a-Sayyed, representing himself and his minor son Emad

3- Hossam al-Din Muhammad Ali Bahgat

Joined by following litigants

- Muhammad Hafez al-Ashqar
- Ahmad Muhammad Saleh al-Sayyad
- Muhammad Ahmad Hasan
- Fatimah Ramadan Abul-Ma`ati
- Abdel-Mohsen Sayyid Ahmad Shashah
- Rawda Ahmad Sayyid Ali

And in case no. 22912 for 61st judicial year

Filed by

Hamid Siddiq Sayyid Makky

And case no. 23003 for 61st judicial year

Filed by

Abdel Migid Muhmmad `Atiyyah Abdel-Migid al-`Anani

And case no. 25752 for 61st judicial year

Filed by

Abdil-Muhsin Muhammad Hammoudah

And case no. 25857 for 61st judicial year

Filed by

`Esam al-Din Mohammad Hussayn a-`Erian

Against

1- The President of the Republic
2- The Prime Minister
3- The Minister of Health
4- The Minister of Social Solidarity
5- The Head of the Public Health Insurance Organization
6- The Head of the Holding Company for Health Care
7- The Head of the Holding Company for Pharmaceuticals and Medical Supplies

Background

The palintiffs filed the standing case demanding: 1) freezing the execution of the Prime Minister's Decision (hereafter, "The Decision') no. 637/2007, establishing the Egyptian Holding Company for Health Care (The Holding Company) and the execution of the court decision with no declaration requirements; 2) the nullification of this decision and all its effects and committing the administrative body to the coverage of the expenses and fees.

In addition, the fourth plaintiff challenged the constitutionality of The Decision, a request forwarded by the third claimant as an auxiliary request, in addition

to his challenging the constitutionality of the agreements made between Egypt and the foreign donors (USAID, World Bank and the European Union) regarding the health reform program, and requesting permission to file the unconstitutionality challenge.

The Plaintiffs, in their explanation of their claim, mentioned that they are beneficiaries of health insurance and citizens of this country who are entitled to the right of health care according to the constitution and according to international law and international conventions. However, on the 21st of March, 2007 the Prime Minister issued his Decision no. 637/2007 (The Decision), establishing the Egyptian Holding Company for Hhealth Care (The Holding Company). The Decision moved all the assets of the Public Health Insurance Organization's (hereafter "HIO") hospitals and clinics to The Holding Company and its affiliate companies. Further, The Decisions declared the assets of the Holding Company are privately owned by the State. This is while law no. 75/1994 concerning health insurance, replaced by law no. 79/1975 regarding social insurance, orders the establishment of the HIO, specify its mandate, its budget, finances, assets and resources and states that one other than the President of the Republic is authorized to issue a decree concerning the establishment of the HIO and the President did issue Decree no. 1209/1964 ordering its establishment. Law no. 61/1963, concerning public organizations, gives the President alone, and no one else, the authority to establish, cancel or merge public organizations, and according to this law, the funds of those organizations are public funds.

Plaintiffs have described The Decision as unconstitutional and in violation of the law and international conventions since it converted the HIO funds into private funds owned by the state, while they are public funds supplied by membership fees deducted from the income and hard labor of Egyptians. Furthermore, they noted The

Decision's transfer of assets and employees to The Holding Company which is an aggressive infringement on the legislative authority which is the only body entitled to that authority. Whereas the Prime Minister may be entitled to the establishment of holding companies according to the provisions of the law no. 203/1991, the Prime Minister is not entitled to convert a public organization into a holding company. This authority is reserved for the President of the Republic alone pending the approval of the Cabinet according to the provisions of that law.

The Plaintiffs also added that The Decision constitutes a neglect from the state towards its duty to protect and promote of the right to health, to which it is committed by means of the Constitution and of the regulations of international responsibility through its ratification of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The threat to this right [to health] constituted by The Decision and the danger it poses to this right justifies the state of urgency in the request to freeze its execution in view of its violation of the law and articles 8, 16, 17, 146 and 156 of the Constitution.

The Plaintiffs concluded with their above mentioned requests.

The case was processed by this court as outlined in the minutes where joining litigants submitted a declared petition stating their joining the Plaintiffs and adopting the same demands put forward by the Plaintiffs' petition.

The Plaintiffs submitted ten document holders. The representative of the Plaintiffs and the Joiners submitted five memo in which they repeated what was put forward by the Plaintiffs' petition and added that The Decision permitted the service to be provided by a company that has investment functions and seeks profit and which is entitled to buy and sell stock shares. This confirms the addition of a profit margin to

the cost of service delivery and results in an increase of financial burden on the beneficiaries, especially the poor amongst them. This is a violation of the legal provisions which stress the humanitarian nature of health insurance and health care with no regard to the parentage contributed by membership fees or a specific profit margin. For example, an operation which costs 250 LE costs 2000 LE in private hospitals. If the HIO has a service delivery structure, it would only charge the costs of the operation without adding any additional profit margin. The memo added that there is a surplus in HIO's budget from 2001 to 2006 and noted an opinion poll organized by the Ministers Cabinet which shows the public's satisfaction with the HIO's services. Even if there are some obstacles or problems they should be studied and resolved in a way that preserves the health insurance scheme rather than privatizing it.

The State Legal Department submitted 8 document holders, one of which contains a copy of The Decision and a memo from The Legal Department of the HIO in response to the [Plaintiffs'] petition. The memo stated that the HIO will continue to exist and that the role of The Holding Company is restricted to the provision of services through clinics and hospitals and that the Ministry of Health will be the body responsible regulating price increases. The holder also contained a memo titled "Important Facts about The Holding Company for Health Care", answering some of the questions raised regarding The Holding Company. It states that [The Decision] separates finance from delivery so that the HIO can devote its efforts to supporting funding resources and extending the umbrella of health insurance to the rest of the citizens. The memo denied any intent to offer the company's shares in the stock market or to sell it the way Omar Effendi [Company] was sold.

Another holder opinion polls of citizens regarding the separation of finance from delivery and regarding the establishment of The Holding Company along with a study about this that is undertaken by the specialized national committees.

The State Legal Department also submitted 9 memos requesting, in principle, a rejection of the [Plaintiffs'] petition for their lack of standing and their lack of interest, and in reservation, the rejection of the petition, both its urgent part and its subject matter and committing the Plaintiffs to cover respective costs. It argued that [the Plaintiffs have no standing because have no sufficient interest because] interest has to be personal and direct; standing is not granted to any citizen interested in upholding the law to protect public interest. The establishment of The Holding Company will not in any way affect the legal position of the Plaintiffs and therefore they have no standing and no interest in the petition.

In response to the subject of the petition, the memo stated that it is an established principle that once public organizations have been established, the administrative branch becomes the party responsible for their management and for laying down the regulation they follow in accordance to its technical expertise and [changing] demand. It is [the administrative branch] which decides whether the new organization will be managed by the state itself or by otherwise public or private parties; whether the management of that public organization be directly performed by the administrative branch or will be delegated to individuals; or whether the organization will be monopolized or be a subject of competition amongst private parties. Hence, the administrative branch has to be authorized to easily amend the regulations of organizations to be able to respond to changing conditions and in order to be able to balance the different means it can adopt to choose the best and most efficient of these regulations. Accordingly, The Decision issued by the Prime Minister

regarding the establishment of The Holding Company is no more than the administrative branch's exercise of its legal responsibility to develop and innovate good service and improve performance after most insured citizens expressed their dissatisfaction [regarding the HIO services] and after several studies have been undertaken concerning the development of the HIO through the separation of finance from delivery, with no infringement on the HIO. Further, the role of the company is limited to performing the service.[1] There is no present nor future intention to offer The Holding Company's shares for sale in the stock market or to sell it to investors. The Decision has been issued by a party that has the authority to do so according to law no. 203/1991 concerning public sector financial companies.

In response to the above, the representative of the Plaintiffs and and the joiners submitted a memo stating that the provisions of the health insurance laws and the Presidential decision no. 1209/1946 which established of the HIO obliged the HIO to deliver health care through its facilities and it has also obliged the HIO to establish hospitals, clinics, curative institutions and pharmacies to carry out its role, which means that it is committed to provide both finance and service delivery by itself; the legislator did not intend separating finance from delivery. Since The Decision alters the roles, functions, duties, the intent of legislative and the social interest in the establishment of the HIO, it has therefore gone beyond its authority and is in violation of the law.

On the 5th of February 2008 the court decided to make its decision on the 18th of March 2008, then postponed the pronunciation of the decision to the 27th of May 2008 after the case was returned to litigation after joiners joined the case no. 21550/61

[1] This is the literal translation. It seems clear though, from what the defendant's claimed earlier and from their submissions, that what was meant here is that The Holding Company will be responsible for the financing only and that the HIO will be responsible for delivery only.

in view of the sameness of the subject and to release a common verdict for all Plaintiffs in the session scheduled for the 10th of June 2008. The pronunciation of the verdict was further postponed to today's session where it was released and when its draft which includes its rationale was filed.

"The Court"

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After reviewing the documents, listening to the clarifications and completion of deliberations,

And since the Plaintiffs have petitioned 1) the freezing followed by the cancellation of The Decision and its effects and the enforcement of the verdict in its urgent component without announcement and obliging the administrative body to cover costs and fees; 2) the unconstitutionality of The Decision and of the agreements made between Egypt and foreign donors regarding health reform and permitting the third and fourth Plaintiffs to challenge the unconstitutionality of the Decision;

And since the case was litigated the way it was detailed above;

And since Article 126 of the Code of Procedure states that "any party who has vested interest can litigate by joining the case made by any of the litigants or petition in his own right in a request related to the claim; the litigation is then based on the usual procedures for filing a petition, provided it is requested before the date of the court session or through a verbal request during the session in the presence of the litigants, which is to be registered in its record; that option cannot be accepted after the closure of litigation."

The effect of this text is that the rationale for joining a petition is the presence of interest and of a connection between the requests for joining and the requests

involved in the standing petition. The decisions of the Higher Administrative Court[2] establish that although interest has to be personal, direct and current, in a petition for cancellation, and where the petition is concerned with the rules and considerations of legality and public order, the "interest" extends to include all petitions for cancellation filed by parties who are, in relation to the impugned decision, in a special legal situation that makes the impugned decision has an effect on a serious interest of the plaintiff—with no confusion of this situation with that of Hesba.

(Review the decision of the Higher Administrative Court in the two cases no. 16834 and 18971, judicial year 54 in the session dated 16/12/2006).

And since the parties joining in claim no. 21665, judicial year 61, fulfill the criteria of a serious interest in their petition, considering that they are Egyptian citizens, granted the right to health and social care by Articles 16 and 17 of the Constitution; and since the Constitution was careful to guarantee this right to all citizens by adding the word "all" in article (17), with an intent to elevate the status of the right to health care which is intricately related to the right to life, it is therefore that the effect of the court decision in the present petition will extend to the parties involved, who have specified their requests in accordance with the requests of the original Plaintiffs as outlined in the submitted memos and the two defense memos submitted by those representing them. Their request to join has fulfilled all its formal requirements and it is therefore the court decided to accept it and to Reject the Defendant's request to rejct the petition on the grounds that the Plaintiffs have no standing since the Plaintiffs fulfill the conditions of an interest and of standing by being citizens guaranteed to the right to health care by the State, whether they are currently covered by the umbrella of health insurance or they are hoping to reach this

[2] The Higher Administrative Court is the second degree administrative court which oversees appeals of the Court of Administrative Justice's decisions.

right through what the State's policies and decisions produces concerning health insurance.

And since the petition fulfilled all its formal requirement regarding the Plaintiffs' request to freeze the execution of The Decision and to cancelling it, it is therefore accepted as regards its form.

As for the freezing the execution of The Decision, a verdict to that end requires the fulfillment of two criteria; first: the criterion of seriousness, i.e. that the request appears to be based on serious grounds that favor the cancellation of the impugned decision; and secondly: the criterion of urgency, i.e. the consequences and effect of the execution of the impugned decision would be difficult to reverse.

Regarding the element of seriousness, Article 4 of the Constitution of the Arab Republic of Egypt (amended by the referendum of the 26th of March 2007) states that "The economy of the Arab Republic of Egypt is based on the development of economic activity, social justice, guaranteeing the different forms of ownership and preservaing the rights of workers." Article 7 of the Constitution states that "The socity is based on social solidarity ."

Article 16 of the constitution states that "The State guarantees cultural, social and health services, and work especially to provide them for the villages [the rural areas so that they become accessible] in an easy and regular manner in order to raise their standard."

Also, article 17 states that "The State guarantees social and health insurance services and work-disability pensions, unemployment and elderly services to all citizens, and this is in accordance with the law."

On the 1st of October 1981, the President issued Decree no. 537/1981 ratifying the International Covenant on Economic, Social and Cultural Rights (The Convention) approved by the UN General Assembly on the 16th of December 1966, and signed by the Arab Republic of Egypt on the 4th of August 1967.

Article 12 of The Convention states that:

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

The first health insurance law for workers in the government, local municipalities and public organizations and institutions (law no. 75/1964) stated in its first article that "upon a decree by the President of the Republic, a public organization is to be established, based in Cairo with branch organizations to manage the health insurance affairs listed in this law……"

Article 4 of the same law states that "insurance in the agency is compulsory. The funds of that insurance are derived from the following sources:

1- Membership fees deducted monthly from the beneficiaries of this law at a rate of 1% of their basic wages and pensions……..

2- Funds contributed by the public treasury, local municipalities or public organizations or institutions at a rate of 3% of those salaries, wages and pensions…….

3- Aid, contributions, donations and endowments which the organization's council decides to accept.

4- Profit of investment in these funds."

In execution of the first article of that law, the President issued Decree no. 1209/1964 establishing the HIO and its branches for workers in the government, local municipalities, public organizations and institutions. The Decree's first article states that "a public organization shall be established and called the Public Health Insurance Organization for workers in the government and local municipalities and public organizations and institutions, which will enjoy the status of legal person, will be based in Cairo and will be supervised by the Minister of Health."

The second article of the above Decree states that "the objective behind the establishment of this organization is to provide health insurance to workers in the government, local municipalities, public organizations and institutions through itself or through its branches……."

"To achieve the above, it might undertake the following:

a- Providing health care to those insured according to pre-defined conditions and levels.

b- Establishing hospitals, comprehensive clinics and other curative institutions, and equipping and administring them.

c- Renting hospitals and other curative institutions and contracting with either to achieve its objectives.

d- ……

e- Providing medicines and medical needs for those insured, including the establishing its own pharmacies and signing agreements with other pharmacies.

f- ……

g- ……”

Article 4 of the Decree states that "the governing council of the organization is the highest authority in charge of its affairs and of management ….. It is especially mandated to:

a- ……

b- ……

c- Suggest the signing of contracts required for financing the establishment of hospitals, comprehensive clinics and other medical service facilities in and for financing their equipment as needed, and according to the standards and regulations it sees fit ……"

In 1975, Law 32/1975 was issued regulating the medical insurance system for workers in the government, local municipalities and public organizations and institutions. In its first article it stated that: "the insurance treatment system is enjoyed by workers in the government, local municipalities, public organizations and institutions specified in stages by a decree from the Minister of Health. This system is managed by the Public Health Insurance Organization."

Social Insurance Law no. 79/1975 was then followed and replaced law 75/1964 according to the provisions of its second article. In article 48, it states that "the Public Health Insurance Organization undertakes the medical treatment and care of the sick according to the provisions of Section 6 of that law……"

Article 85 states that "the Public Health Insurance Organization undertakes the medical treatment and care of the injured or the patient until acquiring recovery or establishing proof of permanent illness……."

Article 86 states that "not withstanding the provisions of the third section of article 48, the treatment and medical care of the injured or the patient is to be undertaken in treatment facilities provided by the Public Health Insurance Organization; this agency is not to undertake this treatment or provide medical care in specialized clinics or hospital or public hospital of specialized centers except according to special agreement made for that purpose……."

Article 87 states that "the Public Health Insurance Organization should examine workers vulnerable to any of the occupational diseases listed in the attached table 1 ……."

Article 135 states that "immovable and movable funds of the Public Health Insurance Organization and all its investment operations, no matter of what kind, are exempted from all taxes, fees and interests imposed by the government or any other public authority in the republic……."

Article 161 states that "the rights and obligations of the Public Social Insurance Organization outlined in law 63/1964 by the issuance of the Social Insurance Law are to be transferred to the fund, the management of which has been entrusted by means of this law to the Public Social Insurance Organization."

Also the rights and obligations of the Public Social Insurance Organization as defined in the above mentioned law 63/1964 and law 75/1964 concerning health insurance for workers in the government, public organizations and public institutions, will be transferred to the fund, the management of which has been entrusted to the Public Social Insurance Organization.

In 1981, Prime Minister's Decision no. 1/1981 was issued concerning widows' benefit from the right to medical treatment and care. It permitted widows to enjoy this right in exchange for a monthly fee equal to 2% of her deserved pension; the fee will be added to the illness and occupational injury treatment fund established by the Social Insurance Law.

In addition, law no. 69/1992 was issued concerning the health insurance system for students. The law made it compulsory for all students in exchange for the annual fee specified in its third article. In article 7, the law stated that "the Public Health Insurance Organization will provide the health insurance services outlined in this law; the services will be provided in treatment facilities specified by the agency inside and outside its units and according to the level of medical services and regulations set in decisions issued by the Minister of Health.

Also, a decision from the Minister of Health and Population, no. 380/1997 concerning the organization of the insured health care system for children born on or after the 1st of October 1997. The second article of the decision states that "the Public Health Insurance Organization will provide preventive and curative services to children either through contracting with public and private treatment facilities or through its own resources."

Finally the Cabinet of Ministers released its impugned decision no. 637/2007 concerning the establishment of the Egyptian Holding Company for Health Care. Article 1, of The Decision orders the establishment of a holding company called "the Egyptian Holding Company for Health Care, which will take the form of a joint stock company and is entitled to set up affiliated companies to undertake its activity…."

Article 2 of The Decision states that "The Holding Company and its affiliated companies will have the status of a legal person and will be considered subject to the private law and will be subject to the provisions of the Law of Public Sector Businesses, the Law of Joint Stock Companies, Companies of Limited Responsibility and the Law of Capital Market…….. employees in those companies will be subjects to Labor Law no. 12/2003 absent a specific regulation in the policies set by the board of directors of each of the companies."

Article 4 states that "the purpose of the company is the provision of health care in all its forms of to the beneficiaries of the health insurance and other patients through affiliated companies in addition to other services related to health care."

Article 5, states that "The Holding Company, through its affiliated companies, may invest its funds and, when necessary, can undertake the investments by itself. To achieve its objectives, the company might also undertake the following:

1- Establish a joint stock company, alone or in partnership with public or private legal persons or individuals.

2- Buy, sell or contribute to the capital of joint stock companies.

3- ……..

4- ……..

Article 6 states "the licensed capital of the company is set at the net registered value of the assets of all hospitals and clinics affiliated to the Public Health Insurance Organization after deducting their financial obligations; the capital is to be distributed over nominal shares at a nominal value of ten Egyptian Pounds, all of which to be entirely owned by The Holding Company."

Article 11 states that "The Holding Company and the affiliated companies it establishes, upon the formation of the management board of the general assembly and the drafting of its financial scheme, distribution of profits and needs and its establishment, is subject to the provisions of the Law of the Conpanies of Public Sector Businesses and its executive bylaws."

Article 12 states that "all assets of hospitals and clinics belonging to the Public Health Insurance Organization are to be transferred to The Holding Company and its affiliate companies. "

Also workers at health insurance hospitals and affiliated units will be transferred from the Public Health Insurance Organization to The Holding Company and its affiliate companies while maintaining the same employment conditions.

Article 14 of the Law of Public Organizations issued by presidential decree no. 61/1963 states that "funds of the public organization are public funds and are governed by the regulations and provisions related to public funds….."

Since the state exercises its role in the performance and management of public services and facilities in different ways, the service is either provided through ministries and government departments directly, which is the most common situation, or through public organizations, mostly providing insurance and social services. The state frees those agencies from some of the rigid regulations, using more flexible ones

which enable those agencies to meet society's need of those services. Otherwise, [the state can exercise its role] through economic facilities to develop the national economy, which involves the management of economic activity through the investment of private state funds, in which case, its units have the status of private law persons. In both the first and second case the funds are public, cannot be sold and have to be used for what they have been intended for. Those [public] funds are our of the domain of [economic] transactions and the state's hand over those funds is more akin to the hand of a trustee and the caretaker than that of command and exploitation. In the third case, the funds are private, seeking profit within the state's economic plan. Here the role of the state is to choose the best and most sound means in the light of society's need of the service. The more the need for a component of life, the less constrained access to that need should be and the provision of which becomes a duty. This cannot be achieved except through the state's direct provision of that service through its ministries and departments or through its organizations using its public funds which do not target profit. This is clearly demonstrated in the health services provided by public and private hospitals and through health insurance. The state cannot depart from that to providing the service through its economic facilities which target profit.

In view of the importance of social and health components as essential elements of society and since the Egyptian Constitution allocates the first chapter of the second section to social insurance as a cornerstone in the structure of society, it has explicitly stated in article 7 that society should be based on social solidarity.

In article 16, it states that the State guarantees cultural, social and health services, and in article 17, it states that the State will provide social and health insurance services. It then allocates the second chapter of that section to economic foundations, which

means that one of the fundamental rules established by the Constitution stipulate that the State must not abandon its role in providing social services nor allocate them to economic units, Constitutional jurisprudence has established that a right which enjoys constitutional protection in principle and in extent, no legally tool inferior to the Constitution can reorganize it in a way that reduces it.

Since health insurance is on top of the means and manifestations of the right to health, which has become one of the basic human rights in laws and legislations about human rights, both nationally and internationally, in view of the close link between the right to health and the right to life; and since the state's provision of health care protects the right to health from being subject to investment, bargaining or monopoly; and since the twenties of the last century have witnessed the beginning of the International Labor Organization and the release by its general assembly of international agreements, which organize health protection for workers, with subsequent agreements following until the foundation of World Health Organization as an international organization specialized in the health sector, its constitution, issued in 1946, stating the individual's right to enjoy the highest level of health; the UN General Assembly on the 16th of December 1996 approved the International Covenant of Economic [Social and Cultural] Rights, signed by Egypt on the 4th of August 1967 and ratified by Presidential Decree no. 537/1981; the covenant includes the most comprehensive article regarding right to health, which is article 12 stating that state parties recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and since this article was subject to the study and recommendations of the Committee for Economic, Social and Cultural Rights affiliated to United Nations Economic and Social Council (22nd session, Geneva, 25 April to 15 May 2000);

While the issues of social and health care has enjoyed recent international interest, Egypt has recognized its importance long ago when it developed its social health insurance, which is considered one of the oldest insurance systems in the world, established by an order issued on the 26th of December 1854 within the framework of civil pensions. The social health insurance is the key and a main entry point into wider and bigger structure of social insurance systems and it protects the income that falls within the core of society's needs. Therefore, social health insurance strengthens the foundations of social principles and constitutes an element in the fabric of society, protected by its conscience which is deeply rooted in the general balance of the society as a whole. It is therefore that Egypt chose the social health insurance system as a main scheme for the provision of health care.

Before 1964, limited steps were taken to apply some version of insured medical care. In 1964 law 63, The Social Insurance Law, ordered applying health insurance to workers in the public sector and to those in the private sector who are subject to the social insurance system. This law ordered health insurance to be provided through the Public Social Insurances Organization. Law no. 75/1964 then followed as the first legislation which authorized the establishment of the HIO [to provide health insurance] for workers in the government, local municipalities, and public organizations and institutions, delegating its establishment to the President of the Republic who issued Decree no. 1209/1964 authorizing the establishment of the organization. Both the law and the Presidential decree mandated this agency to insure to the above mentioned workers and to provide them with care through what it establishes of hospitals and comprehensive clinics. Presidential Decree no. 2298/1964 then followed, transferring the responsibilities of implementing health insurance to workers in both the public and the private sectors subject to the health insurance

system from the Public Social Insurance Organization to the HIO. Since then, health insurance has been providing its services, almost exclusively, through this agency.

Since guaranteeing the citizen's right to health care is not merely an acknowledgement of a basic human rights but a guarantee for the achievement of development and social justice, the 1971 Constitution in articles 16 and 17 stated the right of all citizens to guaranteeing health insurance services and obliged the state to guarantee the right as described above. This constitutional provision confirmed the beginning of a stage of development of the social and health insurance systems and its advancement to extending this protection to all citizens to the effect so they feel secured in all what they have to be secured in, their day, their tomorrow, their present and their future. It is therefore that law 32/1975 was issued [organizing] the medical insurance system for employees in the government and public organizations and local municipalities. with a desire to unify social insurance advantages . The law desired the standardization of social security benefits and sought to develop one legislation for this system, instead of having several ones, to materialize the principle of equal opportunity as explained in the executive bylaws of the above mentioned law 79/1975. The law covers the three types of insurances (social insurance, social benefits and health insurance). Two trust funds were specified for the first two types of insurances, the management of which was entrusted to the Public Social Insurance Organization. A third health insurance fund was to be managed by the HIO. According to the provisions of that law and subsequent legislations, the umbrella of health insurance was extended to include school students (by means of Law no. 69/1992), alongside civil workers in the state administrative body, public organizations and institutions and their affiliated economic units, and workers in the public and private business sectors. Starint from the first of October 1997, the health

insurance umbrella also included all children from the time of birth until school age. All those legislations affirmed that this organization is the body to which the execution of social and health insurance is delegated. It is a legal person and has its own budget within the overall state budget.

The social health insurance system is not merely a system collecting membership fees and providing health service. It has gone beyond that concept to become a social system and a heritage of civilization that has a psychological effect on the citizen. This right has been established by the Constitution which recognizes it as a state obligation. Since the establishment of the HIO in 1964 as an organization of legal status, representing the state in providing health services to beneficiaries of the health insurance system through its hospitals and medical clinics, which, through the fees by those insured and the shares paid by the employers and the government, have become medical edifices which the ill seek and place their hopes in. In order to enhance this mission, the above mentioned legislations permitted the HIO to contract private hospitals to receive a medical service no less in its quality that provided at health insurance hospitals and clinics. The continuous affiliation of those hospitals and clinics to the agency is an actualization of the constitutional provision of the state guarantee of social and health insurance and is securing competition with the private sector while providing this service and a measure for determining the cost when contracting with it, It is therefore that the performance of the HIO of the service of health insurance is a constitutional obligation of the state, granted by the Constitution to respect of the individual's right to life and to preserve public health of citizens, as they constitute an element of public order. It is therefore that the state is obliged to support social health insurance and guarantee the provision of health services to citizens, which is the least common denominator of the human equation. On ground

of this constitutional obligation, the state cannot decline the provision of this service nor delegate it under the pretext of development or budgetary shortage or any other reason the administration alleges in order to vacuum this duty from its content.

After the Constitution combined has health insurance and social insurance in a common article, no. 17, and since health insurance has become a cornerstone of social insurance, the Supreme Constitutional Court affirmed the state's obligation to guarantee this insurance in its judgment issued in case no. 16, judicial year 5 in the session dated the 14th of January 1995, when it ruled that "if the Constitution has moved a step further toward the support of social insurance in article 17 when it obliged the state to guarantee its citizens with both social and health insurance services … because the umbrella of social insurance, which extends to everybody covered by it, is what grants each citizen the minimum level of humane treatment, in which his or her humanity is not violated, which provides the suitable environment for his or her personal freedom, which secures to the right to life its most important source of support and which provides for the rights that solidarity between the individuals of society necessitates and assures the individual's belonging to it. These are the essential foundations without which the society does not survive, and these are the background foundations expressed by Article 17.

In the session dated the 9th of September 2000, in case no. 1 of judicial year 18, the court also ruled that "the Constitution in Article 17supported of the social insurance system when it obliged the state to extend its services in this field to all citizens in all sectors within the boundaries identified by the law, through providing them with support to combat unemployment, inability to work or old age; and that is because the umbrella of social insurance, to the extent it goes, is what guarantees a better reality which secures the citizen's future and advances the determinants of

social solidarity upon which society is built, according to Article 7 of the Constitution. A pre-requisite for that is that social insurance is a social necessity as much as it is an economic necessity and that its objective is to secure the future of its beneficiaries against retirement, disability or illness … indicating that the legislative organization of rights granted by the legislator in that regard would be violating the provisions of the constitution and contrary to its purpose if it legislated about these in a way that negates them or reverses them. ……"

The Supreme Constitutional Court also stated that legal provisions are not drafted in a vacuum and cannot be taken out of their specific context in light of the social interest that motivated them, and [the legal provisions should] be contingent on this interest. The legislator supposed to have been seeking [these social interests] through the drafting of legal provisions.. Accordingly, social interest is the ultimate objective of each legislative text and a framework for its interpretation and a guarantee of the organic unity of the different texts organized by the drafting of legislation, in a way that removes any conflict between its different components and ensures the continuation of its provisions and their interconnectedness, so that they all become devoted to the specific goal intended by legislating them by the legislator (case no. 1, judicial year 17, session on 3 July 1995).

The Court of Administrative Justice has also ruled that the principle of the rule of law is a basic principle, upon which a democratic system is built. This principle means that all state authorities are subject to the law. This [works] in the framework of the safeguards that regulate the relationship between the different authorities when they exercise their delegated constitutional authorities. Since the Constitution has entrusted the legislative branch with the introduction of legislations and the executive

authority with the mandate of their execution, the executive authority is thereby constitutionally obliged to respect the hierarchy within the legislative structure; that respect is not limited toits commitment to produce regulations which are generally within the framework of the law, but also involves the non-breach of the provisions of sovereign legislations through any of its tools which would in that case constitute an aggression against the legislative power and its regulating legislations it produces (The Court of Administrative Justice rulings in cases no. 28124 and 28361, judicial year 85, in its session on the 30th of January 2007).

In view of the vitality of the regulations of social health insurance and its relation to public utility and its attachment to the protection of vulnerable classes with a view to ensure distributive justice, these regulations thereby constitute a component of public order as confirmed by the Constitution and stated by health insurance legislations and international conventions and agreements. This led the legislator to provide health insurance funds with special protection, granting them a preference over that of the debtor upon their collection, permitting their collection through an administrative court order of seizure and exempting them of all kinds of taxes, interests and fees. All of the above is incompatible with the executive authority's aggression on the HIO, its funds or property; [nor is it compatible] with the organization’s abandonment of its commitments dictated by the Constitution and the law. Any claims or calls for change should not change the role or duties of the organization, since the legitimacy of any [claim to change] is governed by a commitment to the objectives of the agency and its roles as perceived by its beneficiaries.

From all of the above, it has been shown that the Constitution (in articles 16 and 17) was keen on supporting social health insurance when it delegated to the State

the provision of its services in those fields to the citizens within the boundaries set by the law, through the identification of what they would need to combat their illness and inability to work, considering that that the umbrella of health insurance is what guarantees a better reality that secures the future of the citizen. The guarantee of insured health care is by default through the HIO through its units of hospitals and clinics. [By doing this, the HIO would be] executing its duties stated by the law and actualizing the purpose of its foundation. This agency is not permitted to undertake treatment or medical care outside its units in clinics or specialized centers or public hospitals except according to specific agreements made especially for that purpose. In order to provide this service, it is entitled to establish hospitals and comprehensive clinics and other treatment institutions and to equip and managethem, in addition to renting and contracting with hospitals. This means that the legislator delegated to the HIO two processes: the fundraising and delivery of the service, in which case the HIO cannot neglect or delegate any of the two processes, since their undertaking is a social duty reserved to it by the legislator in application of the provisions of the Constitution.

The funds of this agency are dedicated by law to a social purpose. Article 23 of the Constitution has provided for its protection and prohibited its violation or change of its course in a way that affects contents or reduces its effect so that it becomes a property devoid of meaning and a mere symbolic framework of rights that has no practical value. [If those funds] are not dedicated to the purpose it was [originally] dedicated to, it seizes to be a base for national wealth that cannot be drained through a change of its content which is not demanded by its social function. No legislation is thereby authorized to deprive it of the protection which assists it in performing its role and guarantees the harvesting of its fruits, products and

attachments. No legislation is authorized to change any of its elements, nor change its nature, nor deprive it of its requirements, nor separate it from its parts, nor destroy its assets, nor restrict the exercise of rights derived from it in the absence of a necessity called for by its social function. Without this [protection], the ownership [of these funds] loses its core guarantees, and any of these acts would be an aggression (as indicated by the Supreme Constitutional Court decision in case no. 45, 15th constitutional year, in the session dated 6 July 1996).

It is worth noting that amendments to the constitution concerning economic activity does not infringe on the constitutional right granted for those covered by the health insurance system; the guarantee of the right to health does not conflict with a change in the economic system. On the other hand, the administration's right to adopt new approaches to management whether by itself or through others is limited by, first, adherence to the rules and provisions organizing ownership of public funds in the first place and, second, by the right of a citizen to receive medical service at a reasonable cost

According to the above and since what is clear from the documents reveal is that the Prime Minister has issued The Decision no. 637/2007, which orders the establishment of the Egyptian Holding Company for Health Care, and states in article 2 that the company is a person of private law and is subject to the provisions of The Law of Public Sector Businesses, The Law of Shareholder Companies, The Law of Companies of Limited Responsibility and The Law of the Capital Market, and in article 4 specified the objective of the company to be providing all types of medical care to the beneficiaries of health insurance, and in article 5 permitted The Holding Company to establish shareholder companies in collaboration with public and private legal persons and with individuals and to manage the financial aspect of the company

including its shares, financial documents and undertake all measures necessary to help in the realization of some or all of its objectives, and in article 6 specified the company's licensed capital as the net asset value of all hospitals and clinics affiliated with the HIO and that the capital should be distributed in shares at a rate of 10 Egyptian pounds per share, and that all assets and employees should be transferred to The Holding Company and its affiliated companies as stated in article 12, hence, The Decision involved a change in the mandate of the HIO and its obligations in violation of the Constitution, of Law 25/1964 which ordered its establishment, of Presidential Decree no. 1209/1964 and later of Law no. 79/1975 and subsequent legislations, all of which stated that the role of the agency is to provide medical and health care through its hospitals and clinics or to exceptionally contract with other agencies to provide the service. Therefore, no authority can exempt it from this obligation which was mandated by the law in application of the Constitution. Furthermore, The Decision encroached on the funds of the HIO by converting it from public to private funds and thereby changed the legislative objective and the social interest for which it was dedicated. It has also deprived that fund of the advantages bestowed upon it by the legislator to achieve its social objective. The Decision thereby subjected those funds to manipulation in the form of shares subject to sale and draining, similar in this case to [private] businesses' funds, in violation of The Law of Public Organizations issued by Presidential Decree no. 61/1963, which stated in its Article 14 that "a public organization's funds are considered public funds and are subject to the regulations and provisions of public funds…"

The Decision also violated the rights of employees of the HIO by transferring them to other companies and unlawfully changing their status from public employees to employees of public business sector employees.

Since The Decision transfers all assets of hospitals and clinics belonging to the HIO and its employees to The Holding Company and its affiliated companies, who are persons of private law, it has thereby deprived the agency of its main character, withheld is social mission and changed the nature of its funds and possessions subjecting it to waste, which is a violation of the regulations governing these funds, which provided protection for the HIO and its funds enabling it to undertake its social mission as a right dictated by international conventions and covenants as well as the Constitution which affirmed it and raised its status and specified its legal framework as an essential established social component based on solidarity. The Decision has thereby altered the mission of the HIO and driven it out of the realm of solidarity and reciprocal responsibility towards profit and investment in contravention of the will of the constitutional legislator which designed health insurance as a social insurance based on solidarity and not a commercial, economic one.

[The Prime Ministers has transgressed his authority by issuing The Decision since][3] Article 1 of the The Law of the Public Business Sector, law no. 203/1991 regarding the establishment of holding companies makes it outside his authority to to establish holding companies at the cost of encroaching upon a public organization or converting it, wholly or partly, into a holding company, since this authority is restricted to the President of the Republic by means of article 9 of that law and limits it to economic organizations, which does not apply to the HIO because it is a social organization, entrusted by the law, derived from the constitution, to undertake the mission of health insurance to its beneficiaries and provide them with medical care. Therefore, The Decision has gone beyond its legal authority by transferring the ownership of state owned public funds dedicated for health insurance to The Holding

[3] This sentence cannot be read clearly in the Arabic version. The rest of the paragraph indicated it however.

Company and its affiliated companies, in violation of the law and with the objective of making profit from those funds within the state's economic plan, which is in total contradiction to the objective of social health insurance. The Decision limited the role of the HIO to be a collector of membership fees to fund The Holding Company in exchange for some privileges it demands in the interest of health insurance beneficiaries, a matter which may be neglected, ignored or offered for an enormous cost by The Holding Company, according to the management authorities allocated to it in the management of its companies.

It is not true what has been argued by the State Legal Department that the goal of The Decision is the separation of management from delivery of the service in order to develop the latter. The HIO was originally established on the basis of development of proper care in exchange for membership fees. Its hospitals, clinics, health centers, and institutions specialized in specific treatments such as surgery continued to be under the direct management of the State. Among those are university hospitals such as al-Qasr al-`Ayny, `Ayn Shams specialized hospital, Nasser Institute for Cardiology, institutes of oncology, liver diseases and ophthalmology, each of which are renowned centers using most up-to-date scientific knowledge and methods and are sought by everybody from near and far. If the goal is the development of this management to the better through an indirect management, then this falls within its authority and is indeed amongst its duties. However, this is not to be achieved through its re-establishment as a holding company and the transfer of the organization’s funds and the vast majority of its mandate. This goal can be achieved through an appointed company, whose sole mission would be the management of its care institutions in exchange for a fee while maintaining the social dimension of the health insurance system and what it necessitates of the provision of a quantitative and qualitative

service which preserves human dignity. Furthermore, this development can be achieved within the HIO itself which has a surplus that is shifted annually in accordance of its regulations. During the last two years, this surplus reached the value of 272 million Egyptian pounds in the fiscal year 2005/2006 (Law no. 133/2005) and 184 million Egyptian pounds in fiscal year 2006/2007 (Law no. 123/2006). This way. It could be made without the waste of its possessions, without depriving it of its substance and content and without abandoning the provision of this service to the economic sector without consideration of the social reality of citizens and without attention to the effect this will have on the right to health, allowing it to be subject to control, monopoly and the private sector's profit making from the illness of those insured, [which is the effect of The Decision] once through selling the assets [of the HIO] at an extremely low cost set according to its original asset value and another through the reselling of medical services with the additional profit which the private sector aims at, after it was provided by the HIO in exchange for its cost price. [The Decision] at the end would convert the health insurance from a social right to a commercial project, and this is at a time when the principle of social reciprocal responsibility and solidarity has become a national demand in Egypt and an objective to be achieved by every citizen, including the incapable.

There is no basis or merit to the claim of the administration that the [Holding] company is owned by the State and that there is no intention to sell it. In the field of administration, issues are not managed according to intentions. The will of the administration is not a personal will of the party which issued The Decision; it is a will that is controlled by the laws and the regulations. Accordingly, the [Holding] company established to replace the HIO, even if owned by the sate, is, together with its affiliated companies, regulated by the rules applicable to other companies as

regards the liability of its shares to be traded in the stock market. Therefore, the establishment of this [Holding] company aims to convert the social health insurance scheme into a commercial health insurance, taking into consideration that it took forty years to build this social health insurance to cover 52% of Egypt's population. Leading countries in this field implement a social health insurance system and have achieved universal coverage of their population several years ago, among them are Japan 1958, Belgium 1961, Austria 1980, Germany 1988, and South Korea 1989, according to a study prepared by the National Council for Development and Social Services submitted by the administration in its document folder. Amongst the recommendations concluded by this study is affirming the role of health insurance in Egypt as a social health insurance. The study criticized the presence of two systems, a high quality one for the rich and a poor quality with limited services for the poor, in addition to the absence of a reciprocal responsibility and solidarity system that connects both systems. The study further recommended the establishment of a national organization for social insurance, and when it recommended the implementation of the principle of separating finance from delivery, it did not in any way indicate the establishment of companies to exclusively provide this service in place of the HIO which has been established and identified by the law as the party responsible to undertake this mission.

Therefore, The Decision, as it has established a [holding] company to seize from the HIO the provision of health services to health insurance beneficiaries, has thereby conflicted with a social objective ordered by the Constitution and stated by the laws; an objective that the State has sought to preserve and to extend its umbrella to all citizens. The Decision, as apparent from the documents, is therefore detached from its reasoning and in violation of the provisions of the law due to the fact that it

seizes an authority that is not granted to its source. It also constitutes a gross aggression against a constitutional right, which makes its cancellation likely when the substance of the claim is addressed and sufficiently provides for the criteria for seriousness in the request to freeze its execution.

As for the aspect of urgency, the execution of The Decision has elements which would constitute an aggression and a threat to the right of citizens to health and a transfer of the ownership of hospitals and clinics, where they receive treatment in, from the HIO to the established [Holding] company and the conversion of the HIO funds into private funds, all of which would consequences which would be irreversible in case the decision was annulled, which sufficiently establishes the urgency criterion Therefore, the requirement criteria for the petition to freeze the execution of The Decision has been fulfilled, and this [the freezing] is what the Court decides and further obliges the administrative branch to cover the costs of this petition in application of Article 184 of The Code of Procedure.

As for the claim of unconstitutionality: since what appears fom documents do not prove the breach of The Decision of more than one aspect of the law, which suffices for the freezing of its execution and later its cancellation, there is no need to adjudicate on that claim. Further, the third litigant introduced this claim together with a claim of the unconstitutionality of Egypt's agreement with the donor states as an auxiliary claim, and since his original claim was affirmed, there is no need to adjudicate on the auxiliary claim, having addressed it in the rationale of this decision instead of its final pronouncement.

"For these reasons"

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The Court rules: the acceptance of the joining litigants alongside the original litigants; the rejection of the appeal for rejecting of the claim on grounds of lack of standing of the litigants; acceptance of the petition in its form; and the freezing of the execution of The Decision. The court also obliges the administrative branch to cover the costs and ordered the referral of the petition to the State Commissioner Council to prepare the legal opinion in its regard.

Secretary of Court **Chief of Court**

[Signature] **[Signature]**