The independence of the constitutional judiciary: between the requirements of appointment and the legitimacy of election

PhD (c)./ Abdallah Haouam [1,2,3], Pr./ Faycal Louafi [1,2]

[1] University of Tebessa, (Algeria)
[2] Laboratory of Comparative Law, Social and Foresight Studies, Faculty of Law and Political
[3] Corresponding Author: abdallah.haouam@univ-tebessa.dz

Date of submission: 03/04/2026 Date of acceptance: 04/08/2026 Date of publication: 28/09/2026

****

Revision of the article: Dr./ Abdelkader Hamma (Univ. Skikda)

Abstract:

The article addresses the fundamental issue of the independence of constitutional justice, which stems from the tension between two sources of legitimacy: judicial legitimacy, derived from its role as the guardian of the Constitution, and democratic legitimacy, emanating from the popular will embodied by the legislative power. It analyzes the two primary mechanisms for selecting judges: Appointment, which guarantees expertise but carries the risk of political subordination. election which provides democratic legitimacy but exposes the judiciary to politicization. The article also examines mixed models that seek to reconcile these two approaches. The Algerian case study shows that the 2020 constitutional revision created a Constitutional Court with a mixed formation system. however, it highlights that the executive branch's control over the election mechanism for the majority of members weakens the Court's independence. In conclusion, the article argues that no perfect selection mechanism exists. The solution lies in establishing an integrated system that combines mixed mechanisms with strong subsequent guarantees such as immunity and security of tenure (inamovibilité) to ensure the true independence of constitutional justice.

Key words: *Constitutional Justice; Constitutional Court; Constitutional Judge; Independence of the Constitutional Judiciary; Constitutional Legislator.*

Introduction:

Constitutional courts, in essence, are the faithful guardians of the constitution and guarantors of fundamental rights and freedoms in a state governed by the rule of law. Their central task is to oversee the constitutionality of laws, a function that places them at the heart of interaction, and often in a state of tension, with the elected legislative authority, which derives its power and legitimacy from the popular will.

However, this unique role creates what is known as the "paradox of constitutional courts": how can an unelected body, which does not derive its legitimacy directly from the people, possess the power to invalidate legislation issued by the elected legislature? A democratically elected parliament?

This unique role also raises a constitutional and legal question regarding the source of the constitutional judge's legitimacy, and whether it rests on democratic or judicial legitimacy, thus placing the mechanisms for forming the constitutional court at the heart of the debate.

In light of the contemporary developments witnessed by constitutional systems, various mechanisms have emerged for selecting members of constitutional courts, such as appointment and election, which raises a fundamental question about the impact of these mechanisms on the independence and legitimacy of constitutional judiciary. Therefore, the problematic of this study is:

How can the mechanisms of appointment and election affect the independence and legitimacy of constitutional judiciary?

This study is based on the hypothesis that achieving the independence and legitimacy of the constitutional judiciary depends largely on the mechanism used to select its members. While appointment theoretically guarantees the selection of highly competent judges, in practice it may lead to political subservience. Conversely, election grants the court democratic legitimacy but exposes the judiciary to the risk of politicization and partisan affiliation, making the process of balancing these two principles a real challenge.

The research employs a comparative analytical methodology to deconstruct and understand the study variables. This methodology seeks to analyze how both appointment and election mechanisms can affect the independence and legitimacy of the constitutional judiciary. This is achieved by reviewing diverse international legal models and evaluating the advantages and disadvantages of each mechanism to arrive at objective conclusions regarding the best ways to ensure an effective and independent constitutional judiciary.

FIRST TOPIC:

APPOINTMENT AS A MECHANISM FOR CONSTITUTIONAL COURT MEMBERSHIP

The appointment mechanism is the traditional and most common method for selecting members of constitutional courts. This task is assigned to a specific authority or body within the state. The primary objective of this mechanism is to ensure the selection of highly experienced and competent judges, thus contributing to maintaining the court's professional performance and shielding it from the partisan conflicts that

may accompany election processes. However, this mechanism carries a significant risk of political bias, as the appointing authority may be inclined to choose its loyalists, thereby threatening the court's independence in the eyes of the opposition or the public (Arash, 2020, p. 05).

First Requirement: Requirements and Conditions of Appointment

To ensure that appointments are free from purely political considerations, most legal systems require strict objective conditions relating to qualifications and experience. These conditions aim to filter candidates based on competence and professionalism, and are the first line of defense against attempts to politicize the court. Among the most prominent of these conditions are: (Khairan, 2021, p. 15).

• **Experience and qualifications**: Candidates must have high judicial or legal experience. In Egypt, for example, two-thirds of the court's vice presidents must be members of the judiciary, with priority given to members of the court's commissioners' body. The candidate must have spent at least five consecutive years in the position of advisor or its equivalent, or at least eight consecutive years as a law professor in Egyptian universities. These requirements ensure that the constitutional judge has the necessary legal depth to address complex constitutional issues with political dimensions (Haj Ibrahim, 2022, p. 73).

• **Age**: Some constitutions specify a minimum and maximum age for membership to ensure that the judge is of an age that allows him to combine intellectual maturity with practical experience. In Syria, the constitution stipulates that a judge must be between forty and seventy-two years old, and must have practiced law, judiciary, or university teaching for a period of no less than 15 years (United Nations Human Rights, 1999, p. 57).

•**International Standards:** The 1999 Universal Declaration of Justice emphasizes that the selection and appointment of judges must be based on objective and transparent criteria and sound professional qualifications. Defining these qualifications is not merely a formality, but an effective tool for ensuring competence and professionalism. This places an additional obstacle in the way of any political entity seeking to fill the court with its loyalists, as candidates must meet the minimum qualifications stipulated in the constitution (Alwani, 2017, p. 09).

In the United States, although there are no specific constitutional requirements for membership in the Supreme Court in terms of age, education, or experience, the practical process requires that candidates have high legal expertise. Candidates undergo an intensive vetting process that begins with recommendations from members of the Senate, followed by an evaluation by the Federal Bureau of Investigation (FBI) and the American Bar Association. This comprehensive examination ensures that candidates possess the skills and competence necessary to serve in the highest judicial body in the country (Al-Muzani & Khattar, 2017, p. 12).

Therefore, these stringent requirements, although not written into the U.S. Constitution, serve as a safeguard against appointments that might be motivated by other irrelevant motives, such as corruption or political favoritism. The goal is to ensure the court is composed of highly qualified judges, thereby enhancing public confidence in its integrity and impartiality (IDEA, 2021). This combination of informal standards and procedural safeguards contributes to a delicate balance between the political role of appointment and the professional role of the judiciary. While the president and the Senate have a direct role in forming the court, the requirement of high professional qualifications ensures that selection is based on merit, thus strengthening the court's long-term independence (Daraji, 2020, p. 02).

Second Requirement: The appointing authority

The appointing authority varies according to political systems, and the main models of appointing authorities can be classified as follows: (The Global Charter of Judges, 1999, p. 19)

• The executive model: In this model, the head of state (the president or monarch) is responsible for appointing constitutional judges. In Egypt, the head of the court and his deputies are appointed by a decree from the president after consulting the Supreme Judicial Council. Although this model gives the executive authority significant power, it may be subject to certain conditions or consultations, such as consulting the Supreme Judicial Council (Kuwait University Journal, 2024, p. 10).

• The mixed model: This is considered the most balanced model, where the power of appointment is distributed among several state authorities. In Morocco, the Constitutional Court consists of twelve members, half of whom are appointed by the King, while the other half are elected by the House of Representatives and the House of Councillors. In France, the President of the Republic and the Speakers of the two legislative chambers each appoint one-third of the members of the Constitutional Council. This model aims to reduce the dominance of any single authority over the court, thereby strengthening its legitimacy and minimizing accusations of subservience (Laws of the Supreme Constitutional Court of Egypt, 2020, p. 63).

• The role of supreme judicial councils: Supreme judicial councils, such as the High Council of the Judiciary, play a significant role in some systems, as they nominate judges or submit a list of them before the official appointment. This helps to insulate the process from direct political influence (Daraji, 2020, p. 06).

One of the most prominent sub-models of appointment is the judicial-executive model, which distributes appointment authority between the judicial and executive branches. In this model, however, the judicial branch (such as senior judges in the Supreme Courts) usually nominates candidates or draws up a shortlist of candidates, after which the executive branch selects one candidate and formally appoints him (Moroccan Constitutional Court).

This model also seeks to achieve a delicate balance between professional competence and political legitimacy; it ensures that the judiciary has a role in determining the most qualified candidates, while the final word remains with the politically accountable executive authority. The International Institute for Democracy and Electoral Assistance (IDEA) explains that this integrated model is applied in Egypt and Iraq, which shows that judicial appointments in democratic systems require the involvement of multiple actors (Federal Supreme Court Law, 2025, p. 08).

In Germany, the "Commission for the Selection of Judges" (Richterwahlausschuss) is an example of a mixed model. This commission is composed of state ministers (Länder) and an equal number of members elected by the Federal Parliament (Bundestag), and is overseen by the Federal Minister of Justice. This composition ensures that the selection is based on broad consensus among different political and regional parties, thus helping to reduce the politicization of the appointment process (Constitution of Jordan, 2024, p. 89).

In Algeria, Article 186 of the Constitution (amended in 2026) stipulates that the Constitutional Court shall consist of twelve (12) members, including four (4) members appointed by the President of the Republic, as well as the President of the Constitutional Court (Constitution of the People's Democratic Republic of Algeria, 2026, Art. 186). By extracting and analyzing this provision, it becomes clear that the executive branch possesses direct and exclusive power to appoint one-third of the Court's members. This structural design grants the executive significant influence over the composition of this supreme judicial body.

Third Requirement: Appointees to the Constitutional Court

To ensure diversity of experience and perspectives within the court, the categories from which appointments can be made are often defined. These categories include: judges from supreme courts, law professors, and experienced lawyers. The distribution of members varies from country to country; in some cases, five members are elected by parliament, five by the judiciary, and five are appointed by the president (Khairan, 2021, p. 20).

This diverse composition is essential to ensure that the court is able to consider constitutional issues from different angles. Judges from higher courts add practical experience in applying the law, while academics contribute to enriching the debate with doctrinal and theoretical analysis, and experienced lawyers provide a practical view of the law from the perspective of litigants (Arash, 2020, p. 112).

In some systems, the constitution itself specifies certain quotas for each category. In Egypt, for example, the law stipulates that at least two-thirds of the vice presidents of the Supreme Constitutional Court must be members of the judiciary. These conditions aim to preserve the court's judicial character while allowing for the inclusion of legal experts from outside the judiciary to enhance diversity and efficiency (Al-Qaid, 2024, p.26).

In addition to these categories, there is a unique category in France, where former presidents of the Republic become lifetime members of the Constitutional Council. This measure aims to benefit from their high political experience and to give historical weight to the Council's decisions, but on the other hand, it raises questions about the impartiality of these members in matters with a direct political dimension, especially if they relate to their previous decisions (United Nations Human Rights, 1999).

Fourth Requirement: General evaluation of the appointment mechanism

The appointment mechanism has clear advantages, the most important of which is that it ensures the selection of judges with high experience and competence, which maintains the professional performance of the court. It also spares the court direct involvement in the partisan conflicts that may accompany the election process. However, the most prominent disadvantage of this mechanism is the possibility of political subservience, as the appointing authority may tend to choose its supporters, which threatens the independence of the court and its legitimacy in the eyes of the opposition or the public (Journal of Jurisprudence and Law, 2024, p. 36).

Therefore, the effectiveness of appointments does not depend on the mechanism itself, but rather on the constitutional and procedural safeguards surrounding it. Multiple appointing bodies and the existence of rigorous objective criteria reduce the risk of politicization and enhance judicial impartiality (Al-Qaid, 2024). Furthermore, the appointment mechanism, despite its shortcomings, is often justified by its ability to ensure the formation of a court of competent individuals capable of issuing complex legal rulings without being influenced by populist pressures. By entrusting the selection to multiple experts or bodies, a high level of professionalism and expertise can be achieved, which is crucial in the field of constitutional law (Laws of the Supreme Constitutional Court of Egypt, 2020, p. 66).

However, the risks of political dependence remain, especially in systems that do not guarantee judges lifetime appointments. In Latin America, for example, permanent appointments to constitutional courts are rare, with the exception of Brazil, making judges more susceptible to political pressures that could influence their decisions (Daraji, 2020, p. 32).

The independence of a judge depends not only on how they are chosen, but also on how they are protected after assuming office. A judge must be immune from threats of dismissal or arbitrary transfer in order to rule justly, but it is these immunities that transform an appointment that may initially be political into genuine independence in the long run (University of Chlef, 2024, p. 15843).

SECOND TOPIC:

ELECTION AS A MECHANISM FOR ACQUIRING MEMBERSHIP IN THE CONSTITUTIONAL COURT

Election as an alternative to appointment entrusts the selection of constitutional judges to other bodies, often democratically elected. While differing from direct popular election, it raises questions about its ability to achieve the necessary balance between legitimacy and independence.

First requirement: Membership as an election mechanism

In this context, election is defined as the process of selecting members of the Constitutional Court by another body through voting, rather than direct appointment. The primary objective of this mechanism is to grant the Court democratic legitimacy, as its members are chosen by representatives of the people, such as the legislative body or supreme judicial councils. This enhances public confidence in the Court's decisions and makes it more closely aligned with the public will (Legal Publications).

Therefore, the philosophy behind the election mechanism is that the constitutional judiciary, with its power to oversee the legislation of the elected authority, must have a form of democratic legitimacy. This prevents the court from being considered an "aristocratic" or elitist authority that is not subject to popular accountability, thus enhancing its credibility in the eyes of the public (Mabrouk, 2018, p. 05).

Moreover, the electoral process, although not directly by the people, indirectly links judges to the political process. This connection ensures that judges are aware of popular and political concerns, which helps them make balanced decisions that enjoy broader societal acceptance (Venice Commission, 1993), In Switzerland, for example, voters rejected a proposal to select judges by lot, demonstrating their preference for the traditional parliamentary election mechanism despite the criticisms leveled against it. This rejection reflects a conviction that democratic legitimacy, even if indirect, is the foundation upon which the judicial system should be built (Legal Publications, 2023, p. 1419).

Second requirement: Procedures for electing representatives of certain bodies.

The election process takes several forms:

• **Parliamentary election**: The legislature is responsible for electing members of the court. This model often requires an overwhelming majority, such as a two-thirds majority. This procedural requirement serves as a safeguard mechanism aimed at compelling political parties to agree on a widely accepted candidate, thus reducing the likelihood of selecting partisan judges and enhancing their impartiality (IDEA, 2020).

• **Election of judicial bodies**: In some systems, a portion of the court's members are elected by the higher judicial councils or the Supreme Court itself (Journal of Jurisprudence and Law, 2024).

In Germany, judges of the Federal Constitutional Court are elected by both houses of parliament, the Bundestag and the Bundesrat. This process requires a two-thirds majority, an overwhelming majority that forces parties to negotiate and reach a consensus candidate with broad acceptance. This requirement prevents any single party from imposing its candidate, thus ensuring the impartiality of the judiciary (Daraji 2020), In contrast, Mexico recently underwent a controversial judicial reform, in which parliament passed a law allowing judges, including Supreme Court justices, to be elected by popular vote. However, critics of this system, such as the United States and human rights organizations, argue that it undermines judicial independence by politicizing the judiciary, as judges will be forced to engage in costly election campaigns dependent on party support (Journal of Jurisprudence and Law, 2024, p. 46).

The outgoing Mexican president promoted this reform with the aim of "cleansing" the judicial system, which he accused of obstructing popular reforms. This model represents an attempt to enshrine direct "revolutionary legitimacy" at the expense of the institutional independence of the judiciary, raising serious concerns about the ability of elected judges to resist partisan pressures (Constitution of Jordan, 2024).

Third requirement: Electing professors of constitutional law

Many constitutions place particular importance on the presence of professors of constitutional law in the composition of the court, given their academic and jurisprudential expertise. In some countries, the process of electing one professor of constitutional law to the Constitutional Court is organized through a regional seminar of Western universities within the framework of the partial renewal of the court's members. The candidate must have at least 20 years of actual service experience in the field of law in higher education institutions, and must submit a sworn declaration of non-affiliation with any political party (Arash, 2020, p. 116).

Therefore, including law professors in the Constitutional Court's composition enhances its intellectual depth and ensures that its decisions are based on sound legal and jurisprudential analysis. Academics possess a broad theoretical understanding of the law, enabling them to interpret and apply the constitution in complex and evolving contexts (Libyan Constitutional Laws). To guarantee their impartiality, the objective criteria requiring many years of experience in academic teaching, in addition to a declaration of non-affiliation with any political party, serve as a significant barrier against any attempt to politicize their selection. These safeguards ensure that they are chosen based on their professional competence, not their political loyalty (Jordanian Judicial Justice Center, 2023).

While judges in most legal systems are prohibited from engaging in any other profession while in office, university teaching is an exception to this prohibition in some cases. This exception recognizes the dual role of the academic judge as a legal expert and educator, allowing them to share their expertise in academic circles without compromising their independence (Legal Publications, 2023, p. 1425).

Fourth requirement: Evaluating the Election Mechanism and its Legitimacy

The election mechanism offers a key advantage: it lends democratic legitimacy to the court by entrusting the selection to representatives of the people, thus enhancing public confidence in its decisions. However, this mechanism is not without risks, most notably the politicization of constitutional judiciary. Elected judges may be inclined to make decisions that serve the interests of the party or faction that elected them, thereby threatening their independence and impartiality (Civil and Commercial Procedure Law, 2020, p 03).

This inherent contradiction reveals that while elections confer democratic legitimacy, they also expose the judiciary to the risk of partisan dependence. To mitigate this risk, procedural safeguards, such as the requirement of an overwhelming majority, are essential to achieving a balance between legitimacy and independence (Khalifa, 2018), Furthermore, the electoral mechanism, particularly in its direct popular form, can transform judges into politicians. A judge compelled to campaign may be forced to rely on party funding and support, making them indebted to the faction that brought them to power. This poses a serious threat to judicial impartiality, as the judge may be inclined to make decisions that serve the interests of their party, thus undermining the legitimacy of their rulings (Legal Publications, 2024, p. 1427).

Furthermore, the election process may weaken standards of professional competence. While appointment systems favor experts with strong professional records, elections may favor the most popular candidates or those best able to raise funds and campaign. This could lead to the election of judges who lack the necessary legal depth to handle complex constitutional issues (Daraji. 2020), The problem is not limited to direct elections alone, but extends to systems that set term limits and allow for renewal. A judge serving a fixed, renewable term may be under constant pressure to make concessions to the ruling power for fear of not having their term renewed. This is a blatant contradiction of the principle of independence that a constitutional judge should possess, which has led some experts to call for the permanent appointment of judges (Libyan Constitutional Laws).

Fifth requirement: The Algerian Model: Appointment and Election of the Constitutional Court

The 2020 Algerian constitutional amendment marked a decisive turning point in the judicial system, replacing the Constitutional Council with a new body called the "Constitutional Court." This change is not merely a change of name, but carries a

deeper significance related to the nature of the constitutional function. The use of the term "court" gives the new body a clear judicial identity and emphasizes that its decisions must be based on purely legal principles. This development reflects the constitutional framers' desire to give constitutional review a more legal character (Jordanian Judicial Justice Center, 2023).

The Algerian Constitution (amended in 2026) adopts a mixed model for the formation of the Constitutional Court, combining appointment and election mechanisms. According to the text of the Constitution, the Court consists of twelve (12) members, distributed as follows (Constitution of the People's Democratic Republic of Algeria, 2026, Art. 186, p. 31).

• Four (4) members appointed directly by the President of the Republic, including the President of the Constitutional Court.

• One (1) member elected by the Supreme Court from among its members.

• One (1) member elected by the Council of State from among its members.

• Six (6) other members elected by ballot from among professors of constitutional law.

A direct reading of Article 186 reveals that the President of the Republic is granted the power to determine the conditions and procedures for electing these six members. In practice, this unique Algerian experience meant that professors at Algerian universities actively participated in the Constitutional Court elections as both voters and candidates. However, analyzing this constitutional provision from a legal standpoint shows that granting the executive the authority to set election conditions allows for effective control over the electoral process for the majority of the court's members. Consequently, this broad executive power significantly weakens the independence of the electoral process, transforming it into a mechanism that reinforces executive influence rather than mitigating it.

THIRD TOPIC:

CONSTITUTIONAL PRINCIPLES AND GUARANTEES FOR THE INDEPENDENCE OF THE CONSTITUTIONAL COURT JUDGE

The independence of the constitutional judiciary is not merely a procedural mechanism, but a fundamental constitutional principle upon which legal legitimacy and democracy are based. This principle rests on a set of essential pillars that ensure its effectiveness and impartiality.

First requirement: The Principle of Judicial Independence and the Separation of Powers

The independence of the constitutional judiciary from the legislative and executive branches is fundamental to its work. It guarantees its ability to make decisions with integrity and impartiality, free from any political influence or external pressure. This independence can only be achieved if the constitution explicitly stipulates that judges are subject only to the law and their conscience in their rulings, and if the principle of separation of powers guarantees the existence of an independent judiciary with exclusive jurisdiction to adjudicate constitutional matters, including disputes between governmental authorities. The independence of the Constitutional Court is a necessary condition for enabling it to fulfill its role as an impartial arbiter between the branches of government, and it embodies the principle that the separation of powers is not merely a distribution of jurisdictions, but also a guarantee of independence (Laws of the Supreme Constitutional Court of Egypt, 2020, p. 70).

The independence of the constitutional judiciary from the executive and legislative branches is a pressing necessity, especially since these two branches participate directly or indirectly in the legislative process, which is subject to the court's oversight. This independence is what grants the court the necessary credibility to fulfill its role as an impartial arbiter between political parties and ensures that its rulings are based solely on the law (Moroccan Constitutional Court). True judicial independence can only be achieved through complete financial and administrative independence from the executive branch. The executive branch must not be able to use the budget as a tool to exert pressure on the court. In Bahrain, for example, the Supreme Judicial Council enjoys an independent budget, which enhances its ability to operate freely and efficiently without financial constraints from the government (Legal Publications, p. 74235).

Furthermore, the court must be able to manage its internal affairs with complete freedom, including appointing its staff and providing the necessary infrastructure and resources for its work. This administrative independence ensures the court's ability to operate effectively and efficiently, free from any external interference or influence, thereby enhancing public confidence in its integrity (Kuwait University Journal, 2024).

Second requirement: The Principle of Protecting Individual and Collective Freedoms and the Supremacy of the Constitution

The Constitutional Court is the primary protector of individual and collective rights and freedoms, ensuring that legislation does not violate them. Among the most important tools used by the constitutional judge in this context is the principle of necessity and proportionality, which requires that restrictions on freedoms be justified, necessary, and non-discriminatory, and that they be proportionate to the legitimate objective sought. The Constitutional Court's role is to ensure that all other legal rules (laws, regulations) respect the supremacy of the Constitution and the hierarchy of legal rules. The Constitution is the supreme law, whose provisions supersede all other

legislation, and the Court works to enforce this hierarchy, so that no legislation can contradict it (Moroccan Constitutional Court).

Since the principle of necessity and proportionality is central to the work of the constitutional judge, it obliges the legislative authority to impose restrictions on freedoms only if they are necessary to achieve a legitimate objective (such as public security or public health), and that these restrictions are proportionate to the desired objective. This principle grants the judiciary broad authority to review legislative objectives and means, thus strengthening its role as a guarantor of rights (Daraji, 2020). The court's role is not limited to applying the provisions of the constitution literally, but extends to interpreting them in light of social and political changes. This dynamic role makes the constitutional judiciary a key player in shaping policies for individual and collective freedoms, as it can, through its rulings, develop and expand the concept of these freedoms (Laws of the Supreme Constitutional Court of Egypt, 2020, p. 1430).

This flexibility in interpretation ensures that the constitution remains a living document, adapting to new challenges, thus strengthening the court's legitimacy in the eyes of the people. Through interpretation, the constitutional judge can enhance the list of constitutional rights and freedoms even when the text is silent, thereby affirming their role as the primary guarantor of these rights (Arash, 2020, p. 125)

Third requirement: Immunity and Irremovability

To guarantee the independence of the constitutional judge, it is not enough to simply stipulate the principles; they must be supported by constitutional and personal guarantees that protect them from pressure and threats. Immunity and irremovability are among the most prominent of these guarantees.

• Constitutional immunity: Immunity is defined as a legal protection granted to constitutional judges to prevent them from being prosecuted for actions related to their job duties. Its main purpose is to protect the judge from malicious lawsuits or politically motivated prosecutions, and to enable him to perform his duties with a clear conscience and complete peace of mind. Comparative experiences show that immunity may be substantive (related to judicial acts) or procedural ‘requiring lifting of immunity before prosecution’ (Legal Publications, 2024, p. 1435)

• Irremovability: The principle of irremovability is one of the most important personal guarantees for a judge, as he may not be removed from his position except for legally specified reasons (such as incapacity or misconduct), and after a fair disciplinary trial that guarantees him the right to defend himself. This principle gives the judge job security and peace of mind, and frees him from the fear of arbitrary penalties that the executive or legislative branches may use against him (Laws of the Supreme Constitutional Court of Egypt, 2020, p. 75).

• The principle of irremovability constitutes the second line of defense against the politicization of the court. If the judge was chosen for political reasons, this principle greatly reduces the ability of the appointing party to use the threat of removal

to influence his decisions, and this turns the potential political appointment into actual independence in the long run, confirming that the independence of the judge depends not only on his good selection, but also on the difficulty of removing him (IDEA, 2020).

Likewise, the principle of irremovability is one of the most important guarantees of the independence of the judge, as it ensures him peace of mind and job security, and prevents him from fearing for his professional future. A judge who fears being dismissed from his position cannot rule justly, which makes this principle crucial in achieving the independence of the judiciary (IDEA, 2021).

Furthermore, judicial immunity, which prevents a judge from being prosecuted for actions related to their duties, is a complementary guarantee aimed at protecting judges from malicious lawsuits and politically motivated prosecutions. This is explicitly affirmed in the Algerian Constitution (amended in 2026), which stipulates that members of the Constitutional Court enjoy immunity from prosecution (Constitution of the People's Democratic Republic of Algeria, 2026). A direct analysis of this constitutional protection demonstrates that it is a necessary mechanism, designed to empower judges to perform their duties with absolute confidence and independence. In addition, these guarantees are not limited to immunity from dismissal; they also include the inability to transfer a judge without their consent, as stipulated in the Tunisian Constitution. This guarantee protects judges from the use of transfer as a means of punishment or pressure, and ensures that the decision to transfer them is based purely on professional considerations, not political ones (IDEA, 2021).

Fourth requirement: Case Study of Algeria: Guarantees and Evaluation

The Algerian Constitution (amended in 2026) includes several guarantees aimed at protecting the independence of the judiciary in general, and the constitutional judiciary in particular. In addition to the immunity enjoyed by members of the Constitutional Court, an examination of the constitutional text shows that the law punishes any violation of the independence of a judge or obstruction of the course of justice, and allows a judge to notify the Supreme Judicial Council of any infringement upon his independence, pursuant to Articles 172 and 178 (Constitution of the People's Democratic Republic of Algeria, 2026, Arts. 172 & 178, p 54).

However, a direct review of the constitutional text reveals a glaring contradiction in Article 180 of the Algerian Constitution (amended in 2026), which stipulates that the Supreme Judicial Council, the supposed guarantor of judicial independence, is headed by the President of the Republic (Constitution of the People's Democratic Republic of Algeria, 2026, Art. 180). From an analytical standpoint, this situation represents a conflict of interest, as the task of protecting the judiciary from the executive branch is entrusted to the very head of that branch, effectively undermining the Council's role as a guarantor of independence.

Furthermore, the mixed formation model of the Constitutional Court, which combines appointment and election, has sought to give the court broader legitimacy, but executive control over the mechanisms for electing the majority of members weakens this legitimacy. Thus, it can be said that the independence of the Constitutional Court in Algeria is "incomplete independence," as the institutional structure still gives preference to the executive authority (Daraji, 2020, p. 09).

Fifth requirement: Evaluating Procedural Aspects of Enhancing Independence

These procedures ‘confidentiality of deliberations, right to dissent, membership requirements’, are not merely regulatory rules, but rather effective guarantees that strengthen the independence of the judge and protect him from subservience, whether appointed or elected. They constitute a professional framework that ensures decisions are based on legal principles, not on other considerations (The Modern Journal of Legal Studies). These guarantees cannot be separated; each complements the other. The presence of a qualified judge ‘membership requirements’ who makes his decisions in a confidential environment (deliberations) and enjoys the right to freely express his opinion (dissent) is an integrated system that ensures the constitutional judiciary is effective and independent in performing its duties (Daraji, 2020, p. 11).

Therefore, judicial independence cannot be achieved without the court's financial and administrative independence. Preventing the executive branch from using the budget as a tool for political pressure empowers the court to operate with complete freedom and provides the necessary infrastructure and resources to ensure its effectiveness and efficiency (Legal Publications).

As evidence of this, the Algerian Constitution (amended in 2026) explicitly stipulates in Article 188 that the Constitutional Court has the power to oversee a "pleading of unconstitutionality" (Constitution of the People's Democratic Republic of Algeria, 2026, Art. 188). Analyzing this constitutional mechanism reveals that it allows any party in a legal dispute to argue that a legislative provision violates their rights. This represents a qualitative addition, transferring constitutional review from the exclusive domain of political bodies to a tool available to citizens, thereby strengthening the court's role.

FORTH TOPIC:

PROCEDURAL PRINCIPLES AND THEIR IMPACT ON THE INDEPENDENCE OF THE CONSTITUTIONAL COURT

In addition to constitutional principles and guarantees, there is a set of procedural rules that strengthen the independence of the Constitutional Court and protect the individual judge within it.

First requirement: Deliberations as a Procedural Mechanism for Protecting the Constitutional Judge

Many legal systems stipulate that deliberations preceding a verdict must be confidential and that only the judges who heard the arguments may participate. The confidentiality of these deliberations aims to enable judges to express their opinions freely and without fear of external or internal pressure, thus ensuring that the final decision is the product of purely legal and impartial debate (Daraji, 2020). Therefore, the principle of confidentiality of deliberations is a cornerstone of judicial independence, providing judges with a safe environment to express their opinions without fear of political or popular influence. This confidentiality is essential to ensure that the decision stems from their legal convictions and not from any other considerations (Journal of Jurisprudence and Law, 2024, p. 44).

Furthermore, confidentiality allows judges to exchange views and express differing opinions openly, enriching legal debate and leading to more mature and accurate judgments. It prevents any leaks of information that could influence the case or place judges under pressure from public opinion (IDEA, 2020). While deliberations are conducted in private, the law ensures that the verdict is announced in open court. This combination of confidentiality in the debate and publicity in announcing the verdict balances the protection of judicial independence with the transparency of the judicial process, thereby enhancing public confidence in the integrity of the court (Laws of the Supreme Constitutional Court of Egypt, 2020, p. 79).

Second requirement: Dissent or dissenting opinion and its impact on protecting the constitutional judge

Dissent, or dissenting opinion, is the right of a judge who disagrees with the majority opinion to record their opinion and its reasons in writing in the case file. This mechanism is considered an important guarantee of the independence of the individual judge, encourages in-depth jurisprudential debate within the court, and adds transparency to the decision-making process, while the confidentiality of deliberations protects freedom of opinion, dissenting opinion grants the judge public freedom and reflects the existence of a deep debate. Some believe that considering dissenting opinions may be inappropriate in the field of justice, but its proponents argue that deliberation.

Confidentiality aims to guarantee the independence of the judge and provide a calm environment for issuing a ruling without being influenced by public opinion. Although some systems may not give any weight to dissenting opinions in interpreting the ruling, their existence remains a safeguard for the individual judge and demonstrates that the court's decision stems from legal debate, not a binding consensus (Alwani, 2017). The judge's right to record their dissenting opinion serves as a safeguard for the independence of the individual judge. Instead of forcing them to agree with a ruling they do not believe in, this right empowers them to express their legal position publicly, thus enhancing their integrity and credibility (Legal Publications).

The importance of dissenting opinions extends beyond protecting individual judges; it also plays a role in the development of legal doctrine. Dissenting opinions today may form the basis for new rulings in the future, enriching legal debate and ensuring that the law continuously evolves to keep pace with social and political changes (Al-Qaid, 2024). In Morocco, for example, the new Judicial Organization Law stipulates the right to formally record dissenting opinions in judicial deliberations. This development is a significant step towards enhancing transparency in judicial work and demonstrates that debate within the court is a vital and dynamic process, not merely a mechanical application of the law (Arash, 2020, p. 130).

Third requirement: Membership Requirements as a Guarantee of the Constitutional Judge's Independence

The objective requirements for membership (such as experience and age) are a primary and fundamental guarantee for selecting the most qualified individuals. A highly qualified judge is best equipped to resist political pressure and adhere to their professional conscience, making these requirements closely linked to the concept of effective independence (Jordanian Judicial Justice Center, 2023). Furthermore, requirements stipulating specific judicial or academic experience ensure that the candidate has spent a considerable amount of time in an independent professional environment, thus reducing the likelihood of selection based on party loyalty. This initial safeguard is the strongest line of defense against any attempt to politicize the judiciary through appointment (Legal Publications, p. 74240).

Therefore, these conditions are not limited to academic qualifications and experience, but also include ethical and behavioral standards. The candidate must be known for integrity and impartiality, and must adhere to the duty of discretion and refrain from any activity incompatible with their position. These ethical conditions are essential to strengthening public confidence in judges (Al-Qaid, 2024, p. 26).

The existence of judicial councils and bodies that participate in the selection process, as is the case in some European countries, enhances the independence of judges. By entrusting the task of selecting candidates to representatives of the judiciary itself, it is ensured that the selection is based on purely professional criteria, not political considerations, thus consolidating the independence of the judiciary (Mabrouk, 2018, p. 05).

Fourth requirement: Evaluating Procedural Aspects of Enhancing Independence

These procedures (confidentiality of deliberations, right to dissent, membership requirements) are not merely regulatory rules, but rather effective guarantees that strengthen the independence of the judge and protect him from subservience, whether appointed or elected. They constitute a professional framework that ensures decisions are based on legal principles, not on other considerations (Journal of Jurisprudence and Law, 2024). These guarantees cannot be separated from one another; each

complements the other. The presence of a qualified judge (membership requirements) who makes his decisions in a confidential environment (deliberations) and enjoys the right to freely express his opinion (dissent) is an integrated system that ensures the constitutional judiciary is effective and independent in performing its duties (Arash, 2020, p. 135).

Therefore, judicial independence cannot be achieved without the court's financial and administrative autonomy. Preventing the executive branch from using the budget as a tool for political pressure empowers the court to operate with complete freedom and to provide the necessary infrastructure and resources to ensure its effectiveness and efficiency (Alwani, 2017). Furthermore, providing the necessary infrastructure and resources for constitutional courts, such as advanced technology and qualified personnel, is an essential part of their independence. A court suffering from a lack of resources may be more susceptible to external influences (Haj Ibrahim, 2022, p. 73)

Conclusion:

In conclusion, there is no perfect mechanism for selecting members of the Constitutional Court, as both appointment and election have their advantages and disadvantages. Appointment tends to favor experience and professional competence, while election promotes democratic legitimacy. The greatest challenge lies in balancing the need for professional competence with democratic imperatives, since appointment can lead to political subservience, and election can lead to the politicization of the judiciary.

- **Findings**:

•Mixed models are the optimal solution: The optimal solution lies in mixed models that distribute the power of appointment or election among several branches (executive, legislative, and judicial), thus reducing the dominance of any single branch and enhancing the legitimacy of the court.

•The importance of procedural safeguards: Procedural safeguards, such as requiring an overwhelming majority for election, are essential to ensure broad consensus on candidates, which reduces partisan influence.

•Subsequent safeguards are crucial: Constitutional (immunity and irremovability) and procedural (confidentiality of deliberations and the right to dissent) safeguards are the cornerstone of ensuring the independence of judges after their selection, transforming politically motivated appointments or elections into genuine independence in the long term.

- **Recommendations:**

Based on the above, the following recommendations can be made to strengthen the independence of constitutional courts:

• Adopting hybrid models: States should strive to adopt hybrid mechanisms for forming constitutional courts, ensuring the participation of various authorities and bodies, thus reducing the dominance of any single authority and enhancing the court's legitimacy.

•Establishing objective criteria: Objective and transparent criteria should be established for selecting constitutional judges, criteria that transcend political considerations and focus on academic qualifications and professional experience.

•Strengthening Constitutional Guarantees: Judicial immunity must be strengthened, the principle of irremovability guaranteed, and no legislation immune from judicial review. This will grant judges job security and increase their ability to resist pressure.

•Recognizing Dissenting Opinions: Encouraging the recognition of judges' right to record dissenting opinions in final judgments will foster a culture of pluralism within the court and demonstrate the depth of legal debate.

•Guaranteeing Financial and Administrative Independence: Constitutional courts must enjoy complete financial and administrative independence from the executive branch to enable them to perform their duties without any pressure or interference from the government.

References:

1. *Constitution of the People's Democratic Republic of Algeria. (2026).*
2. *Constitution of the People's Democratic Republic of Algeria (Amended 2026).*
3. *Civil and Commercial Procedure Law. (2020). https://manshurat.org/node/74235*
4. *Federal Supreme Court Law. (2025). http://dspa.ul.edu.lb/static/uploads/files/etude-juridique/e-j-110-4-2025.doc*
5. *Laws of the Supreme Constitutional Court of Egypt. (2020). https://manshurat.org/node/63719*
6. *Moroccan Constitutional Court. (n.d.). Composition of the Court. https://www.cour-constitutionnelle.ma/Article?id=186&tp=tx&Page=Activite*
7. *United Nations Human Rights. (1999). Basic principles on the independence of the judiciary. https://www.ohchr.org/ar/instruments-mechanisms/instruments/basic-principles-independence-judiciary*
8. *Al-Muzani, H., & Dhaif Khattar, A. (2017). The independence of the constitutional judiciary and its impact on the review of the constitutionality of laws [Thesis].*
9. *Al-Qaid, Z. A. (2024). Mechanisms for forming constitutional courts in comparative systems. Al-Zaytuna University of Jordan Journal of Legal Studies, 5(3), 23–38.*
10. *Alwani, G. (2017). The impact of the formation of the constitutional court on the independence of the judiciary in Qatar and comparative law [Thesis]. Qatar University.*
11. *Arash, N. E.-D. (2020). Judicial immunity as a mechanism for activating the supervisory role of the Constitutional Court after the 2020 constitutional amendment. Journal of Studies on the Effectiveness of the Legal Rule, 5(5), 102–116.*
12. *Daraji, I. (2020). The Syrian Constitutional Court [Doctoral dissertation, London School of Economics and Political Science].*

13. *Haj Ibrahim, A. (2022). Judicial independence in the 2020 Constitution. Modern Journal of Legal Studies, 68–91.*
14. *International Institute for Democracy and Electoral Assistance (IDEA). (2020). A constitutional judge's guide to applying Article 49 of the Constitution.*
15. *International Institute for Democracy and Electoral Assistance (IDEA). (2021). Constitutional courts after the Arab Spring.*
16. *Journal of Jurisprudence and Law. (2024). Elections in parliamentary councils. https://www.revue-alnaqd.com/*
17. *Khairan, N. I. (2021). The legal regulation of the work of the constitutional judiciary (Iraq as a model). Daily Life Journal, 5–28.*
18. *Khalifa, S. (2018). Dissenting opinions in Constitutional Court decisions.*
19. *Kuwait University Journal. (2024). The impact of appointment and election on the independence of the constitutional judiciary. Comparative Studies.*
20. *Legal Publications. (n.d.). https://manshurat.org/node/74235*
21. *Legal Publications. (2024). Deliberation of judgments. https://manshurat.org/node/74235*
22. *Mabrouk, Z. (2018). The independence of the Algerian judiciary in the 2020 Constitution. Al-Manar Journal for Legal and Political Research and Studies, 5(5), 1411–1425.*
23. *The Modern Journal of Legal Studies. (n.d.). https://mucjournals.muc.edu.ps/index.php/pub/article/view/163*
24. *University of Chlef. (2024). Organizing the election of a single professor of constitutional law. https://www.univ-chlef.dz/fdsp/?p=15843*
25. *Venice Commission. (1993). The most important models of constitutional courts: Draft report. Council of Europe. https://www.coe.int/en/web/venice-commission.*