

Algerian Constitutional Court

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Abstract:

Embodying the principle of the supremacy of the constitution, the Algerian legislator adopted the principle of monitoring the constitutionality of laws in all the constitutions that the country knew, under the name of the Constitutional Council, until the last constitutional amendment in 2020, where the Constitutional Court was organized as a new oversight body. Aimed at protecting the constitution and strengthening the principle of separation between powers, and promoting and preserving constitutionally recognized rights and freedoms. It is also charged with adjudicating disputes that may arise between constitutional authorities, in addition to interpreting the constitution.

This study was devoted to talking about the composition of the Constitutional Court, which retained some of the features that characterized the formation of the Constitutional Council, and to studying the tasks of this young court in Algeria.

Keywords: the constitution, constitutional oversight, the constitutionality of laws, the constitutional court.

الملخص:

تجسيداً لمبدأ سيادة الدستور، تبني المشرع الجزائري مبدأ مراقبة دستورية القوانين في جميع الدساتير التي عرفت البلاد، تحت مسمى المجلس الدستوري، حتى آخر تعديل دستوري في عام 2020، حيث تم تنظيم المحكمة الدستورية كهيئة رقابية جديدة. تهدف إلى حماية الدستور وتعزيز مبدأ الفصل بين السلطات، وتعزيز الحقوق والحريات المعترف بها دستورياً، والحفاظ عليها. كما أنها مكلفة بالفصل في النزاعات التي قد تنشأ بين السلطات الدستورية، بالإضافة إلى تفسير الدستور. خصصت هذه الدراسة للحديث عن تشكيل المحكمة الدستورية، التي احتفظت ببعض السمات التي ميزت تشكيل المجلس الدستوري، ودراسة مهام هذه المحكمة الفتية في الجزائر.

الكلمات المفتاحية: الدستور، الرقابة الدستورية، دستورية القوانين، المحكمة الدستورية.

1. INTRODUCTION:

The principle of the supremacy of the constitution over the laws, of the other state, is this principle that translates into the need to approve the minimum constitutional rules. And for that and to ensure its proper application, the legislator surrounded this principle with a set of mechanisms, which were mainly manifested in approving the principle of control over the constitutionality of laws. In this context, we find that the Algerian constitutional legislator has approved this principle, and accordingly established a body to ensure its implementation.

Like many others, parts of Arab countries have adopted the French model, adopting political oversight through a body called the Constitutional Council, to exercise oversight over the constitutionality of laws, until the constitutional amendment of 2020 when it established the Constitutional Court. ⁽¹⁾

According to the first constitution that Algeria knew as an independent state in 1963, it was decided in the text of Articles 63 and 64 to establish a constitutional council that would undertake the task of monitoring the constitutionality of laws. Nevertheless, this council was not established due to the lack of continuity in the work of the constitutional document at that time.

Then, and according to the 1989 constitution, ⁽²⁾ the constitution of profound transformations in Algeria, the principle of monitoring the constitutionality of laws was re-established, with the existence of a commission charged with that, which is the Constitutional Council, according to Article 154 thereof. It consists of seven members, two appointed by the President of the Republic, two elected by the National People's Assembly, and two elected by the Supreme Court from among its members. The president of the constitutional council is appointed by, the President of the Republic.

In 1996, ⁽³⁾ Constitution preserved this gain when it included, through Article 164 thereof, the provision for the establishment of the Constitutional Council. By defining its composition, which now includes nine members, three members including the president appointed by the President of the Republic, two members elected by the National People's Assembly and two members Elected by the Senate, a member elected by the Supreme Court, and a member elected by the Council of State.

As for the treatment of the 2016 Constitutional Amendment 4 regarding the conditions that must be met by members of the Constitutional Council, according to Article 184, ⁽⁴⁾ mainly represented in the age requirement, a member of the Constitutional Council is required to reach forty full years on the day of appointment or election. And competency requirements. This relates to the need for at least 15 years of professional experience in higher education in legal sciences, in the judiciary, as a

lawyer in the Supreme Court, in the Council of State, or in a high position in the state. Notification bodies were also expanded, as the notification practice was granted in accordance with the text of Article 187 to the notification bodies represented in: the President of the Republic - the Speaker of the National People's Assembly - the Speaker of the National Assembly. - The Prime Minister - and 50 deputies from the National People's Assembly - 30 members of the National Assembly. Thus, the Council has become more dynamic and more immersed in constitutional oversight. ⁽⁵⁾

2016 Constitutional Amendment concerning constitutional oversight, which was dominated by the political nature, was the main reason and the main motive for the Algerian legislator, through the 2020 Constitutional Amendment, to endorse a constitutional court that replaces the Constitutional Council in carrying out tasks. Monitoring the constitutionality of laws, and from it, the importance of studying the Constitutional Court in the Algerian constitutional system emerges as a new body that guarantees through its competence the existence and maintenance of the state and the protection of the rights and freedoms of citizens.

Within the framework of the foregoing, the problematic of this study revolves around, what did the presence of the Constitutional Court add to the Algerian constitutional system?

To answer this problem and to stand at the various points related to the Constitutional Court as a new constitutional institution, we will follow a descriptive and analytical approach in which the study is divided into the following:

First: The Constitutional Court as an alternative to the Constitutional Council in the context of exercising constitutional oversight.

Second: The Constitutional Court is an institution charged with constitutional oversight with various jurisdictions.

2. The Constitutional Court as an alternative to the Constitutional Council:

The exercise of constitutional oversight is a pillar of respect for rights and freedoms, which made it the basis of constitutions in most countries, as it was emphasized through the establishment of constitutional institutions tasked with ensuring that legal texts of all kinds conform to the constitution.

The legislator Algeria, like other countries; adopted this principle and established the Constitutional Council to practice it until the last amendment of 2020, when it was replaced by the constitutional court, which replaces the Constitutional Council in the exercise of constitutional oversight. And as a new institution, we will try to find out through this topic its legal nature in the first requirement, in addition to knowing its formation through the second requirement.

2.1 The legal nature of the Constitutional Court:

The Constitutional Court is an independent institution whose mission is to ensure respect for the Constitution. In this regard, the Constitutional Court deliberates in a closed session, and this is stipulated in the new constitution.

A: The Constitutional Court is an independent institution

The Constitutional Court is an independent institution, whose mission is to ensure respect for the Constitution. ⁽⁶⁾ The constitutional legislator included it in the Algerian constitution for the year 2020, and devoted an entire chapter to it, entitled the Constitutional Court, contrary to the first description contained in Article 185, which is independence. Appointing it -a constitutional court- does not mean that it follows the judiciary, as it did not take from the judicial body except to name it. This is due to its work, in terms of ensuring the supremacy of the constitution on the one hand and applying the principle of separation of powers on the other hand.

In this way, the constitutional legislator allocates a complete separation of the Constitutional Court, which is independent of the judicial authority, which confirms the independence of this institution, and strengthens its position among the various state authorities, especially the judicial authority.

The most important thing that can be noted in the new constitutional amendment of 2020, within the framework of constitutional oversight, is that after the Constitutional Council used to express opinions in most of its work, the Constitutional Court today issues final and binding decisions for all. It is binding on the administrative authorities, as well as the judicial authorities, and it is effective and has direct effect from the date of its issuance, as Article 198 confirms in the last paragraph of the Constitution of 2020. ⁽⁷⁾

In this context, the Constitutional Court deliberates in a closed session and issues its decision within thirty days from the date of notification. And in case of emergency, and at the request of the President of the Republic, this deadline is reduced to ten days. It also takes its decisions by the majority of its members present, and in the event of an equal number of votes, the vote of the chairperson is cast. ⁽⁸⁾

Accordingly, the latest constitutional amendment added to constitutional oversight, the existence of an independent body, the Constitutional Court, which issues its decisions in a binding and final manner, that is, it is not subject to appeal, which gives a new entitlement. And a strong motive to control the constitutionality of laws and their implications for establishing the rule of law, and protecting individual rights and freedoms.

B: The establishment of the Constitutional Court

At the headquarters of the Supreme Court in Algiers, the President of the Constitutional Court and its members took the constitutional oath. The constitutional oath session for this new court was presided over by the First President of the Supreme Court, in the presence of the Minister of Justice, Keeper of the Seals, the Advisor to the President of the Republic, in charge of legal and judicial affairs, the President of the State Council, and a number of officials and judges.

This session was held in accordance with Article 186 of the new constitution, and the first president of the Constitutional Court, Mr. Omar Belhaj, became a person with knowledge and experience in the legal field, in addition to his high morals. ⁽⁹⁾

2.2 Conditions for membership within the Constitutional Court:

One of the most important pillars of the independence of the Constitutional Court is to study the composition of the Constitutional Court, as its formation plays a key role in achieving the impartiality of the Constitutional Court, and pushing it towards strengthening constitutional provisions to reach the Constitutional. to establish the rule of law. From it, we will try to stand at the formation of the Constitutional Court in the first section, and discuss the rules of membership in it in the second section.

A: Formation of the Constitutional Court

The constitutional founder adopted the principle of equal and joint representation among the authorities in forming the Constitutional Court, as it maintained the same number of members compared to the Constitutional Council. As confirmed by Article 186, the first paragraph, the Constitutional Court consists of twelve members. This lineup was distributed as follows:

Four members of the constitutional court are appointed by the president of the republic, thus, the President of the Republic remains with the same authority that was granted to him with regard to the Constitutional Council, and this is not considered a violation of the neutrality and independence of this institution. Despite the criticism leveled at the Constitutional Council in this context, the 2020 Constitutional Amendment did not affect this privilege granted to the President of the Republic, as he can appoint 1/3 of the members of the Constitutional Court as well, appointing the President of the Court who casts his vote in the event of a tie. It is also of great importance as the third person in the country. He assumes the duties of the position of Head of State in the event of a double vacancy for the position of President of the Republic and Speaker of the National Assembly. ⁽¹⁰⁾

He assumes his duties as President of the Constitutional Court for a period of six years, non-renewable for life. Provided that he fulfills the conditions of Article 87 of the Constitution, except the age requirement, which is the condition for candidacy for the President of the Republic.

The Supreme Court elects one member from among its members and one member from among the members of the Council of State as well. And six 06 members are elected by ballot from professors of constitutional law. The President of the Republic sets the conditions and methods for electing these members. ⁽¹¹⁾

After the election or appointment of the members of the Constitutional Court, they are committed, and before assuming their duties, to take an oath before the President of the Republic, according to Article 186, ⁽¹²⁾ the last paragraph. Members of the Constitutional Court assume their duties once for a period of six years, provided that half of the members are renewed every three years.

This new composition of the Constitutional Court, which differs greatly from the composition of the Constitutional Council, raises several observations, the most important of which are: Limiting the number of members of the Constitutional Court⁽¹³⁾ is considered very reasonable and acceptable, commensurate with the nature of its work, and the number applicable in most constitutional courts in various countries. An even number, which raises the possibility of equal votes, was also touched upon by the vote of the President of the Constitutional Court.

The formation of the Constitutional Court is based on the criterion of combining the methods of election and appointment on the one hand, and the criterion of differentiated representation between the various authorities in the state, on the other hand, as follows:

The executive authority got the lion's share with 04 four members. And the judiciary got two members, and there is no legislative authority in the composition of the Constitutional Court. This is due to the difficulty of meeting the requirements required by members of the Constitutional Court.

Limiting the term of office of members of the Constitutional Court to six non-renewable years enhances the impartiality and independence of members. While the term is 06 six years too short to form the rules and establish the jurisprudence of the Constitutional Court, which justifies its action toward the main directions.

Also, the mid-term renewal of its members every 3 years would activate the principle of circulation and optimal utilization of competencies and various scientific capabilities, as well as ensure continuity to raise performance at work.

B: Regulations of Membership in the Constitutional Court

In order for the Constitutional Court to occupy a prominent position, the good selection of its members must be taken into account by defining the conditions for their membership, because its central tasks are research and interpretation in the legal field and political science. And Article 187 of the 2020 Constitution specified the conditions for membership in the court, and here the elected and appointed members are equal,

these conditions mainly relate to age, competence, and experience.⁽¹⁴⁾

With regard to the age condition, the constitutional legislator required that a member of the Constitutional Court, whether elected or appointed, reach the full age of fifty years on the day of his election or appointment. According to Article 187 of the 2020 Constitutional Amendment, the age requirement was forty full years on the day of election or appointment for a member of the Constitutional Council, in accordance with Article 184 of the 2016 Constitutional Amendment.⁽¹⁵⁾

The age requirement is very reasonable and commensurate with the requirement related to competence and experience in the legal field. Whereas the constitutional legislator was keen to ensure that a member of the Constitutional Court has an experience in the law of no less than twenty years and that he benefits from training in constitutional law,⁽¹⁶⁾ in order to be able to perform his duties fully and accurately. The legislator did not specify the scope of this experience, but only specified the time period, in contrast to what was the case with the Constitutional Council. where it is required that he have a professional experience of at least 15 years of higher education in legal sciences, the judiciary, or the profession of a lawyer in the Supreme Court or Council of State or in a high position.⁽¹⁷⁾

To the side of the condition of enjoying civil and political rights, and not being sentenced to a criminal penalty that deprived him of his freedom.

The condition of party affiliation, in order to guarantee the principle of impartiality of a member of the Constitutional Court and his non-affiliation with any political orientation, and severing any link that may link him to any party or political orientation, in order for him to fully devote himself to the tasks of the Constitutional Court.

As soon as the members of the Constitutional Court are elected or appointed, they cease to exercise any membership, function, mission, or any other activity or free profession, in order to avoid conflicts of interest with other legal or natural persons, as well as for the sake of full dedication in carrying out their oversight work. . In order to achieve this, the member of the Constitutional Court has been immunized from any judicial follow-up of the procedures related to the exercise of his duties, with the exception of the express waiver of immunity from him or with the permission of the Constitutional Court, due to what the oversight work requires.⁽¹⁸⁾

3. The Constitutional Court is an institution with different jurisdictions:

The Constitutional Court, as a supervisory institution, is charged with checking the compliance of legislative and regulatory work with the Constitution.⁽¹⁹⁾ Consider everything related to respect for the constitution. According to the 2020 constitutional amendment, the Constitutional Court hears matters that may arise from disputes between constitutional authorities.

Thus, the functions of the Constitutional Court have multiplied in addition to its basic and original function of constitutional oversight.

3.1 The jurisdiction of the Constitutional Court within the framework of constitutional oversight:

The Constitutional Court was established in order to exercise control over the constitutionality of laws, and the issue here is to ascertain the extent to which basic laws, regulations, and treaties comply with the constitution. And this control may take the form of tribal control or consider the law after its issuance, because control may be compulsory or optional, or on the grounds of unconstitutionality.

The Constitutional Court here is concerned with the two mechanisms of notification or referral. Without the constitutional legislator giving it automatic intervention to examine the constitutionality of laws since constitutional control, aims to verify laws that violate the constitution, as a prelude to not issuing them if they are not issued, or to cancel them if they are issued. ⁽²⁰⁾

A: Ensuring that the Basic Laws of the House of Representatives comply with the Constitution

Organic laws occupy a special place in the hierarchy of laws, as they precede the rest of the laws in terms of rank, and their topics are characterized by privacy, as they are concerned with issues complementing the constitution. For this reason, the Constitutional legislator obligated it to be subject to control over its conformity with the Constitution, as a preliminary and obligatory procedure before its issuance and after its approval by Parliament, provided that the Constitutional Court is notified obligatorily by the President of the Republic. According to Article 190, Paragraph 5 of the Constitution of 2020, or notification by the Head of State In the event of a vacancy in the position of the President of the Republic. It should be noted here that, according to Article 197. The decision of the Constitutional Court, regarding constitutional oversight, of basic laws, is issued by the absolute majority of its members, while the rest of its decisions are issued by the majority of its members. Article 190, Paragraph 6, subjects the rules of procedure for both houses of Parliament to the same oversight procedures as for organic laws. The bylaws of both houses of Parliament express a set of written legal rules of a special nature that Parliament sets on its own, including the formation of its structures, organs, and functions, and aims to control and organize workflow procedures, to carry out constitutional tasks. ⁽²¹⁾

B: Monitoring the constitutionality of treaties, laws, and regulations

The Constitutional Court looks into the constitutionality of treaties, laws, and regulations. ⁽²²⁾ Article 190, first paragraph, provides that the Constitutional Court may be notified of the constitutionality of treaties before they are ratified. Accordingly, the constitutional oversight of treaties and agreements is considered a voluntary, prior

oversight that comes prior to their ratification. If the Constitutional Court decides that it is unconstitutional, it is not ratified. Article 02 of the Constitutional Amendment 2020 states that, for the procedures of armistice agreements and peace treaties, it is necessary to seek the opinion of the Constitutional Court in this regard and to present it to Parliament for express approval. The opinion of the Constitutional Court here is an advisory opinion, which must be requested as a formality before armistice agreements and peace treaties are submitted to the two Houses of Parliament for approval, but the President of the Republic is under no obligation to take this into.

On the other hand, the approval of laws by the Constitutional Court is related to the notification of the President of the Republic, the Speaker of the House of Representatives, the Speaker of the National Assembly, the Prime Minister, 25 members of Parliament, and 20 members of the National Assembly.

If the Constitutional Court decides that a law is unconstitutional, it will not be passed, ⁽²³⁾ and this confirms the tribal nature of censorship. Ordinary laws may be subject to subsequent scrutiny if it comes to defending the unconstitutionality of laws if their conditions are met, and the methods of convening them are fulfilled.

With regard to monitoring the constitutionality of regulations and orders, constitutional control of regulations differs from constitutional control of orders, in that regulations are then subject to subsequent control, which extends for a period of one month from the date of their publication, ⁽²⁴⁾ and specified in Article 193 of the 2020 Constitutional Amendment. And after a month has passed, the powers of the Constitutional Court cease, and jurisdiction is retained to plead unconstitutionality if its conditions are met.

The Constitutional Court also decides, in accordance with Article 190, fourth paragraph, in a decision on the compatibility of laws and regulations with treaties.

As for presidential orders according to which the President of the Republic exercises legislation in urgent matters, in the absence of the National People's Assembly, or during Parliament's recess. The President of the Republic must notify the Constitutional Court of these orders, provided that you decide on them within ten days.

Accordingly, the President's orders are subject to mandatory control by the Constitutional Court.

With regard to the orders issued by the President of the Republic in the exceptional case, in addition to the fact that they must be taken in the Council of Ministers. The constitutional legislator obligated the President of the Republic, in accordance with the text of Article 98 of the 2020 Constitutional Amendment, and after the expiry of the exceptional state period, to present all the decisions he made to the Constitutional Court for approval.

It should be noted here that according to the text of the third paragraph of Article 198 if the Constitutional Court decides that an order or regulation is unconstitutional, this text loses its effect as of the day the Constitutional Court's decision is issued.

C: The invocation of unconstitutionality

The defense of the unconstitutionality of laws relates to examining the constitutionality of a legislative or regulatory text, on which the outcome of the dispute depends, and raised by one of the parties to the dispute before the Supreme Court or the Council of State. Which gives the Constitutional Court the right to decide on the constitutionality of the text, after referring the file to it by the judicial authorities of the Supreme Court, or the State Council. ⁽²⁵⁾

Accordingly, the defense of unconstitutionality is when one of the parties raises, during the consideration of a case, where the legislative or regulatory text, which will be applied to the dispute, violates the rights and freedoms that are constitutionally guaranteed and protected. The Constitutional Court here is concerned with notifying, it of the referral of the file to it by the Supreme Court, or the Council of State, the Constitutional Court shall rule on its decision within four months from the date of its notification. This period may be extended once for a maximum period of four months, based on a reasoned decision by the court, and informing the judicial authority that issued the notification. And if this decision includes the unconstitutionality of the legislative or regulatory text, it loses its effect from the day determined by the decision of the Constitutional Court, as stipulated in Article 198, Paragraph 4, of the 2020 Constitutional Amendment.

Finally, it can be said that the Algerian legislature adopted the idea of conditional dimensional control of rights and freedoms through the mechanism of refusing unconstitutionality.

3.2 jurisdiction of the Constitutional Court outside the field of constitutional oversight:

The Algerian constitutional founder expanded the scope of the constitutional court's jurisdiction compared to the jurisdiction of the Constitutional Council. The jurisdiction of the Constitutional Court, was no longer confined to the field of constitutional oversight only, but rather extended to other areas, outside the framework of constitutional oversight, and the Constitutional Court became, accordingly, practicing advisory and interpretative arbitral functions. It may consider the appeals it receives about the provisional results of the elections and announces the final results. It also has the right to decide on disputes between the constitutional authorities, as well as the interpretation of the constitution.

A: The advisory powers of the Constitutional Court

The Constitutional Court assumes the role of the advisory body to the President of the Republic in several cases, including exceptional cases, as the law requires him to seek the opinion of the Constitutional Court before declaring them because these issues directly affect the rights and freedoms of citizens. The opinion of the Constitutional Court here is a legitimate addition to the formula and an implicit recognition of the legality and constitutionality of the measures taken.

Among these cases:

A state of emergency or siege and this is stipulated in Article 97 of the Constitutional Amendment 2020 whereby the President of the Republic decides, when urgently necessary, a state of emergency or siege for a maximum period of thirty (30) days after consulting several parties, including the President of the Constitutional Court.

In the exceptional case, the President of the Republic shall consult the President of the Constitutional Court when announcing exceptional decisions, if the country is threatened by an imminent danger that is about to affect its constitutional institutions, independence, or the integrity of its soil, for a maximum period of sixty (60) days. Where the exceptional situation authorizes the President of the Republic to take the necessary exceptional measures, to preserve the independence of the nation and the constitutional institutions of the Republic.

The consultation of the Constitutional Court here is tantamount to announcing the conformity of the president-elect's decision to the constitution, as it is an implicit declaration of compatibility between the availability of the constitutional conditions for the establishment of the exceptional state with the decision to declare the state of exception. The role of the President of the Constitutional Court is not limited to presenting an opinion, but rather he monitors the availability of the conditions for the establishment of the exceptional situation just as the exceptional case ends according to the same forms and procedures that necessitated its declaration, including consulting the President of the Constitutional Court. ⁽²⁶⁾

With regard to the presidential orders taken during the state of exception, we have previously referred to the presidential orders issued by the President of the Republic during the state of exception in accordance with Article 142 of the Constitutional Amendment 2020. Which must also be submitted to the constitutional court, for an opinion on them after the end of the state of exception.

In a state of war, the President of the Republic consults the President of the Constitutional Court when declaring a state of war, if actual aggression against the country has occurred or was about to occur.

With regard to the constitutional amendment, the Constitutional Court states its reasons for the draft constitutional amendment that was not submitted to a referendum, so when this amendment does not affect in any way the general principles that govern

Algerian society, and the rights and freedoms of the citizen. It does not in any way affect the basic balances of the constitutional authorities and institutions, and the Constitutional Court has expressed its justified opinion. The President of the Republic can issue the law that includes the constitutional amendment directly, without submitting it to a popular referendum, when he has obtained three-quarters (3/4) of the votes of the members of both houses of Parliament. ⁽²⁷⁾

In the event of a final vacancy for the position of the President of the Republic, and according to Article 94 of the Constitutional Amendment of 2020, the Constitutional Court convenes compulsorily and by force of law, upon the resignation or death of the President of the Republic. This is to determine the vacancy of the Presidency of the Republic and to announce the final vacancy immediately to the House of Representatives.

The President of the Constitutional Court also assumes the duties of the Head of State when the resignation or death of the President of the Republic coincides with the vacancy of the Presidency of the National Assembly, which proves the importance of this institution in preserving the continuity of the State and its institutions.

The Constitutional Court is also consulted in the event of extending the mandate of the House of Representatives, in the event that there are very serious circumstances that do not allow the holding of normal elections, after the House of Representatives and the National Assembly jointly prove this.

B: Electoral Competences

The Constitutional Court considers the appeals it receives about the provisional results of the presidential elections, legislative elections, and referendum, and announces the final results of all these processes. It must be noted here that, according to Article 200 of the 2020 Constitutional Amendment, the Independent National Authority for Elections has been constitutionalized as an independent institution that undertakes a mission of preparing, organizing, and conducting presidential, legislative, and local elections, as well as referendum operations and supervising them. Voting and counting processes, and the settlement of electoral disputes. ⁽²⁸⁾

So, there is a complementarity regarding the electoral process between the Independent National Authority for Elections, and the Constitutional Court, starting from registration in the lists until announcing the priority results, which the Independent National Authority handles for Elections. All the way to examining appeals and informing the final results, which are handled by the Constitutional Court, whether related to presidential or legislative elections or referendums.

The Constitutional Court is also in charge of announcing the seat's vacancy after notifying it obligatorily by the president of the concerned chamber when any elected member of the National People's Assembly or the National Assembly voluntarily

abandons his political affiliation to the party on which he was elected. ⁽²⁹⁾

C: Competence to interpret the Constitution and ensure respect for it

The Algerian constitutional legislator granted the Constitutional Court the authority to interpret the constitution, which contains the basic principles on which the state is based, starting with defining the powers, their competencies, and their relations, and ending with defining and protecting rights and freedoms.

The process of granting the interpretation of the constitution to the Constitutional Court is a very important issue because of the consequences that may result from it that affect the entity of the state, its institutions, and its authorities in terms of its organization, relations, and functioning.

The principle in legal texts, including the constitutional text, is that they have clear connotations and meanings that show the idea and content that the constitutional legislator wanted when drafting the constitutional text. However, some texts deviate from this origin. Or it is vague or carries more than one meaning and needs interpretation.

The jurisdiction of the Constitutional Court is limited to interpreting the provisions of the Constitution only, without going beyond the legal or regulatory texts, after being notified by the notification authorities specified in Article 193 of the 2020 Constitutional Amendment.⁽³⁰⁾ Because they are the bodies that must deal with it, the Constitutional Court, although it is most likely to apply the texts, along with the legislative and executive branches, is notified that something may affect the effectiveness of this jurisdiction, because of all the texts that may be ambiguous.

Article 185 of the 2020 Constitution⁽³¹⁾ provides for the establishment of the Constitutional Court as an independent institution charged with ensuring respect for the constitution and monitoring the functioning of institutions and the activity of public authorities. Members of the Constitutional Court are immune from any prosecution.

The court is competent to decide on the constitutionality of treaties, laws, and regulations, and monitor them, as well as interpret the provisions of the constitution. And it can be notified by, 40 deputies or 25 members of the National Assembly, on any constitutional issue. And in the event that the court decides that any law, procedure, or treaty, is unconstitutional, it becomes null.

Even the orders taken by the President of the Republic, during the vacancy of the National People's assembly, or during the parliamentary recess, are subject to previous mandatory censorship. As Article 142 of the Constitution stipulates the following: "...the President of the Republic shall compulsorily notify the Constitutional Court of the constitutionality of these orders, provided that it decides on them, within a maximum deadline of ten (10) days".⁽³²⁾

D: The jurisdiction of the Constitutional Court to decide on disputes between the constitutional authorities.

The Algerian constitutional legislator, for the first time, under Article 192 of the 2020 Constitutional Amendment, enabled the Constitutional Court to decide disputes between the constitutional authorities to perpetuate the principle of separation of powers, and this is to avoid any paralysis, or crisis, that may occur between the constitutional authorities in the state.

This expanded the powers of the Constitutional Court compared to the Constitutional Council.

4. Conclusion:

The establishment of the Constitutional Court as a supervisory institution that undertakes the tasks of constitutional oversight is a democratic achievement that must be preserved because its existence has brought about changes. The constitutional legislator assigned it a legal framework that guarantees its independence and impartiality and enables it to exercise competencies that were not previously granted to previous constitutional oversight bodies. The thing that gave it great importance and an active role, such as considering disputes between the constitutional authorities to protect the principle of separation of powers, as well as interpreting the constitution to remove all ambiguity that may surround the constitutional text. It is the main reference for the establishment and continuation of the state.

However, a note can be made in this context, whereby the right of the President of the Republic was imposed, when evaluating the vote of the President of the Constitutional Court, in the case of equal votes in the deliberations of the Constitutional Court, whereby his vote is preponderant. This is a good thing so that the outstanding issues of the country do not remain unresolved.

At the conclusion of this study, we offer the following suggestions and recommendations:

- We propose that the President of the Republic appoint two members, and grant Parliament the right to choose two members from outside Parliament, so that the three authorities have equal representation in the formation of the Constitutional Court.
- And that the President of the Constitutional Court be elected from among its members, due to his independence, and the independence of the Court.
- Expanding the notification bodies outside the three authorities, and giving the Constitutional Court the power to act automatically, especially in the event of a dispute between public authorities, or a violation of the provisions of the Constitution.
- Granting the Constitutional Court the power to express an opinion in exceptional cases, and not limiting it to taking the opinion of the President of the Court, and the opinion must extend to all members of the Constitutional Court.

- The issue of the Constitutional Court should receive great attention from professors and researchers, in order to enlighten public opinion and those interested in this subject.

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6. Margins:

⁽¹⁾ Article 185, of the Constitutional Amendment 2020, issued by Presidential Decree 20/442, of December 30, 2020, O.J. No. 82.

⁽²⁾ Algerian Constitution of 1989 promulgated by Republican Decree No. 89/18, of February 28, 1989, O.J. No. 09.

⁽³⁾ The Algerian Constitution of 1996, promulgated by Republican Decree No. 96/438, of December 7, 1996, in O.J. No. 76, amended by Law No. 02/03, of April 10, 2002, and by Law No. 08/19 of November 15, 2008, No. 63.

⁽⁴⁾ Law No. 16/01 of March 6, 2016, containing the constitutional amendment, O.J. No. 14.

⁽⁵⁾ Article 182, Law No. 16/01 of March 6, 2016, op. cit.

⁽⁶⁾ Article 183, Law No. 16/01 of March 6, 2016, op. cit.

⁽⁷⁾ The Constitutional Amendment 2020, of December 30, 2020, op. cit.

- ⁽⁸⁾ Bousalem Rabeh, *The Algerian Constitutional Council - Its Organization and Nature*, Master's Thesis in Public Law, Faculty of Law, University of Constantine, 2005, p. 27.
- ⁽⁹⁾ [ALGERIA PRESS SERVICE \(aps.dz\)](https://aps.dz), Seen on December 26, 2022 at 09:00.
- ⁽¹⁰⁾ Law No. 16/01 of March 6, 2016, op. cit.
- ⁽¹¹⁾ Maged Ragheb Al-Helou, *Constitutional Law*, University Youth Foundation, Alexandria, 1972, p. 17.
- ⁽¹²⁾ *The Constitutional Amendment 2020*, of December 30, 2020, op. cit.
- ⁽¹³⁾ Ahmed Barakat, *The Legislative Competences of the President of the Republic in the Algerian Constitutional System*, Master Thesis, Faculty of Law, Abu Bakr Belkaid University, Tlemcen, 2007, p. 47.
- ⁽¹⁴⁾ Law No. 16/01 of March 6, 2016, op. cit.
- ⁽¹⁵⁾ Law No. 16/01 of March 6, 2016, op. cit.
- ⁽¹⁶⁾ Linda Onissi, *The Constitutional Court of Algeria, a study on composition and terms of reference*, *Journal of Judicial Jurisprudence*, Volume 13, Issue 28, Biskra, November 2021, p. 118.
- ⁽¹⁷⁾ Fayez Muhammad Abu Shamala, *the Role of the Internal System in Parliamentary Action*, Dar Al-Khaleej, Jordan, 2018, p. 37.
- ⁽¹⁸⁾ Abdel Aziz Salman, *Oversight of the Constitutional Laws*, Dar Al-Fikr Al-Arabi, Cairo, 1995, p. 74.
- ⁽¹⁹⁾ Article 185, *the Constitutional Amendment 2020*, of December 30, 2020, op. cit.
- ⁽²⁰⁾ Article 85, *the Constitutional Amendment 2020*, of December 30, 2020, op. cit.
- ⁽²¹⁾ Article 187, *the Constitutional Amendment 2020*, of December 30, 2020, op. cit.
- ⁽²²⁾ *The Constitutional Amendment 2020*, of December 30, 2020, op. cit.
- ⁽²³⁾ *The Constitutional Amendment 2020*, of December 30, 2020, op. cit.
- ⁽²⁴⁾ *The Constitutional Amendment 2020*, of December 30, 2020, op. cit.
- ⁽²⁵⁾ Article 195, *the Constitutional Amendment 2020*, of December 30, 2020, op. cit.
- ⁽²⁶⁾ Article 98, *the Constitutional Amendment 2020*, of December 30, 2020, op. cit.
- ⁽²⁷⁾ *The Constitutional Amendment 2020*, of December 30, 2020, op. cit.
- ⁽²⁸⁾ *The Constitutional Amendment 2020*, of December 30, 2020, op. cit.
- ⁽²⁹⁾ Article 120, *the Constitutional Amendment 2020*, of December 30, 2020, op. cit.
- ⁽³⁰⁾ Article 120, *the Constitutional Amendment 2020*, of December 30, 2020, op. cit.
- ⁽³¹⁾ Article 120, *the Constitutional Amendment 2020*, of December 30, 2020, op. cit.
- ⁽³²⁾ Article 120, *the Constitutional Amendment 2020*, of December 30, 2020, op. cit.