



the Constitutional Court in Algeria

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Abstract ;

Constitutional censorship is an important gain that embodies the principle of the sovereignty of the Constitution. In the midst of institutional reforms initiated by Algeria's political authority and headed by the President of the Republic, Abdelmadjid Tebboune, it is embodied in the Constitution of 2020, under which the Constitutional Court, which is an independent institution responsible for ensuring respect for the Constitution, was established. It controls the functioning of public institutions and the activity of the authorities Public.

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1. Introduction

Political reform, as part of its interest in improving the efficiency of the system, is seen as a value neutral process in the sense that it is not necessarily Western-style, but the process of political reform in its institutional modernization, must increase the effectiveness of the system through institutions that increase the participation of individuals and expand their right (futtaisi 2022).

In the midst of the institutional reforms initiated by Algeria's political power and headed by the President of the Republic, Abdelmadjid Tebboune.

the Constitution of 2020 establishes the Constitutional Court, which is mandated to ensure respect for the Constitution and control the functioning of public authorities.

As part of the reform of the Constitutional Council, this institution has come up with a new composition to form its members and powers. How effective is the composition of members of the Constitutional Court in the performance of its oversight and constitutional functions? This problem includes the following questions:

The formation of the Constitutional Court?

What are the conditions for membership of the Constitutional Court?

To address the problem of this paper we have based on research methods that help us analyse for the purpose of answering the problem.

1-1 Institutional Legal Approach:

An approach to study political systems that focus on the political institutions that make up these systems and the constitutions on which they are based. This approach was used to analyse the law establishing Algeria's Constitutional Court and the mechanisms and conditions governing its composition and powers.

1-2 A case study curriculum:

a way to study a particular unit as an institution, for example, a detailed study for the purpose of generalizing circulars on the unit studied (shalabi 2007).

The topic of the paper requires the use of this curriculum for the purpose of deepening and analysing the outcomes of institutional reform in Algeria and the Constitutional Court as a sample.

To answer these questions, we will make this research contribution to the following points:

- ❖ First, the composition of the Constitutional Court.
- ❖ Second: Conditions of membership in the Constitutional Court.

Third: Term of office and renewal of the members of the Constitutional Court.

2. Formation and role of the Algerian Constitutional Court:

Established within the framework of institutional reforms initiated by the Algerian political authority, it was included in the new constitutional amendment of 2020 as a State supervisory institution and was mandated to ensure respect for the Constitution and control the functioning of public authorities. It strengthened its composition by adding specialized professors in constitutional law.

The Algerian Constitutional Court is characterized by the compulsory nature and force of force before all public, administrative and judicial authorities in the State. It is privileged to be independent of any entity in the State. Its primary role is to protect the Constitution through its supervisory function (Zidane 2020/2021).

3. Composition of the Constitutional Court:

The Constitutional Court consists of 12 twelve members, according to article 186 of the 2020 Constitution, including appointed members and elected members (article n°186).

3.1 The appointed members of the Constitutional Court:

The President of the Republic shall appoint four members, including the President of the Court, to serve on the Constitutional

Court. On this basis, this appointment remains the executive branch.

3.2. The elected members of the Constitutional Court:

The representation of the judiciary on the basis of the 2020 Constitution constituted the Constitutional Court with two members 02 one member 01 elected from among the members of the Supreme Court. One member 01 elected by the Conseil d'Etat from among its members.

Based on the Constitution of 2020, six 06 members elected by universal suffrage are professors of constitutional law.

This quota was given to the representation of the National Electorate of all professors of constitutional law through universities and higher institutes at home. In this regard, it may be noted that the constitutional legislature through article 186 of the constitutional amendment. The latter does not grant the Parliament any membership in the Constitutional Court as it was in the past. This is why the exclusion of the Parliament expressing the popular will on the one hand, and on the other hand the retention of the important place of the executive and judiciary in the composition of the Constitutional Court. The legislature should have had two members in order to have a balance and parity in the number of members (court. 2022).

4.conditions of membership in the Constitutional Court are:

Article 187 of the Constitution of 2020 stipulates a number of conditions to be met by an elected or appointed member of the Constitutional Court. Its criteria are as follows (n°187).

4.1 legal age is available:

the legislator has set the age of 50 50 full years for the member of the Constitutional Court on the day of his election or appointment.

4.2Specialized training in constitutional law and professional experience:

The constitutional legislature requires the provision of expertise and specialization in constitutional law for a period of not less than 20 years.

4.3The enjoyment of civil and political rights.

4.4Non-party affiliation.

In the same vein, Presidential Decree No. 21-304 establishing the qualifications for the election of constitutional law professors to the Constitutional Court under article 9 of the Constitution provides for the status of professor in constitutional law for at least 5 years (n°9).

4.5 requirements of the President of the Constitutional Court are:

Article 188 of the Constitutional Amendment of 2020 sets out the conditions to be met for the President of the

Constitutional Court and is itself required to run for office as.

President of the Republic, as set out in article 87 of the recent Constitutional Amendment (n°188).

- The enjoyment of Algerian nationality only, which establishes the father's and mother's original Algerian nationality.

- To condemn Islam.

- Proving Algerian nationality only to his husband; A residence in Algeria shall be established for at least 10 years prior to his appointment as President of the Constitutional Court.

Proves his participation in the revolution of 1 November 1954 if he was born before July 1942

- Establishes the performance of national service or the legal justification for its non-performance.

- Proof that his parents were not involved in acts against the revolution on November 1, 1954, if he was born after July 1942.

- A permit is provided for his movable and real property inside and outside the country.

In this regard, it can be said that the President of the Constitutional Court occupies a very important and sensitive position as a result of his possible assumption of the office of Head of State in the event of a vacancy in the office of

President of the Republic with the vacancy of Speaker of the National Assembly. For this reason, the constitutional founder emphasized the need for the same conditions as the President of the Republic, The President of the Constitutional Court also has advisory powers to the President if the latter so requests in accordance with the Constitution.

5. Term of membership and renewal:

The President of the Constitutional Court has six 06 years' custody, according to article 188 of the Constitution of 2020, which stipulates that the President-designate of this institution shall hold one non-renewable custody for a period of six years. The same concerns members of the Constitutional Court with one six-year custody, which shall renew half of its members every 03 years.

6. Electoral function of the Constitutional Court (institution-building):

The Algerian legislature entrusted the constitutional judge with the task of observing the elections in order to ensure their integrity in accordance with article 95, which monitors the admission files for presidential elections. Article 191 provides the right to accept an appeal against the provisional results of the presidential and legislative elections, in addition to the function of announcing the vacancy of the seats in the two chambers of Parliament and the same infringement procedure in

order to preserve the functioning of parliament and protect citizens' choice (Balghalem jun 2023).

7. Implications of the Constitutional Court's decision:

The Constitutional Court's decisions are final and binding on all public, administrative and judicial authorities.

If the Constitutional Court decides that a law, regulation or order will not be constitutionalized, this provision will lose effect (court 2024).

The Constitutional Court is an officer of the public authorities that prevents the violation of the Constitution. It also plays an important role in the continuity of the State in normal and extraordinary circumstances and its decisions are not subject to appeal (Qashti 2022).

8. conclusion:

The institutional reform in Algeria has resulted in the inclusion in the Constitutional Amendment 2020 of a supervisory institution called the Constitutional Court, which is a constitutional &tion in force in most countries. This has precipitated political power to keep abreast of international developments in the institution-building and reform aspect in order to expand its oversight functions. The criterion of representation and membership of this institution has received some reservation,

especially by appointing its President, who is in the hands of the President of the Republic. Some see it as bias and reservation in adjudicating decisions, as well as the absence of legislative power in the composition of the membership of the Constitutional Court. Even the legal age of 50 is regarded as an injustice to the category of young people, whose marginalization in the composition of the Constitutional Court is regarded as an absenteeism. Although it is prioritized in the reforms initiated by the political authority, in particular the reform of the Organic Elections Act 21-01 to represent local and national councils and the Supreme Youth Council. Despite these reservations to the membership of the composition of the Constitutional Court, it has been well received by the specialists

and the general public because it is characterized by impartiality, independence and the composition of its membership from experts in constitutional law. The Constitutional Court remains an outcome of Algeria's institutional reform.

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