



Religious freedoms and minority rights: the extent of the Constitutional Court's intervention in Algeria

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Abstract:

This study examines religious freedoms and minority rights in Algeria, outlining the constitutional and legal basis for freedom of belief and religious practice, and the evolution of their protection in Algerian constitutions up to the 2020 Constitution. It also examines the rights of minorities and guarantees for their protection, and highlights the role of the Constitutional Court in monitoring the constitutionality of laws, interpreting the provisions of the Constitution, and resolving disputes between authorities. The study focuses on the Court's contribution to protecting these rights and freedoms, analyzing the mechanisms for notification and plea of unconstitutionality and the procedural restrictions associated with them, and their impact on the effectiveness of constitutional oversight and achieving a balance between freedom of belief and respect for law, public order, and national constants, ensuring the preservation of fundamental rights, equality, and non-discrimination.

Keywords: religious freedom, minority rights, constitutional court, constitutional oversight, 2020 amendment, public order.

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introduction

Religious freedom and minority rights have become increasingly important topics in contemporary constitutional and legal studies, given their close connection to protecting human dignity and ensuring the exercise of fundamental rights and freedoms. They are also related to the principles of equality, non-discrimination, and respect for diversity within society. Recognizing these rights alone is not sufficient to guarantee their protection. Rather, it requires the existence of effective constitutional and institutional guarantees that prevent them from being infringed or restricted in a manner that exceeds the limits established by law. Hence, constitutional oversight emerges as one of the basic mechanisms aimed at ensuring the supremacy of the Constitution and the conformity of laws with its provisions, especially when it comes to rights and freedoms that enjoy constitutional protection. In this context, religious freedoms gain particular importance as they are linked to the individual's freedom to embrace his beliefs, practice his rituals, and express his religious convictions within the framework of constitutional and legal controls. Minority rights, on the other hand, refer to a set of guarantees that guarantee groups with religious, cultural, or linguistic characteristics the enjoyment of their rights and freedoms on the basis of equality and non-discrimination, taking into account the requirements of public order and national unity.

This issue is particularly relevant in Algeria, given the place rights and freedoms occupy in the constitutional structure, and the transformation of the constitutional oversight system under the 2020 Constitution, through the creation of the Constitutional Court to succeed the Constitutional Council and grant it a set of powers related to ensuring respect for the Constitution and monitoring the constitutionality of laws and regulations, in addition to interpreting some provisions of the Constitution and considering the plea of unconstitutionality. Making it one of



the institutional mechanisms that can play an important role in protecting fundamental rights and freedoms.

Religious freedoms, within the framework of this study, mean the set of rights that allow the individual the freedom to believe, practice religious rituals, and express his beliefs within the limits permitted by the constitution and the law, while minority rights mean guarantees that aim to protect groups with religious, cultural, or linguistic specificities and ensure their enjoyment of rights and freedoms without discrimination. The intervention of the Constitutional Court is represented by the set of powers and oversight mechanisms that it can exercise in the face of legal and regulatory texts that may be directly or indirectly related to these rights and freedoms. The importance of addressing this issue stems from the fact that it brings together two overlapping areas: constitutional law and the protection of human rights. It also allows us to determine the effectiveness of the constitutional guarantees established for religious freedoms and the rights of minorities, and the extent of the Constitutional Court's ability to achieve a balance between protecting freedom of belief and the practice of religious rituals on the one hand, and respecting public order, national constants, and the rights and freedoms of others on the other hand. In addition to trying to reveal the extent to which the transformation brought about by the 2020 Constitution in the constitutional oversight system has affected the level of protection of rights and freedoms.

Through this, the study seeks to highlight the constitutional and legal framework regulating religious freedoms and minority rights in Algeria, and to identify the various forms of protection that constitutional and legal texts can provide for this category of rights, in addition to analyzing the powers of the Constitutional Court related to rights and freedoms, and determining the extent of its ability to exercise effective oversight over texts that could affect religious



freedoms or minority rights While trying to uncover the most important limitations that may limit the effectiveness of this protection.

To achieve this goal, The descriptive and analytical approach is employed by presenting and describing constitutional and legal provisions related to religious freedoms, minority rights, and the powers of the Constitutional Court. Its content is then analyzed and its compatibility with the requirements for protecting rights and freedoms is revealed. The analysis also utilizes the procedural mechanisms governing the exercise of constitutional oversight, particularly the mechanism for notification and plea of unconstitutionality.

Based on this, the study raises a problem centered around the following question: To what extent does the intervention of the Constitutional Court in Algeria contribute to protecting religious freedoms and the rights of minorities in light of constitutional and legal guarantees and restrictions? Three sub-questions arise from this problem: To what extent is the Algerian constitutional and legal framework sufficient to guarantee religious freedoms and protect the rights of minorities? What are the most important powers and intervention mechanisms of the Constitutional Court through which these rights and freedoms can be protected? To what extent can restrictions associated with notification mechanisms and procedural conditions limit the effectiveness of the Constitutional Court's intervention in protecting religious freedoms and minority rights? The study is based on two basic hypotheses. The first is that the constitutional oversight exercised by the Algerian Constitutional Court, through its expanded powers to interpret the constitution and resolve conflicts between authorities, contributes to achieving a balance between the principle of freedom of belief and the state's religious standards, which enhances the protection of minority rights within the framework of respect for public order. The second assumes that despite the expansion of the Constitutional Court's powers in the 2020 amendment, the restrictions of the notification mechanism and the formal



requirements, Such as the required number of members of parliament and the deadlines set may limit the effectiveness of oversight of laws relating to religious freedom, especially when they affect legislation regulating the religious practices of minorities.

However, addressing this issue is not without some difficulties, particularly with regard to defining the concept of minorities and the scope of protection they can enjoy within the Algerian constitutional and legal framework, in addition to the limited applications and published constitutional interpretations that directly address issues of religious freedoms and minority rights, which may make it difficult to measure the extent to which the Constitutional Court actually intervenes in protecting these rights Another difficulty arises related to reconciling the protection of freedom of belief and the practice of religious rituals with the requirements of public order, national constants and the rights of others, in addition to the difficulty of determining the boundaries separating the legitimate restriction of rights and freedoms from the restriction that may lead to undermining their essence, which imposes the necessity of analyzing the relevant constitutional and legal texts in a precise manner and linking them to the powers of the Constitutional Court and its working mechanisms This allows for an assessment of the effectiveness of constitutional protection of religious freedoms and minority rights in Algeria.

THE FIRST TOPIC : The conceptual foundation of religious freedom and minority rights

The concept of religious freedom and minority rights constitutes a fundamental pillar of the human rights system, as these two principles are closely linked to the dignity of the individual and his collective identity. These conceptual foundations are of particular importance in light of the diversity of societies and



their multiple cultural and religious affiliations. This necessitates the establishment of legal frameworks that ensure a balance between freedom of belief and respect for public order, while protecting smaller or less influential groups from any discrimination or exclusion. This makes studying these foundations a necessary introduction to understanding national and international legislation in this field.

The first requirement: religious freedom

Religious freedom is one of the oldest and most sensitive human rights, as it touches on the essence of an individual's belief and relationship with his Creator, and goes beyond being merely an individual right to being a social and political phenomenon with which the state and society interact. Legal systems have varied in defining the content and scope of this freedom. While international conventions recognize it as an absolute right within the circle of conscience, its public practices are subject to restrictions that vary depending on the historical and social circumstances of each country. This calls for an analysis of the foundations upon which this freedom is based in positive law and constitutional jurisprudence.

Firstly : Recognition of religious freedom

Recognition of religious freedom is linked to internal laws that have been established by the existence of religious phenomena and the establishment of the state. This recognition has extended to the contemporary international community within the scope of protecting human rights and fundamental freedoms.

Religious phenomenon and the state: The right to religious freedom is essentially based on the dignity of the human person, which led to its recognition in the laws of society and thus became a civil right. The religious phenomenon is also a social phenomenon rooted in human nature. Therefore, there is no human society without containing the religious phenomenon, i.e. a group of groups or individuals living under a certain authority They will be subject to certain laws that



reflect considerations of values, traditions, dress, religion, family, education, economics, and politics, all of which constitute pillars of society¹.

When we talk about religious freedom, we must examine in this context the government policy related to the state's specificity in the religious field, as well as the fact of the existence of the state, which is based on the existence of a nation in terms of race, morals, activities and behaviors that express this existence, as the various of these activities appear in aspects with historical, cultural and artistic dimensions of groups. Therefore, every country sets its laws according to historical, social and political requirements that derive their roots from its nation and common heritage. Hence, there are countries that view religious freedom as cultural gains, while there are countries that give more than that to religious freedom, when they make a religion a state religion. For example, in North Africa, there are many countries whose constitutions recognize religious freedom but recognize Islam as their religion. In Latin America, there are many countries whose constitutions recognize religious freedom, but they recognize the Catholic doctrine and grant it a special status².

Secondly: The constitutional embodiment of religious freedom in Algeria

The Algerian Constitution addresses freedom of belief in its texts, often stating it in general terms, given that the constitutional document in most countries contains general provisions, with reference to the authority with jurisdiction to determine the details related to how to implement it.³

¹FRANCISCO PAREDES, Religious Freedom and the declaration of human rights, FIDES ET LIBERTAS, 2009, p 75.

² FRANCISCO PAREDES, Ibid, p 76.

³Dahmane Hammadou, Constitutional Protection and Freedom of Belief (A Comparative Study between Algeria and France), Journal of Comparative Legal Studies, Issue 2, 2021, p. 1302



The Algerian constitutional founder addressed the issue of public freedoms in the 1963 Constitution in a chapter entitled "Fundamental Rights," but freedom of belief was not mentioned in this chapter. The 1963 Constitution stipulated in the chapter "Main Principles and Tasks" that freedom of belief is an important and public freedom, meaning that Article 4 of it states: "Islam is the religion of the state. The Republic guarantees every individual respect for his opinions and beliefs and freedom to practice religions".¹

It is noted in the text of this article that the founder of the Algerian Constitution, despite the recent era of independence, enshrined the principle of the right to religious freedom, without prejudice to the fact that Islam is the religion of the state, the embodiment of the principles of the liberation revolution and the November 1st statement. Article 10 of the 1963 Constitution, paragraph 7, also stipulated that one of the goals of the Algerian Republic is to resist any type of discrimination, especially racial or religious discrimination²

All Algerian constitutions that came after the 1963 Constitution adhered to the same two methods, then the freedom of belief was stipulated in the 1976 Constitution as well as the 1989 Constitution, all the way to the last constitution in the People's Republic in 1996, which stipulated freedom of belief in Article 36 thereof: "There is no prejudice to the sanctity of freedom of belief, and the sanctity of freedom of opinion."³

The latest amendment of 2020 also stipulated in Article 51, Paragraph 02: "Freedom to practice worship is guaranteed and exercised within the framework of respect for the law. The state guarantees the protection of places of worship from any political or ideological influence "⁴.The order was previously regulated in

¹See: Article 4 of the 1963 Constitution of the People's Democratic Republic of Algeria.

²See Article 10, Paragraph 07 of the 1963 Constitution.

³ See Article 36 of the 1996 Constitution

⁴See Article 51, Paragraph 02 of the 2020 Constitution



Presidential Order 03/06 relating to the practice of religious rituals for non-Muslims.

Thirdly : Restrictions on religious freedom

Given the need for societies to place restrictions on various rights and freedoms, restrictions on religious freedom have been approved at the level of international and regional texts, as international texts on human rights have unanimously agreed to subject religious freedom to restrictions under normal circumstances. The Universal Declaration of Human Rights, in its formulation to approve restrictions on rights and freedoms, did not specify specific restrictions for each right or freedom within an article on the grandfather, Rather, in exercising his rights and freedoms, the individual was subjected to the restrictions determined by law within a single text that includes all rights and freedoms, contained in the second paragraph of Article 2/29 of the Declaration, as follows: "No individual shall be subject, in exercising his rights and freedoms, except to the restrictions determined by law, the exclusive purpose of which is to ensure due recognition and respect for the rights and freedoms of others, and to fulfil the just requirements of virtue, public order and the well-being of all in a democratic society." The International Covenant on Civil and Political Rights has specifically restricted the right to religious practices with an explicit and direct phrase in Article 3/18 as follows: ((A person's freedom to express his religion or belief may not be restricted except with restrictions determined by law and required to protect public safety, public order, public health, public morals, or the fundamental rights and freedoms of others However, the International Covenant, through this article, does not allow any restrictions on freedom of thought and conscience or the freedom to follow or embrace a religion or belief, and these freedoms enjoy unconditional protection. The only freedom that can be restricted among the



freedoms guaranteed under Article 18 of the International Covenant is the freedom to manifest religion or beliefs.

The United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief of 1981, in order to restrict the exercise of religious freedom, adopted the same wording as the International Covenant on Civil and Political Rights, under Article 3/1, and the American Convention on Human Rights adopted a text identical to the text contained in the International Covenant on Civil and Political Rights, in order to subject the right to religious practices to restrictions under Article 3/12. Unlike the International Covenant and the American Convention, the European Convention is distinguished in its text regarding the imposition of restrictions on religious freedom by the phrase "in a democratic society" as included in Article 2/9 thereof. The Arab Charter on Human Rights was unique from previous texts before its amendment in 2004 in that it did not mention public order as a basis for restricting religious freedom.

Article 27 of the Charter subjected the restriction of freedom of thought, belief and opinion to a single restriction, which is stipulated in the law, and the text in this manner would have granted only very little protection to religious freedom, especially freedom of religious practice. However, within the new amended version of the Arab Charter, this was remedied by approving a text similar to the version of the European Convention, but using the phrase "necessary in a tolerant society that respects freedoms and human rights" versus the phrase "necessary in a democratic society", and this is within Article 2/30.

The African Charter on Human and Peoples' Rights chose a brief formula to approve restrictions on religious freedom, within Article 8.

Accordingly, the scope of religious freedom may narrow or extend according to considerations and concepts that may differ between many countries. For example, the difference in the concept of public order or public



security may result in the establishment of strict measures and laws to prevent some religious practices and manifestations under the pretext of maintaining public order or public security in certain countries, while those practices and manifestations are permissible in other countries. There is no better evidence of this than the issue of prohibiting the wearing of a face covering in public places, as laws prohibiting it have been issued in many European countries, while wearing a face covering is considered a manifestation and tradition of some Islamic societies¹

In addition to restrictions under normal circumstances, religious freedom, like other rights and freedoms, may be subject to further restrictions under so-called exceptional circumstances where national constitutions and charters agree

The second requirement: a definition and Types of minorities

Many international legal texts have referred to the term minorities, either explicitly or implicitly, and some have attempted to provide a definition for it. Among these definitions, we take, for example:

Recommendation No. (1201) of 1992 issued by the Parliamentary Assembly of the Council of Europe included a definition that a national minority is: a group of people in a country² :

- Residents and citizens of the territory of this country,
- They have long-standing, strong and lasting ties with this country
- They constitute a sufficient number, but they are smaller in number than the rest of the country's population or one of its regions

¹On August 1, 2018, Danish authorities began implementing a niqab ban in accordance with a law adopted by the Danish Parliament, which banned the niqab in public places. The niqab ban has expanded in Europe since 2010, starting with France, followed by Belgium, the Netherlands, and Austria. It is still under discussion in Germany, Switzerland, Estonia, Latvia, Lithuania, and Norway.

²Muhammad Yusuf Alwan and Muhammad Khalil Al-Mousa, *International Human Rights Law: Protected Rights*, Part Two, Fourth Edition, Dar Al-Thaqafa for Publishing and Distribution, Jordan, 2014, p. 456



•They are bound together by a common will to preserve the elements that make up their common identity

•Especially related to their culture, traditions, customs, religion or language.

International minority law recognizes a range of rights that they can enjoy. These rights are divided into general rights shared by different human beings and specific rights that concern individuals belonging to these minorities, given that they constitute distinct human groups.

Firstly : General rights of minorities

These are the various rights mentioned in the Universal Declaration of Human Rights of 1948, in addition to what is stated in the two International Covenants on Human Rights of 1966. However, we will suffice with mentioning only some of them, which are as follows:

1. The right to life

The right to life is considered one of the first rights that have been discussed in many international documents. It is a natural right that is compatible with human life. This right has received the attention of all international conventions and declarations¹

For example, we find the text of Article (03) of the Universal Declaration of Human Rights stating that: (Every individual has the right to life, liberty and security of person)²

The same is the case with the text of Article (06) of the International Covenant on Civil and Political Rights, which states: "The right to life is an

¹ Tahar Ben Mohammed, *Protecting Minorities in Armed Conflict*, First Edition, Kunuz Al-Hikma Foundation, Algeria, 2011, pp. 105-106

²Article 3 of the Universal Declaration of Human Rights of 1948, adopted by United Nations General Assembly Resolution No. (217), dated December 10, 1948



inherent right of every human being, and the law must protect this right, and no one may be arbitrarily deprived of his life¹

2.The right to protect private property

This right is also established, whether for the individual alone or jointly with others, in everything that is money or denominated in money, and every individual has the right to private property without discrimination based on color, race, or national origin² .

This is what was stipulated in the text of Article (12) of the Universal Declaration of Human Rights, which stipulates that: (Every person has the right to own property alone or in association with others, and no one may be arbitrarily deprived of his property)³ .

This right relates to the freedom of individuals to dispose of what they own to achieve wealth, and therefore no one may be deprived of the means of livelihood, but nevertheless we find that some international agreements concerned with human rights have restricted this right for the sake of the public interest⁴ .

3.The right to use the language

Language is considered one of the most important elements that lead to the cohesion of the people of a country, nationality, or any other sect. It therefore serves as a means of determining the personality of individuals and groups.

This right has been affirmed in the Universal Declaration of Human Rights more than once, along with the right of everyone to use his or her language and teachings and to use them in official transactions⁵.

¹ Article 6 of the International Covenant on Civil and Political Rights of 1966, adopted and offered for signature, ratification and accession by resolution of the United Nations General Assembly, dated 16 December 1996, effective date: 3 January 1976

² Muhammad Al-Tahir, previous reference, p. 105

³ Article 12 of the Universal Declaration of Human Rights.

⁴ Muhammad Al-Tahir, previous reference, p. 105

⁵ Kamal Jaalab, The Role of the Algerian Constitutional Council in Interpreting the Constitution, Journal of Law and Human Sciences, Volume 11, Issue 03, 2018, p. 43



By creating the constitutional institution in the 2020 constitutional amendment for the Constitutional Court instead of the Constitutional Council, which expanded its powers and explicitly assigned it the jurisdiction to interpret the Constitution in accordance with Article 192, which states: « The Constitutional Court may be notified by the parties specified in Article 198 regarding disputes that may occur between the constitutional authorities.

These parties may notify the Constitutional Court regarding the interpretation of one or more constitutional provisions, on which they shall express an opinion »

According to Article 192 of the 2020 Constitutional Amendment, the entities that may notify the Constitutional Court regarding the interpretation of a constitutional provision are the same entities that may notify the Constitutional Council regarding oversight of the constitutionality of laws, with the exception of individuals. These entities are the President of the Republic, the Speaker of the National People's Assembly, the Speaker of the National Assembly, the Prime Minister or Prime Minister, as the case may be, and members of Parliament.

Secondly; Resolving disputes that may occur between authorities

In the 2020 constitutional amendment, the constitutional founder assigned a new jurisdiction to the Constitutional Court that was not previously exercised by the Constitutional Council, which is to adjudicate disputes that may occur between the highest authorities in the state. This jurisdiction confirms the judicial nature of the Constitutional Court, regardless of its composition, which includes only two judges. Rather, given the nature of the powers assigned to it, especially the resolution of disputes that may occur between the higher authorities in the state, this new jurisdiction contributes to ensuring the application of the principle of separation of powers and the distribution of powers between the authorities in a manner specified in the Constitution, and also protects the country from political



crises that may lead to the paralysis or disruption of one of the constitutional institutions, Therefore, in exercising this jurisdiction, the members of the Constitutional Court naturally resort to interpreting the Constitution, which is the new jurisdiction mentioned above.

THE SECOND TOPIC: The nature of the Algerian Constitutional Court's oversight of the constitutionality of laws and notification mechanisms

Constitutional oversight of laws is one of the most important mechanisms that guarantee the supremacy of the Constitution and the protection of rights and freedoms from any violation that may affect the legislative or executive authority. This oversight in Algeria has developed significantly with the constitutional amendment of 2020, which brought about a qualitative shift by replacing the Constitutional Council with the Constitutional Court, and assigning it new powers that enhance its judicial character, such as resolving conflicts of jurisdiction between authorities and lifting the immunity of parliamentarians. The mechanisms for referral to this court are of particular importance, as they specify the entities authorized to resort to them, and the conditions and procedures to be followed. This makes the effectiveness of oversight dependent on the breadth of the circle of referral specialists and the flexibility of the restrictions imposed on them. Therefore, studying the nature of this oversight and its mechanisms requires examining the court's components, its jurisdiction, and the procedural restrictions governing its work, in order to assess the extent of its success in achieving a balance between state powers and preserving constitutionality.

The first requirement: The nature of organic composition; Judicial Nature and oversight by the Constitutional Court

The Algerian Constitutional Court, as restructured under the 2020 Constitutional Amendment, comprises twelve members predominantly selected



from legal professionals, with Article 187 mandating a minimum of twenty years of legal experience and prohibiting political party affiliation to ensure institutional neutrality. Its judicial character is conclusively established by Article 198, which renders its decisions final and binding upon all public, administrative, and judicial authorities, thereby satisfying the dual criteria of obligation and finality inherent to judicial jurisdiction. Furthermore, the mechanism of plea of unconstitutionality under Article 188 and Organic Law No. 18-16¹ institutes a posteriori constitutional review, marking Algeria's transition from absolute legislative sovereignty to a centralized model of specialized judicial oversight consistent with comparative constitutional standards.

Firstly : Composition and Appointment Modalities of the Algerian Constitutional Court: A Comparative Constitutional Perspective

In the organic Composition Legislative legislation sometimes involves the intervention of a third authority, although there are variables that vary from one country to another. In this context, we will mention some examples presented by Professors Luis Favoro and Mastor in 2016, such as:

Appointment by the Prime Minister of members of the Constitutional Court (Canada, Sweden and Promotion).

Election equally between the two chambers of the German Parliament (Bundestag and Bundesrat).

Austria: Eight members chosen by the government, and four (4) others by each association, appointed by the President of the Federation.

¹ Organic Law No. 18-16 dated 22 Dhu al-Hijjah 1439 AH, corresponding to September 2, 2018, determining the conditions and modalities for applying the plea of unconstitutionality, *Official Gazette*, No. 54.



In France: three (3) members appointed by the President of the Republic, three (3) members appointed by the President of the Senate, and three (3) members appointed by the President of the National Assembly¹.

The appointment may also be joint by the three authorities (legislative, executive and judicial). In this context, we mention Italy, whose body charged with ensuring the supremacy of the Constitution consists of 5 members appointed by the President of the Republic, 5 members by Parliament, 5 by the Court of Cassation, and 5 by the Council of State and the Court of Auditors².

Applying the above to Algeria, and returning to the constitutional amendment of 2020, we find that Article 186 thereof, which addresses the composition of the Algerian Constitutional Court, where the latter (i.e. the Constitutional Court) includes twelve (12) members as follows: the executive authority appointed by the President of the Republic, two (2) elected members representing the judiciary, and six (6) members elected by professors of constitutional law, It is noteworthy that this formation is dominated by lawyers, who represent approximately 1/6 of the court's formation, which is inconsistent with the above-mentioned standard. In addition, Article (187) of the same constitutional amendment stipulates that a member of the Constitutional Court, whether elected or appointed, must have no less than twenty (20) years of legal experience This necessarily means that the remaining part, which are the four (4) members representing the executive authority, must have experience in the law. Accordingly, it can be said that the entire composition of the Constitutional Court is made up of those with experience in the law – because Article 187 stipulates that they must have no less than twenty (20) years of experience in the law. This confirms the judicial nature of the Constitutional Court It is also required that a

¹Favoreu Louis et autres, Droit constitutionnel, 21e édition, Dalloz, paris, France,p275-276

²FavoreuLouis et autres, op. Cit.



candidate for membership in the Constitutional Court, whether elected or appointed, not belong to any political party in accordance with Article 187 (4), which indicates the exclusion of the political nature in the aspect related to its members, which guarantees the neutrality of the Court while performing its duties and confirms the judicial nature of this body.

In the same vein, the Algerian Constitutional Court, although not all of its members are judges, has training in constitutional law, as mentioned above. This is in line with centralized or specialized judicial oversight, which abolishes legislative texts that violate the constitution and executes them as if they had never existed. It is worth noting in this regard that this type of oversight was initially rejected on the basis of the principle of legislative sovereignty: « The law cannot be wrong», and this is because it was enacted by representatives elected by the people within the framework of representative democracy, but this changed with the increasing emergence of parliamentary legislation that violates the constitution, where a new legal principle emerged that stipulates that the law now expresses the general will only with the possibility of violating the constitution, and the evidence for this is the existence of several laws that violate public rights and freedoms in addition to their contradiction with the document¹.

Secondly : Juridical Nature, Binding Authority, and Mechanisms of Constitutional Review

Objectively speaking, the raison for the juridical nature of the Constitutional Court appears in some formal characteristics and in the validity of its rulings ,²

¹Boumediene Mohamed, Justifications for the Algerian Judiciary's Recognition of a Role in Monitoring the Constitutionality of Laws and Transforming the Constitutional Council into a Constitutional Court, *Al-Ijtihad Journal for Legal and Economic Studies*, Volume 8, Issue 4, 2019, p. 16.

²Shawqi Tammam Yaish, The Nature of the Algerian Constitutional Council According to the Constitutional Amendment of 2016 (A Comparative Study of the French Constitutional Council), *Algerian Journal of Legal, Political and Economic Sciences*, Volume 57, Issue 2, Algeria, 2020, p. 113.



The Constitutional Amendment of 2020 confirmed this, as Article 198, paragraph five (5), stipulates that the decisions of the Constitutional Court shall be final and binding on all public, administrative and judicial authorities.

For his part, the jurist Marcel Valin confirmed when he analyzed the meaning of the word judiciary (Jurisdiction), where he explained that the most important thing that distinguishes the judiciary is that its rulings are authoritative in a way that makes them obligatory to be applied in a peremptory manner to both parties to the dispute¹, by dropping what was mentioned above to the Algerian Constitutional Court based on the constitutional document (Constitutional Amendment of 2020) and organic law 22-19², we find that it included the two criteria (obligation, And finality), which conclusively indicates the judicial nature of the Constitutional Court, which is confirmed by the previously mentioned Article 198.

The mechanism for pleading unconstitutionality, which was included in Article 188 of the 2016 Constitutional Amendment, and was regulated by Organic Law No. 18-16, which specifies the conditions and methods for applying the plea of unconstitutionality, established post-control over the constitutionality of laws by opening the way for individuals to file an appeal against a law on which the money for resolving the dispute depends One of the parties to the dispute argues that this application of the law to the dispute before the judicial authority infringes on the rights and freedoms guaranteed by the Constitution. This argument is referred to the Constitutional Council by the Supreme Court or the Council of State, as the case may be, according to specific procedures. The Constitutional Council decides on this argument by a decision and reports it to the judicial authority, which relies on it when deciding the dispute.

¹ Ibid., p. 113.

² Organic Law No. 22-19 dated July 25, 2022, determining the procedures and modalities of notification and referral followed before the Constitutional Court, *Official Gazette*, No. 51



SECOND REQUIREMENT: Notification Mechanisms

The notification is considered a point of contact with the Constitutional Court, through which the latter can exercise its oversight role. The constitutional founder stipulated in Chapter One of Part Four of the 2020 Constitutional Amendment that the Constitutional Court, which consists of 12 members, and the exercise of its powers requires the intervention of some parties, which the constitutional founder specified in the text of Article 193 of the same amendment. This intervention is through the error mechanism¹.

Firstly: The authorities authorized to notify the Constitutional Court

The authorities authorized to notify the Constitutional Court are:

. President of the Republic: A representative of the executive authority, which is a right granted to him in all amendments to the 1996 Constitution, even before the issuance of the 1996 Constitution

The Prime Minister or the Head of Government, as the case may be: also representing the executive authority, as the constitutional founder did not grant him this right except in the constitutional amendment of 2016 and the constitutional amendment of 2020, which are considered as.

A successful addition by the constitutional founder, considering that the Prime Minister or Head of Government is responsible for implementing laws.

Domain. And the regulations are in accordance with Articles 112 and 141 of the Constitution, which gives him experience in this

The Speaker of the National Assembly represents the legislative authority, and this is a right granted to him in the 1996 Constitution with all its amendments.

¹Sumaya Ocean, The Mechanism for Notifying the Constitutional Court, an Analytical Study of the Constitutional Amendment of 2020 and Organic Law No. 22-19, Journal of Legal and Political Thought, Volume Seven, No. 01, University of Batna – Algeria, 2023, p. 870.



– Forty (40) deputies in the National People's Assembly: representing the legislative authority, as this right was decided in the constitutional amendment in 2016, and the number specified by the constitutional founder was fifty (50) deputies, between whom the 2020 constitutional amendment reduced this number to forty (40) deputies.

–Twenty-five (25) members of the National Assembly also represent the legislative authority, as this right was decided in the 2016 constitutional amendment. The number set by the constitutional founder was thirty (30) members, while the 2020 constitutional amendment reduced it to twenty-five (25) members¹.

The percentages set by the constitutional founder do not achieve equality between the two chambers regarding notification, as approximately 09% of the total number of representatives of the National People's Assembly (8.65%) is required, meaning that approximately 1/12 of the representatives are required to sign it, while in the National Assembly approximately 18% of the total number of members of the Assembly (17.36%) is required, meaning approximately 1/6 members of the Council, as almost double the percentage is required, and therefore this number must be reduced again, especially in the National Assembly, so that the parliamentary opposition can actually notify the Constitutional Court².

Secondly: Restrictions on the Constitutional Court notification procedure

Although the constitutional institution was expanded in the 2016 amendment from notification bodies and supported in the 2020 amendment by

¹Gharbi Ahsan, The Constitutional Court's Notification Mechanism, Mediterranean Notebooks Magazine, Volume 6, Issue 1, Skikda, 2021, p. 20.

² Ibid., p. 21



reducing the number of representatives and members of the National Assembly to enable the opposition to exercise it, the exercise of this procedure is governed by a **number of substantive and procedural restrictions, which are:**

1– Under review in notifying the Constitutional Court

The Algerian legislator has set deadlines for every type of oversight of the constitutionality of laws, which are adhered to by the notification bodies constitutionally authorized to do so. Any violation of these deadlines forfeits the right to notification.

2– List the bodies notifying the Constitutional Court

The constitutional founder limited the bodies notifying the Constitutional Court to the three powers without expanding this procedure outside.

These authorities, with regard to permissible notification, the constitutional founder limited the notification authorities to the three authorities through Articles 193 and 195 of the Constitutional Amendment of 2020, and granted the right of mandatory notification to the President of the Republic, as the authorities specified in Article 193 of the Constitutional Amendment of 2020 cannot directly make mandatory notification.¹

3– Passport registration for notification to the Constitutional Court

The permissibility of notification is considered the greatest restriction that hinders and reduces the effectiveness of the role of the Constitutional Court in monitoring the constitutionality of laws, regulations and treaties that violate the Constitution, if the parties specified in Article 193 remain silent regarding these texts that violate the Constitution.

Thirdly: The Constitutional Court's decision regarding notification

¹Gharbi Ahsan, op. cit., p. 25



Rejecting the notification in form if it receives the notification from a party not specified in the Constitution or is notified by a party specified in Article 193 regarding organic laws, for example, or the internal regulations of one of the two chambers of Parliament.

1– Judging the constitutionality or conformity of the text according to the type of censorship presented to it.

2–Ruling that the legislative or regulatory text is unconstitutional or identical¹.

Conclusion

At the conclusion of this study on religious freedoms, minority rights, and the extent of intervention by the Constitutional Court in Algeria, it becomes clear that the issue of religious freedoms constitutes one of the fundamental pillars of human rights enshrined in international conventions and national constitutions. However, its exercise remains subject to a number of restrictions imposed by considerations of public order, security, health, and public morals. This made the scope of these freedoms vary from one country to another according to each society's perception of the concept of public order and prevailing social values.

The study showed that the Algerian constitutional legislator, from independence until the 2020 constitutional amendment, was keen to stipulate freedom of belief and religious practice while declaring Islam the state religion, creating a special balance between the state's religious identity and adherence to international human rights standards. However, the problem raised by this study is the extent to which the Algerian Constitutional Court, as an independent judicial body established to succeed the Constitutional Council, is able to exercise

¹Ibid., p. 33



effective oversight over laws and regulations related to religious freedoms and minority rights, especially in light of the powers granted to it by the 2020 constitutional amendment, which included interpreting the constitution, resolving conflicts between powers, and lifting parliamentary immunity.

An analysis of the nature of the Court's oversight and the notification mechanisms specified in the Constitution has revealed that the Court has a judicial character, given its composition, which is predominantly legal and its independence from political parties. Furthermore, its decisions are binding on all authorities, thus strengthening its role in protecting rights and freedoms. However, the effectiveness of this oversight remains limited by a number of procedural and substantive restrictions, most notably the confinement of notification bodies to the three powers without giving individuals the right to directly appeal, the unequal quorum required between the two chambers of Parliament for notification, as well as the restriction of notification to specific deadlines during which the opportunity to appeal texts that violate the Constitution may be missed.

Thus, the question of the Constitutional Court's effectiveness in protecting religious freedoms and minority rights remains dependent on how these mechanisms are activated and how they overcome the restrictions that limit their role, especially in light of the absence of judicial rulings issued in this area. This makes the study forward-looking, relying more on textual analysis than on actual judicial practice.

Study results

1. All Algerian constitutions, from 1963 until the 2020 amendment, approved the principle of freedom of belief and the practice of religious rituals, stipulating



that Islam is the state religion, which reflects a balance between the state's religious identity and respect for individual rights.

2. The Algerian Constitutional Court, by virtue of its composition, which is dominated by legal experts, the independence of its members, and the fact that its decisions are binding and enforceable, has a judicial character that enables it to exercise effective oversight over the constitutionality of laws.
3. The 2020 constitutional amendment granted the court new powers not previously granted to the Constitutional Council, such as interpreting the constitution, resolving conflicts between powers, and lifting parliamentary immunity, strengthening its oversight role.
4. Despite the expansion of notification powers in the 2016 and 2020 amendments, this mechanism remains limited to limiting it to the three powers and not giving individuals the right to direct appeal, in addition to the unequal quorum required between the two chambers of Parliament.
5. The exercise of religious freedom in Algeria is subject to legitimate restrictions, including respect for public order and applicable laws. This is consistent with international standards, while maintaining a margin of appreciation for the state in determining the concept of public order based on its cultural and religious specificities.

Study recommendations

1. Calling on the constitutional legislator to expand notification bodies to include civil society bodies concerned with human rights and the National Council for Human Rights, in a way that enhances oversight of laws related to religious freedoms and minority rights.



2. Working to achieve a balance in the quorum required between the two chambers of Parliament for notification, by reducing the quorum in the National Assembly to match its counterpart in the National People's Assembly, enabling the parliamentary opposition to exercise its right to appeal.
3. Study the possibility of expanding the right to challenge unconstitutionality to include individuals directly, similar to some comparative models, while maintaining controls that prevent abuse of this right.
4. Calling on the Constitutional Court to play an effective role in interpreting constitutional texts related to religious freedoms, in a way that clarifies the boundaries between the exercise of religious rights and considerations of public order, and creates well-established judicial precedents in this field.
5. To work to spread the culture of religious rights and freedoms in Algerian society, and to educate institutions and individuals about the available constitutional challenge mechanisms, in a way that contributes to consolidating the principle of the rule of law and respect for religious and cultural diversity.

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