

The independence of the Constitutional Court in Algeria in light of the 2020 constitutional amendment

إستقلال المحكمة الدستورية في الجزائر في ضوء التعديل الدستوري لسنة 2020

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Abstract:

The Algerian constitutional enshrined the principle of the Constitutional Court's independence by ensuring its organic and functional autonomy, thereby strengthening its role as the highest authority in constitutional oversight. On the organic level, the method of appointing the court's members was revised to ensure a balanced and independent composition, reducing external influence over its decisions. Additionally, legal safeguards were reinforced to protect court members from any pressures that could affect their impartiality and independence.

Key words: Constitutional Court, independence, constitutional justice, rights and freedoms.

Introduction:

Separation of powers is a fundamental constitutional characteristic of modern constitutional systems that allocates power amongst various branches in a way that power does not get accumulated in one institution. Its most elementary purpose is to provide balance between the executive, legislative, and judiciary branches in such a way that each function will be within the assigned domain.

In Algeria, constitutional development has been a journey of going through various stages, marked by amendments aimed at maintaining balance among state institutions. Among the key developments in this journey was the 2020 constitutional amendment that replaced the Constitutional Council with the Constitutional Court. This newly established court was given broader roles, including resolving disputes between state organs, ensuring constitutionality of law and regulations, and overseeing processes of constitutional review. Its broader roles give it a strong foothold in supporting institutional balance.

The importance of the Constitutional Court is that it plays the role of supervision to guarantee that the executive never oversteps its limits, protect the legislature from any unlawful encroachment, and maintain judicial autonomy. However, its efficacy in these objectives remains contingent upon its level of independence. The categorical nature of its rulings and its ability to rule on constitutional infringements that could jeopardize the separation of powers raise a question on the very essence: To what extent is the Algerian Constitutional Court truly independent, and what safeguard has the constitutional legislator put in place to preserve this independence?

Did the guarantees established by the Algerian constitutional legislator in the 2020 amendment contribute to ensuring the true independence of the Constitutional Court?

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1- The Composition of the Constitutional Court:

1.1- The Legal Basis of the Constitutional Court:

the existence of Constitutional Court founded on a set of constitutional and legislative provisions that define its legal nature, competencies, and operational mechanisms, ensuring a balance between powers and the protection of fundamental rights and freedoms.

The constitution and its complementary organic laws define the role of Constitutional Court in constitutional oversight, and other responsibilities that make it one of the most significant institutions in Algeria's constitutional framework.

Constitutional oversight in Algeria has evolved through different stages. It was first introduced in the Constitution of September 8, 1963, which established a Constitutional Council composed of seven members¹. However, constitutional oversight was abandoned in the Constitution of November 22, 1976².

The constitutional legislator later reintroduced constitutional oversight in the Constitution of February 23, 1989, by establishing a Constitutional Council composed of seven members³, tasked with overseeing the constitutionality of laws and assuming additional competencies in the electoral domain⁴. This institution was maintained in the Constitution of November 28, 1996, with its composition strengthened by increasing the number of members to nine⁵. The 2008⁶ and 2016 amendments followed the same approach.

Article 185 of the constitution November 1, 2020⁷ explicitly states that the Constitutional Court is an independent institution tasked with ensuring respect for the constitution.

1.2- Selection of Constitutional Court Members:

The Constitutional Court differs from the Constitutional Council, in several ways.

1.2.1- Diversity in the Composition of the Constitutional Court:

Under Article 186 of the 2020 Constitution, the Constitutional Court consists of 12 members:

- Four (4) members, including the President of the Court, are appointed by the President of the Republic.
- One (1) member is elected by the Supreme Court.
- One (1) member is elected by the Council of State.
- Six (6) members are elected from among constitutional law professors.

The rationale behind this exclusion is that the composition of the legislature may lead to the selection of members lacking the necessary constitutional legal expertise. Additionally, the decision aligns with the principle of political neutrality, as legislative elections are inherently political⁸. However, this exclusion has been met with criticism, as some argue that it disrupts the balance of powers and fails to guarantee true constitutional oversight of laws⁹.

A noteworthy aspect of the new composition is the inclusion of university professors specializing in constitutional law (six out of twelve). These professors are elected by their peers at the national level¹⁰, underscoring a strong commitment to academic and professional expertise. This decision enhances the credibility and depth of the Constitutional Court's decisions, given that its role requires extensive legal knowledge and a high level of technical proficiency in various legal disciplines¹¹.

The President of the Republic retained his authority to appoint the President of the Constitutional Court¹², a decision that has been criticized for potentially undermining the independence of the court by creating a form of institutional dependence¹³. However, to counterbalance this, the qualifications required for holding this position were significantly tightened.

1.2.2- Conditions for Membership in the Constitutional Court:

These conditions aim to select highly competent individuals in the legal and judicial fields, in addition to ensuring integrity and impartiality. The methods for appointing members vary

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between presidential appointment and election, with specific membership duration and renewal mechanisms established to ensure the court functions in accordance with the Constitution.

1.2.2.1- General Conditions for Membership in the Constitutional Court

These conditions mainly include¹⁴:

A- Age Requirement

The responsibilities assigned to a Constitutional Court member require a high degree of wisdom, experience, and competence¹⁵, enabling them to make sound and appropriate decisions in various legal situations and challenges. Therefore, the constitutional legislator stipulates that a member of the Constitutional Court must be at least fifty (50) years old on the day of their election or appointment. This requirement reflects the great importance placed on selecting members who will effectively achieve the objectives of constitutional justice.

B- Enjoyment of Civil and Political Rights

Holding civil and political rights is a key requirement for assuming high-level positions in the state, including membership in Algeria's Constitutional Court¹⁶. This criterion is intended to guarantee that appointees are legally and ethically sound, reinforcing the court's independence and credibility.

Civil and political rights are fundamental to active engagement in public affairs, encompassing the right to vote, run for office, and exercise full legal capacity. Consequently, candidates must not have any judicial rulings against them that could limit these rights, ensuring their impartiality and integrity in fulfilling their responsibilities within the Constitutional Court.

C- No Final Conviction Resulting in Deprivation of Liberty

To be appointed to Algeria's Constitutional Council, one must not have secured a final conviction and sentence of imprisonment for a misdemeanor or a felony, unless the former legal status has been restored. However, there is an exception here as regarding a misdemeanour or a crime with coercion. It is a necessary measure to ensure the integrity and credibility of Council members. This requirement correlates to the principal rationale of ensuring that Council candidates are not guilty of serious crimes punishable by imprisonment, that is, their legal status and moral integrity are safeguarded. Thus, not including a person with a final conviction in Council membership does not detract from public confidence in its decisions, impartiality, or independence.

D- Non-Partisan Affiliation

The stipulation that members of the Constitutional Court cannot be affiliated with any political party is intended to ensure their independence and impartiality.

As the final protector of constitutional values and disputes, the court depends on members to deliberate and decide with complete impartiality¹⁷. Any form of political affiliation would create potential conflicts of interest, and decisions would then be based on satisfying political agendas¹⁸.

Thus, insisting on bare neutrality among members of the court attempts to secure the rule of law so that the court continues to be an impartial and fair authority determined to uphold the Constitution and promote institutional balance—unbiased by any political or partisan interests that threaten constitutional justice.

1.2.2.2- Special Requirements for Membership in the Constitutional Court

A- Legal Expertise

A key feature of the conditions set by the constitutional legislator for membership in the Constitutional Court is that they are strict and relatively demanding, aimed at ensuring that only highly qualified individuals in the legal field serve as members. The more qualifications and legal expertise a member possess, the better the court's functioning will be¹⁹.

The constitutional legislator has carefully balanced professionalism, impartiality, competence, and legal expertise when setting membership criteria²⁰. For this reason, candidates are required to have at least twenty (20) years of experience in the legal field. This period allows

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members to acquire a broad base of theoretical and practical legal knowledge, enabling them to make the best possible decisions on the various legal matters brought before the court.

B- Acquisition of Expertise in the Constitutional Field

The expertise qualification in a constitutional matter is based on ensuring that the courts' members are well-equipped to deal with complex constitutional matters and the capacity to analyze and interpret legal documents in accordance with constitutional principles and the spirit of the law. and it is therefore essential that they possess specialized knowledge that allows them to make judgments based on deep legal understanding and a minute comprehension of the Constitution, especially given its competences are very technical and require superior expertise and specialization in law .

The constitutional legislator has set some standards for members of the Constitutional Court, namely that they are people of high competence with extensive experience in the legal profession, particularly in constitutional law.

C- Holding a University Professor Position

This is a constitutional option and demonstrates the Algerian legislator's faith in the need for academics to contribute to constitutional surveillance. Academics have been viewed as one of the primary sources of deep legal insight, particularly of constitutional law and political institutions. The university lecturers possess years of experience in dealing with constitutional documents and staying informed about legal and legislative developments and are thus suited for productive input towards the advancement of constitutional law and delivering judiciously sound decisions.

Moreover, their role in scientific research and comparative legal analysis enables the Constitutional Court to learn from the experience of other countries and from new trends in jurisprudence. That enhances the quality of its rulings, making them more meaningful and accurate.

The members of the jury - university professors - enables an opportunity for legal and theoretical discourse within the court, adding to the reinforcement and development of constitutional jurisprudence. Further, including an academic perspective means there will be diversity, which is beneficial to the degree of legal analysis as well as constitutional provision interpretation. From a comparative standpoint, Algeria approaches this topic in a different way. While it is common amongst different countries to compose their constitutional court with some mix of judges, attorneys, and legal scholars without necessarily establishing a composition of a specific number of professors, requiring that half of the members are university professors reflects a clear constitutional philosophy, which aims to base the workings of the court in academic scientific knowledge.

But the need of the constitutional legislator that half of the Constitutional Court's members are professors of universities raises some considerations. The first one is that scholarly activities are fundamentally different from the legal activities which are done by the Constitutional Court. While the former depends upon theoretical analysis, comparative studies, and scientific research, the latter requires the competence of handling constitutional legal facts and taking binding decisions based on tangible legal principles. This difference can lead to a gap in the application and comprehension of constitutional principles in the court, particularly if university professors lack practical experience in the judicial arena or in applied constitutional law interpretation.

Aside from that, the necessity would affect the effectiveness and timeliness of the Constitutional Court's decision-making. As academicians, university professors are used to writing lengthy theoretical arguments and high-level intellectual discussion, which would slow down decision-making in important urgent constitutional cases that require timely and accurate decisions. While scholarly examination certainly has an important role to play in the development of constitutional jurisprudence, the second dimension of it is that constitutional decisions should

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also have a practical dimension and be appropriately tuned to balance legal analysis with political and social realities.

Secondly, this development undermines the proportion of academic scholarship and practical legal practice in the court. By allocating university professors half of the seats, the ratio of judges with real experience in constitutional adjudication has been reduced. This would serve to weaken the case-handling strength of the court in handling cases of a purely judicial nature. Constitutional courts are not merely analysis institutions; they decide constitutional disputes and issue binding decisions, which requires deep judicial experience that cannot be fully replaced by scholarly knowledge.

2- Legal and Functional Guarantees for the Independence of the Constitutional Court

The Constitutional Court is an independent judicial body instituted to rectify disequilibria hitherto achieved in the distribution of public powers in the state²¹. For effective discharge of its role, the Constitutional Court must enjoy complete independence from political, executive, and legislative influences on its judgment.

Guarantees comprise a combination of constitutional, legal, and administrative protection that ensures the court can operate without any influence from external sources.

2.1- Legal Guarantees

2.1.1- Constitutional Provision for the Independence of the Constitutional Court

This guarantee directly shows within the Constitution itself the place and status of the Constitutional Court, allowing it to remain an institution free from others and shielded from political and executive interference in how it reaches conclusions²². It is noteworthy that the court has a chapter dedicated entirely to itself in the fourth part, dealing with institutions of oversight, demonstrating that it is attempting to solidify its status and independence from other institutions.

This type of guarantee also seeks to demonstrate and ensure public confidence that the court will act with impartiality in defending and ensuring their rights and freedoms under the Constitution.

The article 185 stresses that the court is not subject to the authority of any other institution, but is itself, an autonomous institution that derives its autonomy from the Constitution. The constitutional court is empowered to perform its functions without subordination or interference.

2.1.2- The Binding Nature of Constitutional Court Decisions and the Prohibition of Appeals

As the body instructed to ensure respect for the Constitution, the court must play a role in preventing constitutional disputes from becoming issues of protracted controversy among authorities. In this area.

2.1.3- The Extensive Powers of the Constitutional Court

The Constitutional Court has the power to review the law for its conformity with constitutional values, which includes not only maintaining regulations and decrees consistent with the Constitution, but also determining if a law violates the Constitution by abrogating or modifying its application. The Constitutional Court also asserts its regulatory authority by being a neutral and independent force free from any executive branch or political power in its decisions.

Additionally, the court has jurisdiction for constitutional disputes between any state authority and between legislative and executive bodies²³.

The Constitutional Court is granted material independence, which means that it has considerable leeway in its ability to issue binding decisions that are not subject to external influence.

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2.2- Functional Guarantees for the Independence of the Constitutional Court

In order for the Constitutional Court to perform its functions in an effective and objective manner, it must be endowed with a system of functional guarantees to ensure that it is entirely independent of political and administrative pressures, which could undermine its decisions. Independence is not an abstract principle.

2.2.1- Strict Membership Requirements for the Constitutional Court

One of the most important requirements to ensure the independence of the Constitutional Court is the requirement of actual judicial or legal experience by its members. This is to ensure that they are able to deal with constitutional legal matters in an objective, impartial way and possessing vast legal expertise.

The members must have at least twenty (20) years of legal experience along with some advanced training in constitutional law. In addition to this, the Algerian Constitution does not allow court members to belong to political parties, thus lessening the potential for any political affiliation to influence their ruling. In addition, the candidates must be fifty (50) years or older at the time of their appointment or election.

The application of strict standards in the appointment of members of the court is not only to guarantee their professionalism²⁴ but also a useful means of insulating them from pressures and influences that can undermine their ability to act independently, objectively, and effectively.

2.2.2- Distributing the Power to Appoint Members Among Multiple Authorities

This is an effective means of check and balance since the process to make sure that no single political or governmental organization has power or could dominate the appointment of Justices.

If the authority to appoint all of the court's members were united under one office. However, by separating the authority to appoint court members between multiple appointing entities, it becomes much more difficult for one specific appointing advantage to dominate. This method maintains judges' independence by ruling on each case as an individual merit in accordance with the Constitution and not on a narrowly partisan basis, and it separates political forces and the Constitutional Court²⁵.

2.2.3- Granting Immunity to Members During the Exercise of Their Duties

Judicial immunity allows judges for the Constitutional Court to operate in their positions without fear of intimidation or retaliation regarding decisions they make. This allows them to do their job free of fear of influence or threats by being confident and wholly independent²⁶. Without judicial immunity, members would be subject to political pressure either from the executive seeking to control the decision-making of the courts or other pressure through administrative or legal mechanisms from some other functions related to constitutional justice.

Judicial immunity ensures that court members are not answerable for their opinions and decisions save through extraordinary means. Judicial immunity is needed in a bid to maintain their integrity as well as allow them to decide on the basis of constitutional principles rather than political reasons or extraneous pressures²⁷.

The worth of immunity is not only to protect individual members—but to protect the judicial branch itself from fraudulent acts. Court members will feel more likely to act courageously, making autonomous and courageous rulings on behalf of the public and the Constitution in general, without fear of revenge if they feel they are properly shielded²⁸. Furthermore, such protection helps guarantee public trust in constitutional justice because the people are assured that the court's verdicts come from justice and principles of law rather than political or individual agendas.

Article 189 of the 2020 amendment reiterated the same principle "Members of the Constitutional Court cannot be prosecuted for acts carried out in the course of unofficial functions unless they relinquish their immunity voluntarily, or by being granted a mandate from the Constitutional Court itself.²⁹" Such broad immunity is intended to assure that members of the court can act in an independent manner that is unencumbered by undue outside influence.

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2.2.4- Defining the Term of Membership

Limiting the term of Constitutional Court members to a single six-year mandate, with partial renewal every three years, is a crucial safeguard for enhancing the court's independence and protecting it from political influences and external pressures³⁰. Judicial independence requires that members perform their duties with absolute impartiality, free from any considerations related to reappointment or tenure extension. By setting a non-renewable term, several advantages contribute to reinforcing the court's autonomy, while the principle of partial renewal ensures institutional continuity and strengthens the court with new competencies, improving its overall performance³¹.

When a court member knows that their term cannot be renewed, they are more likely to make decisions based solely on constitutional principles, without being concerned about pleasing any party to secure their reappointment³². This protection shields them from potential pressures exerted by the entity that appointed or elected them. In contrast, if the position were renewable, members might face temptations to use their role for personal gain or engage in behind-the-scenes deals to guarantee their continuation in office. However, a single-term mandate eliminates such considerations, ensuring that members remain fully dedicated to their constitutional duties rather than future career prospects.

2.2.5- Non-Removal of Court Members by the Appointing Authority

This principle acts as a fundamental safeguard, protecting judges from potential threats aimed at compromising their neutrality and autonomy³³.

Allowing removal by the appointing authority could create a serious vulnerability, where members might hesitate to make decisions that contradict the interests of those who appointed them—fearing dismissal or retaliation. This, in turn, could undermine the court's role as an impartial institution tasked with upholding the constitution rather than serving any political agenda. Therefore, non-removability is one of the core safeguards ensuring that court members can exercise their duties without external pressure or the fear of consequences affecting their position.

If a court member no longer meets the required conditions for holding office or commits a serious breach of duty, the court convenes a session with all members present to hear the concerned member's statements. If it is determined that the member has seriously violated their duties, the court may request their resignation. Should the member refuse, the court makes a final decision on their dismissal by a majority vote, without the affected member participating in the decision-making process.

This framework ensures that no external entity—whether political or executive—has the power to interfere in the court's composition or influence its members. By removing dismissal power from appointing authorities, the legislator has effectively shielded court members from external pressures, allowing them to perform their constitutional duties with full independence and integrity.

Conclusion:

Independence cannot be seen as a theoretical necessity, but an operational necessity in order to ensure justice and safeguard individuals' and groups' rights.

An efficiently organized judge and guaranteed independence by the legal and institutional framework can serve effectively as the protector of the Constitution. Independence in this regard serves to maintain public faith in the judiciary as well as provide a basis for a democratic system to grow on the grounds of justice and equality.

The composition of the judges in the court is central to comprehending to what extent the court is independent; this will depend on how they are appointed, whether there is a balance of members, and whether members can be shielded from political or administrative pressure that can

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annihilate independent thinking. Legal arrangements create space for court authority that is authoritative but allows autonomy for the judges' immunity from interference.

In terms of the absolute autonomy of the Constitutional Court, it is based upon a wider legislative horizon, a deeper political will, and a legal framework that fits within a legal tradition governing its role as a protector of rights and the supremacy of the constitution. Entrenching that autonomy means entrenching legislations' provisions, changing the procedures for appointments, and developing respect for constitutional justice, such that its mandate can be carried out free of excessive burdens.

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