

The scope of the Constitutional Court's intervention in the electoral dispute

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Abstract:

The 2020 Constitutional Amendment granted the Constitutional Court the power to adjudicate disputes related to presidential and legislative elections and referendums. It also grants the Constitutional Court the right to appeal various decisions issued by the National Independent Election Authority. The Court is responsible for adjudicating special appeals in disputes related to candidacy, voting, and the announcement of results in presidential elections, as well as voting and announcement in legislative elections.

We will discuss this article in two sections: First, we will discuss the composition of the Constitutional Court. Second: Its role in electoral conflict.

Keywords: Elections, electoral dispute, Constitutional Court, Authority.

Introduction:

Constitutional texts have always occupied the highest position in the hierarchy of the legal system of any modern constitutional state as a tool for regulating power, based on a set of principles enshrined in the Universal Declaration of Human Rights, namely the protection of human rights and freedoms and guarantees for their exercise, as well as the need to adopt the principle of separation of powers, after the system had been based on customary rules¹.

Algeria was influenced by the French experience, entrusting the task of monitoring the legality of elections to a body called the Constitutional Council². The latter appeared in Algeria's first constitution in 1963, disappeared in the 1976 constitution, and was reintroduced in the 1987 and 1996 constitutions. It has evolved significantly, and its powers were expanded under the 2016 constitutional amendment. However, the 2020³ constitutional amendment stipulated that the Constitutional Court is a body that can appeal to various decisions of the Constitutional Court, which is considered the highest authority in the country. It is a judicial body

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stipulated in the 2020 constitutional amendment in Article 185, which states: "The Constitutional Court is an independent institution charged with ensuring respect for the Constitution."⁴

The problem we are addressing is the extent to which the Constitutional Court contributes to ensuring the integrity of the electoral process.

We will address this problem in two sections:

First Section:

Composition of the Constitutional Court

The success of the Constitutional Court as a national supervisory and advisory institution depends on the eligibility of its members for the positions entrusted to them⁵, as they are the administrators of this institution. We will address this topic in two sections. The first section is devoted to studying the members of the Constitutional Court. While the second is devoted to examining the conditions for candidacy for membership of the Constitutional Court.

The first section: Members of the Constitutional Court. Countries' positions differ on the mechanism for selecting a body, but they do not deviate from two main methods: appointment or election⁶, which is in line with democracy as an international requirement today. However, both methods have shortcomings which, in our view, should be eliminated as far as possible in supervisory institutions, given the sensitivity and precision of the tasks entrusted to them. The Algerian founder was aware of this and combined the two methods, i.e. appointment and election, as is clear in the requirements for members of the Constitutional Court in the 2020 constitutional amendment.

Article 186 stipulates the formation of the Constitutional Court, specifying the number of its members and the methods of their selection. It is composed of twelve members, the same number that made up the Constitutional Council under the 2016 constitutional amendment, distributed between the executive and judicial branches, without the constitutional founder establishing a numerical balance. In addition to the representation of the two branches, there is also representation of university competencies, which is being adopted by the constitutional founder in Algeria for the first time in explicit terms⁷. We will address this in the first section entitled "Appointed Members," while the second section will deal with elected members.

First Requirement: Members of the Constitutional Court

I. Appointed members

The executive branch is represented by four (04) members chosen by the

President of the Republic, including the President of the Constitutional Court. This is the same number that the President of the Republic appointed to the Constitutional Council in the 2016 constitutional amendment. However, the constitutional founder has relinquished the President of the Republic's power to appoint a Vice-President from among the four members, as was the case in the 2016 constitutional amendment. It should be noted that the President of the Republic plays a major role in the composition of the Constitutional Court, as he appoints the President of the Court, who holds a distinguished position due to the set of powers he enjoys, which include:

- Convening the court and presiding over its sessions.*
- Proposing appointments to several positions in the Constitutional Court, such as the Secretary-General and the Director-General.*
- Appointing the member responsible for investigating and preparing the draft opinion or decision⁸, which is often the same person who votes on it in the Constitutional Court.*
- The President of the Court is considered the authorizing officer for the budget and has the power to appoint an official in charge of financial management and accounting in the Constitutional Court.*

In addition to these important powers, the President has the casting vote in the event of a tie, as stipulated in Article 197, which states: "Decisions of the Constitutional Court shall be taken by a majority of its members present, and in the event of a tie, the President shall have the casting vote."

II: Elected members.

1. Representation of the judiciary:

The judiciary is represented by two members elected equally from among the judges of the Court and the Council of State, with each judicial body representing one member within the Constitutional Court. Although the method of election is adopted, the two judges are appointed by virtue of their position, which is considered a wise appointment. We note here that Article 186 of the constitutional amendment states: "One member shall be elected by the Supreme Court from among its members, and one member shall be elected by the Council of State from among its members"⁹

Referring to the 2005¹⁰ Rules of Procedure of the Supreme Court, we find that Articles 48 to 59 deal with the subject of the nomination of one or more judges for membership in one of the state bodies or institutions. where a general assembly is convened and the judges who are eligible to vote are summoned. The aforementioned articles also include provisions on the quorum required for the general assembly to be convened for their election,

the polling station, proxy voting, the absolute majority in the first round or the second round in the event that no candidate obtains an absolute majority, the counting of votes, and the announcement of the results.

Referring to the 2019¹¹ internal regulations, we find that they included how to elect judges of the Council of State to other state bodies and institutions, in particular the Supreme Council of Judges and the Constitutional Council. Currently, the Constitutional Court. It stipulates the electoral process by specifying the polling station, the procedures for candidacy, proxy voting, the counting of votes, the announcement of the results of the first round or the resort to a second round if no candidate obtains an absolute majority, and the process of challenging the legality of the vote.

Given that the Constitutional Court is a judicial body, the representation of the judiciary in it is of great importance. as judges are more familiar with the procedural aspects of the work and functioning of the Constitutional Court. It is preferable to have judges, as they are more familiar with the procedural aspects, in addition to keeping pace with the process of expanding notification, especially after the introduction of the mechanism for challenging the constitutionality of laws under the 2016 constitutional amendment.

It should be noted that judges from the Supreme Court and the Council of State may be appointed as part of the four members appointed by the President of the Republic, as there is nothing to prevent this.

2. Constitutional law professors (representing the electorate)

The Constitutional Court comprises six (6) university professors elected by popular vote from among professors of constitutional law, provided that they have experience in law and training in constitutional law, in accordance with Article 187 of the 2020¹² constitutional amendment, which stipulates: Six members shall be elected by public ballot from among professors of constitutional law, with the President of the Republic determining the mechanism and method of their election.

The constitutional founder adopted the principle of semi- sovereignty for the people in selecting six members of the Constitutional Court from among university professors, while the other half is distributed among the executive and judicial authorities as we have explained. In this way, the constitutional founder has created a balance between the representation of public authorities and the electorate, despite making the president an appointed official.

In the 2020 constitutional amendment, the constitutional founder

excluded the legislative authority from representation in the Constitutional Court, whereas in the 2016 constitutional amendment, it was represented by four members of the Constitutional Council, two members from each chamber elected from among the members of the appointed chamber. Consequently, parliament no longer has any role in the composition of the Constitutional Court, as it is not represented by members within its composition and cannot enact a law regulating the composition of the Constitutional Court or the legal system for court members. The court is thus completely independent of parliament, unlike the executive branch, which is represented by four members, including the president. The independence of the Constitutional Court vis-à-vis the president is thus limited in comparison with its independence vis-à-vis the legislative branch.

Second requirement: Conditions for membership of the Constitutional Court

The conditions and duration of membership may affect the independence of the body responsible for oversight. Prior to the 2016 constitutional amendment, there were no conditions for membership in the Constitutional Council, but under the 2016 constitutional amendment, conditions for membership in the constitutional judiciary were specified, which was valued in the 2020 constitutional amendment in Article 187, which are as follows:

I: Age and competence requirements.

1-Age:

The constitutional founder stipulated that a member of the Constitutional Court must be at least 50 years of age on the day of election and appointment, as the President of the Republic cannot appoint a member to the Court who is under 50 years of age on the day of appointment. The same requirement applies to the election of judges to the Supreme Court and the Council of State, as a judge cannot be elected to the Constitutional Court if he is under 50 years of age, and the same applies to six professors of constitutional law. A judge to run for membership of the Constitutional Court if he is less than one year under the age of 50, and the same applies to six professors of constitutional law.

Reaching the age of 50 is calculated according to the Gregorian calendar, not the Hijri calendar. The relevant date is the day of the election for elected members and the date of appointment for appointed members, not the date of submission of membership applications for elected members. A person who meets all the conditions at the time of filing their

candidacy may submit their candidacy even if they have not yet reached the age of 50, provided that they have reached the legal age on the day of the election.

Returning to the 2016 constitutional amendment, we find that the constitutional founder set the age requirement for membership of the Constitutional Council at 40 years, while the 2020 constitutional amendment raised the age to 50 years. The constitutional founder is criticized here for not specifying a maximum age for candidacy, as advancing age has a negative impact on health and mental capacity, which weakens the member's ability to perform their duties¹³.

2-Competence requirement:

A. Professional experience in the field of law:

Members of the Constitutional Court must have at least twenty years of experience in the field of law, as a member cannot be appointed or elected despite fulfilling the other requirements if they do not have at least twenty years of legal experience. Thus, the constitutional founder moved from merely representing the constitutional authorities within the constitutional institution represented by the current Constitutional Court and the former Constitutional Council, to selecting legal experts by these authorities and assigning the task of monitoring the constitutionality of laws to competent individuals who can easily identify areas where legislative texts do not comply with the constitution.

However, the constitutional text did not specify the method of acquiring legal experience, its duration, or whether it should be through teaching at universities or practicing a profession related to law, such as law or the judiciary, as the oversight function of the Constitutional Court¹⁴ requires its members to have high legal qualifications and competencies to ensure the effectiveness of the Constitutional Court's work and the consistency of its decisions.

B. Training and specialisation in constitutional law:

Members of the Constitutional Court are required to have training in constitutional law, as appointed or elected members of the court must have training in constitutional law in addition to experience. Therefore, the two members representing the judiciary are judges and must have received training in constitutional law before running for membership of the Constitutional Court. We find that this requirement applies to members who are not professors of constitutional law, as professors of constitutional law are already trained in constitutional law and do not need further training to run for membership of the Constitutional Court. This

requirement is therefore limited to judges and members appointed by the President of the Republic.

The Algerian legislature has done well to emphasise the requirement of expertise in constitutional law, to ensure that members play an active role within the Constitutional Court.

II: Enjoyment of civil and political rights and not having been sentenced to a term of imprisonment.

Members of the Constitutional Court must enjoy all their civil and political rights, in particular the right to vote and stand for election, and must continue to enjoy these rights without any impediment that would lead to their deprivation, due to conviction for serious crimes leading to moral incapacity under the Penal Code or due to mental disorder causing loss of discernment and control, leading to mental incapacity under the law¹⁵.

Moral capacity means that the person has not committed criminal acts that make him unworthy of honor and respect¹⁶, such that he cannot be a member of the Constitutional Court because his vote has become questionable. The Algerian legislature referred to this prohibition in Article 50 of Decree 21-01 containing the organic law relating to the amended and supplemented¹⁷ electoral system. The constitutional amendment also emphasised that members must be morally competent by including the condition that appointed or elected members must not have been sentenced to a custodial sentence.

However, the constitutional founder did not clarify his position on the issue of rehabilitation, but we clearly see that no person who has been sentenced to a custodial sentence, even if they have benefited from rehabilitation, can be a member of a constitutional institution that ensures respect for the constitution and oversees the activities of other public institutions in the state.

Mental capacity means that the person is not suffering from mental illness that affects their abilities. Mental incapacity includes persons who are under guardianship, and the amended and supplemented Penal Code 21-01 guarantees the impediments to capacity specific to this type.

III: Non-affiliation with a political party.

Not belonging to any political party throughout one's life is the most likely possibility if it is not stipulated in the 2016 constitutional amendment. This condition is considered unclear and not precisely defined. whether it means that at the time of appointment or election, the member must not belong to a political party regardless of their previous affiliation, or whether it means that the person must not have belonged to a political party

throughout their life, which would enshrine the independence of the members of the court¹⁸.

We note here that, in addition to the conditions applicable to members of the Constitutional Court, the President of the Court must meet the same conditions as the President of the Republic, given the sensitive position of the President of the Court, who may assume the duties of the Head of State in the event of a vacancy and if the vacancy coincides with a vacancy in the position of President of the Council of the Nation. The president of the Constitutional Court also provides numerous consultations to the president of the republic, as specified in the constitution.

Second Section:

Powers of the Constitutional Court in the field of elections.

The 2020 constitutional amendment granted the Constitutional Court broad powers in the field of presidential and legislative elections and referendums, as its oversight extends to various types of electoral legislation, including prior oversight of constitutional amendment bills and organic laws relating to elections, ordinary laws defining electoral districts and the seats allocated to them, and subsequent oversight of regulations involving the convening of the electorate.

It also has exclusive jurisdiction to consider appeals relating to candidacy for the president of the republic and to determine the final list of candidates, to rule on disputes relating to voting in presidential and legislative elections and referendums, and to announce the results. In addition, it intervenes in other areas related to elected institutions, particularly when the presidency becomes vacant, the National People's Assembly is dissolved, the parliamentary term is extended, parliamentary immunity is lifted from members of parliament, and the presidential and legislative elections are postponed.

First requirement: the functions of the Constitutional Court in presidential elections.

Presidential elections are an important milestone in the life of citizens and their country, given the weight and ability of the elected president to fulfil the promises made during the election campaign. Winning the citizens' votes is the biggest challenge facing all candidates, who are driven by fierce competition to disregard the legal conditions governing this process. Hence the importance of the Constitutional Court's role in overseeing the integrity of the electoral process¹⁹.

I: Pre-election period:

This stage begins when the Constitutional Court receives appeals from

candidates for the presidency whose files have been rejected by the Independent National Electoral Authority, in accordance with the forms, conditions and deadlines imposed by law.

The rapporteur appointed by the president of the court examines each candidate's file and ensures that its contents comply with constitutional and legislative requirements. The rapporteur concludes his work with reports and draft decisions, which he submits to the Constitutional Court in a closed meeting to rule on the validity of the candidacies. The decision is officially announced and communicated to the relevant authorities and to the candidates who receive decisions accepting or rejecting their candidacy. The court's decision is final and binding on all public authorities, whether administrative or judicial.

The Constitutional Court issues its decision as described above, and its work is suspended to allow for the launch of the presidential election process, which is subject to constitutional and legislative conditions and monitored by other bodies.

II: Post-polling phase:

This phase begins immediately with the Constitutional Court receiving the minutes of the presidential election results issued by the Independent National Electoral Authority, examining their contents and verifying their accuracy, and the receipt of appeals relating to the provisional results of the presidential elections, and to consider their substance and conditions for acceptance. This is done by a rapporteur appointed by the president of the court, who may, where necessary, hear any person and request the production of any document relating to the electoral process.

After reviewing all the appeal reports, the Constitutional Court shall issue its final decision in a closed session to accept or reject the appeal, which shall be communicated to the parties concerned. If no candidate wins an absolute majority in the elections, the Constitutional Court announces the results of the first round of elections and the names and titles of the top two candidates who are eligible to compete in the second round and invites them to participate in it.

Unlike in the first round, the withdrawal of a candidate from the second round of the presidential election does not result in a decision of rejection, but rather the election process continues as normal until the results are announced.

Upon completion of the electoral process, whether normal or exceptional due to the death of one of the candidates or a legal impediment in the second round, the Constitutional Court shall announce the results.

Second requirement: Powers of the Constitutional Court in legislative elections.

Like presidential elections, legislative elections are also of paramount importance because of their results, which determine the composition of the future parliament.

Unlike presidential elections, the Constitutional Court's oversight of legislative elections focuses on a single stage, which is the post-polling stage.

This stage begins when the Constitutional Court receives the results prepared by the committees of the Independent Electoral Authority, as well as the results of the elections for two-thirds of the members of the Council of the Nation, in order to examine them, verify the final results and allocate seats to the winners of the National People's Council and the Council of the Nation.

Any candidate or political party participating in the National People's Council elections and any candidate for the Council of the Nation elections has the right to challenge the integrity of the voting process by filing an appeal with the Independent Electoral Authority. If dissatisfied with its decision, the appeal may be brought before the Constitutional Court.

The deadlines for appealing to the Constitutional Court are set at 48 hours for National People's Council elections and 24 hours for National Assembly elections, with the deadline starting from the date the results are sent to the Constitutional Court²⁰.

Regarding the time limits for challenging the validity of presidential elections and referendums, no deadline has been set, but in general, the deadline is midnight on the day following the vote. The challenge must be filed in person with the General Secretariat of the Court or by fax, and evidence and defence statements must be submitted thereafter²¹.

Third requirement: Powers of the Constitutional Court in referendums

Alongside elections, referendums are also an important event and a means of ascertaining the opinion of citizens on a particular issue²². While elections are restricted to specific dates on which citizens choose their representatives at the local or national level, referendums can be held on any issue of national importance. that can only be decided by broad popular consultation, ending in approval or rejection. The Constitutional Court's task of overseeing the validity of the referendum takes place in a single stage, which is the post-referendum stage.

The minutes are sent in sealed envelopes to the Constitutional Court, which announces the results, considers appeals related to the referendum

process, and takes the appropriate decision. Within the time limits specified by the organic law on elections, the Constitutional Court rules on the validity of the referendum process and related disputes and announces the results.

In monitoring the validity of presidential and legislative elections and referendums, members of the Constitutional Court are subject to rules of integrity and impartiality, maintain the confidentiality of deliberations, and refrain from taking a public position on a case before them.

Conclusion:

In the 2020 constitutional amendment, the Algerian constitutional founder included the Constitutional Court as a supervisory body for presidential and legislative elections after replacing the Constitutional Council, although it retained some of the elements of the Constitutional Council within the organic aspect of the Constitutional Court, such as retaining the same number of members, which is 12, in addition to retaining the representation of the executive and judicial authorities. However, this does not mean that the 2020 constitutional amendment did not bring anything new, as it included the participation of the electorate for the first time in the process of forming the Constitutional Court.

This body was granted the right to rule on various appeals concerning decisions on candidacy for the presidential elections that were rejected by the Independent National Electoral Authority, i.e. it was considered a corrective and supervisory body for the various actions of this authority relating to the candidacy and voting processes, the announcement of the results of the presidential elections, and the voting and announcement of the results of the legislative elections and referendums.

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