

Guarantees of judicial independence in the face of executive power dominance: An analytical reading in accordance with the provisions of the 2026 constitutional amendment.

ضمانات استقلالية القضاء في مواجهة هيمنة السلطة التنفيذية قراءة تحليلية وفق أحكام التعديل الدستوري لسنة 2026.

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Abstract:

It In light of the provisions introduced by the 2026 constitutional amendment, the status of the judicial authority has been significantly strengthened as one of the fundamental pillars of the rule of law, alongside the legislative and executive branches, given its essential role in administering justice and safeguarding rights and freedoms. However, the realization of this objective remains contingent upon the effective establishment of judicial independence, which must go beyond mere constitutional texts to encompass practical realities that ensure judges are free from all forms of influence or pressure, particularly from the executive authority.

Moreover, the principle of the subjection of all individuals—rulers and the ruled alike—to judicial oversight constitutes a genuine embodiment of the rule of law, reinforcing equality before the law and fostering confidence in the justice system. Any infringement upon this principle would undermine the standing of the judiciary and limit its effectiveness in performing its functions. Accordingly, the guarantees of judicial independence, as enshrined in the recent constitutional amendment, represent a fundamental mechanism for countering any potential dominance of the executive branch, through the establishment of a genuine balance between powers and the strengthening of the institutional framework necessary to protect the judiciary and enable it to perform its duties with integrity and impartiality.

Keywords : Judicial Independence, 2026 Constitutional Amendment, Executive Authority, Supreme Judicial Council.

الملخص:

في ظل ما أقره التعديل الدستوري لسنة 2026، تعززت مكانة السلطة القضائية باعتبارها إحدى الدعائم الأساسية لبناء دولة القانون، إلى جانب السلطتين التشريعية والتنفيذية، لما تضطلع به من دور جوهري في إرساء العدالة وحماية الحقوق والحريات، غير أن تحقيق هذه الغاية يظل رهيناً بتكريس استقلالية فعلية للقضاء، لا تقتصر على مجرد النصوص الدستورية بل تمتد لتشمل الممارسات الواقعية التي تضمن تحرر القاضي من كل أشكال التأثير أو الضغط، لا سيما من جانب السلطة التنفيذية. كما يُعدّ مبدأ خضوع الجميع، حكماً ومحكومين، لرقابة القضاء تجسيداً حقيقياً لسيادة القانون، بما يعزز المساواة أمامه ويكرّس الثقة في العدالة، وأي مساس بهذا المبدأ من شأنه أن يضعف مكانة القضاء ويحدّ من فعاليته في أداء وظيفته ومن ثم فإن ضمانات استقلالية القضاء كما جاء بها التعديل الدستوري الأخير، تمثل آلية أساسية لمواجهة أي هيمنة محتملة للسلطة التنفيذية، من خلال إرساء توازن حقيقي بين السلطات، وتدعيم الإطار المؤسسي الكفيل بحماية القضاء وتمكينه من أداء مهامه بكل نزاهة وحياد. الكلمات المفتاحية: استقلالية القضاء، التعديل الدستوري لسنة 2026، السلطة التنفيذية، المجلس الأعلى للقضاء.

Introduction:

In the absence of complete judicial independence, the executive branch's dominance and interference have become increasingly pronounced, to the point of subjecting judicial rulings to its will and approval. This has negatively impacted the judiciary's true role in protecting rights and freedoms, and has led to a weakening of the rule of law within society. This situation has prompted calls for the establishment of the principle of judicial independence as the fundamental guarantee for achieving justice impartially, free from any influence or subordination to any other authority.

Based on this, most modern constitutions have sought to adopt and enshrine this principle, including the Algerian Constitution, which established the principle of separation of powers. This ensures the distribution of governing functions among the executive, legislative, and judicial branches, aiming to establish a balance and mutual oversight among these branches. This guarantees the application of the law to everyone without discrimination, rulers and ruled alike. Therefore, it becomes essential that the body responsible for enforcing the law enjoys complete independence and is free from any subordination, so that it can fulfill its role in protecting individual rights and safeguarding freedoms optimally.

The importance of this study stems from several points, most notably:

1- The study's scientific significance lies in the depth of the problem it addresses and its connection to the realities of modern systems. Examining the extent of the executive branch's influence on the judiciary has become a matter of paramount importance, especially given the evolution of judicial systems alongside societal developments in various fields. This necessitates highlighting the various guarantees that ensure the independence of judges, protecting them from any interference or pressure from the executive branch and enabling them to perform their duties with complete freedom and confidence.

2- Upholding the principle of constitutional supremacy, particularly concerning the independence of the judiciary, by protecting it from any infringement or interference in its affairs by the executive branch, which could disrupt its organization and fundamental function.

3- The importance of this topic is further underscored by its role in consolidating the principle of judicial independence, which strengthens confidence in the legitimacy of the existing system and guarantees the principle of equality among individuals, especially regarding their right to access an independent and impartial judiciary. The Problematic Issue

The Algerian legislator is keen to establish the principle of separation of powers as one of the most important guarantees for achieving balance and mutual oversight among them, without resorting to coercion or domination. This principle requires that the executive branch not assume judicial functions, and that it be prevented from interfering with or influencing judges while they are performing their duties, thus ensuring the protection of rights and the preservation of security within society. Has the 2026 constitutional amendment succeeded in effectively enshrining the principle of judicial independence, and how effective are the constitutional guarantees established to limit the interference of the executive branch?

This central problem leads to the following sub-questions:

- What is meant by the principle of judicial independence?
- What are the most important guarantees established by the 2026 Constitution to strengthen the independence of the judiciary in Algeria?

- What are the most prominent manifestations of executive branch interference in judicial affairs?

To what extent are the constitutional reforms sufficient to achieve genuine judicial independence? Methodology

The study primarily employed a descriptive-analytical approach, describing the constitutional framework governing the judiciary, analyzing various relevant texts, clarifying their legal implications, interpreting the provisions of the 2026 Constitution, and demonstrating their significance in enshrining the principle of judicial independence. Additionally, an inductive approach was adopted, tracing and analyzing the texts of organic laws related to the subject matter to extract the safeguards established by the Algerian legislature and assessing their effectiveness in limiting executive branch interference.

This study aims to:

1- Analyze the constitutional texts in the 2026 amendment related to the independence of the judiciary.

2- Examine the reforms proposed to limit the interference of the executive branch.

3- Evaluate the effectiveness of these guarantees in enshrining the independence of the judiciary.

Plan

To study and understand the topic, the study was divided into two parts: an introduction that included the most important basic elements, and two sections. The first section was dedicated to outlining the conceptual framework of the principle of judicial independence, while the second section addressed the mechanisms for enshrining the principle of judicial independence in the 2026 constitution. Finally, a conclusion included the most important findings and some recommendations.

1. The conceptual framework of the principle of judicial independence

Judicial independence means the liberation of the judicial authority from any interference by the legislative and executive authorities. To reveal the depth of the relationship between the judiciary and other authorities, especially the executive authority, we must examine the powers enjoyed by judges as individuals in relation to public authorities and adversaries. An independent judiciary cannot exist unless there is a body tasked with monitoring the professional path of judges, composed of judges themselves and protected by a system that prevents any interference that could affect the independence of the judiciary.

To achieve this, we divided this topic into two sections. In the first section, we addressed the definition of the institutional independence of the judiciary, while in the second section, we focused on clarifying the personal independence of the judiciary.

1.1- Defining the institutional independence of the judiciary

It is well known that the state conducts its business through its three authorities: the legislative authority, the executive authority, and the judicial authority, which seeks to apply the law and establish justice without being subordinate to the two previous authorities; that is, to preserve its institutional independence from other previous governmental branches. This means that the independence of the judiciary is one of the most prominent results of the principle of separation of powers, which should be secured by fortifying it with administrative and financial independence, as explained in the following two sections.

1.1.1- Administrative Independence of the Judiciary

One of the most important aspects of judicial independence is ensuring that judges are protected by a separate administrative system that safeguards all their affairs, managed solely by members of the judiciary. This system is organized and affiliated with the Supreme Judicial Council, which oversees the organization, implementation, and supervision of judicial affairs without interference from any other authority.

First - The Legislative Authority's Inability to Interfere in Judicial Matters

The legislative authority is responsible for enacting laws, while the judicial authority is responsible for their application and ensuring their compliance. The independence of the judiciary requires that it not be subject to any interference from the legislative authority. Violating this principle would lead to the spread of injustice and the breakdown of order. However, in practice, it is observed that the legislative authority possesses various means that could enable it to influence the judiciary and undermine its independence. (Al-Ahmad, p. 89)

Among the most prominent cases mentioned are the intervention of the legislature by enacting interpretative laws for previous laws, as well as issuing organic laws related to the organization of the judiciary and judicial bodies, or issuing regulatory laws related to the Personal Status Law, the Nationality Law, the Penal Code, and the Code of Criminal Procedure, particularly the definition of felonies, misdemeanors, and the various penalties corresponding to them, and the rules related to the Code of Civil Procedure. (See Zain al-Abidin Ghitri)

While most modern constitutions recognize the granting of certain powers to the legislative authority in relation to the judicial authority – which entails the indirect subjection of the judge to the legislative authority that approves the laws that govern judges and by which they also rule – this grants it the right to exploit these powers to directly interfere in the work of the judiciary, considering that this affects the essence of the independence of the judiciary. Based on this, we will explain below the cases in which the legislative authority is prevented from interfering in judicial work.

It can be said that these cases vary depending on the different oversight mechanisms that the constitution grants to parliament. However, they can be summarized in a number of controls, including preventing members of parliament from addressing cases before the judiciary through their parliamentary questions, prohibiting discussion of judicial rulings or ongoing cases within parliamentary debates, and prohibiting the government from being questioned about matters still under judicial consideration. It is also understood from this that parliament cannot restrict the right to litigation through legislative texts, in addition to refraining from issuing laws that aim to legitimize decisions issued by the executive authority. (Hamli, p. 82)

Second – Prohibiting Executive Authority Interference in Judicial Affairs

To understand the extent of the judiciary's independence from the executive branch, it is essential to examine the reciprocal influence between the judiciary and the executive branch's representative body, the Ministry of Justice, represented by the Minister of Justice. The Minister is entrusted with establishing a national judicial system that respects constitutional guarantees and the independence of the judiciary, ensuring the proper functioning of the justice system, issuing directives to public prosecutors and state governors, proposing laws and regulations, ensuring their effective implementation, and promoting judges by

encouraging training and research to develop the sector. (See Zain al-Abidin Ghitri), While exceptions exist that define legitimate instances of executive branch interference in judicial matters, accepting the lack of regulation of the executive branch's intervention in the judiciary's domain could have dire consequences for judicial independence. Therefore, it is imperative to define the scope of this intervention according to the standards established by modern democratic practices. No member of the executive branch—whether a director, minister, or even president—should be allowed to confiscate or restrict the right to litigation, diminish its guarantees, dictate orders to judges in any case, or undermine the authority of their rulings, which inevitably leads to the violation of the rule of law. One manifestation of this is the president's exercise, as the highest judicial authority in the country, of the right to grant pardons, reduce sentences, or commute them, as stipulated in Article 91, Paragraph 8 of the 2016 constitutional amendment, which states: "The President of the Republic has the right to grant pardons and the right to reduce or commute sentences." (Hamli, p. 102) (For further reading, see: Makhfi Mina: Obstacles to the Independence of the Judiciary, University of Algiers Research, Issue 9, Part 1, p. 240. Also see the full text of Article 91, Paragraph 8 of Presidential Decree No. 26-04 dated March 26, 2026, containing the constitutional amendment, Official Gazette of the People's Democratic Republic of Algeria, Issue 22, 2026)

1.1.2- Financial independence

The lack of financial independence of the judiciary, and its continued subordination to the executive branch, renders it financially dependent on other entities. The Algerian legislature acted wisely in granting the Supreme Judicial Council financial autonomy, ensuring that the necessary funds for its operation are allocated in the state's general budget, and that the judge serving as secretary of the Supreme Judicial Council authorizes expenditures, as stipulated in Article 176 of the 2016 Constitution. (cited) Article 73, paragraph 3 of Organic Law No. 22-12, which specifies the methods for electing members of the Supreme Judicial Council. (27-6-2022)

This is the same approach taken by the Algerian legislator in the latest amendment of 2026, specifically in Article 180, Paragraph 1, which strengthened the role of the Supreme Judicial Council by stipulating that "the Supreme Judicial Council guarantees the independence of the judiciary." The principle of independence here is general, extending even to financial independence. (Faramouch, p. 71)

Ultimately, judges should receive salaries and allowances that preserve their dignity, guarantee their protection, enhance their independence in society, and shield them from all temptations and influences.

The judiciary's budget must include the following:

1- Modernizing the justice system by introducing an automated information system to assist judges in all decisions and laws. This will be achieved through information banks and their use in the court clerk's office. This service will expedite the judicial process, enabling the judiciary, with its various branches, to keep pace with modern scientific methods. (Al-Jabali)

2- Strengthening the needs of court buildings, restoring and establishing them, and ensuring that the newly constructed buildings include accommodations for judges. This

pertains to the organizational aspect. As for the personal aspect, it is necessary to provide a decent standard of living and financial benefits for judges and members of the Public Prosecution to protect them from all suspicion. (Faramouch, pp. 72-73)

1.2- Definition of the personal independence of the judiciary

Judges, as individuals, have the right to enjoy personal independence while performing their judicial duties. This does not mean yielding to their personal desires and whims, because this right is countered by the duty to adjudicate the cases presented in accordance with what the law dictates. Any departure from this principle and any breach in the performance of the tasks assigned to them will result in being subject to disciplinary, civil, or criminal accountability. Accordingly, it was necessary for the legislator, in order to preserve the principle of the personal independence of the judiciary, to distinguish the judge with a type of protection that is embodied in strengthening the intellectual independence of the judge, as well as providing sufficient protection during the exercise of the judge's responsibility.

1.2.1- Protecting the intellectual objectivity of the judge

A judge's impartiality and commitment to justice are fundamentally based on their balanced personality, profound legal knowledge, and extensive experience and wisdom gained through years of practice and learning. These qualities are not merely formal qualifications, but rather represent a continuous state of mind and intellect that must accompany a judge throughout their career, forming a solid foundation that reflects their independence and ability to issue fair judgments without influence or bias. This mental aspect is an integral part of judicial independence, reflecting the judge's adherence to professional and ethical values that guarantee the integrity of judicial decisions and the protection of rights and freedoms. (Raad)

Neutrality must include political neutrality. There is no point in judicial independence if we violate the impartiality of judges and involve them in politics, which will undermine their role as guardians of the law. For if politics enters the sanctity of the judiciary, justice will inevitably depart. (Omran)

Accordingly, impartiality is a legal obligation, and breaching it entails disciplinary and civil liability, and may even result in criminal liability if the breach is serious, such as when a judge commits fraud, deception, or treachery during the course of the proceedings or when issuing a judgment or decision, or when a judge, for any reason, shows bias in favor of one party at the expense of the other. (Abdelhafid, p. 193)

1.2.2- Protecting the judge during accountability

The judge's respect and dignity before the litigants reflects the soundness of his character and his avoidance of anything that might shake this image, as he is the refuge of the litigants, reflecting the justice of the law. His deviation from this task does not prevent him from being held accountable and penalized, which has required the legislator to provide a kind of protection during this accountability process.

First – Protecting the Judge During Disciplinary Proceedings

It is generally accepted that disciplinary responsibility is based on the concept of error, defined as a deviation in conduct. However, if a judge commits an administrative error in the

performance of their duties, rendering them subject to disciplinary action, it is essential, in order to safeguard their independence, to establish specific rules that must be observed during disciplinary proceedings. This is necessary to prevent the executive branch from using such proceedings as a means to influence the judge. Therefore, it is necessary to define the procedures that must be adhered to during disciplinary proceedings against judges, initiated by the Supreme Judicial Council as the sole judicial body, as stipulated in Articles 53 to 68 of Law 22-12. (Omran) (Refer to Articles 53 to 68 of Organic Law No. 22-12)

Secondly - Protecting the Judge During Civil Liability

The general principle is that a judge is not liable for actions taken during the performance of their judicial duties, as they are considered to be exercising a right granted to them by law and given personal discretion. Accordingly, the Algerian legislator has established protections to ensure the judge's peace of mind during civil liability proceedings. This pertains to establishing the state's responsibility for all actions that may be taken by a judge and cause harm to others. (Hamli) This includes the state's responsibility for damages resulting from unjustified temporary detention, as stipulated in Article 219 of the Code of Criminal Procedure. (Article 219, paragraph 2 of Law No. 25/14 dated August 3, 2025, which includes the Code of Criminal Procedure, Official Gazette of the People's Democratic Republic of Algeria, No. 54 of 2025, states that "the compensation granted shall be borne by the Public Treasury...".) The state's responsibility in cases of judicial disputes, according to Article 19, Paragraph 2 of Organic Law No. 26-03 (Article 19, Paragraph 2 of Organic Law No. 26-03 dated 4 Shawwal 1447 AH / 23/3/2026 containing the Basic Law of the Judiciary, Official Gazette of the People's Democratic Republic of Algeria, No. 23, issued on 29 March 2026.) Which indicates that "the judge is only responsible for his personal error and he does not bear responsibility for his professional error except through a recourse action taken by the state against him," which is an indication of the state's superficial responsibility for the judge's error.

Third - Protecting the judge during his criminal accountability

This relates to the judge committing a crime that is classified as a felony or misdemeanor. In this case, he is subject, like any citizen, to the provisions of the Penal Code, taking into account the special procedures for judges contained in the Code of Criminal Procedure 25/14 and the Organic Law containing the Basic Law of the Judiciary in its Article Thirty, which clearly indicates the criminal liability of the judge due to his committing a felony or misdemeanor in accordance with the provisions of the Code of Criminal Procedure. (Abdelhafid, p. 214)

This does not mean that the judge is not surrounded by protection while committing such acts. Rather, the legislator has provided him with procedural protection during the investigation stage, according to what was stated in Article 736, which clarifies the procedures for investigating Supreme Court judges, heads of judicial councils, and public prosecutors, and Articles 737, 738, and 739 of the same law, which note the procedures that must be applied during the investigation process with judges of judicial councils, heads of courts, and public prosecutors. In addition, the legislator has surrounded the judge with a set

of procedural guarantees during the trial stage(See Articles 736-737-738-739 of the Criminal Procedure Code 25/14, source previously mentioned).

Moreover, if a judge is subjected to threats, insults, slander, defamation, or attacks of any nature, while performing his duties, or in connection with or because of them, and even after his retirement, the State shall compensate for the direct damage resulting from this, and in these circumstances shall take the place of the victim to claim his rights. Accordingly, the State has the right to use a direct lawsuit that it may file, when necessary, as a civil plaintiff before the competent judicial authorities, as stipulated in Article 17 of Law 26-03.

2. Mechanisms for Enshrining the Principle of Judicial Independence in the 2026 Constitution

The judiciary is fundamentally independent, as any infringement upon this independence undermines the sanctity of the judiciary and weakens the foundations of justice. Therefore, merely stipulating judicial independence in constitutions is insufficient to guarantee its practical realization unless these constitutional provisions are supported by mechanisms that embody both institutional and personal judicial independence. This independence is not interpreted as a privilege or special status for the judiciary, but rather as a fundamental affirmation of the judiciary's authority and a reinforcement of its structure, which in turn leads to the establishment of justice and the rule of law.

Therefore, it is essential to adopt certain fundamental mechanisms that serve as principles enshrined in constitutions. These include strengthening the role of the Supreme Judicial Council, enshrining its composition in the constitution, and ensuring job security for judges, while maintaining the principle of two-tiered litigation in administrative matters.

2.1 Strengthening the role of the Supreme Judicial Council

The Supreme Judicial Council, headed by the President of the Republic according to Article 180 of the 2026 constitutional amendment, occupies a significant position, resulting in a relationship of influence and interaction between it and the judiciary in particular, and society in general. Is this role limited to promoting, appointing, assigning, and disciplining judges? Or does it extend to other functions that are considered important mechanisms for establishing an independent judiciary, as we will explain?

2.1.1- Expanding the powers of the Supreme Judicial Council

If safeguarding the objectivity of judges is one of the means of strengthening their independence, then expanding the powers of the Supreme Judicial Council to elevate it to the status of overseer of judicial affairs is also a crucial factor in strengthening judicial independence (This is what the French legislator sought through the amendment of July 27, 1993, which dealt with the Supreme Judicial Council. As for the draft constitutional law of 1998, proposed by the former Minister of Justice, Elisabeth Ayko, it was not adopted. In this context falls the amendment of the judicial system by Law No. 398 issued on 12/21/2001. For further information, see Nabil Shdid Al-Fadil Raad: reference previously mentioned, p. 58).

First - Constitutionalizing the Composition of the Supreme Judicial Council

This is stipulated in Article 180, Paragraph 2 of the 2026 amendment and subsequent articles, which state that the Supreme Judicial Council consists of 22 members, chaired by the President of the Republic. The Vice-Presidency of the Council is assigned to the First President of the Supreme Court. The Minister of Justice is excluded from membership in the Supreme Judicial Council to avoid blatant violations of the principle of separation of powers. The President of the Council of State is included as a member, along with the Attorney General at the Supreme Court. The number of judges is reduced to 15, elected by their colleagues. Six independent figures from outside the judiciary are retained. The provision for the presence of two representatives from the National Union of Judges and the membership of the President of the National Human Rights Council, which was present in the 2020 Constitution, is removed.

Second - Appointment of Judges and Appointments to Specialized Judicial Positions

1- Appointment of Judges: The President of the Republic has the authority to appoint judges, as stipulated in Article 92 of the 2020 Constitutional Amendment, by presidential decree. (In reality, despite this method being considered the most widespread and effective, it could be seen as conflicting with the independence of the judiciary from the executive branch if the law specifies the procedures the executive branch must follow when appointing judges, such as the conditions and qualifications required of candidates for this position. This is because the basis for this selection will have a positive or negative impact on achieving justice and upholding the principle of equality before the law, which is considered one of the most important pillars of the right to litigation. Furthermore, in this context, the president's authority is not limited to initial appointments but extends to appointments to specialized judicial positions)

Based on a proposal from the Minister of Justice, and after deliberation by the Supreme Judicial Council, after the completion of all administrative (security) investigations and social research that must be positive, based on what was stated in Article Three of the Organic Law containing the Basic Law of the Judiciary, and in this way the best is chosen to assume the task of the judiciary, because the supreme judicial bodies such as the Supreme Judicial Council usually consist of senior judges who are competent, experienced and able to choose the most suitable person to occupy the judicial position.

Regarding the 2026 constitutional amendment, Article 181, Paragraph 1 states: "The Supreme Judicial Council shall decide, in accordance with the conditions stipulated by law, on the appointment, transfer, and career path of judges." Does this text imply that the task of appointing judges is now entrusted to the Supreme Judicial Council, a power previously held exclusively by the executive branch? This would constitute an effective mechanism for strengthening the judiciary's independence from executive dominance. Alternatively, does it reaffirm the provisions of Articles 92 of the 2020 Constitution and 3 of Law 26-03, which contains the Basic Law of the Judiciary?

Conversely, Article 52 of the same law expands the executive branch's role in the direct appointment of judges, stipulating: "Judges may be appointed directly and exceptionally as advisors to the Supreme Court or State Councilors to the Council of State, upon the proposal of the Minister of Justice and Keeper of the Seals, and after deliberation by the Supreme

Judicial Council. These appointments shall not, under any circumstances, exceed 20% of the available budgetary positions..." (See the full text of Article 52 of Law 26-03, source mentioned above.)

2- Appointment to specialized judicial positions: According to Article 181/Paragraph 2 of the 2026 Constitution, the President of the Republic is responsible for appointing to specialized judicial positions by presidential decree and after consulting the Supreme Judicial Council, which deliberates on the list of appointments and termination of duties in specialized judicial positions, as stipulated in Article 63 of the Basic Law for Judges No. 26-03. (Mouloud, p. 497)

Thirdly – Transfer and Assignment of Judges

Among the guarantees of judicial independence is the principle that the assignment of a judge should not be subject to the absolute authority of the executive branch or any other entity. Therefore, it becomes necessary to establish clear rules that define the conditions and procedures for transferring, assigning, or seconding a judge. These rules should be applied by the council responsible for managing judicial affairs, ensuring that decisions comply with the requirements of the law and protecting judges from any external influence when determining their assignment, transferring them, or assigning them new duties.

The Algerian legislator has attempted to expand the powers of the Supreme Judicial Council in the area of transferring judges, as stipulated in Article 181 mentioned above, while taking into account a number of objective criteria. Furthermore, the legislator has limited the scope of assignments within Article 91 of Organic Law No. 26-03, the most important of which are assignments to constitutional or governmental bodies, assignments to international organizations, etc. (Rahman, p. 125)

Fourth – The Secondment and Retirement of Judges

Referring to the Basic Law of the Judiciary No. 26-3, specifically Article 97, we find that the authority to place judges on secondment rests with the Supreme Judicial Council upon a personal request from the judge. In urgent cases, the Supreme Judicial Council, through its Permanent Bureau, may approve a judge's request for secondment, provided that the judge's situation is presented to the Supreme Judicial Council for resolution at its first session. This is considered a bold step by the legislator, as it removed the power to place judges on secondment in urgent cases from the Minister of Justice and vested it in the Supreme Judicial Council.

The Supreme Judicial Council is also authorized to retire judges upon reaching the legal retirement age, which is 60 years for male judges and 55 years for female judges. However, in exceptional cases, the retirement age is extended to 70 years for judges of the Supreme Court and the Council of State, and to 65 years for other judges, as stipulated in Article 103 of Law 26-03.

2.1.2- Facilitating the administration of justice

If a sound judgment represents the essence of truth and justice, then reality demands more than simply issuing a legally correct ruling in cases. In pursuit of the ultimate goal of the judiciary and ensuring the integrity of legal proceedings, individuals are not satisfied merely

with a legally correct judgment. They aspire for this judgment to be issued in a timely manner, through simple and transparent procedures, and subsequently implemented promptly with sufficient guarantees to ensure respect for rights and the achievement of genuine justice. (Ubaid, p. 9)

All competent state agencies are required at all times, in all places and in all circumstances to ensure the implementation of judicial rulings. The law punishes anyone who undermines the independence of the judge or obstructs the proper administration of justice and the implementation of its decisions. It is self-evident that justice is based on five basic pillars, represented by a sound legal text, applied by an impartial judge, supported by competent assistants, within simple procedures, and within the framework of a well-established judicial system. This is what Article 181/Paragraph 3 enshrined when it emphasized the need to ensure respect for the basic law of the judiciary and to monitor the discipline of judges under the chairmanship of the First President of the Supreme Court. (For further details, see the full text of Article 181 of the 2026 Constitutional Amendment.)

2.1.3- Two-tier litigation in administrative matters

The principle of two-tier litigation is considered one of the most important guarantees of a fair trial, and it was guaranteed by the 2016 constitutional amendment in Article 160 in criminal matters and military justice. This principle was enshrined in administrative matters in the 2020 constitutional amendment by stipulating the establishment of administrative courts of appeal under Article 179, after the Council of State had been the competent authority for appeals against judgments issued by administrative courts. This article remained unchanged, which reflects the constitutional framers' keenness to enhance the clarity of the constitutional framework and ensure its consistent operation without compromising the fundamental gains established by the 2020 Constitution. (Mouloud, p. 503)

2.2 . Ensuring Job Security for Judges

A judge is one of the most important figures in the justice system, and therefore must have a degree of security that enables him to perform the tasks entrusted to him in the cases presented to him. This security is often impossible if he is threatened with dismissal from his position, or if his mind is constantly preoccupied with thoughts of promotion, or if his physical or mental health does not allow him to quickly adjudicate cases and adhere to the principle of impartiality in order to reach a just verdict. Therefore, it seems imperative to protect the judge with a set of protective mechanisms, which are as follows:

2.2.1 - The Irremovability of Judges

The irremovability of a judge means that a judge may not be removed from their judicial position, whether by dismissal, retirement, suspension, or transfer to another post, except in the cases and according to the procedures stipulated by law. (The grounds for terminating a judge's duties under Article 98 of Law 26-03 are: death, loss of Algerian nationality, resignation, retirement, dismissal, discharge due to permanent physical or mental incapacity preventing the performance of duties, and discharge due to unqualifiedness, lack of appointment, or professional incompetence resulting from a clear lack of knowledge of the law.) Undoubtedly, judicial freedom is only possible with the freedom of judges, and a judge

who fears dismissal cannot find the path to truth and justice. This mechanism is the essence of judicial independence. (Al-Jabali, p. 42)

Article 172 of the 2020 Constitution, which remained unchanged, stipulates that a judge may not be dismissed, suspended from work, relieved of his duties, or subjected to disciplinary action during or in connection with the performance of his duties, except in the cases and according to the guarantees specified by law, pursuant to a reasoned decision by the Supreme Judicial Council (Article 172, paragraphs 2 and 3 of the 2020 constitutional amendment).

Based on the principle of parallelism of forms, the dismissal of heads of judicial bodies is carried out by presidential decree and outside the framework of the Supreme Judicial Council. Among these is the President of the Supreme Court, meaning that appointment and dismissal fall under the authority of the President of the Republic. Therefore, the provisions of Organic Law No. 26/03 must be adapted to conform with the articles of the Constitution. (Abdelmalek, p. 1675)

2.2.2 - Promotion

Among the requirements that are considered a basic guarantee for the quality of judicial work is the development of the judge's talents and abilities in order to prepare him with a solid legal preparation, and respect for his abilities and qualifications. Referring to the content of Article 58 of Law 26-03, we find that it included the possibility of promoting judges belonging to the ordinary judicial system and classified in each of the ranks of the appointed ranks according to the conditions specified in the regulatory text stipulated in Article 13 of the same law, where judges must hold progressive positions, with promotion to one of them being from the immediately lower position, provided that the promotion is based on the efforts made in terms of quantity and quality, taking into account competence and seniority, and ensuring the establishment of controls for assessing competence, such as the evaluation obtained at the end of continuous and specialized training and the scientific works completed and obtained. (Rahman, p. 124)

Conclusion:

Societies are not as affected by the dysfunction of other branches of government as they are by the dysfunction of the judiciary, given its role as the guardian of the constitution and protector of citizens' rights and freedoms. However, the dominance of the executive branch and the proliferation of its various actions reflecting its control over the judiciary have led to the erosion of the latter's independence. This has resulted in the executive branch escaping judicial oversight under the pretext of serving the public interest. Therefore, it is imperative to surround the independence of the judiciary with a set of guarantees that allow for the full exercise of judicial functions. Accordingly, our study of this topic has yielded several key findings, the most important of which are:

1- The independence of the judiciary can only be built upon two main elements: institutional independence and personal independence. Any infringement upon these two elements constitutes a violation of the principle of judicial independence.

2- The judiciary must be supported by a set of mechanisms, most notably strengthening the leading role of the Supreme Judicial Council and expanding its powers as the overseer of judicial affairs and the facilitator of justice. Furthermore, a degree of job security for judges is essential to enhance their independence, achieve reform in the justice sector, and propel the country forward.

3- The 2026 amendment enshrines a significant set of guarantees on both the organizational and functional levels, most notably: maintaining the principle of two-tiered litigation in administrative courts; constitutionalizing the composition of the Supreme Judicial Council and prioritizing its judicial character by removing the Minister of Justice from membership and vice-presidency of the Council and assigning the role to the First President of the Supreme Court; and ensuring the membership of the President of the Council of State and including the Attorney General at the Supreme Court.

Eliminating the provision for the presence of two representatives from the National Union of Judges and the membership of the President of the National Human Rights Council, which was present in the 2020 Constitution.

4- Strengthening the independence of judges' professional careers by exclusively granting the Supreme Judicial Council the authority to manage appointments, transfers, promotions, secondments, and disciplinary actions.

5- The relative independence of the judiciary under the President of the Republic's chairmanship of the Supreme Judicial Council, the exercise of presidential pardons, and appointments to specialized positions. Therefore, it seems imperative to present the following proposals:

1- The Algerian legislature should reconsider the content of Organic Law 26-03 in a way that effectively empowers the executive branch, prevents the dismissal of judges, and limits the Supreme Judicial Council's authority to transfer judges to specialized positions, rather than leaving this power as a prerogative of the President of the Republic. This should be done while ensuring consistency between the provisions of the 2026 constitutional amendment and the text of this law.

2- A modern organic law should be enacted to define the methods and rules for organizing and operating the Supreme Judicial Council, in accordance with the latest constitutional amendment of 2026.

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