

THE INDEPENDENCE OF THE SJC IN THE LIGHT OF THE CONSTITUTIONAL REFORM OF 2020

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Abstract:

This study aims to demonstrate that the 2020 constitutional amendment is a significant milestone in the constitutional reforms initiated by the constitutional founder since the 1996 amendment. It includes qualitative additions to ensure and support the independence of the judiciary, provided that they are effectively implemented in practice. However, some organisational and functional obstacles remain, such as the appointment of judges, the chairmanship of the Supreme Judicial Council and the influence of the President of the Republic on the exercise of his powers, as well as his powers to grant pardons, commute sentences and amend judgments.

The study concludes that the independence of the judiciary remains relatively constrained by the President of the Republic's chairmanship of the SJC, his power to appoint judges, the exercise of the President's power of pardon and the potential restrictions imposed on the judiciary by the Minister of Justice. Strengthening the principles of the new republic therefore requires eliminating the dominance of the executive over the judiciary and giving the judiciary a new status in its relationship with the legislative and executive branches, since it is an essential component of a state governed by the rule of law.

Keywords: Judiciary, independence, constitutional amendment 2020, independence of the High Council of the Judiciary, guarantees of independence, President of the Republic, Minister of Justice.

Introduction:

The independence of the judiciary is the cornerstone of justice and the guarantee of freedom, as well as one of the most important components of a State governed by the rule of law. It implies the organic and functional unity of the judiciary, so that judges are free from any authority and subject only to the law. The judiciary is treated as the sole institution vested with the power to settle disputes and issue judicial rulings and decisions. The founder of the Algerian constitution has emphasised the independence of the judiciary since the first constitutional experience in 1963 until the latest amendment in 2020, when Article 163 affirmed that the judiciary is an independent authority and that judges are independent and bound only by the law.

How does the 2020 constitutional amendment contribute to strengthening the independence of the SJC? What are the main imbalances? This study uses the appropriate scientific methods for this type of topic, namely descriptive and analytical methods, by providing a precise description of the constitutional text regarding the independence of the judiciary in the 2020 amendment. This involves analysing and reviewing this new text on independence to determine its effectiveness as well as its shortcomings, and proposing solutions based on objective criteria.

In order to answer the questions raised, the study is based on a framework divided into three main sections:

1. Guarantees of the independence of the SJC.
2. Aspects of the relative independence of the SJC.
3. Modern mechanisms established for the independence of the Supreme Judicial Council.

Main Section One: Guarantees of the independence of the SJC

The guarantees of the independence of the SJC include those relating to the legislative and executive branches, as well as self-imposed and objective guarantees, which are dealt with in the following subsections.

Subsection One: Guarantees of the independence of the SJC from the public authorities



The main guarantees of the independence of the judiciary from the legislative and executive branches are the methods of selection and appointment of judges, the incompatibility of members of the judiciary with other bodies, the prohibition of interference by the legislative and executive branches in judicial matters and the impossibility of dismissing or transferring judges, as well as the protection and promotion of judges¹.

1- Method of selection of judges:

The guarantee of the independence and integrity of the judiciary must necessarily be achieved through the adoption of decisive and transparent criteria, the most important of which is the competence and legal ability of judges in the selection process. Although this may be left to the discretion of the judge, international law on the status of judges shows that there is no consensus on the method of selection. Therefore, some systems use elections, others rely on selection by the legislative authority or appointment by the executive authority, and a third system leaves the selection to the judicial authorities².

1.1 Electoral method:

The electoral system is considered the best means of achieving judicial independence.

This method is used in most Marxist socialist constitutions, with the exception of the Soviet, Polish and former Czechoslovakian constitutions. In the United States constitution, judges are directly elected by the people, which gives the judiciary a democratic character. However, the danger of this approach lies in the voters' lack of awareness of the qualifications and merits that judges should possess, as well as their susceptibility to political parties and voters³.

1.2 Selection of judges by the legislature:

In countries with some politically oriented courts, such as the former Yugoslav Republic of Macedonia, the legislative assembly simultaneously elects members of the Constitutional Court and the Judicial Council of the Republic. However, in countries with a party system, this approach leads to the intermingling of political and party considerations, whereas the judiciary should remain neutral⁴.

1.3 Appointment of judges by the executive:

The selection of judges by the executive is the most common method adopted by most Arab countries. This method requires strong guarantees to ensure that judges do not fall under the influence of the executive authority, thereby maintaining their neutrality and integrity. The most important of these guarantees is protection against dismissal. It requires the formulation of general and abstract rules to regulate the career of judges⁵.

1.4 The self-selection method:

This approach is based on the selection of judges by the judiciary itself or by separate judicial supervision. Some constitutions use this method, such as the Portuguese Constitution, which empowers elected judges to appoint certain members of the court. In contrast, the Bulgarian Constitution gives the judiciary itself the power to make appointments. In addition, Supreme Court judges can appoint judges to lower courts. While this approach ensures the full independence of the judiciary from subjugation, it may also lead to the dominance of the judiciary and the removal of any political control over it, creating a separate entity within the state known as the judicial state. This could result in a class monopolising positions, which could lead to arbitrariness and the deviation of the judiciary from the right path⁶.

2- Non-interference of the legislative and executive branches in judicial affairs:

¹- Duverger, Maurice. *Political Institutions and Constitutional Law*, Paris, France, 1966, p. 170.

²- Bou Chaïr, Said. *Constitutional law and comparative political systems*, volume 2. Bureau of University Publications, Algeria, 1999, p. 25.

³- Ben Hamouda, Leïla. *Democracy and the Rule of Law*. Dar Houma for Printing, Publishing and Distribution, Algeria, 2014, pp. 243-244.

⁴- Djall, Saleh. *Protection of freedoms and the rule of law*. Doctoral thesis in public law, Faculty of Law, University of Algiers, 2009-2010, p. 142.

⁵- Al-Fail, Abdel Khalek Saleh Mohammed. *The extent of judicial independence in Yemen and Algeria*. Thesis for the PhD in Law, Faculty of Law, University of Algiers, 2016, p. 13.

⁶- Boubechir, Mohand Amqarane. *The Algerian Judicial System*. Bureau of University Publications, Algeria, 2005, p. 88.

For the judiciary to be independent, it must be free from any interference by the legislative and executive branches in the exercise of its functions. A judge is subject only to the law, as his or her role is to apply the rule of law. A judge should be bound only by his or her conscience. The independence of the judiciary does not preclude the existence of means of cooperation between the judiciary and other State authorities in the pursuit of the public interest. However, the executive should not adjudicate on disputes or interfere in the administration of justice through recommendations, directives or otherwise. Similarly, the legislature should not exceed its powers or enact legislation that undermines the right to litigation or infringes rights and freedoms¹.

In order to prevent violations of the independence of the judiciary, it is essential to impose criminal sanctions, to ensure non-interference by the legislative or executive authorities, and to establish an independent and effective mechanism that allows judges to use criminal sanctions to prevent interference and pressure. In order to achieve an effective and independent judiciary, the state must bear all errors arising from a judge's interpretation in order to find solutions to difficult problems. However, this should not include errors resulting from negligence, ignorance of legal principles or misunderstanding of new laws, etc².

3- Immunity from dismissal and transfer:

The guarantee of immunity from dismissal is based on the principle that judges should not be removed from their judicial duties, whether by dismissal, retirement or suspension. Judges who fear for their positions cannot rule with integrity; those who fear for their status and future cannot adequately serve the oppressed. Judges must therefore be free from such fears. However, this principle does not mean that a judge should remain in office if he or she acts unprofessionally. Rather, it is meant to protect judges from abuse and mistreatment, while allowing for prosecution if a judge is guilty of a crime that warrants trial and dismissal, but this should be pursued solely through disciplinary channels³.

Judges fear dismissal from their positions and the end of their careers as this can lead to instability in their lives, especially as judges have acquired a special social status that requires the removal of dismissal mechanisms. It is essential to ensure that they complete their term of office⁴.

Subsection Two: Personal and objective guarantees of the independence of the SJC

1- Personal Guarantees of the Independence of the Supreme Judicial Council

In order for a judge to be independent, Islamic jurisprudence stipulates that persons exercising judicial functions must possess a number of qualifications, the most important of which are being a Muslim, mature, rational, free, honest, knowledgeable about the judicial matters assigned to them, and consulting experts in the field. In addition to knowledge of the Arabic language, understanding of people's conditions and customs, and sound senses, these qualifications refer to the judge's personal qualities. Their purpose is to endow the judge with dignity and status, enabling him to achieve the objectives of his judicial decisions and to execute them to the fullest extent⁵.

Positive law, on the other hand, emphasises the dignity and honour of judges, requiring them to meet legally established criteria such as good character and reputation, full competence, mental maturity, adherence to judicial traditions, and the acquisition of knowledge and academic qualifications⁶.

2- Objective guarantees for the independence of the SJC:

2.1 Provision of financial means for judges:

Judges must be above suspicion and fully committed to their work, as the judiciary represents the balance of justice. In order to ensure the independence of judges, it is essential to provide them with

¹- Al-Fail, Abdel Khalek Saleh Mohammed. The Extent of Judicial Independence in Yemen and Algeria, *ibid*, p. 14.

²- Makhmouri, Faker Saber Baiz. Judicial Independence between Sharia and Law, Legal Books House and Shatat Publishing and Software, Egypt, 2012, p. 151.

³- Faisal, Sami Mohamed. "The Principle of Judicial Independence: Thought and Foundation." *Journal of Rights and Political Science*, University of Abbes Laghrour, Khenchela, issue 10, June 2018, p. 81.

⁴- Ben Mansour, Abdel Karim and Arab Saida. "The seriousness of the guarantees established for the independence of the judiciary." *Critical Journal of Law and Political Science*, University of Tizi Ouzou, Volume 16, Issue 2, June 2021, p. 228.

⁵- Ben Mansour, Abdel Karim and Arab Saida, p. 229.

⁶- Cherqawi, Ahmed Khalifa. *The Dignity of the Judiciary: A Guarantee for Judicial Independence (A Comparative Study between Islamic Jurisprudence and Positive Law)*. University Thought Publishing, Alexandria, Egypt, 2013, pp. 17-18.

generous remuneration and adequate security of livelihood. A decent livelihood protects them from personal interests or political and partisan whims. A judge must also be independent in his desires, which improves his financial situation and prevents him from feeling disadvantaged when comparing his salary with that of others¹.

2.2 Ensuring the training and specialisation of judges:

One of the most important guarantees of the independence and impartiality of the judiciary is the professional legal training of judges, which enables them to rule with integrity and to empower all those who have rights. It is therefore the responsibility of the State to ensure and supervise this training, especially in the modern era, when the multiplicity of laws and the diversity of subjects make it impossible to master the field of law in its entirety. The solution of legal problems requires the diligence and competence of judges, as well as the interpretation of the will of the legislator by examining contemporary political, social and economic concepts in the field of law. All these elements are essential for understanding judicial decisions and the legal reasoning necessary for legal interpretation².

Legal texts cannot solve all problems; they are human creations with many imperfections. Judges must rule according to the law when considering cases, and they cannot evade the silence of legal texts or refuse to rule. Instead, they must strive to find legal solutions based on traditions and textual preparations, especially general legal principles. Their efforts contribute to the formulation of law, which can only be achieved through the creation of law. This requires a broad legal culture, which can only be achieved through a high level of legal education³.

Main Section Two: Aspects of the Relative Independence of the SJC

The main aspects of the relative independence of the SJC in the 2020 amendment can be divided into elements that affect organic aspects and others that affect objective aspects, which we will address below:

Subsection One: Aspects of the relative independence of the SJC from the organic side:

Unless administrative matters are separated from the executive, and the appointment, dismissal, transfer, promotion and disciplinary responsibility of judges are carried out under the supervision of the judicial bodies without interference from the executive, the judicial bodies will not be able to achieve the desired goal of independence. This is essential in order to anchor the principles of judicial independence and stability at the organic level⁴.

Looking back at Algeria's constitutional experience prior to the recent constitutional amendment of 2020, it is clear that the executive authority controlled the appointment of judges and heads of judicial institutions, in addition to exerting influence on the High Council of the Judiciary through interventions by both the executive and legislative authorities. In addition, the President of the Republic retains authority over the Council.

The independence of the SJC is undermined by the intervention of the executive authority in the appointment of judges and heads of judicial bodies, as well as by the influence exercised over the SJC as the body responsible for monitoring the careers of judges⁵.

1- Appointment of judges and heads of judicial bodies:

1.1 Appointment of judges:

The President of the Republic has the exclusive power to appoint judges, as stipulated in paragraph 8 of Article 92 of the 2020 Amendment, which affects the organic independence of the judiciary. This provision emphasises that the President of the Republic has the exclusive power to appoint judges, which affects the organic independence of the judiciary.

1.2 Appointment of heads of judicial bodies:

¹- Cherqawi, Ahmed Khalifa. *Ibid.*, pp. 23-28.

²- Lajalt, Fawaz. *Constitutional Guarantees for Protecting the Principle of Legality*. PhD thesis, Faculty of Law, University of Algiers, 2015, pp. 44-45.

³- Mohamed Abdel Hamid Abu Zaid. *The Balance of Powers and Its Oversight*. Golden Eagle Printing, Cairo, 2003, p. 337.

⁴- Duverger, Maurice. *Political Institutions and Constitutional Law: Major Political Systems*, translated by George Saad. University Foundation for Studies, Publishing, and Distribution, Beirut, Lebanon, 1992, p. 144.

⁵- Habchi, Leila Kamila. "Judicial Independence in Algerian Legislation." *Approaches Journal*, University of Ziane Achour, Djelfa, Volume 3, Issue 5, October 2015, p. 25.

According to Article 92(4) and (5) of the Constitution, the President of the Republic has the power to appoint the First President of the Supreme Court and the President of the Council of State, as well as broad powers to appoint various judicial bodies. Despite the repeal of the provisions of Presidential Decree No. 99-240 on the appointment of civil and military state officials¹, the President's exclusive power to appoint members of the various judicial bodies was expressly detailed in Article 3(4).

However, an analysis of Presidential Decree No. 20-39 of 2 February 2020 on Appointments to Civil and Military State Positions, in particular Article 1, suggests that the President's powers still encompass various fields and areas outlined in Decree No. 99-240. This can be inferred from the opposite concept derived from the last paragraph of Article 1 of Decree No. 20-39, which stipulates that the President of the Republic has the power to make appointments outside the positions assigned to the Prime Minister². If we look at the legal texts of Articles 2, 3 and 4 of Presidential Decree No. 20-39, it is clear that they confer on the Prime Minister the power to make appointments to certain posts within the Prime Minister's Office and the regional administrations, but do not confer on him the power to appoint members of the judiciary³.

Consequently, it can be said that the President of the Republic still has the power to appoint members of the judiciary, as provided for in paragraph 4 of Article 3 of the repealed Decree No. 99-240 on the appointment of civil and military state officials. This paragraph states that the President is responsible for appointing the members of the following judicial bodies:

- Appointments to the Supreme Court: The first President of the Supreme Court and its Prosecutor General.
- Council of State appointments: President of the Council of State, Public Prosecutor, Advisers to the Council of State and Deputy Public Prosecutors.
- Court of Disputes Appointments: President of the Court of Disputes, Prosecutor and Deputy Prosecutor, and Judges of the Court of Disputes.
- Appointments to the Court of Accounts: The President of the Court of Accounts and his deputy, the Auditor General and his deputies, the Heads of Branches and the Heads of Departments.
- Judicial Council appointments: President of the Judicial Council and Public Prosecutor.
- Appointments to the Court of Cassation: the President of the Court of Cassation, the Public Prosecutor and his prosecutors⁴.

2- Influences exercised on the Supreme Judicial Council:

The independence of the SJC is influenced by the presidency of the Council by the President of the Republic and his powers of appointment within the Council:

2.1 Presidency of the SJC by the President of the Republic:

The second paragraph of Article 180 of the Constitution, as amended in 2020, states: "The President of the Republic shall preside over the High Council of the Judiciary". This body, as recognised in the constitutional texts themselves, is responsible for appointing judges, transferring them, supervising their careers, ensuring compliance with the basic law governing the judiciary and monitoring their discipline through a committee chaired by a representative of the executive, namely the President of the Republic. This arrangement allows the President to control judges from their appointment to their dismissal, which is fundamentally at odds with other constitutional provisions, the most important of which is Article 148. This article stipulates that judges are protected from any form of pressure, interference or aggression that could affect their performance or the integrity of their decisions⁵.

2.2 Appointments within the SJC as an organic influence on the independence of the judiciary:

The intervention of the executive and legislative branches in the judiciary also extends to appointments within the Supreme Council of the Judiciary. Article 3 of Organic Law No. 12-04 on the creation, functioning and powers of the Supreme Judicial Council stipulates that the President of the Republic has

¹- Alloua, Houam. "Guarantees for Judicial Independence in Arab Constitutions." *Journal of Rights and Political Science*, Volume 2, Issue 1, University of Abbes Laghrour, Khenchela, Algeria, p. 116.

²- Presidential Decree 99-240 dated October 27, 1999, concerning appointments to civil and military positions of the state, *Official Journal of the Algerian Republic*, Issue 76, published on October 31, 1999.

³- Presidential Decree 39-20 dated February 2, 2020, concerning appointments to civil and military positions of the state, *Official Journal of the Algerian Republic*, Issue 06, published on February 2, 2020.

⁴- Presidential Decree 39-20 dated February 2, 2020, *Ibid*.

⁵- Presidential Decree 99-240 dated October 27, 1999, *Ibid*.

the power to appoint six (6) judges from outside the Council. This affects the independence of the judiciary and opens the door to arbitrary treatment of judges by the executive¹.

For example, Article 87 of Organic Law No. 04-11, which contains the Basic Law of the Judiciary, highlights the relative independence of the judiciary. This article states that the Supreme Council of the Judiciary may, after consultation, approve the appointment of a judge if it is established that the judge possesses professional competence or that a manifest lack of legal knowledge may lead to his or her transfer to an appropriate position, retirement or dismissal. The vagueness of the terminology used makes judges vulnerable to dismissal and resignation at any time².

3. The Public Prosecutor's Office, under the authority of the Minister of Justice:

The Public Prosecutor's Office is the executive authority at the judicial level, vested with judicial, administrative and financial powers, and represents the authority of the judicial system. It is an institution under the authority of the Minister of Justice, who is a member of the executive. This subordination makes the Public Prosecutor's Office subordinate to the executive authority, especially when the concept of presidential authority prevails and the notion of the independence of the Public Prosecutor's Office and judges is completely absent. The result is dependency rather than independence. The negative impact stems from the lack of independence of the Public Prosecutor's Office, which limits its ability to carry out judicial follow-up. The law explicitly grants it the power to protect the principle of legality against violations by initiating public proceedings³.

3.1 Aspects of the relative functional independence of the SJC

The functional independence of the judiciary refers to the unity of the judiciary and its exclusive jurisdiction in resolving disputes and issuing judicial rulings and decisions, considering it as a general reference for all citizens without discrimination or bias and without the presence of different bodies to apply the law. The functional independence of the judiciary is compromised by the executive and legislative branches exercising judicial functions through acts of pardon and by the executive branch refusing to execute judicial rulings and decisions⁴.

3.1.1 Exercise of the right to pardon:

There are two types of pardon: presidential pardon, which is the prerogative of the President of the Republic, and general pardon (pardon for crimes), which is the responsibility of Parliament.

First: Presidential pardon and commutation of sentences:

Presidential pardon is a presidential prerogative recognised by Article 91(8) of the Constitution after the 2020 amendment. According to this provision, the President of the Republic has the right to grant pardons and has the power to reduce or replace sentences⁵.

The right of pardon is a legal procedure exercised by the President of the Republic during religious and national holidays or after receiving presidential privileges. This power is usually exercised by the President and, according to the conditions established in the Clemency Decree, the exercise of this power by the President is legally equivalent to the execution of judicial sentences and establishes the President as the supreme authority. Normally, clemency takes precedence over judicial decisions taken in the name of the people, even though the founder of the Constitution allowed the SJC to give a prior opinion on the exercise of the President's right to pardon. In reality, this is seen as an attempt by the founder of the Constitution to affirm the independence of the SJC and prevent interference in its decisions. The power of the judiciary to annul or compensate such acts is only valid through the judicial

¹- Lajalt, Fawaz. *Ibid.*, p. 38.

²- Organic Law 12-04 dated September 6, 2004, concerning the formation, functioning, and powers of the Supreme Judicial Council, Official Journal of the Algerian Republic, Issue 57, published on September 8, 2004.

³- Organic Law 11-04 dated September 6, 2004, concerning the Basic Law of the Judiciary, Official Journal of the Algerian Republic, Issue 57, published on September 8, 2004.

⁴- Chabbi, Taha Ben Mohamed Nasser. "Judicial Independence: Aspirations vs. Reality." *Journal of Justice and Legislation*, Issue 08, Year 53, Al-Madina Al-Munawwara, 2011, p. 53.

⁵- Cheikh, Shafiq. Lack of Functional Independence in Algeria. Master's thesis in Public Law, State Transformations branch, Faculty of Law, Doctoral School of Fundamental Law and Political Science, Mouloud Mammeri University, Tizi Ouzou, 2010-2011, p. 67.

bodies approved by the Supreme Judicial Council, bearing in mind that the President of the Republic presides over it¹.

The President therefore plays the role of judge and arbitrator. This idea has intertwined political, economic, social and legal dimensions that can sometimes be valid, at least from the point of view of the source of authority that the President possesses, having been elected by the people in direct and secret elections. However, this authority may not always be present and, more fundamentally, it constitutes an interference in the work of the judiciary, which affects its independence. This aspect does not affect the concept of judicial control over the actions of the executive, since the penalties are essentially either annulled or compensated for, which inevitably goes beyond the scope of clemency². It is also noteworthy that the text of paragraph 8 of Article 91 explicitly refers to the right of pardon granted by the Constitution to the President of the Republic. This means that the President has the power to grant pardons, whether general or specific. This is an important power that can undermine the confidence attached to judicial decisions³.

Second, the general legislative pardon:

This is a legislative power aimed at granting full pardon for a crime, removing its criminal designation and abolishing the original penalty, as well as any additional or complementary penalties⁴. Comprehensive amnesty is usually granted when a political coup leads to the replacement of one political regime by another, similar to the comprehensive amnesty granted after independence under Decree No. 2-62 of 10 July 1962, which covered crimes defined by general law committed before 3 July 1962⁵.

The constitutional basis for full pardon is found in Article 139(7) of the 2020 Amendment⁶. We are of the opinion that its exercise by Parliament does not constitute a violation of the independence of the judiciary, since the role of the judiciary is limited to the enforcement of the laws relating to the general pardon. Such provisions constitute an interference in the legislative function and a disregard for the principle of separation of powers.

3.1.2 Administrative refusal to implement judicial rulings and decisions:

The founder of the Constitution mandated the public administration to implement judicial decisions under Article 145 of the 1996 Amendment, which states: "All competent state authorities are obliged to ensure the execution of judicial decisions at all times, in all places and under all circumstances"⁷. Due to the growing phenomenon of administrative refusal to implement judicial and administrative rulings, the founder of the Constitution added the following phrase to Article 163 of the 2016 amendment: "The law shall punish anyone who obstructs the implementation of a judicial decision."

The Civil and Administrative Procedure Law No. 09-08 recognises that judges have broad powers and a variety of means to compel the administration to implement rulings and decisions issued against it, such as issuing orders to the administrative body⁸.

Furthermore, the refusal to implement judicial rulings and decisions is criminalised under Article 138 bis of the Criminal Code, which states that "Any official who uses his official authority to prevent the execution of a judicial decision or who deliberately refuses, obstructs or hinders its execution shall be

¹- Article 8 of Paragraph 91 of the 2020 amendment states: "He has the right to grant pardons and to reduce or substitute penalties."

²- Article 182 of the 2020 amendment states: "The Supreme Judicial Council gives an advisory opinion prior to the exercise of the President's right to grant pardons."

³- Article 85(1) of the 2020 Amendment states: "The President of the Republic shall be elected by direct and secret universal suffrage."

⁴- Article 91(8) of the 2020 Amendment, *ibid*.

⁵- Bousqui'a, AHCEN. A concise guide to general criminal law, 10th edition. Dar Houma for Printing, Publishing and Distribution, Algeria, 2011, p. 412.

⁶- Bousqui'a, AHCEN. *Ibid*, p. 414.

⁷- Article 139, paragraph 7 of the 2020 amendment states that Parliament shall legislate in the field of: "the general rules of criminal law and criminal procedure, in particular the definition of crimes and misdemeanours, the corresponding penalties, the general amnesty, the extradition of criminals and the prison system".

⁸- Presidential Decree No. 96-438 of 7 December 1996 on the publication of the text of the constitutional amendment approved by referendum on 28 November 1996, Official Journal of the Republic of Algeria, No. 76, 8 December 1996.

punished by imprisonment for a term ranging from six (6) months to three (3) years and a fine ranging from DZD 5,000 to DZD 50,000”¹.

Failure by the government to implement judicial rulings and decisions leads to violations of individual rights, undermines the authority of judicial decisions and harms the dignity and independence of the judiciary.

Main Section Four: Modern Mechanisms for the Independence of the Supreme Judicial Council in 2020

The constitutional amendments of 2020, whether structural, organic or functional, have brought about a qualitative change in the independence of the judiciary as follows:

Subsection One: Modern mechanisms established for the independence of the Supreme Judicial Council from the structural and organic side:

The most important new mechanisms to support the independence of the judiciary organisationally and structurally, as established by the constitutional amendments of 2020, include the constitutionalisation of the two-tier judicial system in administrative matters, in addition to the constitutional amendment of the SJC to strengthen the independence of the judiciary.

1. Constitutionalisation of two-tier litigation in administrative matters:

The right to two-tier litigation allows a party to present its claims to more than one judge or court for consideration, and gives the plaintiff who fails to win a case the opportunity to bring the same dispute before a higher court for a later decision.

The principle of two-stage litigation is one of the main guarantees of a fair trial and the independence of the judiciary. It was incorporated into the Algerian Constitution in the 2016 constitutional amendment, with Article 160 stating that the law guarantees a two-tier trial in criminal and military cases. Following the constitutional amendment of 2020, the Administrative Court of Appeal was established in accordance with Article 179 of the Constitution, which enshrines the principle of a two-stage procedure in administrative cases, whereas previously the Council of State had the right to appeal against decisions of the Administrative Court².

2. Guarantee of the independence of the judiciary by the Supreme Judicial Council:

The 2020 constitutional amendments introduced a number of changes to the structure of the SJC aimed at ensuring the independence of the judiciary. Perhaps the most significant of these is the constitutionalisation of the composition of the SJC and the removal of the Minister of Justice, with the position of Deputy President of the Council being filled by the First President of the Supreme Court.

2.1 Constitutionalisation of the composition of the SJC:

The 2020 constitutional amendment is the first time that Algeria has constitutionalised the composition of the SJC. Article 180 of the amendment stipulates that the SJC shall be composed of twenty-seven members, headed by the President of the Republic and the First Vice-President of the Supreme Court, including:

- The President of the Council of State.
- The President of the National Council for Human Rights.
- Six (6) members elected on the basis of their competence from outside the judiciary, two (2) of whom are appointed by the President of the Republic, and four (4) deputies elected by Parliament in equal numbers from the National People’s Assembly and the Senate, excluding representatives and members of the judiciary.
- Two judges from the Judges’ Association.
- Fifteen judges elected by their peers, distributed as follows:
 - * Three judges from the Supreme Court, including one judge and one public prosecutor.
 - * Three judges from the Council of State, including a judge and a public prosecutor.
 - * Three judges from the Council of the Judiciary, including one judge and one public prosecutor.
 - * Three judges from the Administrative Court who are not members of the Council of State, including one judge and one public prosecutor.

¹- Law 08-09 of 25 February 2008 on civil and administrative procedure, Official Journal of the Algerian Republic, number 21, published on 23 April 2008.

²- Law 09-01 of 26 June 2001 amending and supplementing Decree No. 66-155 of 8 June 1966 on the Penal Code, Official Journal of the Algerian Republic, No. 34, published on 27 June 2001.



* Three judges from the ordinary courts, including one judge and one prosecutor.

The constitutionalisation of the composition of the SJC is a constitutional achievement aimed at guaranteeing the independence of the judiciary, granting it supremacy and immunity from other legal provisions and ensuring judicial protection. This is important because the amendment of constitutional rules requires special amendments and complex procedures, in addition to the procedures for amending ordinary laws.

The constitutionalisation of the composition of the SJC is a true embodiment of the principle of the separation of powers, which strengthens the independence of the judiciary from the legislative and executive branches, which are responsible for legislation and enforcement. and execution¹.

2.2 Exemption of the Minister of Justice from membership of the SJC:

The Minister of Justice is a political member of the executive branch, both organisationally and functionally. He is appointed by the President of the Republic, on the recommendation of the Prime Minister if the legislative elections result in a presidential majority, or by the Prime Minister if there is a parliamentary majority. He is functionally accountable to the President and the Prime Minister for the responsibilities and activities related to the Ministry of Justice. The delegation of powers to him as President of the SJC represents a blatant interference and a clear violation of the principle of separation of powers, as the Minister of Justice combines membership in the executive branch with membership in the SJC, thus subjecting the judiciary to executive control, which undermines the principle of judicial independence.

The founder of the Constitution made a wise decision by removing the Prime Minister from the position of President of the SJC². The presence of the Minister of Justice limits the effectiveness of this constitutional body in carrying out its tasks and indirectly influences the decisions of the SJC due to his political affiliations, which compromise the requirement of neutrality of the Minister of Justice². The appointment of the First President of the Supreme Court is one of the main mechanisms designed to guarantee and support the independence of the judiciary by separating the judiciary from the executive and legislative branches, thereby reinforcing one of the key components of the establishment of rights and laws in the State, which is the principle of the separation of powers.

3.2 Granting the position of Vice-President of the SJC to the First President of the Supreme Court:

By giving the First President of the Supreme Court a key position in the SJC through the role of Vice-President, as provided for in the first point of paragraph 4 of Article 180 of the 2020 Amendment, the constitutional founder has made an important addition that will help provide judicial guarantees to the Ministry of Justice, thereby strengthening its independence. This clearly reflects the will of the founder of the Constitution to put into practice the principle of the separation of powers, ensuring that the principle of the independence of the judiciary is a branch of this separation.

Assigning the position of Vice-President of the SJC to the First President of the Supreme Court means that he can preside over the Council in the absence of the President of the Republic. This is based on the amendment expressly provided for in paragraph 3 of Article 180 of the 2020 Constitution, which allows the President of the Republic to appoint the First President of the Supreme Court to preside over the Council. This arrangement is supported by the many constitutional responsibilities of the President of the Republic. It shows that the Minister of Justice, as Vice-President of the SJC, has effectively chaired the meetings of the Council.

The First President of the Supreme Judicial Council is a judge who has completed all the stages necessary for the exercise of judicial functions. The SJC is responsible for ensuring the independence of the judiciary³, supervising the career of judges, appointing and transferring judges, ensuring compliance with judicial discipline and supervising discipline, as stipulated in Article 181 of the 2020 Amendment⁴.

¹- Article 179 of the 2020 amendment states: "The Council of State is the body that evaluates the work of the administrative courts of appeal and other authorities that rule on administrative matters."

²- Gharbi, AHCEN. "The Supreme Judicial Council under the constitutional amendment." *Critical Journal of Law and Political Science*, Volume 15, Issue 2, Faculty of Law and Political Science, University of Tizi Ouzou, 2020, p. 71.

³- Gharbi, AHCEN. *Ibid*, p. 75.

⁴- Abbas, Amal. *The judiciary under Algerian constitutions*. PhD thesis in Law 47, Faculty of Law, University of Algiers 1, 2016, p. 127. See also: Bougqal, Fatiha. "The intervention of the Minister of Justice in the High Council of the Judiciary and its impact on the independence of the judiciary in Algeria." *Journal of Rights and Freedoms*, Volume

This article requires that the Council be composed of persons who are fully aware of the problems faced by judges and who are therefore responsible for disciplinary matters. Therefore, assigning the position of Vice-President of the SJC to the First President of the Supreme Court will help to provide greater legal protection for judges.

Main Section Four: New mechanisms dedicated to the functional independence of the judiciary:

The Constitutional Amendment 2020 includes constitutional provisions that support the independence of the judiciary in financial and functional terms. The most important of these include improving the financial status of judges, criminalising obstruction of justice, ensuring the proper execution of judicial decisions and providing legal protection for judges.

Subsection One: Improving the Financial Status and Protection of Judges

1. Improving the financial status of judges

The financial independence of judges is one of the most important guarantees for ensuring judicial independence and the fairness of judicial decisions. Judges need to be protected both materially and morally, based on a monthly salary that allows them to live a dignified life commensurate with their status in society and the country. Adequate salaries promote trust and confidence in judges, preserve their dignity and independence, and protect and support them¹.

The constitutional amendments of 2020 have made a qualitative leap in improving the financial status of judges. Article 172, paragraph 4, states: “The State shall protect the judge and keep him free from need”, which guarantees the judge’s independence from litigants and protects him from any attempt to manipulate or influence his rulings, until an organic law is enacted to specify how this provision will be implemented².

2. Protection of judges:

Paragraphs 2 and 3 of Article 172 of the 2020 Amendment include a series of guarantees to support the independence of the judiciary, such as protecting judges from dismissal, suspension, removal or disciplinary sanctions during the performance of their duties, and allowing judges to notify the Supreme Judicial Council in the event of a violation of their independence³.

Subsection Two: Criminalisation of obstruction of justice and the execution of judgments:

The Constitution and legal texts grant administrative judges extensive powers against the public administration. Article 178 of the 2020 Amendment states: “All competent state bodies are obliged to ensure the execution of judicial decisions at all times, in all places and under all circumstances⁴. The law shall punish anyone who undermines the independence of the judge or obstructs the proper functioning of the judiciary and the execution of its decisions”⁵.

Undoubtedly, this amendment is an important addition aimed at restoring the dignity of the judiciary and ensuring that the administration complies with its decisions.

Conclusion:

Tracking the constitutional amendments that Algeria has undergone from 1996 to the latest amendment in 2020 shows that the constitutional founder has increasingly focused on the judiciary, which was previously a lower priority. The 1996 amendment introduced the dual judicial system for the first time, creating administrative judicial bodies outside the regular judiciary. The 2016 amendments continued this trend by introducing two levels of procedure in criminal and military justice, prohibiting interference in judicial proceedings and ensuring the inviolability of judgments. The 2020 amendments provided a

05, Issue 02, published by the Laboratory of Rights and Freedoms in Comparative Systems, Mohamed Khider University, Biskra, 2016, p. 127.

¹- Paragraph 1 of Article 180 of the 2020 Amendment states: “The Supreme Judicial Council shall guarantee the independence of the judiciary.”

²- See Article 181 of the 2020 Amendment.

³- Abdi, Ousama. Judicial independence in Morocco (foundations and guarantees). Master’s thesis, Faculty of Legal, Economic and Social Sciences, Hassan II University, Casablanca, Morocco, 2016, pp. 115-116.

⁴- The last paragraph of Article 172 of the 2020 Amendment states: “An organic law shall determine the methods for implementing this article.”

⁵- The second and third paragraphs of Article 172 of the 2020 Amendment state: “A judge may not be dismissed, suspended, relieved or disciplined in the performance of his duties or in connection therewith, except in the cases and under the guarantees established by law, on the basis of a reasoned decision of the Supreme Judicial Council”. The judge shall inform the SJC of any infringement of his independence.

number of important guarantees for the independence of the judiciary in organisational and functional terms, the most important of which was the adoption of the principle of a two-tier procedure in administrative law. The Constitution establishes the Supreme Council of the Judiciary and entrusts it with the responsibility of ensuring the independence of the judiciary, while prioritising its judicial character, excluding the Minister of Justice from membership of the Council and appointing the First President of the Supreme Court as its head. In addition, these amendments strengthen the legal protection of judges and improve their financial conditions, while criminalising acts that obstruct the judiciary and the execution of its decisions.

We conclude, therefore, that the independence of the judiciary remains relatively limited because of the President of the Republic's chairmanship of the Supreme Council of the Judiciary, his power to appoint judges and the exercise of the presidential pardon power, as well as the potential limitations on these powers. It is therefore imperative for the new republic to strengthen the judiciary by freeing it from executive dominance and establishing a new status in its relationship with the legislative and executive branches, making it a fundamental element of a state governed by the rule of law. This can only be achieved by enriching its constitutional and legal treatment, freeing it from dependence on any party and ensuring its natural and legal character, with a firm stance on the separation of powers. This can be achieved through the following recommendations:

- The state needs a real political will to guarantee the independence of the judiciary.
- Establish a dedicated budget for the Supreme Judicial Council and adopt a specialised judicial training policy to guarantee the quality of judicial decisions.
- Abolish the Minister of Justice's supervision of the Public Prosecutor's Office.
- Establish a national Supreme Court to try the President of the Republic for acts that could be considered treason, as well as for high crimes and misdemeanours committed by the First President in the exercise of his duties, as a mechanism to ensure balance between the branches of government.

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