THE IDENTITY OF THE CONSTITUTIONAL JUDICIARY IN THE ALGERIAN MODEL IN THE LIGHT OF THE AMENDMENTS TO THE 2020 CONSTITUTION

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Abstract:
In the topics of constitutional law, no scientific research is devoid of importance, and the latter will witness an increase and become inevitable in obtaining its right of study whenever the topic relates to individual and collective rights and freedoms. This topic of ours brings together all the motives;. There is no doubt that the conviction of the Algerian constitutional founder in the inevitability of installing a constitutional court is not a fusion on his part in an effort to keep pace with the development witnessed by constitutional law in its essential branch related to building the state of right and law, stabilizing its institutions.
Keywords: *constitutional judiciary; Constitutional Court; Judicial oversight;*

INTRODUCTION:

It seems that the Algerian model of the Constitutional Council, from its inception and after assuming its main role and its interventions through control mechanisms, was not prepared to grasp the scope of understanding and following the content of constitutional law and the protection of public rights and freedoms. This has made it a secondary institution within its environment and the limits of its interpretations, especially within the prevailing political philosophy of the state. Legal experts attribute this situation to the constraints under which it operated, particularly the socio-legal, political and constitutional constraints that surrounded its interpretation of the pre-2020 Algerian constitution.

Based on this premise, it was expected that after the 2020 constitutional amendment, the Algerian constitutional judiciary would undergo changes aimed at eliminating hierarchical links and establishing new balances that would qualify it to be recognised as an independent judicial institution, with the consequent strengthening of its authority and interpretations.

The constitutional amendment of 2020 in Algeria, with its reformative content, has had a significant impact on the identity of the Algerian constitutional judiciary and its place within the broader constitutional framework, not to mention its relations. The framers of the Constitution sought to transform and open up the work of the judiciary in the context of the major changes that have taken place in our country with regard to the question of the supremacy of the Constitution.

Significance of the study

The importance of this topic lies in highlighting and clarifying the identity of the constitutional judiciary following the constitutional amendment of 2020. This amendment creates the need for an independent judicial institution represented by the Constitutional Court, which leads us to examine the manifestations and characteristics of this change.

Objectives of the study

The objectives of this study stem from our urgent desire to understand the identity of the Constitutional Judiciary after the Constitutional Amendment 2020, which introduced a new direction. This will be explored through the following key areas:

- Identifying the specificity of the new Algerian constitutional judiciary.
- Highlighting the structure of the new Algerian constitutional judiciary.
- To examine the mechanism of notification as a means of operation for the Algerian constitutional judiciary.

- To examine the extent to which the identity of the Algerian constitutional judiciary has been strengthened.

RESEARCH QUESTION

What is the identity of the Algerian constitutional judiciary in the light of the 2020 amendments?
To address this problem, we have chosen to analyse the issue through an analytical approach divided into two main sections. The first section is entitled "The Constitutional Court: A Qualitative Identity for the Constitutional Judiciary in Algeria," while the second section focuses on assessing the presence of the identity of the Algerian constitutional judiciary in terms of achievements and maintenance.

1. The Constitutional Court: A qualitative identity for the Algerian constitutional judiciary

The establishment of the rule of law requires Algeria to create institutions aimed at the effective application of democratic principles. This was well understood by the founder of the Constitution, who, in amending the constitutional framework in 2020, stressed the importance of strengthening the field of constitutional justice through the creation of the Constitutional Court. This Court is positioned to occupy a place of equal importance to other state institutions, given its critical role in protecting and respecting the Constitution and ensuring its supremacy[1].

1.1 The specific nature of the Algerian constitutional judiciary

The constitutional legislator's desire to enhance the concept of constitutional justice has led to a focus on quality, in particular through the explicit mention of the Constitutional Court as an institution characterised by its independence. This Court is fundamentally tasked with ensuring respect for the Constitution, acting as the guardian of the principle of constitutional supremacy - one of the most prominent principles of constitutional law. This is particularly important when it comes to activating the monitoring of the constitutionality of laws and regulations[2].

It is important to note that the term "constitutional judiciary" has several meanings. It can refer to the judicial bodies established by the constitution, operating within its framework and exercising judicial control in the narrow sense. It can also refer to constitutional courts, which perform specialised judicial oversight functions, protect the principle of legality and monitor the constitutionality of laws[3].

In this context, the Constitutional Court is seen as an independent body, i.e. it is not subordinate to the well-known judicial bodies. This interpretation is reinforced by the fact that it is located in Chapter Four of the Constitution, entitled "Supervising Institutions". However, it should not be understood that the status granted to the Constitutional Court deprives it of a judicial identity; on the contrary, it strengthens its constitutional authority and emphasises its independence from the judiciary, which is specifically charged with ensuring respect for the Constitution[4].

Returning to the use of the term "Court" instead of "Council" by the founder of the Constitution, this choice is to be interpreted in a unique way: it denotes a judiciary that is different from any other and that operates according to constitutional principles and values, which are generally stated and rarely contain detailed rules. The Court is subject to the same general principles that apply to the judiciary, which means that its decisions are final and binding on all state authorities and take effect immediately upon delivery. This ultimately guarantees its neutrality and independence, allowing it to act solely as a guardian of the Constitution[5].

1.2 The qualitative composition of the Algerian constitutional judiciary

The activation of the role of the Constitutional Court as a specialised judicial body that monitors the constitutionality of laws requires specific technical expertise that can only be possessed by members who are sufficiently qualified to study and understand the constitutional and legal content. It also requires guarantees and immunities to ensure its independence.

1.1.2 Composition of the Constitutional Court

The Constitutional Court is composed of a president and eleven members, as stipulated in Article 186. This article requires a mix of judicial, political and academic backgrounds among the members,

with a structure based on both appointment and election. Specifically, the composition of the Court includes the President of the Constitutional Court, who is appointed by the President of the Republic, and three other members, also appointed by the President. In addition, there are two members elected by the Supreme Court and the Council of State, as well as six members from the university faculty specialising in constitutional law, who are elected by public vote in accordance with defined conditions and procedures.

A careful examination of this structure reveals two important insights. First, the founder of the constitution has effectively prevented both the executive and the legislature from determining the members of the Constitutional Court. This is a remarkable achievement, especially when compared to cases where the founder remains silent on such determinations. This arrangement undoubtedly has a positive impact on the independence of the Constitutional Court by minimising the potential for influence from the authorities[6].

The second lesson concerns the combination of appointment and election in the composition of the Court. This dual approach is advantageous because it helps to prevent potential pressure from an appointing authority if the composition relied solely on appointments. Conversely, it also mitigates the political pressures that elected members might face if the composition were based solely on election. This balance enhances the Court's ability to function independently and to fulfil its role as guardian of the Constitution[7].

Among the new features introduced by the constitutional amendment concerning the composition of the Constitutional Court is the qualitative addition of professors of constitutional law. This change was well-considered by the constitutional founder, who recognised the urgent need for the expertise of university professors in the work of the Court.

Another important aspect of the aforementioned article is the acceptable number of members of the Constitutional Court, which is in line with the practice of constitutional courts in countries with previous experience. This even number facilitates the smooth functioning of the Court and its activities, especially in terms of meetings and discussions, even with a limited number of members present. It also allows decisions to be taken by majority vote, despite concerns that the President of the Constitutional Court could have a decisive influence in the event of a tie, due to his casting vote[8].

Furthermore, we note that the numerical composition of the Constitutional Court is similar to that of the Constitutional Council as defined in the 2016 constitutional amendment. It maintains the same number of members appointed by the President of the Republic from the executive branch (four members), thus preserving the established share of the executive branch in the appointment of one third of the members of the Constitutional Court, while eliminating the role of the President of the Constitutional Council. Nevertheless, there has been criticism of the potential influence of the President of the Republic on the work of the Court.

In addition to the previous points, an examination of the text concerning the members of the Constitutional Court reveals a reduction in the representation of the judiciary compared to the era of the Constitutional Council. This change can be interpreted in several ways[9].

First, it suggests that the constitutional founder abandoned the idea of equal representation of the branches of government. Second, it suggests that the constitutional founder was concerned about the increasing role of the judges in the Constitutional Court, particularly with regard to monitoring the constitutionality of laws. Experts argue that this decision deprives the Constitutional Court of the opportunity to benefit from the training and knowledge of judges, which could affect the protection of rights and freedoms.

Another noteworthy aspect of the composition of the Constitutional Court is the lack of representation of the legislative authority. This is probably intended to ensure that the Court remains a non-political body, free from any form of politicisation in the exercise of its supervisory functions. However, some observers find this exclusion puzzling, as it removes a body that represents the general will, potentially favouring the executive at the expense of legislative input[10].

2.1.2 Recent developments in the conditions and obligations of membership

Article 187 of the Constitutional Amendment establishes specific conditions for the composition and selection of the members of the Constitutional Court, reflecting the desire of the founder of the

Constitution to appoint constitutional judges who possess the competence and integrity necessary to establish a strong identity for constitutional justice and to safeguard the Constitution. Among the obligations established for both elected and appointed members is a minimum age requirement of fifty years. In addition, candidates must be highly qualified, with at least twenty years' experience in the field of law and five years' experience in the field of constitutional law at the time of their nomination, at the rank of professor, while actively working in a university institution, as provided for in Article 09 of Presidential Decree No. 21/304[11]. Furthermore, the elected members must enjoy their civil and political rights, have no criminal convictions leading to imprisonment and not belong to any political party.

A careful examination of the article that sets out the conditions for membership of the Constitutional Court reveals several key findings:

With regard to the age requirement that a member must be at least fifty years old at the time of election or appointment, we can derive two sub-readings. The first is that some experts argue that this condition is unreasonable and harsh, justifying this by referring to the age requirement for the President, which is set at forty, despite the significant responsibilities of this position. They also note that the age requirement for the Constitutional Council was also forty. They believe that the founder of the Constitution should have set a maximum age limit instead[12].

The second reading, which we support, considers the age requirement of fifty years to be logical and objective, since it is linked to the second condition laid down regarding the need to have competence and the requirement of twenty years' experience in the legal field, which cannot be achieved with an age limit set at forty years.

As regards the requirement of at least twenty years of legal experience, with an additional background in constitutional law, this period is reasonable and in line with the age limit of fifty years. The candidate must be active at the time of nomination and hold the rank of professor in higher education, with five years of teaching experience in constitutional law, in addition to his or her scholarly contributions in the field[13].

This was a wise decision on the part of the founder of the Constitution, since the new responsibilities of the Constitutional Court require a combination of knowledgeable constitutional scholars who are familiar with the general rules of electoral systems and state theory, experienced judges, and state officials who are well versed in administration and governance[14]. Others, however, argue that the constitutional founder should not have specified the area of specialisation for university professors, as was the case at the time of the Constitutional Council, which required experience in high state functions or academic qualifications in law, the judiciary or practice before the Supreme Court or the Council of State.

Among the amending provisions is the requirement that members of the Constitutional Court enjoy political and civil rights, which means the right to participate politically through candidacy, voting or holding office, as well as the rights guaranteed to individuals for the protection of their freedoms and the freedom to engage in civil activities with the community. This is in addition to the requirement that members have not been convicted of criminal offences involving deprivation of liberty, as shown by their criminal record[15].

Another new provision concerns the need not to be a member of a political party. The purpose of this condition is undoubtedly to achieve the desired neutrality of the Constitutional Court in the exercise of its functions. However, there has been some debate about this requirement, with many questioning whether it applies to individuals who are appointed or elected, i.e. whether they must not belong to a political party throughout their lives, or whether they should simply not be affiliated at the time of appointment or election. This was clearly addressed in Article 09 of Presidential Decree No. 21/304, which states that individuals must not have belonged to a political party for at least three years prior to their election.

In addition, the founder of the Constitution stipulated that the members of the Constitutional Court who are selected or elected must resign from their previous positions or activities in order to ensure full dedication and independence in the performance of their new duties.

In addition, the founder of the Constitution laid down specific conditions for the President of the Constitutional Court, which are the same as those laid down in Article 87 for candidacy for the Presidency. These conditions include the requirement to be of Algerian origin, which must also be proven for the member's father, mother and spouse. They must also profess the Islamic faith and have resided in Algeria for at least ten years prior to their appointment as President of the Constitutional Court.

They must also have participated in the revolution of 1 November 1954 and, if born before July 1942, must not have had parents involved in actions against the revolution. They must also prove that they have done their military service or have a legal reason for not doing so. Finally, they must declare their real and personal property located inside or outside the country.

In addition, Article 189 establishes judicial immunity for members of the Constitutional Court during the performance of their duties, meaning that they cannot be prosecuted for actions related to their constitutional responsibilities, except with an explicit waiver of immunity or with the permission of the Constitutional Court.

3.1 Preserving notification as a mechanism for the functioning of the Algerian constitutional judiciary

The founder of the Constitution and the legislator did not provide a precise definition of "notification" as a fundamental tool for the functioning of the Constitutional Court. Instead, they confined themselves to clarifying the entities authorised to notify the Court, without giving any examples. A close reading of Article 193 reveals that the text does not elaborate on the meaning of notification; it merely enumerates the entities that have the power to notify the Constitutional Court, namely the President of the Republic, the President of the National Assembly, the Speaker of the Lower House of Parliament, the Prime Minister or the Head of Government, and forty deputies or twenty-five members of the Senate.

It should also be noted that the above notification does not extend to matters relating to the notification of unconstitutionality.

What can be observed as new provisions regarding the notification is a reduction compared to the constitutional amendment of 2016. The current requirement is for thirty senators in the Senate or fifty deputies in the National People's Assembly, which has been criticised by specialists who refer to the constitutional amendment in France, which allows for notification by sixty members of the National Assembly or sixty members of the Senate. This has led to increased monitoring by the French Constitutional Council, as evidenced by the many decisions it has taken[16].

1.1.3 Notification from the perspective of jurisprudence

Some scholars specialising in the control of the constitutionality of laws have attempted to define the limits of the notification mechanism in order to avoid ambiguity. This has led to various definitions, but a common substance is emerging. Among the most notable definitions is the one that considers notification as the mechanism through which communication with the Constitutional Court takes place, allowing for the initiation of oversight on a specific subject. Another definition states that notification is an action by the constitutionally authorised body requesting the intervention of the Constitutional Court in order to monitor the compatibility or incompatibility of a legislative or regulatory text with the Constitution[17]. Notification is thus a request by the competent authority to express its position on the constitutionality of laws.

Finally, we note that the Algerian Constitutional Court cannot act on its own initiative. Its actions are subject to the condition of notification, which is granted to certain bodies. In this respect, we criticise the founder of the Constitution, since the Constitutional Court, as one of the safeguards established to protect the principle of constitutional supremacy, will remain inactive without notification.

2.1.3 Outstanding features of the notification mechanism of the Constitutional Court

The notification mechanism is characterised by several features that need to be understood in order to avoid ambiguity. These features are outlined below:

1. Limited notification bodies: Article 193 specifies the entities that are exclusively entitled to activate this notification mechanism, which include the President of the Republic, the President of the Senate, the President of the Chamber of Deputies, the Prime Minister or the Head of Government, as the case may be, and forty deputies or twenty-five members of the Senate.
2. Political nature of the notification: This is due to the predominance of the political character in the exercise of control over legislative and regulatory texts. We observe the involvement of the public authorities in this process, represented by the President of the Republic, the Prime Minister or Head of Government, as well as the Presidents of both Houses of Parliament, which relates to the principle of separation of powers.
3. Mandatory notification by the President of the Republic: With reference to articles 142 and 190, the President of the Republic is the only constitutional authority to exercise the right of mandatory notification to the Constitutional Court. This is done in the context of monitoring compliance with the organic laws, the internal rules of Parliament and the orders issued by the President in the event of a vacancy in the National People's Assembly or during a parliamentary recess.
4. Indirect notification of individuals: It is important to note that the founder of the Algerian constitution omitted the original action for interested parties as the primary means of judicial control of the constitutionality of laws. This means that the constitutional control of laws in Algeria lacks any right of initiative for natural or legal persons, which results in their inability to challenge laws in court for unconstitutionality, either retroactively or prospectively. Conversely, the framers of the Constitution granted natural and legal persons only the right of indirect notification[18].

2. Strengthening the identity of constitutional justice: Between gains and preservation

In an effort to move away from the French model in the naming of the Constitutional Council, to strengthen rights and freedoms, and to renew constitutional justice while regulating the functioning of state institutions in the fight against corruption, the founder of the Constitution granted the Constitutional Court several new powers while retaining some existing ones.

1.2 Activating the original jurisdiction of the Constitutional Court in monitoring compliance with the law

There is a consensus that the monitoring of the constitutionality of laws is the core of the work of the Constitutional Court, where all laws, regardless of their source, are examined to determine their compliance with the Constitution. Here, "review" refers to "deciding the fate of a law - whether it is constitutional or not".

1.1.2 Review of constitutional amendments

As stipulated by the constitutional founder in Articles 219 and 220, various necessary parameters are defined for each constitutional revision, particularly with regard to the body responsible for initiating the preparation of the draft, as well as the various measures, formats, required quorum for approval and the body responsible for ratification. In addition, the constitutional founder has addressed the issue of monitoring the content of the draft constitution or the format of the amendment to ensure that it contains several essential provisions and principles and does not violate human and civil rights and freedoms. It also examines whether it affects the fundamental balance of powers and constitutional institutions and justifies its opinion.

2.1.2 Constitutional supervision of the constitutionality of treaties

Given the importance of treaties in the hierarchy of legal organisation within the State and their impact on implementation, the founder of the Constitution emphasised the need to activate supervision over them. This is reflected in Article 190/01, in which the founder of the Constitution states that the constitutionality of treaties, laws and regulations shall be determined by a decision of the Constitutional Court. This means that any international agreement, regardless of its subject matter, that the State wishes to ratify must be examined for its constitutionality. This is in line with the general definition of international treaties in the Vienna Convention on the Law of Treaties.
A notable new provision is the departure of the constitutional founder from the approach taken in the 2016 constitutional amendment, where the Court would express its opinion on treaties; it has now shifted to a decision-making role.

From another perspective, Article 198(01) allows the Constitutional Court to give its opinion on the constitutionality of treaties prior to their ratification. This suggests that the founder of the Constitution ruled out subsequent control and was satisfied with the possibility of notifying the Court of any treaty or agreement prior to ratification. Conversely, if a treaty is found to be unconstitutional, it should not be ratified by the President of the Republic, as stated in Article 190, paragraph 02. According to this article, if the Constitutional Court declares a treaty or agreement unconstitutional[19], it cannot be ratified.

On the other hand, Article 190/04 subjected ordinary laws to the control of compliance with treaties after ratification by decision, which is a new provision. If a law is declared unconstitutional under Article 198/02, it cannot be enacted with respect to the effects of its unconstitutionality.

3.1.2 Review of ordinary laws, regulations and presidential decrees

The supervision of the constitutionality of ordinary laws is considered to be one of the traditional competences of the Constitutional Court. The Court's jurisdiction in respect of ordinary laws includes the examination of their conformity with the provisions contained in the Constitution before they are promulgated by the President of the Republic, and this examination may also be carried out subsequently in the event of a challenge to their constitutionality.

Furthermore, with regard to regulations issued by the President of the Republic, the Constitutional Court has the task of examining their constitutionality if they are notified by the aforementioned bodies within one month of their publication. This new provision was introduced in the Constitutional Amendment 2020, as stated in the second paragraph of Article 190, which requires the notification of the Constitutional Court regarding the constitutionality of regulations within one month of their publication.

In a related matter, focusing specifically on presidential decrees - which are one of the main tools provided by the constitutional founder for the president to intervene in legislative work - these decrees are also subject to subsequent discretionary review by the Constitutional Court after notification by the president[20]. This is another new provision introduced by Article 142, which requires the President to notify the Court of the constitutionality of these orders, with a maximum deadline of ten days for the Court to rule on the matter.

2.2 The Jurisdiction of the Constitutional Court for Compliance Oversight

The oversight of the Constitutional Court in this regard pertains to both organic laws and the internal regulations of the two chambers of Parliament (the National People's Assembly and the Senate). The Court works to ensure that these laws respect the will of the constitutional founder and accurately align with the constitution both formally and substantively.

1.2.2 Oversight of Organic Laws

The constitutional founder established this type of law for the first time in Article 123 of the 1996 Constitution, defining it as supplementary rules to the provisions of the constitution concerning their enactment and implementation. Both Parliament and the government can initiate organic laws, similar to ordinary laws, but with specific regulations in place.

According to Articles 190/05 and 197, the Constitutional Court can activate its oversight of organic laws following the mandatory notification from the President of the Republic and subsequent approval by Parliament. This means it is a prior oversight, and the Constitutional Court decides based on a resolution taken by the majority of its present members, with the President's vote serving as a tie-breaker in case of equal votes.

2.2.2 Compliance Oversight of the Internal Regulations of Parliamentary Chambers

Once the Rules of Procedure for each House of Parliament have been drafted and approved by the National People's Assembly and the Senate, the Constitutional Court is required to issue a ruling on their conformity with the Constitution. If the Constitutional Court declares that an internal regulation contains a provision that is not in conformity with the Constitution, the chamber concerned cannot proceed with it until it is amended and resubmitted to the Constitutional Court for a ruling on its conformity with the Constitution, in accordance with Articles 135/03 and 190/06.

In summary, it can be concluded that the activation of the Constitutional Court's control over the observance of organic laws and the internal regulations of the Houses of Parliament can only take place upon notification by the President of the Republic, as an exclusive right.

3.2 Strengthening the jurisdiction of the Constitutional Court in Algeria

The constitutional amendment increased the powers of the Constitutional Court, leading many to describe it as an elevation of the constitutional founder's vision of constitutional justice.

1.3.2 Attempt to define the concept of challenging the constitutionality of laws

Genuine democracy is based on respect for fundamental values, first and foremost human rights. Thus, democracy is not limited to the application of the apparent conditions of majority rule to ensure the protection of individual rights and freedoms. Instead, individuals must be provided with appropriate legal means to challenge laws that may be unconstitutional. This highlights the role of the judiciary as a fundamental mechanism for protecting individual rights and ensuring that they are not violated[21]. This was reaffirmed by the founder of the Constitution in 2020 through Article 195/01, which allows the constitutionality of laws to be challenged after notification to the Constitutional Court on the basis of a referral from the Supreme Court or the Council of State. This applies to cases in which one of the parties to the proceedings claims that its rights and freedoms guaranteed by the Constitution have been violated by a legislative or regulatory decision of the judicial authority that is decisive in the dispute.

A careful reading suggests that the founder of the constitution retained the retrospective review, which was established for the first time since independence in the 2016 constitutional amendment. However, the challenge only applied to legislative decisions and did not extend to regulations - a term added by the constitutional founder in 2020. Experts have pointed out that this addition will raise points of contention, particularly regarding the jurisdictional limits of both the Constitutional Court and the administrative judiciary, in order to avoid jurisdictional conflicts between the two bodies. It is also noted that the constitutional text leaves room for interpretation, as it does not clarify whether national and foreign persons will be treated equally.

As a general rule, the exercise of this judicial control by the Constitutional Court is activated following a judicial referral by one of the parties, based on a dispute brought before the courts by way of a challenge to the constitutionality of a legislative or regulatory provision that affects the outcome of the dispute, regardless of its nature. This is done when the following conditions are met:[22]

The challenge to the constitutionality of laws is not brought directly before the Constitutional Court, but is raised in the context of an ongoing dispute before the competent judicial authority.

- One of the parties to the dispute challenges the constitutionality of the text of the law or regulation that is decisive for the resolution of the dispute.
- Any party to the dispute, whether a natural or legal person, may initiate a constitutional challenge.
- The constitutional challenge can only be raised if the legislative or regulatory text intended to be applied to resolve the dispute constitutes a violation of rights or freedoms guaranteed by the Constitution.

In addition, Organic Law No. 22/19 sets out the procedures and methods of notification and referral to the Constitutional Court[23], thus highlighting the rules applicable in cases of constitutional challenge. The challenge is not made directly to the Constitutional Court, but may be made at any stage of the substantive proceedings before the Courts of Appeal or during a first appeal to the Supreme Court. It may also be raised by way of an objection to a default judgment, a request for reconsideration or an objection that does not fall outside the scope of the dispute[24].

In accordance with the provisions of the Organic Law, and in particular Articles 19 to 23, if the judicial authority before which the challenge to the constitutionality is brought finds that it meets the conditions laid down, it shall issue a decision to refer the matter to the Supreme Court or to the Council of State, accompanied by the pleadings and memoranda of the parties, within ten days of the date of issue of the decision. This has the effect of suspending the proceedings, with the exception of the person deprived of liberty in the specific case.

Similarly, constitutional challenge proceedings are initiated before the higher judicial bodies, which must decide on the referral to the Constitutional Court within two months from the date of receipt.

The decision of the Supreme Court or the Council of State must then be notified to the judicial body that lodged the challenge and communicated to the parties to the dispute within ten days.
In this context, if the Constitutional Court is notified, it must issue its decision within four (4) months from the date of notification, as provided for in Article 195/02 of the Constitution. This period may be extended once, for a maximum of four (4) additional months, by a reasoned decision of the Court, which must be communicated to the judicial body that made the notification. If the legislative or regulatory act is found to be in conformity with the Constitution, it shall remain in force. If it is found to be unconstitutional, it shall cease to have effect from the date of the decision of the Constitutional Court, which shall be final and binding in accordance with Article 198/05.

2.3.2 A new provision for resolving potential disputes between constitutional authorities

The separation of constitutional powers is one of the most important constitutional principles established by the founder of the Algerian constitution. This principle is considered to be a cornerstone of the establishment of a democratic state. The constitutional founder emphasised this in article 16 of the same organic law, stating that the state is founded on the principles of democratic representation, the separation of powers and the guarantee of rights, freedoms and social equality. Furthermore, the founder of the Constitution extended this principle in Article 192, ensuring its practical implementation through a new provision that previous constitutions did not dare to include. A careful reading of this new provision shows that, in order to establish the principle of the separation of powers and to prevent any abuse by one of the authorities, it is necessary to define the functions of each authority so that it exercises its powers within certain limits that cannot be exceeded. Otherwise, such actions would encroach on the powers of another authority. This means that the legislative authority must be responsible for the creation of laws, the executive authority for their implementation and the judicial authority for the application of these laws in the disputes that come before it[25].
In this regard, some experts have noted that the new provision is general and does not clearly outline its dimensions and implications. However, they agree that this is an important positive point that distinguishes the Constitutional Court from the Constitutional Council.

3.3.2 A new competence to interpret constitutional texts

The constitutional amendment of 2020 introduced a new specific competence for constitutional justice in Algeria, namely the power of the Constitutional Court to interpret constitutional texts. This power is outlined in Article 192, paragraph 02, which allows the Constitutional Court to express its opinion on one or more constitutional provisions after receiving a communication from the designated bodies.
The interpretation of constitutional texts involves a full and precise explanation of the texts, revealing their purposes and underlying contexts, addressing any reservations surrounding them and clarifying their intended meaning with the necessary care. It also involves outlining the criteria and bases inherent in those texts for dealing with specific facts at different levels[26].
Consequently, the interpretation of constitutional texts requires, as an imperative, the precise definition of concepts in a way that leaves no room for ambiguity or arbitrary interpretation. It also requires consideration of the philosophical and ideological foundations on which the constitution is based, clarification of the intersections of the texts, and determination of the vision underlying the drafting and articulation of the constitutional text.
Moreover, the assignment of this essential competence to the Constitutional Court will manifest itself in two dimensions: first, the Court will engage in interpretation while exercising its control over the constitutionality of laws, as a fundamental role in dealing with constitutional challenges. Second, the Court will exercise its interpretive power in resolving disputes that arise between constitutional authorities.

4.2 Advisory powers of the Constitutional Court

In addition to its primary competences, which are diverse and numerous, the Constitutional Court also has other advisory competences, which it exercises depending on the circumstances and situations. These advisory powers include supervision of the electoral process, intervention in cases of impediments and vacancies, and settlement of disputes between constitutional authorities.

1.4.2 Maintaining the competence of the Constitutional Court to supervise the electoral process

The constitutional amendment established the Independent National Electoral Authority and assigned to it tasks related to the preparation, organisation and supervision of electoral events, be they presidential, legislative or local elections, as well as referendums. In order to ensure the integrity of the electoral process, Organic Law No. 21/01 was enacted following the establishment of the Authority under Organic Law No[27]. 19/17[28]. A review of its provisions shows that the powers previously exercised by the Constitutional Council were transferred to the Independent National Electoral Authority.

However, an examination of the powers of the Constitutional Court, in particular Article 191, shows that the Court has retained the power to consider appeals against the provisional results of presidential and legislative elections and referendums, as well as its role in announcing the results of all the above electoral processes. This indicates that the Constitutional Court is the arbiter of elections.

In addition, the founder of the Constitution, in Article 120, established the prohibition of political manoeuvring for parliamentarians, emphasising the automatic revocation of a politician's electoral mandate by law if they change their affiliation after being elected, whether to the National People's Assembly or the Senate. In addition, a new provision was added requiring the President of the relevant chamber to notify the Constitutional Court of such changes.

2.4.2 Jurisdiction of the Constitutional Court in cases of disability and vacancy

Under normal circumstances, when a position becomes vacant, the transfer of authority in management and administration takes place naturally, in order to avoid stagnation, on the basis of legal conditions related to a certain period of time, which ends upon its expiry. However, the situation is fundamentally different when it comes to the vacancy of the presidency, as the transfer of authority takes on a special dimension due to its significant impact on the continuity and functioning of state institutions and their stability[29].

In this context, the founder of the Constitution had the task of clarifying the procedures for the transfer of authority, under specific control, as set out in Article 94, which deals with the inability of the President of the Republic to perform his duties due to a serious and chronic illness. In this case, the Constitutional Court must be convened automatically and without delay. If this incapacity is confirmed by appropriate means, the Court proposes that the existence of the incapacity be declared to Parliament by a three-quarters majority (3/4) of its members.

Upon careful reading, it is noted that there are new provisions, particularly regarding the need to convene "by operation of law", which was referred to in the 2016 constitutional amendment using the phrase "as it may not be permissible", along with another new provision adding the phrase "and without delay".

The President of the Senate shall act as acting President of the State for a maximum period of forty-five (45) days after Parliament, sitting in both Houses, has approved the President's impediment by a two-thirds (2/3) majority of its members. If the impediment continues beyond this forty-five (45) day period, the vacancy shall be declared to be due to resignation. In the event of the resignation or death of the President, the Constitutional Court must convene to confirm the definitive vacancy of the Presidency, with immediate notification to Parliament by means of a certificate declaring the definitive vacancy, as provided for in Article 94, paragraphs 02 and 03.

In addition, Article 94/04 stipulates that the second highest official of the State, the President of the Senate, shall assume the duties of the Head of State for a maximum of ninety (90) days. During this period, preparations must be made for the organisation and holding of presidential elections. As a new provision, in cases where it is impossible to hold these elections, and after consulting the Constitutional Court, this period may be extended for a maximum of ninety (90) additional days, with the proviso that the Head of State is ineligible to run for the presidency.

It is worrying that there is still ambiguity in the 2020 constitutional amendment, as the constitutional founder did not address the question of which body has the authority to notify the Constitutional Court of a vacancy in the presidency in the event of a temporary impediment, without providing a clear specification on this matter. In addition, the issue of serious and chronic illness was mentioned

without further elaboration. This raises questions about the monitoring of health and measures for the resumption of duties. The framers had the opportunity to address these gaps in the amendment, given the sensitivity of the presidency and its significant national and international weight.

3.4.2 A new competence to waive the immunity of members of the legislative authority

In paragraph 02 of Article 130, a new competence has been introduced for the Constitutional Court with regard to the lifting of the immunity of members of the legislative authority. This competence is now centralised within the Court, whereas previously the Minister of Justice, as the direct point of contact with the judicial authority, had to notify the office of one of the chambers of Parliament - the National People's Assembly or the Senate. With this amendment, the former Constitutional Council was no longer responsible for this task.

Constitutional experts have linked this point to the lack of legislative authority in the composition of the Constitutional Court.

CONCLUSION:

At the end of this research study entitled "The identity of constitutional justice in the Algerian model in the light of the amendments to the 2020 Constitution", we have arrived at several key findings:

- The constitutional amendment of 2020 explicitly adopts the Constitutional Court as the new identity of Algerian constitutional justice, replacing the former Constitutional Council and distinguishing it from previous constitutions.
- It is difficult to determine whether the identity of the constitutional judiciary has really shifted from political oversight to the intention of activating judicial oversight.
- The founder of the Constitution continues to emphasise the essential guarantees for the supremacy of the Constitution.
- The amendment seeks to restructure the Constitutional Court, in particular by focusing on the mechanism for electing its members and by including university professors, thereby strengthening its authority and jurisprudence.
- The position of the Constitutional Court has been strengthened within the general constitutional framework, particularly with regard to the binding nature of its decisions on oversight and constitutional compliance.
- A notable criticism of the identity of the Constitutional Court is that it operates only under the constraints of notifications with fixed deadlines, as well as ambiguity regarding its methods of communication.
- The Constitutional Court retains many of the powers previously held by the Constitutional Council, while at the same time enhancing its identity with gains that strengthen its role.

The identity of the constitutional judiciary in the Algerian model, in light of the amendments to the 2020 Constitution, requires further evaluation based on this research. We propose the following proposals:

- The ongoing debate about whether the Algerian constitutional judiciary is political or judicial needs to be clearly resolved, overcoming the duality in its functioning.
- Emphasis should be placed on the representation of the judiciary in the composition of the Constitutional Court in order to strengthen its judicial identity, while at the same time strengthening the presence of popular representatives and adopting an electoral process for the election of its president.
- The Constitutional Court should operate without the restrictive notifications that were originally intended to facilitate its functioning.
- There is a need to fill the gap in the legal framework outlining the Court's powers in relation to constitutional amendments.
- The scope of referrals to the Constitutional Court should be broadened to include all courts against any legislative text that violates the Constitution, while at the same time activating the right of civil society and trade unions to submit complaints to the Court in order to ensure better protection of individual and collective rights and freedoms.

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