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de l'artisanat et des industries culturelles et créatives  
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## Ligne éditoriale

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**L**a revue a pour dénomination **ZAOULI** qui désigne à la fois une danse et une musique populaires pratiquées par les communautés gouro, dans les départements de Bouaflé et de Zuénoula, en Côte d'Ivoire. Hommage à la beauté féminine, le **ZAOULI** s'inspire de deux masques : le Blou et le Djela. Son autre nom, « Djela lou Zaouli », signifie « Zaouli, la fille de Djela ». Le Zaouli associe, dans un même spectacle, la sculpture (le masque), le tissage (le costume), la musique (l'orchestre, la chanson) et la danse. Le masque Zaouli se décline en sept masques faciaux traduisant chacun une légende spécifique. Les détenteurs et les praticiens sont les sculpteurs, les artisans, les instrumentistes, les chanteurs, les danseurs et les notables (garants des coutumes et des traditions de la communauté).

Dès lors, le **ZAOULI** possède une fonction éducative, ludique et esthétique. Porteur de l'identité culturelle de ses détenteurs, il contribue également à la préservation de l'environnement, et favorise l'intégration et la cohésion sociale. La transmission de l'élément s'opère à l'occasion des représentations musicales et des séances d'apprentissage. Les amateurs en apprennent la pratique sous la supervision de praticiens expérimentés. La viabilité du **ZAOULI** est assurée grâce aux représentations populaires, organisées deux à trois fois par semaine par les communautés. La chefferie traditionnelle, garante des traditions, joue également un rôle clé dans le processus de transmission. Les festivals et les concours de danse inter-villages constituent également d'autres opportunités de revitalisation.

En définitive, le **ZAOULI** est réputé détenir des pouvoirs permettant l'accroissement de la productivité du milieu dans lequel il est pratiqué. Inscrit sur la liste prestigieuse du Patrimoine Mondial de l'UNESCO, le **ZAOULI** est une synthèse de la sculpture, la musique et le tissage. Elle a donc pour but de mettre un point d'honneur sur la beauté féminine. C'est pourquoi, il se

distingue par la finesse des traits du masque, la beauté de la danse et la grâce qui en font un spectacle fort apprécié dans les manifestations publiques.

Cette nouvelle revue vise donc à promouvoir la recherche et la réflexion dans les domaines suivants :

- ▶ Arts et Culture ;
- ▶ Lettres et Langues ;
- ▶ Sciences de l'information et de la communication ;
- ▶ Sciences Humaines et Sociale ;
- ▶ Sciences Juridiques et Politiques ;
- ▶ Sciences Economique et de Gestion ;
- ▶ Sociologie ;
- ▶ Anthropologie ;
- ▶ Psychologie ;
- ▶ Criminologie.

Elle vise également à publier les résultats des recherches menées par les chercheurs et à développer la production scientifique chez cette nouvelle génération de chercheurs. C'est une revue pluridisciplinaire dont l'enjeu est de favoriser un enrichissement entre chercheurs dans une relation de mutualisation des connaissances tout en s'inscrivant dans les normes scientifiques et éthiques du CAMES.

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Les articles à soumettre à la revue doivent être conformes aux normes suivantes :

**Style et volume d'un article :** Book Antiqua; taille de police : 12, interligne : 1 volume 15 à 20 pages maximum.

**La structure du texte :**

La structure d'un article scientifique en Lettres et Sciences Humaines se présente comme suit :

*Pour un texte qui se présente sous forme de contribution théorique et fondamentale* : Titre, Prénoms et Nom de l'auteur, Institution d'attache, adresse électronique, Résumé en Français [250 mots maximum], Mots clés [5 mots maximum], [Titre en Anglais] Abstract, Keywords, Introduction (justification du thème, problématique, hypothèses/objectifs scientifiques, approche), Développement articulé, Conclusion, Bibliographie.

*Pour un texte qui résulte d'une recherche de terrain* : Titre, Prénoms et Nom de l'auteur, Institution d'attache, adresse électronique, Résumé en Français [250 mots au plus], Mots clés [7 mots au plus], [Titre en Anglais], Abstract, Keywords, Introduction, Méthodologie, Résultats et Discussion, Conclusion, Bibliographie.

**Les articulation du texte :** A l'exception de l'introduction, de la conclusion, de la bibliographie, les articulations doivent être titrées, et numérotées par des chiffres (Exemples : 1. ; 1.1. ; 1.2 ; 2. ; 2.2. ; 2.2.1; 2.2.2.; 3. ; etc.). (Ne pas automatiser ces numérotations).

La conclusion doit être brève et insister sur les résultats et l'apport original de la recherche.

La référence bibliographique adoptée est celle des notes intégrées au texte. Elle se présente comme suit : (nom de l'auteur, année de publication, page à laquelle l'information a été prise).

### **Présentation des références bibliographiques:**

Les passages cités sont présentés en romain et entre guillemets (Pas d'Italique donc). Lorsque la phrase citant et la citation dépassent trois lignes, il faut aller à la ligne, pour présenter la citation (interligne 1) en romain et en retrait, en diminuant la taille de police d'un point (pas d'italique, pas de guillemets).

Les références des citations sont intégrées au texte citant, selon les cas, de la façon suivante : (Initiale (s) du Prénom ou des Prénoms de l'auteur. Nom de l'Auteur, année de publication, pages citées). Initiale (s) du Prénom ou des Prénoms de l'auteur. Nom de l'Auteur (année de publication, pages citées).

### **Exemples**

:

Le processus du sous-développement résultant de ce choc est vécu concrètement par les populations concernées comme une crise globale (S. Diakité , 1985, p. 105).

En effet, le but poursuivi par M. Ascher (1998, p. 223), est « d'élargir l'histoire des mathématiques de telle sorte qu'elle acquière une perspective multiculturelle et globale ».

**NB :** Les sources historiques, les références d'informations orales et les notes explicatives sont numérotées en série continue et présentées en bas de page.

Les divers éléments d'une référence bibliographique sont présentés comme suit :

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ouvrage, d'un mémoire ou d'une thèse, d'un rapport, d'une revue ou d'un journal est présenté en italique.

Dans la zone Éditeur, on indique la Maison d'édition (pour un ouvrage), le Nom et le numéro/volume de la revue (pour un article). Au cas où un ouvrage est une traduction et/ou une réédition, il faut préciser après le titre, le nom du traducteur et/ou l'édition (ex : 2nde éd.).

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### Exemples

AMIN Samir, 1996, *Les défis de la mondialisation*, Paris, L'Harmattan.

DIAGNE Souleymane Bachir, 2003, « Islam et philosophie. Leçons d'une rencontre », *Diogène*, 202, 4, p. 145-151.

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## **Mechanisms of Oversight in Light of the Jurisdictional Powers of the Constitutional Court in Algeria**

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### ***Abstract :***

*The Constitutional Court in Algeria is considered the cornerstone for ensuring respect for the constitution and achieving a balance of powers. Through its expanded powers, introduced by the constitutional amendments of 2020, the court has become a pivotal player in the oversight of legislation, resolving constitutional disputes, and ensuring the protection of rights and freedoms. Despite the legal tools these powers provide for regulating institutional performance, the court's effectiveness remains linked to several factors, most notably its independence, the mandatory nature and strength of its decisions, and the mechanisms for their implementation. This is aimed at developing and gaining a deeper understanding of how to enhance the court's role and ensure its actual impact in protecting the constitution and fundamental rights*

***Key words:*** Constitutional oversight; Competencies; Constitutional Court; Court members; Protection of the constitution.

## **Mécanismes de contrôle à la lumière des compétences jurisdictionnelles de la Cour constitutionnelle en Algérie**

### **Résumé :**

*La Cour constitutionnelle en Algérie est considérée comme la pierre angulaire du respect de la Constitution et de l'équilibre des pouvoirs. Grâce à ses pouvoirs élargis, introduits par les amendements constitutionnels de 2020, la Cour est devenue un acteur central dans le contrôle de la législation, la résolution des litiges constitutionnels et la garantie de la protection des droits et libertés. Malgré les outils juridiques que ces pouvoirs fournissent pour réguler la performance institutionnelle, l'efficacité de la Cour reste liée à plusieurs facteurs, notamment son indépendance, le caractère obligatoire et la force de ses décisions, ainsi que les mécanismes de leur mise en œuvre. L'objectif est de développer et de mieux comprendre comment renforcer le rôle de la Cour et assurer son impact réel sur la protection de la Constitution et des droits fondamentaux.*

**Mots clés :** Contrôle constitutionnel ; Compétences ; Cour constitutionnelle ; Membres de la Cour ; Protection de la constitution.

## Introduction

The Constitutional Court in Algeria stands as the highest judicial authority responsible for ensuring the conformity of laws and legislation with the Constitution. It plays a pivotal role in upholding constitutional principles and safeguarding the fundamental rights and freedoms of citizens. Officially established following the 2020 constitutional amendment, the Constitutional Court replaced the former Constitutional Council, thereby acquiring broader and more influential powers within Algeria's legal system.

The establishment of the Constitutional Court aims to reinforce the principle of constitutional legality and to ensure that enacted laws align with constitutional norms. It also supervises the functioning of public institutions to guarantee their compliance with the Constitution. As such, it serves as a vital guarantor of legal and political stability in Algeria by adjudicating constitutional disputes within the scope of its authority.

The significance of the Constitutional Court lies in its capacity to maintain the integrity of the legal and political order. It protects rights and freedoms, promotes the principle of separation of powers, and ensures the supremacy of the Constitution as the highest law of the land. Moreover, its role in overseeing elections and referenda contributes to enhancing democratic governance and ensuring the transparency of political processes.

Thus, the Constitutional Court is not merely a judicial body but a fundamental institution within the Algerian legal framework. It is tasked with delivering constitutional justice and upholding the rule of law. With its expanded authority,

the Constitutional Court forms the cornerstone for safeguarding democratic values and maintaining institutional stability in Algeria.

Studying the structure and jurisdiction of the Constitutional Court is crucial, as it is one of the most significant constitutional institutions that ensure the respect and effective implementation of the Constitution. This study is essential for various legal, political, and societal reasons, including:

### **Ensuring respect for the Constitution and the rule of law**

The Court ensures that legislation aligns with constitutional principles, thereby preserving legal coherence and preventing conflicts or overreach. Studying the Court aids in understanding the mechanisms through which constitutional norms are applied and laws are assessed for compliance with citizens' guaranteed rights and freedoms.

### **Protecting fundamental rights and freedoms**

The Constitutional Court plays a key role in safeguarding individual and collective liberties by reviewing legislation that may infringe upon citizens' rights. Research in this field helps in exploring ways to enhance constitutional oversight and maintain a stable democratic order.

### **Promoting the separation of powers**

The Constitutional Court is a foundational element for maintaining the balance between legislative, executive, and judicial powers. Studying its jurisdiction helps clarify how it preserves institutional independence and prevents overreach by any branch of government.

## **Assessing the Court's independence and the impact of its decisions**

Analyzing the Court's ability to issue impartial rulings free from political influence is essential. It also enables exploration of challenges related to the enforceability of its decisions and their influence on legislation and public policy.

### **Analyzing its role in electoral oversight**

As the body responsible for supervising elections, the Court ensures their integrity. Examining this function allows for a better understanding of the Court's effectiveness in promoting democracy and adjudicating electoral disputes.

This paper seeks to provide a comprehensive analysis of the Constitutional Court's role within Algeria's legal and political system, particularly its impact on institutional stability and constitutional legality. The main objectives of this study include:

Analyzing the legal and regulatory framework governing the Court's functioning, particularly under the 2020 Constitution, and comparing it with the former Constitutional Council to assess the evolution of its competencies.

Identifying and evaluating the Court's jurisdiction and effectiveness, especially in reviewing the constitutionality of laws, resolving constitutional disputes, and safeguarding rights and freedoms.

Assessing the Court's independence, including legal safeguards against executive and legislative interference, and the practical challenges it faces in maintaining impartiality.

Evaluating the enforceability of its decisions, by analyzing the extent to which public authorities comply with its rulings and identifying administrative or legal obstacles to their implementation.

Amid Algeria's political and legal transformations following the 2020 constitutional revision, the Constitutional Court emerged as a supreme body for ensuring constitutional compliance and protecting basic rights and freedoms. With broader powers than its predecessor, its effectiveness and the adequacy of the legal framework ensuring its independence and efficiency warrant thorough examination.

**The main research problem this study addresses is:**

To what extent does the Algerian Constitutional Court, through its structure and jurisdiction, contribute to effective constitutional oversight, the protection of rights and freedoms, and the promotion of the separation of powers under the current legal framework?

A secondary issue relates to the Court's role in promoting legal certainty and political stability through its review of legislation and the impact of its decisions on the overall legal system.

This study necessitates a precise methodology that combines legal analysis, legislative comparison, and critical assessment to provide a comprehensive and evidence-based perspective.

Accordingly, the primary methodology employed is the descriptive-analytical method, which facilitates a detailed examination of the legal texts governing the Constitutional Court. This enables identification of its legal framework and comparison with similar institutions in other legal systems.

A supplementary critical legal approach will also be used to evaluate the Court's effectiveness in fulfilling its constitutional duties, including its independence and its ability to adjudicate inter-institutional disputes.

The methodological tools employed include legal text analysis, drawing on Algeria's 2020 Constitution and complementary laws defining the Court's competencies, as well as the interpretation of constitutional provisions through jurisprudential and doctrinal lenses.

This structure offers a comprehensive framework for examining the Constitutional Court from legal, procedural, and practical perspectives.

## **1. The Theoretical Framework Governing the Constitutional Court**

The 2020 constitutional amendment allocated the fourth chapter of the Constitution to oversight institutions, including the Constitutional Court, the Court of Auditors, the National Independent Authority for Elections, and the High Authority for Transparency, Prevention, and the Fight against Corruption. The first section is dedicated to the Constitutional Court and its role in supervising and monitoring the electoral process.

The Algerian legislator, through Presidential Decree No. 20-442 dated December 30, 2020, formally introduced the Constitutional Court in Chapter Four of the Constitution, under the heading of oversight institutions. Article 185 establishes it as an independent institution tasked with ensuring respect for the Constitution and regulating the operation

of public authorities. In the electoral context, the Court is empowered to hear and resolve electoral appeals.

This chapter is divided into two main parts:

## **The Nature of the Constitutional Court, The Organizational Structure and Functioning of the Court**

### **1.1. The Nature of the Constitutional Court**

Established under the 2020 constitutional amendment, the Constitutional Court is an independent constitutional body distinct from the judiciary. It exercises a unique form of jurisdiction, and its decisions are binding. In this section, we will first define the Court and explain the rationale behind its establishment (Subsection 1), followed by an analysis of its legal character (Subsection 2).

#### ***1.1.1 Definition and Rationale for Establishment***

According to Article 185 of the 2020 Constitutional Amendment:

"The Constitutional Court is an independent institution tasked with ensuring respect for the Constitution. It regulates the functioning of institutions and the activities of public authorities." (Presidential Decree No. 20-442, 2020, p. 39)

The establishment of the Constitutional Court was driven by multiple needs, including the benefit of comparative experiences with similar institutions globally. Algeria, like many countries, chose to move away from the French model of political oversight of constitutional legality toward a more judicial approach. This path mirrors that of Tunisia, which also transitioned from a constitutional council to a constitu-

tional court, recognizing the limitations of the French-inspired model.

Given the recent political crises in Algeria and the Constitutional Council's inability to address them effectively, the constitutional reform aimed to create a stronger institution with broader powers to prevent future crises. This move seeks to curtail the usurpation of power by one branch over another, whether deliberate or accidental (Kazania, Noura & Bouaziz, Widad. 2021/2022, pp. 49–50)

### **The Legal Nature of the Constitutional Court**

The legal nature of the Constitutional Court stems directly from the inherent nature of constitutional adjudication, which is often characterized as political due to the Court's functions involving matters of state policy. Two primary perspectives emerge in this regard:

- ❖ **The first view** acknowledges that constitutional adjudication inevitably performs a political role, since its operations are grounded in constitutional texts—documents that are inherently legal and political in nature. Moreover, constitutional provisions permeate every sphere of public life, reinforcing the Court's influence over political processes.
- ❖ **The second view** rejects any political dimension of constitutional justice, invoking the principles of judicial independence and impartiality. According to this perspective, allowing judicial involvement in political affairs would subject the judiciary to politicization, undermining its legal essence and portraying it as strictly juridical in nature.

- ❖ The debate surrounding this issue informs our present analysis: while recognizing the Constitutional Court as a judicial institution with a primarily legal function, it is necessary to acknowledge its significant political influence, akin to other state institutions. This tension between law and politics has stirred considerable debate in legal and political circles, particularly in light of the Court's involvement in shaping political outcomes.
- ❖ Constitutional judges, through their interpretive and supervisory powers, engage in a judicial process that has inherently political consequences. One could argue, therefore, that their work is **legal in form, yet political in effect**. The reason lies in the nature and hierarchy of the legal norms under review—namely, constitutional provisions that hold the highest authority in the legal order. (Ben Lahcen Khadouja and Ben Khalifa Meryema, 2020/2021, pp. 14–15)

### *1.1.2. Formation and Functioning of the Constitutional Court in Algeria*

According to the second paragraph of Article 185 of the 2020 constitutional amendment, “*The Constitutional Court shall determine its own rules of procedure.*” This provision clearly indicates the Court’s independence in managing its internal affairs, affirming its autonomy both structurally and functionally.

As for the Court’s composition, Article 186 of the 2020 constitutional amendment preserves certain characteristics of the former Constitutional Council while introducing new elements. Notably, the amendment sets conditions for membership and defines special requirements for the President of

the Constitutional Court, as will be detailed in the subsections below.

## **Members of the Constitutional Court**

### **❖ *Composition***

The 2020 constitutional amendment did not alter the number of judges serving on the Court; however, it discontinued parliamentary representation and, for the first time, introduced representation from the electoral body through constitutional law professors.

As stipulated in Article 186 of the Constitution and Article 3 of Presidential Decree No. 22-93 (Presidential Decree No. 22-93 of 8 March 2022, 2022)<sup>^2</sup> the Constitutional Court is composed of twelve members. These judges take an oath before the First President of the Supreme Court prior to assuming their duties.

### **❖ *Eligibility Criteria***

The eligibility criteria for both elected and appointed members align with those required for presidential candidacy, with the exception of age requirements. This is confirmed in Article 97 of the 2020 constitutional amendment. As per Article 187:

“The Constitutional Court shall be composed of twelve (12) members:

Four (4) members appointed by the President of the Republic, including the President of the Court.

One (1) member elected by the Supreme Court from among its members.

One (1) member elected by the Council of State from among its members.

Six (6) members elected by constitutional law professors through a voting process whose conditions are determined by the President of the Republic.” (Presidential Decree No. 20-442, 2020, p. 39)

This latter clause, granting the President power to define the election conditions for academic members, is arguably unconstitutional. Legislative powers, including defining such frameworks, fall under the exclusive authority of the Parliament, except in extraordinary situations where the President legislates by ordinance in the absence of Parliament. Given that Algeria has an active legislature, assigning this power to the President raises significant constitutional concerns.

Additionally, we recommend a substantive amendment: permitting public law professors—not only constitutional law scholars—to run for Court membership. Public law professors possess broad expertise in areas that the Constitution addresses, such as rights, freedoms, international treaties, governmental powers, and emergency scenarios.

Furthermore, the 20-year teaching requirement is excessive. A 14-year minimum teaching period, along with a full professorship rank, would suffice.

We also propose that future constitutional drafting committees include both legal drafting experts and Arabic language scholars to ensure clarity, precision, and linguistic integrity.

It is imperative to revise several aspects of the current system. For instance, granting the President the authority to appoint a third of the Court's members—including the Court's President—undermines its neutrality and independence. This setup echoes the outdated Constitutional Council

model, which failed to declare the president's incapacity during a critical national moment.

Thus, it would be more consistent with judicial impartiality if all twelve members were elected, and the President of the Constitutional Court selected internally by the judges themselves.

❖ *Appointment of the President of the Constitutional Court*

The President of the Republic appoints the President of the Constitutional Court for a non-renewable six-year term. The appointee must meet the eligibility requirements listed in Article 87 of the 2020 amendment—identical to those for presidential candidates, except for the age criterion, which is fixed at 50 years.

We suggest amending this rule. It is illogical that presidential candidates must be at least 40 years old, while members of the Constitutional Court must be 50. Either both should require a minimum age of 40, or, conversely, both should require 50—consistency and logic must prevail.

Constitutional Court members serve one six-year term, with half of the members renewed every three years. They enjoy immunity concerning acts performed during their tenure. (*Ibid.*, Articles 188-189)

To ensure independence, we again emphasize that the President of the Court should be elected by the members rather than appointed by the executive branch.

## **1.2. Internal Organization of the Constitutional Court**

Chapter II of Presidential Decree No. 22-93, dated March 8, 2022, outlines the internal organizational structure of the

Court, encompassing 32 articles covering all administrative and operational aspects.

### ***1.2.1. Cabinet (Diwan)***

Article 11 of the decree states: “*The President of the Constitutional Court is assisted by a Chief of Staff, supported by three researchers and summarizers.*” Article 9 adds that the President is assisted by directors of research. The cabinet’s functions are further clarified by a decision issued by the President of the Court.<sup>1</sup>

### ***1.2.2. Secretariat***

According to Article 12, the General Secretariat operates under the authority of the President and is managed by a Secretary-General assisted by research directors<sup>2</sup>

The Secretary-General supervises the organizational structures specified in Article 10 and oversees their proper functioning, including the Office of General Services and Postal Affairs, as detailed in Article 13.<sup>3</sup>

Article 14 outlines the Secretary-General’s responsibilities in detail.

### ***12.3. Directorate-General for Legal and Constitutional Affairs***

This directorate handles key functions related to legal oversight, as established in Articles 15 and 16 of the decree.

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<sup>1</sup> · Presidential Decree No. 22-93, art. 11.

<sup>2</sup> · Ibid., art. 12.

<sup>3</sup> Ibid., art. 13.

#### **1.2.4 Directorate for Research and Documentation**

This directorate's responsibilities are detailed in Article 17 of the decree.

#### **1.2.5. Directorate of Information Systems and Communication Technologies**

This unit oversees the Court's information systems and communication technologies infrastructure.<sup>1</sup>

#### **1.2.6. Directorate of Resource Management**

Tasked with managing human, material, and financial resources to ensure smooth operations of the Court's administrative structures.<sup>2</sup>

#### **1.2.7. Registry Office**

Responsible for core clerical and procedural functions, as specified in Article 20.

### **2. Original Jurisdictions of the Constitutional Court**

The 2020 constitutional amendment granted the Constitutional Court several powers. These include **original jurisdictions** related to overseeing the constitutionality of laws, as well as **advisory** and **oversight competencies**, specifically monitoring the entire electoral process. Therefore, in this section, we will address the **general jurisdictions of the Constitutional Court in Algeria** in the first sub-section, reserving the second sub-section for examining the Constitu-

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<sup>1</sup> · Ibid., art. 18.

<sup>2</sup> Ibid., art. 19.

tional Court's role in overseeing the electoral process in Algeria.

## **2.1General Jurisdictions of the Constitutional Court in Algeria**

The Constitutional Court's jurisdictions are numerous and varied, especially in light of the 2020 constitutional amendment. Therefore, we'll address all these general jurisdictions as follows:

### ***2.1.1. Constitutional Review of Legislation***

Constitutional review refers to the process of verifying the compatibility of laws with the Constitution to ensure that legislative and executive enactments comply with constitutional legitimacy. (Abdelhakim, Moulai Brahim, and El-Aid Raaei, 2021, p. 823)

This function is explicitly assigned to the Constitutional Court under Chapter IV, titled "Oversight Institutions," particularly in Article 184 of the 2020 Constitutional Amendment. The article states: "The constitutional institutions and oversight bodies are responsible for verifying the conformity of legislative and regulatory actions with the Constitution and ensuring the proper use and management of public resources and funds." (Presidential Decree No. 20-442, *ibid.*, p. 38)

It should be noted, however, that the Constitutional Court should have been distinguished from other oversight bodies. Article 184 gives the impression that constitutional review is a collective task shared among various institutions, while in fact, the Constitution entrusts this duty exclusively to the Constitutional Court. Accordingly, the constitutional legisla-

tor ought to amend this article to reflect this exclusive competence clearly.<sup>1</sup>

Moreover, Article 185 of the same amendment confirms that the Constitutional Court is an independent institution charged with ensuring compliance with the Constitution. Similarly, Article 190 states that, in addition to the powers explicitly assigned to it by other constitutional provisions, the Constitutional Court shall rule on the constitutionality of treaties, laws, and regulations. (Presidential Decree No. 20-442, *ibid.*, p. 40)

### **2.1.2. The Advisory Role of the Constitutional Court**

Consultation implies seeking expert opinion on specific matters. The Constitution mandates such consultations to guide the President of the Republic in making crucial decisions. One such instance is found in Article 151 of the 2020 Constitutional Amendment, which requires consultation with the President of the Constitutional Court—not the Court in its entirety—before dissolving the National People's Assembly or calling early legislative elections. This raises an important question: Why is only the President of the Court consulted, rather than the full bench? What is the role of the Court's members if their collective opinion is not sought? Furthermore, is this consultation binding or merely advisory?

By contrast, in the case of extending electoral deadlines, the article refers to the Court's opinion, again without clari-

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<sup>1</sup> . Hicham Massoudi, “Proposals and Perspectives on the Draft Constitutional Amendment,” National Radio Broadcast from Béchar Station during the COVID-19 Pandemic, Professor of Law and Political Science, University of Mohamed Boudiaf, M’sila, Algeria.

fying whether it is binding. This lack of clarity necessitates an urgent amendment to remove ambiguity, particularly in light of the importance of these decisions to the general public and the state.

The constitutional legislator failed to define whether these consultations are mandatory or discretionary, and whether the President is obliged to act upon them. If not, one must ask: What purpose do they serve? Therefore, we recommend a constitutional revision to clarify this point. Future amendments should also involve legal scholars with expertise in precise legislative drafting.

### *2.1.3. Powers of the Constitutional Court in Exceptional Circumstances*

The Constitutional Court holds jurisdiction in several exceptional cases, including:

- **Declaration of Presidential Vacancy**

To prevent crises stemming from a potential presidential vacancy, the Constitution—through Article 94 of the 2020 amendment—outlines procedures for the management of state affairs in such events. (*Ibid.*, p. 22)

The Court plays a critical role here, particularly in two scenarios: (a) when the President is unable to perform his duties due to a serious and chronic illness, and (b) in the event of resignation or death. In the first case, the Court must convene immediately and verify the incapacity through appropriate means. It is essential to highlight past shortcomings during the tenure of the former Constitutional Council, which failed to act despite evident incapacity, endangering national stability. The vague phrasing—

“appropriate means”—in Article 94 leaves too much room for interpretation. If the cause is indeed a serious or chronic illness, the Constitution should specify that a panel of specialized medical experts must determine the President’s condition, as defined by an organic law. Algeria’s social security system already maintains a list of chronic illnesses; this could serve as a legal reference point. Vague terminology should be avoided to ensure legal clarity and consistency. In the second scenario—resignation or death—the Court must formally declare the vacancy and notify Parliament, which then convenes automatically.

### ● **Peace and War Treaties**

While the President has the authority to sign treaties of peace and war, the Constitution mandates that the Constitutional Court be consulted beforehand regarding armistice and peace treaties (Article 102). Again, ambiguity arises as the nature of this opinion—whether binding or not—is unclear. If the President is not required to follow the Court’s opinion, one must question the consultation’s utility.

Moreover, Article 102(2) allows the President to submit such treaties to both houses of Parliament for approval. However, what if Parliament believes the treaty favors the opposing state—potentially allowing it to regroup and reengage in conflict with greater force? This scenario reflects a strategic misjudgment that must be considered during treaty evaluation.

### ● **Consultation in Exceptional Situations**

According to Articles 97 and 98 of the 2020 amendment, the President must consult the Constitutional Court before imposing a state of emergency or siege. Upon the conclusion of such measures, the President must submit his decisions to

the Court for review. However, the efficacy of such post-facto consultation is questionable. If the circumstances have already passed, what practical value does the Court's opinion hold?

Therefore, we recommend that the Court's opinion be binding prior to the adoption of emergency measures to safeguard constitutional principles, public liberties, and institutional stability. Additionally, if the Court disagrees with the President's actions, whose decision prevails? These issues underscore the necessity for legal precision and institutional balance.

In conclusion, the Constitution suffers from significant textual ambiguities that could undermine national governance. We strongly urge the constitutional legislator to revise the identified provisions with expert input to ensure legal clarity and institutional stability.

- Fourth Case: Declaration of Vacancy of a Member of the People's National Assembly or the Council of the Nation Due to Change in Political Affiliation

Article 120 of the Algerian Constitution provides for the automatic forfeiture of a parliamentary mandate in both chambers of Parliament when a member voluntarily changes the political affiliation under which they were elected. This forfeiture occurs by operation of law without the need for additional legal procedures. (Moulai Brahim Abdelhakim and Al-Ra'i Al-'Id, 825–828)

## **2.2. Jurisdiction of the Constitutional Court in Electoral Oversight**

Constitutional oversight of the validity of electoral processes represents one of the fundamental pillars of demo-

cratic practice. It is impossible to conceive of fair and transparent elections without such oversight, which ensures the integrity of the right to vote. The Constitutional Court plays a pivotal role by adjudicating electoral disputes and formally validating election results. This role was reinforced through Article 191 of the 2020 constitutional amendment and codified in Ordinance No. 21-01, which governs the organic law on elections.<sup>1</sup>

The Court exercises its jurisdiction both after the electoral process – by reviewing appeals – and during the preliminary stages, overseeing any acts that may affect the integrity of the vote. Legal scholars emphasize that the Court's oversight extends to any actions that could distort election results, such as the use of unlawful campaign methods, disturbances affecting public order, or breaches of general voting regulations. The Court's authority also includes supervising vote counting and result announcement procedures, thereby covering all aspects likely to influence electoral outcomes. (Shadia Rahab, 2021, 73–74)

### **2.2.1. Oversight of the Constitutional Court Prior to Voting Day**

The Constitutional Court extends its oversight to all preliminary stages of the electoral process, covering various issues as detailed below:

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<sup>1</sup> .Ordinance No. 21-01 dated March 10, 2021, Official Gazette, No. 17, March 10, 2021.

- **Review of Appeals Concerning Presidential Candidacy Rejections**

When individuals submit their intent to run for the presidency, the National Independent Electoral Authority examines the validity of their applications within seven days. In case of rejection, the decision may be appealed before the Constitutional Court within 48 hours of notification. The Court then has seven days to render a decision from the date of receiving the final decision from the Authority.<sup>1</sup>

- **Oversight of the Final List of Presidential Candidates**

The Constitutional Court is responsible for issuing the final list of presidential candidates after reviewing any appeals against rejected applications. The final list is to be published in the Official Gazette within seven days.<sup>2</sup>

- **Review of Serious Impediments or Death of a Candidate After Final List Approval**

Once the Constitutional Court approves the final list, withdrawals are not permitted unless the candidate experiences a legally confirmed serious impediment or dies. In such cases, the electoral process may be delayed, and a new nomination period – ending at least one month before the election – is permitted. If the candidate dies or becomes incapacitated after publication of the final list, the election may be postponed for up to 15 days.<sup>3</sup>

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<sup>1</sup> Ordinance No. 21-01, Article 252; see also Constitution, Article 95.

<sup>2</sup> .Ordinance No. 21-01, Article 252, Paragraphs 4–5

<sup>3</sup>.Ordinance No. 21-01, Article 255.

## 2.2.2. The Role of the Constitutional Court in Supervising the Electoral Process

The Constitutional Court plays a key supervisory role in electoral processes, especially in the following areas:

Appeals Concerning Provisional Results of Presidential, Legislative Elections, and Referenda

Article 191 of the 2020 Constitution authorizes the Court to adjudicate appeals related to the results of presidential and legislative elections, as well as referenda. The Court is also responsible for officially announcing the final results of these processes. (Presidential Decree No. 20-442, op.cit, 40)

### • Presidential Elections

Following the announcement of provisional results by the President of the Independent Electoral Authority, any candidate or registered voter may submit an appeal within 48 hours to the Constitutional Court. However, appeals must be preceded by an official protest recorded in the counting report and submitted to the Electoral Authority. The candidate declared elected is then notified and may submit a written response within 72 hours. The Court must rule within three days. If the appeal is deemed valid, the Court may annul or amend the results accordingly.<sup>1</sup>

In cases where fraud or manipulation of vote tallies is proven, the Court should not only invalidate the results but also refer the candidate for criminal prosecution. Legal amendments should ensure that candidates found guilty of altering official records are disqualified, even if initial results indicated victory. Fraud involving tampering with vote rec-

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<sup>1</sup> Ordinance No. 21-01, Articles 258–260

ords should be met with criminal penalties, including disqualification, loss of candidacy rights, and referral to criminal courts on charges of forgery and corruption.

The legislature should have harmonized the standards applied in presidential and legislative elections, especially regarding procedural deadlines and the annulment of elections based on evidence of falsified records.

### • **Legislative Elections**

Upon announcement of provisional legislative results, political parties, candidate lists, and independents may file appeals within 48 hours for National Assembly elections and within 24 hours for the Council of the Nation. The Constitutional Court then notifies the concerned candidate or list, which may submit a written response within 72 hours. The Court must decide within three days. If the appeal is found valid, it may annul the contested election or amend the result.<sup>1</sup>

The Constitutional Court is entrusted with validating and proclaiming the final results of legislative elections within ten days of receiving provisional results from the Independent Electoral Authority. If necessary, this deadline may be extended by an additional 48 hours through a decision by the President of the Constitutional Court.<sup>2</sup>

### ❖ **Oversight of Referendum Results Appeals**

Under Ordinance No. 21-01, every voter has the right to challenge the validity of voting procedures concerning referenda. However, the ordinance requires that such objections

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<sup>1</sup> .Ordinance No. 21-01, Articles 209–210, 240

<sup>2</sup> Article 211 of Ordinance No. 21-01

be recorded in the official counting report at the polling station.<sup>1</sup>

The appeal must then be submitted to the registry of the Constitutional Court within 48 hours following the announcement of the provisional results.<sup>2</sup>

The Court rules on submitted appeals within three days of receipt. If it finds the objections to be valid, it issues a reasoned decision and re-drafts the result protocols accordingly.<sup>3</sup>

The final referendum results must be announced by the Court within ten days from the date it receives the electoral committee reports.<sup>4</sup>

#### ❖ **Oversight of Appeals Against Decisions of the Campaign Finance Oversight Committee**

Following its review of the credibility and legality of the financial records related to election campaigns, the Campaign Finance Oversight Committee must issue a formal decision within six months, either approving, modifying, or rejecting the campaign account.<sup>5</sup>

If an account is rejected, Ordinance No. 21-01 authorizes the Constitutional Court to hear appeals against the Committee's decision. These appeals must be submitted within one month from the date of official notification.<sup>6</sup>

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<sup>1</sup> Article 258, Paragraph 1 ,ibid.

<sup>2</sup> Article 259, Paragraph 4 ,ibid

<sup>3</sup> Article 260, Paragraph 1 ,ibid

<sup>4</sup> Article 263, Paragraph 2 of Ordinance No. 21-01

<sup>5</sup> Article 118 of Ordinance No. 21-01, dated March 10, 2021, concerning the Organic Law on the Electoral System, Official Gazette No. 17, March 10, 2021, p. 19

<sup>6</sup> Article 121 ibid.

## Conclusion

The establishment of the Constitutional Court marks a turning point in Algeria's legal and institutional framework. However, its effectiveness relies heavily on its independence, its competence in overseeing laws, and its dispute resolution mechanisms. These elements are central to legal discourse, as addressing them is vital to strengthening Algeria's constitutional justice framework.

Studying the operation and jurisdiction of the Constitutional Court is not merely a legal exercise – it is essential to understanding how to reinforce the rule of law, ensure institutional stability, and safeguard fundamental rights and freedoms. Through a thorough analysis, it is possible to enhance constitutional oversight mechanisms and reform relevant legislation to improve the Court's performance in fulfilling its constitutional role.

### *Key Findings*

After analyzing the functioning and jurisdiction of the Constitutional Court in Algeria, several critical findings have emerged, highlighting the Court's influence on the legal and political order:

- 1. Strengthening Constitutional Oversight of Legislation**  
The Court plays a crucial role in ensuring that laws conform to constitutional principles, thereby preventing the enactment of unconstitutional provisions. However, the study also identifies legal loopholes that limit the Court's power to review legislation pre-enactment, as it currently intervenes only post-promulgation.

- 2. Development of Constitutional Dispute Resolution**  
The Court has effectively mediated disputes between

public institutions, clarifying the balance between the legislative and executive branches. While its rulings serve as authoritative constitutional interpretations, stronger enforcement mechanisms are needed to ensure compliance by all actors.

### **3. Protection of Fundamental Rights and Liberties**

The Court has proven its capacity to block legislation that infringes on citizens' fundamental rights, thereby reinforcing the rule of law. However, challenges remain in the practical application of constitutional provisions, particularly concerning compliance by the executive.

### **4. Judicial Independence of the Constitutional Court**

The Constitutional Court, unlike its predecessor—the Constitutional Council—enjoys increased independence as a standalone judicial body. Nevertheless, concerns persist over indirect political influences, necessitating further legal safeguards.

### **5. Binding Nature and Enforcement of Court Decisions**

While the Court's rulings are legally binding on all public institutions, effective implementation hinges on executive cooperation. Thus, there is a pressing need to improve enforcement mechanisms to ensure timely and complete application of its decisions.

### **6. Electoral Supervision and Democratic Legitimacy**

The Court has played an instrumental role in overseeing electoral and referendum processes, thereby strengthening democratic legitimacy. Nonetheless, certain electoral procedures must be revisited to close legal loopholes that may undermine electoral integrity.

### **7. Composition and Eligibility Criteria for Court Members**

This study proposes a series of reforms to the Court's composition. In particular, it recommends setting the minimum age for university professors at forty, limiting eligibility to public law scholars due to their broader legal expertise (as opposed to constitutional law specialists with narrower focus), and reducing the required teaching experience from 20 to 14 years. These reforms are deemed essential to enhancing the Court's effectiveness and integrity.

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