

Organization of the advisory body of the Algerian State Council and its impact on the effectiveness of consultation: comparative study

تنظيم الجهاز الاستشاري لمجلس الدولة الجزائري وأثره في فعالية الاستشارة: دراسة مقارنة

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Abstract:

The theme of the organization of the State Council in the terms of reference of the advisory is of great importance in the activation of its advisory role as a contributor in the legislative process, Rather, it is considered the rule and the basis which his advisory function is based, the effectiveness of these terms of reference is closely related to the efficiency and effectiveness of the structural organization of the Council of state in examining and analysing the legal texts consulted. The Algerian legislator has been interested in organizing the advisory body Through Organic Law No. 98-01 related to the State Council, as it was divided into two bodies, the General Assembly and the Standing Committee, this law would be amended by Organic Law No. 18-02 that united the two bodies into one body called the Consultative Committee. The aim of the study lies in knowing the efforts of the Algerian legislator in organizing the advisory body in proportion to the field of consultative competencies of the State Council, this is in comparison with the various comparative systems, in order to benefit from the pioneering experiences in this field.

key words: Consultation; The advisory body; Structural organization; the State Council.

المخلص:

يعد موضوع تنظيم مجلس الدولة في اختصاصاته الاستشارية ذو أهمية كبيرة في تفعيل دوره الاستشاري كمساهم في العملية التشريعية، بل يعتبر القاعد والاساس الذي تُبنى عليه وظيفته الاستشارية، بحيث أن مدى فعالية هذه الاختصاصات لها علاقة وطيدة بمدى نجاعة التنظيم الهيكلي لمجلس الدولة وكفاءته في فحص وتحليل النصوص القانونية محل الاستشارة. ولقد اهتم المشرع الجزائري بتنظيم الجهاز الاستشاري من خلال القانون العضوي رقم 98-01 المتعلق بمجلس الدولة، حيث تم تقسيمه لهيئتين هما الجمعية العامة واللجنة الدائمة، ليتم تعديل هذا القانون بموجب القانون العضوي رقم 18-02 الذي وحد الهيئتين في هيئة واحدة تدعى اللجنة الاستشارية. إن هدف الدراسة يكمن في معرفة جهود المشرع الجزائري في تنظيم الجهاز الاستشاري بما يتناسب مع مجال الاختصاصات الاستشارية لمجلس الدولة، وهذا مقارنة بمختلف الأنظمة القانونية المقارنة، بغية الاستفادة من التجارب الرائدة في هذا المجال.

الكلمات المفتاحية: الاستشارة، الجهاز الاستشاري، التنظيم الهيكلي، مجلس الدولة.

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Introduction:

Laying the foundations for the advancement of the future of the state and its development in various aspects of life is linked to the governance of legal texts, and this will only come through activating the role of the advisory function of the State Council, as this function is one of the most important pillars on which the state depends on in order to create legal consistency and the quality of legislative rules from On the one hand, and in order to have a good interpretation of these rules and their applicability on the other hand.

The State Council has been and continues to play an important role as an advisory body in many comparative legal systems, and for this reason the Algerian Constitutional Founder entrusted the State Council consultative powers in addition to its judicial powers, and this is in accordance with Article 119 of the 1996 Constitution¹, To become a government adviser on legal texts before submitting them to the Council of Ministers.

The consultative function of the Algerian State Council has evolved and expanded to include draft legal texts and presidential orders, in accordance with Article 142 of the 2016 constitutional amendment², This development in the consultative work establishes its important role in the proper formulation of legal texts, and the suggestion of amendments that it deems necessary in order to face the complexities of its interpretation and the resulting practical problems when applying, and this task is in line with the requirements of the public interest.

However, the effectiveness of the advisory powers of the State Council in devoting the quality of legal texts is linked to the organizational framework of the advisory body, as the distribution of advisory terms of reference according to the principle of specialization requires the existence of a structural organization commensurate with these competencies.

Accordingly, it is clear that the interest in the structural organization of the State Council in its consultative function in proportion to the competencies entrusted to it is a very important matter, as many countries that took the State Council system as a consultant to the executive authority tried to imitate the French model that embodies the true image of the consultative function, especially the system of administrative departments The State Council that dedicates the principle of specialization in advisory work.

The main purpose of this study is to shed light on the importance of the organization of the advisory body of the State Council in achieving the effectiveness of the consultation, as well as on the extent of the interest of the

Algerian legislator through the successive amendments of the organic law related to the State Council to organize the advisory body.

Problem of the study:

From the above, the problem of the study is clear in the following question: How effective is the structural organization of the advisory body of the Algerian State Council in its advisory function?

Methodology used:

We have estimated that the appropriate method for this study is the comparative approach, by studying the organization of the advisory body of the State Council in both Egypt and France, and this is in order to know the developments in this field, in addition to the analytical method in order to examine the various legal texts of the Algerian legislator related to the organization of the advisory body.

General Division of the study:

This research paper has been divided into two sections: the first section we devote to studying the organization of the advisory body of the State Council in comparative legal systems, and the second section we devote to studying the organization of the advisory body of the State Council in Algeria.

Section I: Organization of the advisory body of the State Council in comparative legal systems

We will address the organization of the advisory body of the State Council in Egypt and France, and this is as follows:

A) Organization of the advisory body in Egypt:

The State Council in Egypt is an independent body attached to the Presidency of the Council of Ministers, and it consists of the Judicial Department and the Advisory Section for Fatwa and Legislation, and it consists of a president and a number of agents, assistant advisers, representatives, and delegates³.

The consultative mission of the State Council in Egypt was assigned to the advisory section of the State Council, this section, which was initially composed of two independent sections, one for the fatwa and the other for legislation, but at a later stage the Egyptian legislator decided to merge them into one section, explaining that the fatwa is an application of existing laws and regulations And those who practice it are the most capable of people to know the flaws of the legislation, and the new legislation will not be complete unless the experience of opinion meets the art of drafting⁴.

In spite of the merits of these considerations, the Egyptian legislator, through Law No. 68 of 1969 related to the State Council, and was followed by

that in the current law of the Egyptian State Council No. 47 of 1972, he returned to separate the two sections⁵:

1) Section of Fatwa:

This section is concerned with expressing opinions to the various ministries and departments on any administrative issue facing them, provided that this section is divided into several specialized departments in certain sectors, according to the ministerial departments, sometimes it is a department for each ministry, and thus each department provides its advisory opinion on all the issues that are required Opinion regarding it from its affiliate and attached to its minister⁶.

The Fatwa Department also includes three committees called the Fatwa Departmental Committees. The competence of each one is held when the issue presented for consultation pertains to or concerns several ministries or departments.

2) Section of Legislative:

This section consists of one of the deputies of the President of the Council of State and a sufficient number of advisors and assistant advisors, and delegates are attached to it, and Egyptian law required every ministry or interest before issuing any law or decision of a legislative or regulatory character, to present the proposed project to the Legislative Department for review Its drafting, and it may entrust the Legislation Department with the process of preparing these legislations⁷.

This section also undertakes the task of legal drafting of legislations or preparing draft laws and decisions that the executive authority refers to the Council of State without exposure to its subject matter or the appropriateness of issuing it⁸.

B) Organization of the advisory body of the French State Council:

The Council of State occupies a central position within the French state, as it is the legal adviser to the government. This position made him monitor all legal texts of all kinds. This is evident by dividing the consultative powers between several important bodies: the General Assembly in its regular and full forms, the permanent committee, and the administrative departments.

1) General Assembly:

The General Assembly is considered the first body that performs the consultative function of the State Council in normal circumstances, the effectiveness of the General Assembly in dealing with the legal texts presented to it is discerned through its activities in 2016 and 2015. In 2016, the number of

texts processed reached 60 in 38 sessions, while in 2015 the number of texts processed reached 65 in 40 sessions⁹.

The General Assembly, on the occasion of its advisory functions, takes one of two images: the General Assembly or the General Assembly in its entirety.

1- Ordinary General Assembly:

The General Assembly of the Council of State of France consists of the Vice-President of the Council of State and the heads of the six sections, twelve advisers from the judicial section and twelve advisers from the administrative departments, at least two thirds of whom are ordinary advisers, and meet once a week, and are presented with bills, orders, draft decrees, in addition to the competent minister, the Vice-President of the Council or the Head of one of the relevant sections of the Council, and other members of the Council can attend their meetings without the right to vote in deliberations except for those who are of them decided in the subject submitted to it¹⁰.

2- General Assembly in its entirety¹¹:

The law has made it broader than the first picture: it includes the Vice-President, the heads of the six sections, all the council's advisers, and deputies and delegates can attend its meetings but without the right to vote in deliberations.

This Assembly has no unique jurisdiction other than choosing members of the Council of State, if the place of a member becomes vacant, the matter is presented to this entire assembly in order to choose whoever occupies it. The choice shall be by secret ballot and by an absolute majority of the members present.

With this regard returned, the consultative competence of the ordinary general assembly shall not be transferred to it except by a decision of the Vice-President of the Council of State based on the proposal of one of the heads of the six departments.

2)- Standing Committee:

The Standing Committee was created by Order No. 45-1708 of July 31, 1945, concerning the Council of State, and it consists of the Vice-President of the Council of State, the deputy head of the Finance Department, twelve advisers and six deputies, Its competence is to examine draft laws and decrees in case of urgency, And who decides this case is the competent minister or prime minister¹².

The statistics related to the activities of the Standing Committee since its inception is on the rise, taking the lion's share of the texts before the French Council of State.

The Government often resorts to urgency, which constitutes three quarters (4/3) of the draft legal texts presented to the Council¹³.

3)- Administrative sections of the French State Council:

The French Council of State has six administrative sections¹⁴:

1- Section of Interior:

The section consists of about thirty members, headed by a state counselor, which is competent to examine all matters submitted to it by the Prime Minister except for matters within the jurisdiction of other sections, and the matters submitted to him by the Minister of Justice, as it is concerned with examining draft laws, orders and decrees related to constitutional principles, public freedoms, the system of persons, public authorities, institutions and Public Utilities.

2-Section of Finance:

This section consists of about twenty members, headed by a state counselor, who specializes in examining texts related to draft laws, decrees and decisions related to public finance (taxes, fees, budget and accounting provisions), economic and financial provisions, as well as international conventions.

3- Section of Social Affairs:

This section was established in 1946 and consists of about twenty members, headed by a councilor, it is concerned with examining draft laws, decrees, orders, and decisions related to health, social security, social activity as well as work and employment.

4- Section of Public Works:

This section consists of about twenty members, headed by a state councilor, it is concerned with examining draft laws, decrees, orders, and decisions related to protect the environment, housing and urban construction, energy and mines, transportation and transport, public property, public works, agriculture and fishing.

5- Section of report and studies:

In 1963, the Report and Studies Committee was established to develop annual reports and studies on specific topics, in accordance with Decree No. 90-85 of January 24, 1985, it is to be replaced by the Report and Studies Section¹⁵, charged with preparing the general report of the State Council, and resolving the difficulties related to implementing the decisions of the State Council in litigation and other administrative competencies.

The true value of annual reports and studies is reflected in their profound impact on the government during the preparation of draft laws, a particular study carried out by the Council of State rarely remains a dead letter, most of his studies are positive, and this has happened on many occasions, One of the most important studies carried out in 1969 and 1970 on automated information and Freedoms was the source of Law No. 06 of January 1978, And the law issued on July 11, 1979 related to the reasoning of administrative decisions issued with rejection, which was amended by the law issued on January 17, 1986, it was inspired and modified from studies carried out by the French Council of State on this subject in 1971 and 1985¹⁶.

6-Section of Administration:

In the framework of strengthening the consultative function of the French State Council, a new section was created in 2008 in addition to the previous five sections, named in the section of administration, by Decree No. 2008-225 of March 06, 2008, this section consists of about fifteen members headed by a state councilor, it is concerned with examining draft laws, decrees and decisions related to: defense, organization and management of the administration, public employees and agents, property and public order.

The above-mentioned administrative sections form the basis of the work of the advisory bodies of the French Council of State, work is distributed between these sections by decision of the Prime Minister of the Government and the Minister of Justice each time when a new government is appointed at the suggestion of the Deputy Premier of the State Council¹⁷, this decision defines the scope and area of competence of each administrative section individually. this division is based on the criteria of the ministerial departments¹⁸.

As for the legal texts presented to the administrative sections, the year 2016 reached about 1371 texts, compared to 1250 texts in the year 2015. As for the legislative orders, they reached 87 in 2016, and the texts of the decrees presented to the administrative departments amounted to 911 texts¹⁹.

From the above, it is clear that the administrative sections of the French Council of State play an active role in its advisory function, as the above statistics on the large number of projects examined by these sections illustrate the great importance that the legislator has given to the advisory

function, which is no less important than the judicial function.

It is also clear that the French legislator has attached great importance to the organization of the advisory body of the Council of State by dividing it into three basic bodies, each dealing with specific and specific areas, in order to

ensure efficiency and effectiveness in the processing of the texts presented for consultation.

Section II: Organization of the advisory body of the Algerian State Council

Based on the provisions of Article 119, paragraph 3, and Article 153 of the Constitution of 1996, the organization of the State Council as a consultative body came in an organic law No. 98-01 related to the State Council, where we find the provisions of Articles 4, 12, 35 to Article 39, as well as Articles 8 and 9 of Organic Law No. 11-13²⁰, have everything related to the State Council as a consultative body, where it was organized in two varieties: the General Assembly and the Standing Committee .

Then there was an important amendment to the aforementioned texts. In 2018, Organic Law No. 18-02 amending and supplementing Organic Law 98-01 relating to the terms of reference and organization of the Council of State, the legislator amended the advisory body of the State Council by making it meet in the form of a single body called the Advisory Committee.

A) Stages of the organization of the advisory body of the State Council:

The organization of the advisory body of the Algerian State Council has gone through two stages:

1) Organization of the advisory body under the Organic Law N° 98-01:

By reference to Organic Law No. 98-01 related to the State Council, especially Article 35 of them, it appears that the structural organization while performing the advisory function of the Algerian State Council is similar to its French counterpart, despite the existence of some differences between them, the Algerian legislator relied on two bodies, the General Assembly and the Standing Committee, while the French legislator relied on three bodies, namely the General Assembly, the Standing Committee and the administrative sections²¹.

1- General Assembly:

According to articles 35 to 37 of organic law No. 98-01, the Council of State is deliberating in the form of a general assembly, consisting of the President of the Council of State, the Vice-President, the Governor of state and the heads of chambers, as well as five advisers, It meets under the chairmanship of the President of the Council of State and the possibility of the presence of the ministers concerned themselves or appoints their representatives, and the decision on the draft law is valid only in the presence of half the members of the General Assembly.

Examining the composition of the General Assembly results in the observation that the legislator has tried to expand participation in the consultative function as much as possible, in addition to the leadership of the Council of State and the presidents of the chambers, and all of them are experienced and highly competent, he included five advisors and the governor of the state, he also admitted to the government represented by the ministers or their representatives the right to attend the discussion sessions, this is in order to clarify the reasons and objectives of the draft law presented for consultation as well as the scope of its application and other important topics, and this work would enlighten the members of the Council of State.

It should be noted that the representative of the minister in the General Assembly must not be less than the director of a central administration, and is appointed by the prime minister, this is as stipulated in article 39 of organic law No. 98-01, and the legislator has therefore been keen to impose a certain level for persons representing the Government, which reflects positively on the level of discussions and the work of the Council of State²².

2- Standing Committee:

The permanent committee represents the second advisory body to the Council of State, as the Algerian legislator did not want to subject the draft laws of different circumstances surrounding them to one procedure, rather, he admitted to the government, represented by its president, its right to be alert to the urgent nature of the text or project in question, and then it must be presented to the permanent committee, which is formed according to Article 38 of the Organic Law No. 98-01 of: Head of a committee at the rank of chamber president, at least four state advisors, the state governor or one of his assistants to submit his written notes, and ministers or their representatives can participate in the sessions of the Standing Committee when consultation relates to matters relating to their sectors, with an advisory opinion and in the same manner and conditions stipulated in article 39 of the aforementioned organic law.

professor Mustapha Ben DJelloul criticized the exceptional standing committee system and considered it a threat to the effectiveness of the consultative function of the State Council, if it was not organized within a limited and restricted legal framework in form and content, to be expressly declared in the form of a legal text related to how to consult the State Council in urgent cases before the permanent committee, and to explicitly state what cases the Government is resorting to to the Commission and what are the conditions and procedures of urgency²³.

2) Organization of the advisory body under the Organic Law N° 18-02:

One of the most important amendments to organic law No. 18-02, amended and complementary to Organic Law No. 98-01 on the terms of reference, organization and work of the Council of State, is to review the composition of the Council of State in its advisory function, as the council deliberated on an advisory committee instead of a general assembly and a permanent committee, whereas, article 14 amended according to Article Two of Organic Law No. 18-02 states:" For the exercise of its consultative competences by the Council of State, it is organized in the form of an advisory committee", This committee consists of the President of the Council of State, the Governor of state, the heads of chambers and three advisers appointed by the Head of state, and ministers or their representatives can attend sessions devoted to adjudicating issues within their sectors, in accordance with the conditions of article 39 of the aforementioned organic law.

The Minister of Justice justified this amendment when introducing organic bill 18-02 to the Committee on Legal, Administrative and Freedoms of the National People's Assembly, with the requirements of efficiency and non-weighty procedures, as well as addressing draft orders and laws in the shortest possible time, he added that the Council of State currently consists of two formations, one for ordinary cases and the other with urgency, but the reality and in practice there is one composition, hence the proposal to form a single body that examines draft laws and orders taking into account the urgency²⁴.

B) Composition of the Consultative Committee of the Algerian State Council:

The good and effective conduct of the Advisory Competences of the Council of State requires the presence of a human element with specialized skills and competence in the advisory field, as well as the good organization of the members of the advisory body.

1) Members of the Consultative Committee of the State Council:

The latest amendment 18-02 of organic law No. 98-01 in Article 04, which amended the articles from 35 to 41 bis, as well as 41 bis 3, reads: " The Council of State deliberates in the consultative field in the form of an advisory committee." (article 35), " it is chaired by the Head of State, consisting of the Governor of state, the heads of chambers and three state counselors and are appointed by the Head of State.... The committee's meetings are valid in the presence of at least half of its members, and ministers or their representatives can participate in sessions on issues of their respective sectors"(article 37).

Through the above, it is clear that the members of the Council of State in its advisory group are respectively:

1- The President of the Council of State:

The Algerian State Council, since its inception, has its own president, unlike the French State Council which is legally headed by the Prime Minister, and the President of the Council of State is also considered the most important position in the Council because of its powers and obligations associated with the organization of this organ, and to ensure its proper judicial and advisory performance.

The President of the Council of State is appointed by the President of the Republic by a presidential decree, and the constitutional founder not only granted the authority to appoint the President of the Republic, but also gives him discretion to terminate his duties for any reason he deems sufficient, but even more so, since the President of the Republic can terminate the functions of the Head of state even without reason, which violates the principle of inability to be isolated²⁵.

As for his advisory powers, the President of the Council of State plays a prominent role in this area, by holding the project sent by the Secretary-General of the Government, and he appoints a state adviser by order, and then returns the consultation project to the Government's Secretariat after preparation.

2- Governor of state:

The governor of the state is appointed by presidential decree as a judge, and the law does not specify special conditions for that and no specific procedures. He is a member of the state council whose rank is not less than that of the head of the state council and the degree of assistant state governors is not lower than that of state councilors in the Council of State, however, the Algerian legislator failed when organizing this category of members of the Council of State, when he made it a wire whose members were graded in ranks and grades, and gave it the role of the public prosecutor, in doing so, it created a kind of ambiguity and ambiguity in the organization of this body and the determination of its powers, which made it different from its counterpart in France and Egypt²⁶.

As for its advisory terms of reference, after examining the legal texts that formed the legal framework for the role of the Governor of the State in the consultative field, we find that they have unanimously used the term attendance in front of the advisory formations of the Council of State (the General Assembly and the Standing Committee, which were replaced by an advisory committee)

without detailing the concept of this presence and the value and fate of the notes and reports submitted by the Governor of the State on the occasion of this²⁷.

Whereas the Organic Law No. 98-01 and the Organic Law No. 11-13 amending and supplementing it did not mention any clarification regarding the role of the state's governor in the consultative field, whereas, Organic Law No. 11-13 in Article 26 bis was limited to mentioning the judicial role only, also, Organic Law No. 18-02 on the terms of reference, organization and work of the Council of State did not mention the role of the Governor of state in the advisory field, this makes it necessary for us to refer to Executive Decree 98-261, which specifies the forms and procedures in the advisory field²⁸, whereas, the seventh article of it did not address the role of the governor of the state in the consulting field in detail, but referred this issue to the Council's rules of procedure, which stated in Article 128 of it that the speech shall be given after the president's opening of the meeting for the adviser to present the final draft report, after which the word will be given to the Assistant Governor of the State to make his remarks.

Therefore, in the face of this shortcoming in the legal approach to the role of the Governor of state in the consultative field, we expect the Algerian legislator to remedy this by explicitly and clearly stating the terms of reference for the Governors of the State, as this is of great importance in strengthening its advisory role.

3- Chamber Heads:

The Council of State consists of five presidents divided into five chambers, appointed by presidential decree after consulting the Supreme Council of the Judiciary, with powers in the judicial field in addition to their participation in the consultative process of the Council of State as members of the Advisory Committee, where chamber presidents contribute to the examination and study of draft legal texts and legislative orders before the Council, and as such have an advisory vote for each of them.

4-Counselors of the State Council:

State counselors are the main category of the Council of State, and are divided into two categories, as in the French Council of State: state counselors on a regular mission, state counselors on an extraordinary mission.

For the state counselors on a regular mission any permanent members of the Algerian Council of State are appointed from among the judges by presidential decree, and are selected by promotion on the basis of competence, taking into account the seniority requirement among first-class judges²⁹.

As for the French Council of State, the state counselors on a regular mission are selected from among the deputies, and appointments are made by choice of a list of three names drawn up by the French Vice-President of state in consultation with the heads of the sections, and the remaining one third can be appointed from outside the Council of State provided that the candidate for these positions is 45 years of age, and they are appointed by decree of the Council of Ministers at the suggestion of the Minister of Justice³⁰.

With regard to the terms of reference of the state counselor on a regular mission, it is to carry out the task of reporting and consulting, both in the judicial and advisory composition, and the law also authorizes him to exercise the function of the assistant state governor in accordance with Article 29 of Organic Law No. 98-01 amended and completed³¹.

As for the state counselors on an extraordinary mission, they are selected from among the prominent figures and frames with high competencies in the various fields of national activity, they are related to the membership of the State Council and are not subject to the Basic Law of the Judiciary; Organic Law No. 98-01 referred the conditions and manners of appointing state counselors on an extraordinary mission to the organization, where Executive Decree No. 03-165 was issued³², who determined their number a maximum of 12 advisers appointed by executive decree for a three-year, once renewed at the suggestion of the Minister of Justice and after taking the opinion of the Council of State³³.

The task of the state counselor on an extraordinary mission is limited to contributing to the exercise of the consultative competence of the State Council, without jurisdiction limited to state counselors on a regular mission.

If we go back to the French Council of State, there is a match in the label, but that does not necessarily mean a match in the tasks, the difference lies in the fact that these members enjoy full membership in the French Council of State and exercise their functions outside the Council in administrative interests, as for the Algerian State Council, and according to the Organic Law No. 98-01 in its articles 20 and 39, we find their participation taking place within the Council as a permissibility³⁴.

It should also be noted that the composition of the Council of State on the occasion of its convening as an advisory body also includes representatives of the Ministry concerned with advisory opinion, where the ministers can participate by themselves or appoint their representatives in the sessions devoted to the resolution of cases belonging to their sectors, and the appointment shall be among the senior positions at the rank of Director of central administration at least³⁵.

2) Lack of organic separation in the composition of the Council of State to practice his advisory terms of reference:

The consultative function is practiced in most comparative legislations in a specialized and independent form of the judiciary, and this plays a major role in achieving the effectiveness of the advisory function of the Council, however, the matter is completely different for the Algerian State Council, as the legislator did not distinguish and separate in the various legal texts organizing the State Council between the members who are responsible for exercising the judicial function and the members assigned to exercise the counseling function, and this is a contradiction between the dedication of the functional dualism of the council on the one hand, and its exercise by one group on the other³⁶.

In title two of Organic Law 98-01, the Algerian legislator stipulated in the first chapter the judicial competences of the Council of State, and then under the same title provided for the terms of reference in chapter 2 of the terms of reference, by this, the Algerian legislator has dedicated the functional dual of the State Council and has made a clear distinction between its judicial and advisory powers, but it has not dedicated the dual membership, he did not separate the composition of the exercise of jurisdiction from the composition of the advisory role.

This matter is not only related to organic law, but even to refer to Presidential Decree No. 98-187³⁷ appointing members of the Council of State, as we find it has overlooked the separation of the issue of distinction between members of the State Council and their distribution between the judicial function and the counseling function, even for State counselors, the legislator has not decided whether they are members of the judicial composition or in the consultation, knowing that holding the sessions of the council as an administrative judge also includes advisors.

The question of not separating between the members of the formation exercising the advisory role from the members of the formation exercising the judicial role, if anything indicates, indicates that the Algerian legislator has not given importance to the advisory function as he does for the judicial function, that is, unless the interpretation of the question as due to the short and the newness of the Algerian experience in this area.

C) Consultation procedures before the Advisory Committee:

In view of the provisions of the articles of organic law No. 18-02 and the rules of procedure of the State Council published in the official newspaper No. 66

of 2019³⁸, we can divide the procedures before the Advisory Committee into two types:

1) Normal procedures:

Under Article 41 of Organic Law No. 18-02, the State Council shall be notified of draft laws and orders by the Secretary-General of the Government after approval by the government and are attached to all possible elements of the file³⁹.

After receiving the referred file, the President of the Council of State shall appoint one or more rapporteurs from among the members of the Consultative Committee, depending on the importance of the project and the amount of work required for its study⁴⁰.

After the appointment of the rapporteur, who belongs to the State Advisory Service in the normal case, he organizes the work and how to carry out his mission, and programmes the necessary meetings and sessions, especially with representatives of the ministerial sector initiating the bill or order⁴¹.

After the completion of the examination of the project by the rapporteur, and after the completion of the work, he will write a report informing him to the members of the advisory committee, after which the President of the Council of State will call the Advisory Committee for a general discussion on the decision's report, and the minister concerned shall know that he can attend in person or appoint a representative to attend the work of the Advisory Committee provided that his rank is not less than a central manager in the Ministry⁴².

After the members concerned are present in the debate, the President of the Council of State opens the session and refers the floor to the rapporteur for the presentation of the draft report and then to the Governor of the State to make his remarks on the draft, and the secretary-general of the Council of State, who is usually the Secretary-General of the Council of State, shall write down all the observations of the members of the Advisory Committee and the minister concerned or his representative in a special register designed for this purpose.

After examining the preliminary report prepared by the rapporteur and the end of the discussion, either this report is adopted without amendment, or the amendments deemed necessary by the Committee, after which the rapporteur shall be prepared in the light of the observations recorded during the debate the final report to be debated by the Committee, where it is voted by a majority of the members present, and in the case of equal number of votes the President's vote is likely⁴³.

After the vote on the final report, which contains the advisory opinion on the draft legislative text submitted for consultation, it is signed by the President of the Council of State and the decision adviser and then copied to five copies sent to the Secretary-General of the Government, and the original version is kept in the archives of the Council of State⁴⁴.

2) Consultation procedures in case of urgency:

Although it is important to address the procedures in the urgency, the Algerian legislator did not regulate in organic law No. 98-01 or in the organic law, amended and complementary 18-02 relating to the Council of State, the legal framework set for the means of consultation in the event of urgency, and did not specify what the conditions of urgency and procedures were, but merely mentioned one article only to urge the Council of State to study in the shortest terms the draft legal texts and orders in the exceptional case that the first warned of urgency⁴⁵, as for the procedures followed in the event of urgency, this was referred to the rules of procedure of the Council of State.

Back to the rules of procedure, we find that in case of urgency alert edited by the Prime Minister, and after the draft text and the attached file has reached the Chairman of the Consultative Committee (the President of the State Council), he appoints the rapporteur among the council's advisers, and determine the date of the session to study the draft law or order, and inform the relevant Minister, the Governor of state and members of the Committee mentioned in article 47 of article 4 of the Organic Law No. 18-02; when the committee members meet, its chairman will conduct the session's work, where he will present the final draft report prepared by the decision for discussion by the committee members⁴⁶.

After the members of the Committee discuss the final report, it is submitted for ratification by a majority of the members present, and signed by the Rapporteur and the Chairman of the Advisory Committee⁴⁷, to be sent to the Secretary-General of the Government.

Conclusion

Through the above, it is clear that the issue of the organization of the Council of State in its advisory functions is essential to achieving the effectiveness of the consultation, however, it has not received sufficient attention from the Algerian legislator compared to the comparative systems, where he merely mentioned the advisory body in a single article, limited to one body called the Consultative Committee it was entrusted with examining draft laws and legislative orders, while the French legislator expanded the scope of the consultation to include the legislative and administrative field, and established

three bodies, each of them specializing in specific fields, thus achieving efficiency and effectiveness in the processing of the texts being consulted.

Therefore, it is necessary for the Algerian legislator to expand the scope of consultation and to reconsider the organization of the advisory body in accordance with the advisory competences of the Council of State, and this by benefiting from the French experience in this field.

Accordingly, we suggest some recommendations:

1- Establishing a special law related to the advisory terms of reference to the Council of State, with interest in the organizational framework of the advisory body of the State Council;

2- The distribution of advisory terms of reference to specialized bodies for effective processing of the texts consulted;

3- Achieving organic separation in the composition of the advisory body, by separating the members of the State Council exercising the advisory role from the members exercising the judicial role, as how can members of the Advisory Committee exercise the advisory function, contribute to the development of the legal base and improve the quality of the legislative texts, and they have been entrusted with the exercise of many and various jurisdictions.

4- Following the model of the administrative sections of the French Council of State, which is a model that embodies the true images of the advisory function, achieving the principle of specialization in the performance of consultative work.

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Organization of the advisory body of the Algerian State Council and its impact on the effectiveness of consultation: comparative study
