

The Role of the Algerian Constitutional Council in Insuring the Rights and Freedoms of Citizens

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The Algerian Constitution of 6 March 2016 has devoted many rights and freedoms to the citizen and has in this respect recognized all the fundamental rights and freedoms recognized by the constitutions of the most developed and democratic states. The first paragraph of Article **182** of the constitution provides that "the Constitutional council is an independent institution in charge of monitoring the observance of the Constitution".

The accordance and most important mission of the Constitutional council is the ensure respect for the constitution by different powers including legislative power.

In accordance with Article 140 of the Constitution, the parliament shall legislate on the fundamental rights and duties of individuals, particularly the legal regime of public freedoms, the safeguarding of individual freedoms, and the duties of the citizens, in other words, human rights and freedoms fall within the competences of legislative power. The constitutional Council plays a fundamental role in guaranteeing and protecting the rights and freedoms of citizens. Fundamental rights and freedoms insurance is one of the objectives of controlling the law's constitutionality, a mission that contributes to the consolidation of the principles and values of the Rule of law.

I- Constitutionalization of human rights and freedoms and its impact on the role of the constitutional council

Algeria has ratified the majority of international and regional instruments relating to human rights. In the aftermath of its independence, under Article 11 of the Constitution of 10 September 1963, Algeria adhered to the Universal Declaration of Human Rights of 1948. In the same year, it began the process of acceding to all international human rights instruments and conventions. The Constitution enshrined the right of citizens to equality before the law and made the promotion of women's political rights by expanding their representation in the elected assemblies, a duty that the State endeavours to promote. The equal access of men and women to employment and promotion in positions of responsibility in public and institutional bodies and services. The Constitution also guarantees the inviolability of freedoms of belief, opinion and worship in accordance with the law, freedom of investment, trade, academic freedom and freedom of scientific research. The Constitution guarantees also freedoms of expression, association, assembly and freedom of peaceful demonstration. Besides, it guarantees the right to establish political parties and the exercise of power at the local and national levels through the democratic rotation. The Constituent has not only constitutionalized many basic rights and freedoms as described above but has also developed a mechanism that would lead to a real revolution in the human rights system and a radical change in the status and role of the Constitutional Council. It consecrated a new right to parties in trial empowering them with the right to point out provisions that violate the rights and freedoms guaranteed by the Constitution in Chapter 4, Articles 32 to 73. Indeed, Article 188 of the

Constitution enshrines the possibility of the litigant to contribute to the defence of the rights and freedoms guaranteed by the Constitution and to participate indirectly in the modernization and purification of the legislative system, stating: « The Constitutional Council may be referred to about an exception of unconstitutionality under a request by the Supreme Court of the Council of State when one of the parties in a trial claims before the jurisdiction that the legislative provision upon which the issue of litigation relies may adversely affect the rights and freedoms guaranteed by the Constitution». Indeed, as of 23 July 2019, the Supreme Court has addressed an exception of unconstitutionality to the Constitutional Council, raised by Mr HAMDY Abdelaziz claiming that Article 416 of criminal procedures code that stipulates: "law provides for two levels of adjudication in criminal affairs", infringes his right guaranteed by the Constitution. He has been sentenced to a fine equivalent to 20.0000 DA and was unable to appeal. After instruction and deliberation, by law, the Constitutional Council issued a decision on 20 November 2019 of the unconstitutionality of the first paragraph of Article 416 of the criminal procedures code. It added that legislative provisions declared unconstitutional immediately lose their effects. It is as safe to say that the Algerian Constitutional Council adopted a broad concept of what is known as the block of unconstitutionality by referring to its content to unconstitutional texts. The block of unconstitutionality, which is for the Constitutional Council the reference texts it adopts to protect rights and freedoms, consists of :

-Provisions of the Constitution

Being the supreme law in the legal system, the Constitution constitutes the mandatory reference in the field of constitutionality

review of laws relating to human rights and fundamental freedoms. The constitutional provisions explicitly enshrine many human rights and freedoms unlike the French constitution.

-Provision of international treaties

On the ground of Article 123 of the Constitution, the Constitutional Council recognized, to itself, the authority of ensuring respect for these treaties, according to decision n°1 of 20 August 1989 on Electoral Law, which states : (considering that after its ratification and as soon as it is published, any treaty shall integrate into the national law and acquire an authority superior to that of laws, conferring to any Algerian citizen the possibility of invoking it before justice. These legal instruments prevent any discrimination of whatsoever nature ».

Law provisions: The Constitutional Council resorted in the issuance of the above-mentioned decision to the provisions of the law relating to Algerian nationality to monitor the electoral law in 1989. It sets in the core of this decision: "Considering that the Algerian nationality law sets the conditions for its acquisition and deprivation and in particular the effects of obtaining Algerian nationality, especially the right to hold an electoral mandate after five years of its obtaining. Since this legal provision cannot be subject to selective or partial application, and an application of the Algerian nationality law the ratified international treaties, the requirement of the original nationality of a candidate for legislative elections is not in conformity with the Constitution".

II-The Constitutional Council's monitoring of the constitutionality of laws and the idea of guaranteeing rights and freedoms

The Constitutional Council exercises broad control over legislative texts that include directly or indirectly, provisions relating to the rights and fundamental freedoms of citizens, in accordance with the constitutional monitoring of the Constitution. This is achieved through prior monitoring of laws after being referred to by the authorities empowered by the Constitution to notify, as well as by parties in a trial, through the exception of unconstitutionality.

Prior control of the constitutionality of laws relating to the rights and freedoms of citizens

The Constitutional Council's jurisprudence is abounding with opinions and decisions that compel public authorities to respect and observe the provisions of the Constitution devoted to rights and freedoms and has already stated that many legislative provisions are unconstitutional for this reason, making it a genuine guarantor of human rights and freedoms.

Here are some of the above-mentioned jurisprudence in direct relation to the subject.

- Decision n°2 of 30 August 1989 concerning the particular status of the Deputy: The Constitutional Council declared that Article 8 of this law is unconstitutional, which comprises incompatibility between the functions of deputy and the functions of higher education and doctors in the public sector, because the law, which is the expression of the public will, cannot create inequalities between citizens or generate the discriminatory situation.

- Opinion n°1 of 06 March 1997 on monitoring of compliance of the organic law relating to political parties to the Constitution:

The Constitutional Council declared the unconstitutionality of Article 13, which stipulates that the founding members of a political party must have the Algerian nationality by birth or acquired it since, at least, ten years, because the person acquiring the Algerian nationality shall enjoy all the rights related to the Algerian nationality from the date of acquisition, and that the nationality law did not restrict this rights, except for the foreigner who is naturalized Algerian, who can submit for an electoral mandate, only 5 years after his naturalization. This makes the condition of the original nationality or the acquisitive for at least ten (10) years not conform to the Constitution.

The Constitutional Council, on the occasion of its issuance of the same decision, pointed out a general principle that **«the legislator's intervention in the field of individual and collective rights and freedoms should be aimed at ensuring the effective exercise of right or freedom that are constitutionally recognized»**.

- Opinion n°01/16 of 28 January 2016: approved the constitutionality of the amendments of some provisions of the Constitution and the addition of some articles which «are not in total contradiction with human and citizens' rights and freedoms» and «do not infringe at all the general principles of the Algerian society and human and citizens' rights and freedoms ». These amendments or additions are, for example, about the punishment of cruel, inhuman or degrading treatment, and assignment to the State the task of improving the business climate, controlling the market, protecting the consumer rights, preventing monopoly and unfair competition, enhancing academic freedom, freedom of scientific research, right to the pacific

demonstration, freedom of the press and granting rights to parties. All these are rights and freedoms that aim at supporting freedom of expression, to promote "pluralistic democracy and guarantee coexistence within the society and between different political orientations and ensuring rotation and respect of others' dignity".

The organic legislator has put forward simple conditions and procedures to enable the litigant to activate its constitutional right in the exception of unconstitutionality.

Thus, by exercising this new constitutional right before jurisdictions, the litigant will participate in the purge of the national legislative system of the provision that violates the rights and freedoms guaranteed by the Constitution and will have right to question the constitutionality of the laws voted by his representatives in Parliament. This shows the depth of the reform approved by Article 188 of the Constitution that sets the protection of rights and freedoms and promotes the development of this new mechanism.

In conclusion, I note the support and expansion of the Constitutional Council's role in ensuring the rights and freedoms of citizens, which it exercised on the entry into force of the unconstitutionality payment mechanism through the application of Organic Law No. 16-18 specifying the conditions and modalities for applying for the unconstitutionality payment. In three cases, the first case was in 2019 based on a referral from the Supreme Court, and it issued its first decision in the field of pleading unconstitutional on November 20, 2019, related to the provisions of Article 416 - the first paragraph - in its first part related to the natural person, From the Criminal Procedures Law, as this article regulates the appeal in the

penal articles, and the Council recognized that the restrictions on appeal under this article violate the provisions of Article 160 of the Constitution, and the Constitutional Council issued on the same date its second decision in the field of pleading unconstitutional and related to the same article and it declared, before deciding to argue that Article 416 of the Criminal Procedure Code is unconstitutional according to his first decision.

- As for the year 2020, the Constitutional Council reached the third case in the field of pleading unconstitutional, based on a referral from the Supreme Court, related to the constitutionality of Article 496 (point 6) of the Criminal Procedures Law, and the Constitutional Council decided on this claim by its decision issued on May 06, 2020, I hereby acknowledge the constitutionality of this article, as it does not infringe on constitutionally guaranteed rights and freedoms.