

The composition of the Constitutional Court in the 2020 Constitutional Amendment and its role in strengthening the missions of the Court

تشكيلة المحكمة الدستورية في التعديل الدستوري لسنة 2020
ودورها في تعزيز عمل المحكمة

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Abstract:

The 2020 Constitutional Amendment has included very important oversight institutions, some of these institutions were established for the first time, such as the Constitutional Court.

The importance of this study lies in showing the importance of this institution through its composition that distinguishes it. Through which we came to consider that this composition as a reason for activating and strengthening the work and the missions of the Court.

The topic was addressed in two main points, the first related to the provisions of membership and representation, and the second to the conditions of membership in the Court and its role in activating the the missions of the Court.

Key words: The Constitutional Court, the 2020 Constitutional Amendment, Constitutional Council, Elections.

الملخص:

أدرج المؤسس الدستوري في التعديل الدستوري لسنة 2020 مؤسسات رقابة مهمة جدا منها من استحدثت لأول مرة، ويتعلق الأمر أساسا بالمحكمة الدستورية، تكمن أهمية هذه الدراسة في تبيان أهمية هذه المؤسسة من خلال التشكيلية التي تميزها، والتي وصلنا من خلالها إلى اعتبار مستجدات هذه الأخيرة سببا من أسباب تفعيل وتعزيز عمل المحكمة وتم تناول الموضوع في نقطتين أساسيتين الأولى تتعلق بأحكام العضوية والتمثيل والثانية بشروط العضوية في المحكمة ودورها في تفعيل عمل المحكمة.

الكلمات المفتاحية: المحكمة الدستورية، التعديل الدستوري لسنة 2020، المجلس الدستوري، الانتخابات.

Introduction:

The 2020 Constitutional Amendment¹ was distinguished by the inclusion of important oversight institutions in its fourth Title, which includes the Constitutional Court in its first chapter, the Court of Account in its second chapter, the Independent National Election Authority in the third chapter, and The High Authority for Transparency, Prevention and fight against Corruption in the fourth chapter.

These institutions were established for important objectives in accordance with Article 184, they shall have the task of verifying the conformity of the legislative and executive action(s) with the Constitution and verifying the conditions of the use and management of material means and public funds.

Among these institutions that were established for the first time in the 2020 Constitutional Amendment is the Constitutional Court which replaced the Constitutional Council, and the inclusion of this institution came with a kind of distinction from what the Constitutional Council was based on previously, whether in terms of the place of the Court in the Constitution or in terms of its composition and competencies in the field of oversight, elections, advisory, interpretation and settling disputes between authorities.

What contributes to the effective performance of the missions of the Constitutional Court is its composition, which is fundamentally different from the composition of the Constitutional Council, as Parliament is absent from representation in this Court, and Professors of constitutional law were included for the first time, and the number of the judicial power representatives was reduced.

This research paper comes to show the developments of the composition of the Constitutional Court in the 2020 Constitutional Amendment and its role in strengthening the missions of the

¹ Presidential Decree N° 20-442 of Jumada El Ouwla 15, 1442 corresponding December 30, 2020, concerning the issuance of the constitutional amendment, ratified by referendum of the first November 2020 in the Official Journal of the People's Democratic Republic of Algeria , JORA N° 82 of Jumada El Ouwla 15,1442 corresponding to December 30, 2020.

For the call of the Electoral Commission for the Constitution amendment see: Presidential Decree N° 20-251 of Muharram 27, 1442 corresponding September 15, 2020, including the call of the Electoral Commission for the Constitution amendment, JORA N° 54 of Muharram 28, 1442 corresponding to September 16, 2020.

The composition of the Constitutional Court in the 2020 Constitutional Amendment and its role in strengthening the missions of the Court

Constitutional Court, by detailing the conditions of membership in the Court.

On this basis, the main question that we could ask is:

What are the new provisions of the composition of the Constitutional Court in the 2020 Constitutional Amendment, and how will contribute this composition to strengthening the missions of the Court?

Methodology used:

In this study, we will follow the method of descriptive and analytical legal research by studying the articles of the Constitution and the Presidential Decree related to the election of Professors of Constitutional law members of the Court.

General Division of the study:

The topic will be dealt with through two sections:

The **first section** is about: The stability in the method of appointment of representatives of the Executive Power and developments in the election of members of the Constitutional Court

The first Subtitle: The representation of the Constitutional Powers in the composition of the Constitutional Court

The second Subtitle: The provisions for the election of Professors of constitutional law members of the Constitutional Court

The second section is about: The conditions for membership in the Constitutional Court and their impact on strengthening the missions of the Court

The first Subtitle: The constitutional conditions for membership in the Constitutional Court

The second subtitle: The updates of the Presidential Decree in terms of membership in the Constitutional Court

Section I: The stability in the method of appointment of representatives of the executive power and developments in the election of members of the Constitutional Court

In accordance with Article 186 of the 2020 Constitutional Amendment, the Constitutional Court shall consist of twelve members (12), six (6) members representing the constitutional powers (**A**) and the six (6) another members representing Professors of constitutional law (**B**)

A) First subtitle: The representation of the Constitutional Powers in the composition of the Constitutional Court

In accordance with Article 186 of the 2020 Constitutional amendment, the Constitutional Court shall consist of twelve members (12), four (04) members appointed by the President of the Republic¹, including the President of the Court, one member (01) shall be elected by the Supreme Court from among its members, one (01) member shall be elected by the Council of the State from among its members.

What can be observed through this new composition is the stability on the appointment of the President of the Republic of (04) four members of the Court, including the President of the Constitutional Court, while we note the absence of representation of the Parliament, and the reduction of the representation of members of the judicial power to only two members, in contrast to the composition of the Constitutional Council that included the representation of the legislative power with four members, two members were elected by the People's National Assembly and two others by the Council of the Nation, as well as the judicial power with four elected members, two members were elected by the Supreme Court and two members by the Council of the state².

The aim of the absence of the parliament in the Constitutional Court is to isolate the political character in the composition of the Court, and it is a guarantee for the independence of the Court.

B) Second subtitle: The provisions for the election of Professors of constitutional law members of the Constitutional Court

Adding to the (06) six members representing the President of the Republic and the Judiciary, six other members are elected from Professors of constitutional law, a new representation in the history of Algeria in a constitutional institution.

The Presidential Decree N° 21-304 of Dhu al-Hijjah 25, 1442 corresponding to August 4, 2021 was issued, specifying the conditions and modalities for electing Professors of constitutional law members

¹ For more read about the executive power in the 1996 Constitution before the 2016 and the 2020 Constitutional Amendments see:

-Hartani A.K "Le pouvoir présidentiel dans la constitution du é_ novembre 1996", Thèse pour l'obtention du Doctorat d'Etat en droit public, Université d'Alger, 2003

² Article 183 of the Law N° 16-01 of Jumada El Ouwla 26, corresponding to March 6, 2016, includes the constitutional amendment, JORA N° 14 of Jumada El Ouwla 27,1437 corresponding to March 7, 2016.

The composition of the Constitutional Court in the 2020 Constitutional Amendment and its role in strengthening the missions of the Court

of the Constitutional Court¹. According to its Article 3, this Decree distributed the (06) six seats for Professors, allocating two seats for each Regional Conferences of Universities, the Center one (based at the University of Algiers 1), the West Conference (based at the University of Oran 2), the East Conference (based at the University of Sétif 1)², the elections shall be organized under the supervision, management and control of a National Electoral Committee established at the level of the National Conference of Universities.

1) The process of candidacy for elections and its provisions³:

- A register is opened to register the declarations of candidacy at the level of university institutions, to be indicated by the head of the electoral commission for the Regional Conference of Universities.

- A receipt showing the date and hour of filing is obligatory for the person declaring candidacy.

2) Deadlines and dates for candidacy for elections: According to Article 11 of Presidential Decree 21-304, the last date for candidacy is forty (40) full days before the date of the polling, and the nomination process begins from the date of the summoning of the electorate by the President of the Constitutional Court.⁴

3) The validity of candidacy files:

The Regional Electoral Commission receives candidacy files from university institutions immediately after the deadline for filing nominations The Electoral Commission of the Regional conferences

¹ Presidential Decree N° 21-304 of Dhu-Elhijjah 25, 1442 corresponding to August 04, 2021, which defines the conditions and modalities for electing Professors of constitutional law, JORA N° 60, of Dhu-ElHijjah 26, 1442, corresponding to August 05, 2021.

² See Presidential Decree N° 21-304 (Extension) , ibid.

³ Article 10, Ibid.

⁴ Article 10. of Presidential Decree 304/21, Ibid.

تم التفاصيل في هذه الإجراءات ضمن الدليل المرشد من إعداد:
المستشار محمد درفوف، رئيس اللجنة الانتخابية الوطنية، الأستاذ وليد شريط عضو اللجنة الانتخابية الوطنية، الأستاذ جمال بن سالم عضو اللجنة الانتخابية الوطنية، الدليل المرشد لإنتخاب أساتذة القانون الدستوري أعضاء المحكمة الدستورية 14 أكتوبر 2021، اللجنة الانتخابية الوطنية على مستوى الندوة الوطنية للجامعات لإنتخاب أساتذة القانون الدستوري أعضاء في المحكمة الدستورية.

of universities decides on the validity of the nominations and publishes a temporary list of the accepted candidates within a maximum deadline of 05 days from the date of the expiry of the deadline for filing nominations.

In the event that any candidacy file is rejected, the committee shall notify its justified decision to the concerned candidate within the same deadline mentioned above. Each candidate may appeal the temporary list of accepted candidates before the National Electoral Commission within a maximum period of 05 days starting from the date of notification or publication. The National Electoral Commission decides on the appeal submitted before it within a period of 05 days from the date of registering the appeal and informs the person concerned of its reasoned decision and to the Electoral Commission of the Regional Conference of Universities concerned. The National Electoral Commission announces the list of finally accepted candidates as soon as the appeal period has expired¹.

4) Announcing the results:

Two (02) candidates will be declared winners from among the candidates who obtain the largest number of votes expressed according to each Regional Conference.

In the event of a tie, the candidate with the oldest in rank, then in employment, then the oldest, will be declared the winners.

Every candidate has the right to appeal the provisional results of the elections before the National Electoral Commission within a maximum period of 48 hours starting from the date of the announcement of the provisional results.²

The National Electoral Commission shall decide within a maximum period of 48 hours starting from the date of filing the appeal and upon expiry of the deadline for appeal.

The President of the National Electoral Commission announces the final results of the election of Professors of constitutional law members of the Constitutional Court and sends them to the President of the Republic. All documents relating to the electoral process are deposited with the Constitutional Court³.

¹ Article 12 of Presidential Decree 304/21, Ibid.

² Presidential Decree N° 21-304, Op.cit.

³ Ibid.

Section II: The conditions for membership in the Constitutional Court and their impact on strengthening the missions of the Court

In this second section we will see first the constitutional conditions for membership in the Constitutional Court (A), those conditions have been detailing in the Presidential Decree in terms of membership in the Constitutional Court(B).

A) First subtitle: The constitutional conditions for membership in the Constitutional Court

For membership in the Court, in accordance with Article 187 of the Constitution, is required:

- to be fifty (50) years old on the election or appointment day ;
- to have an experience in law for at least (20) twenty years, and to benefit from training in constitutional law;
- to enjoy civil and political rights, and not have been sentenced to a custodial penalty ;
- not belonging to political party¹.

According to Article 188 the President of the Constitutional Court shall meet the conditions stipulated in Article 87 of the Constitution, except for age, which are the conditions to be eligible for the presidency of the Republic, we consider it a logical condition as long as The President of the Constitutional Court may assume the Presidency of the State in case of the vacancy of the Presidency of the Republic.

And these conditions are:

- Have, solely, the native Algerian nationality and certify the native Algerian nationality of the father and mother;
- Not have acquired a foreign nationality;
- Be Muslim;
- Enjoy full civil and political rights;

انظر أيضا: المستشار محمد درفوف، رئيس اللجنة الانتخابية الوطنية، الأستاذ وليد شريط عضو اللجنة الانتخابية الوطنية، الأستاذ جمال بن سالم عضو اللجنة الانتخابية الوطنية، الدليل المرشد لإنتخاب أساتذة القانون الدستوري أعضاء المحكمة الدستورية 14 أكتوبر 2021، المرجع السابق ذكره.

¹ Article 187 of the Constitution., Presidential Decree N° 20-442,Op.cit.

- Prove the exclusive native Algerian nationality of the spouse;
- Justify a permanent residence only in Algeria for a minimum of ten (10) years preceding the submission of the application;
- Justify his participation in the Revolution of 1 November 1954 for the candidates born before July 1942;
- Proven he has performed national service or the legal justification for not performing it,
- Justify the non-involvement of the parents of the candidate born after July 1942, in hostile acts against the Revolution of 1 November 1954;
- Submit a public declaration of his movable and immovable property, both inside and outside Algeria¹.

B) Second subtitle: Updates of the Presidential Decree in terms of membership in the Constitutional Court and their impact on strengthening the missions of the Court

The Presidential Decree N° 21-304 of Dhu-Elhijjah 25, 1442 corresponding to August 04, 2021, which defines the conditions and modalities for electing Professors of constitutional law, detailed the conditions for candidacy in the Constitutional Court as follows²:

- The candidate must be over fifty (50) years old on the Election Day.
- have the rank of Professor,
- be a Professor of constitutional law for at least five (5) years,
- and has scientific contributions in this field,
- be active in higher education institutions at the time of candidacy,
- have at least twenty (20) years of experience in law in a higher education institution,
- enjoy full civil and political rights,
- not to have been convicted of a custodial penalty for a crime or offence and has not been rehabilitated, with the exception of unintentional offences,

¹ Article 87 of the Constitution., Presidential Decree N° 20-442, Op.cit. Conditions to be eligible for the Presidency of the Republic. Except the condition of age.

² Article 9 the Presidential Decree N° 21-304, Op.cit.

The composition of the Constitutional Court in the 2020 Constitutional Amendment and its role in strengthening the missions of the Court

- Not to be affiliated with a political party at least during the three (3) years preceding the election¹.

After the promulgation of this decree, the President of the Constitutional Council issued the Resolution N° 01 in 2021 includes the call of voters Professors to elect Professors of constitutional law members of the Constitutional Court².

By including these new conditions, it appears that they will inevitably contribute to the effectiveness and quality of the work of the Constitutional Court, given that the requirement to specialize in law for a period of 20 years, the availability of research in constitutional law, the exclusion of political party affiliation even for a certain period, all these conditions will guarantee the impartiality and independence of the Court and will guarantee the quality of the decisions of the Constitutional Court³

Conclusion:

What can be concluded after presenting the composition and the conditions for the candidacy in The Constitutional Court, is that is clear that the 2020 Constitutional Amendment with these

¹ Ibid;

² Resolution N° 01 of Muharram 6, 1443 corresponding to August 15, 2021, includes the call of voters Professors to elect Professors of constitutional law members of the Constitutional Court, JORA N°63 of Muharram 6, 1443 corresponding to August 15, 2021.

By virtue of this decision, the date of October 14, 2021 has been set for holding the election.

³ The Court has lot of competencies more than the Constitutional Council, in many field such as in protecting fundamental rights and public freedoms. The Court may be referred to with regard to an exception of unconstitutionality pursuant to a request by the Supreme Court or the Council of the State when one of the parties in a trial claims before the jurisdictions that the legislative and **regulatory** provisions upon which the issue of litigation relies may adversely effect the rights and freedoms granted by the Constitution.

For more details about protecting fundamental rights and public freedoms.by the Constitutional Council see:

-Mr. FENNICHE Kamel, President of the Constitutional Council: “The role of the Algerian Constitutional Council in ensuring the rights and freedoms of citizens” (Arabic and English version) , Revue du Conseil Constitutionnel, N° 15, 2020,pp. 11-23.

constitutional guarantees will contribute to strengthening the missions of the Constitutional Court.

The Constitutional Court is the most important amendment in the 2020 Constitutional Amendment, thus, we wait a lot from this important institution in several fields, whether the constitutionality of laws, the protection of fundamental rights and public freedoms, and resolving the disputes between constitutional institutions and other important powers that falls within the tasks of the Constitutional Court.

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b- Presidential Decrees:

1- Presidential Decree N° 20-251 of Muharram 27, 1442 corresponding September 15, 2020, including the call of the Electoral Commission for the Constitution amendment, JORA N° 54 of Muharram 28, 1442 corresponding to September 16, 2020.

2- Presidential Decree N° 21-304 of Dhu-Elhijjah 25, 1442 corresponding to August 04, 2021, which defines the conditions and modalities for electing Professors of constitutional law, JORA N° 60, of Dhu-ElHijjah 26, 1442, corresponding to August 05, 2021.

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The composition of the Constitutional Court in the 2020 Constitutional Amendment and its role in strengthening the missions of the Court

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1- Mr. FENNICHE Kamel, President of the Constitutional Council: “The role of the Algerian Constitutional Council in ensuring the rights and freedoms of citizens” (Arabic and English version), Revue du Conseil Constitutionnel, N° 15, 2020, pp. 11-23.

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