

African Constitutional Judges: Analyzing Political Mandate Processing

القاضي الدستوري الإفريقي وسيرورة العهدة السياسية

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Abstract:

The African constitutional judiciary system has undergone a transformation due to the status granted to the constitutional judge and the role they play in exercising regulatory functions in the political sphere. This is achieved by securing the transfer of political mandate and accompanying its progress according to the hybrid concept of jurisdictional competence granted to them, their supervisory role, and the boundaries of their jurisdiction.

Keywords: Constitutional judge; political mandate; regulatory function; constitutional review; African constitutional judiciary.

ملخص:

عرف النظام القضائي الدستوري الإفريقي تحولا من خلال المكانة التي مُنِحَت للقاضي الدستوري والدور الذي يُؤدِّيهِ في ممارسة وظيفة الضبط في المجال السياسي، من خلال تأمين انتقال العهدة السياسية ومرافقة سيرها وفق المفهوم الهجين للاختصاص التنازعي الممنوح له ودوره الرقابي وحدود مجال عمله.

كلمات مفتاحية: القاضي الدستوري؛ العهدة السياسية؛ الوظيفة الضابطة؛ الرقابة الدستورية؛ القضاء الدستوري الإفريقي.

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Introduction

The African constitutional judiciary system witnessed a significant transformation since the 1990s, particularly after the collapse of the socialist pole and the unification of the world's view of the political organization of countries.

¹ This study focuses on the cases of Algeria and Benin, two nations whose constitutional frameworks are built, from a constitutional perspective, on several concepts, including giving the constitutional judiciary a due recognition and a role in the political sphere. This is done by continuously invoking it in political issues as an essential element of the legal structure of states². The African constitutional judiciary system has shown “a unique originality” through the exercise of numerous overseeing functions, which lead to a “hybrid” form ³of constitutional review.

The hybridity of the African constitutional judiciary model is evident in its overseeing role. The exclusive regulatory function that the constitutional judge holds has given him a new and innovative jurisdiction of conflict, which is far removed from the ongoing debate among jurists about defining the scope of work of the constitutional judge.⁴ Some of these jurists believe that the role of the judge should be limited to: “... adjudicate on the conformity of the rule of law voted on by the parliament to the constitution”. This means that he has a specific jurisdiction in the literal and narrow application of the constitution “*stricto sensu* (Lit. in the strict sense)” by repealing laws that he considers unconstitutional⁵, thus appearing as a “passive legislator”⁶. Another group of jurists believes that the constitutional judge has the possibility of exercising his interpretative jurisdiction⁷ in an absolute form by giving a broader reading of the constitution “*lato sensu* (Lit. in the broad sense)”. This is done by depending on a reference that has an authority surpassing the authority of the constitutional text itself and supports it with symbolic texts that come under the constitutional block and are exercised by giving instructions to the legislator in order to rewrite the rule of law⁸.

Despite all this, the African constitutional judge has shown on many occasions another way of review that is distinguished by its uniqueness and quality in the various readings suggested by the constitution, which are all based on the constitutional review of acts.⁹ Depending on this review, the constitutional judge seeks to play a special and effective role in creating a political space, especially in critical stages based on the principle that the effectiveness of the constitutional judge is not only in his independence, but also in the role he plays in ensuring respect for the separation of powers, the supremacy of the law and equality before it, and the protection of fundamental rights and freedoms, which are considered the backbone of the state of law¹⁰.

Overseeing the constitutionality of acts, which has distinguished the African constitutional judge, is based on the exercise of the overseeing function. This function shifts the judge's task from verifying the conformity of one standard rule with another one to analyzing the current political data within a specific society at a specific period of time and verifying its conformity with the constitution.¹¹ The justification for adopting this function is found in the turbulent political experience that has characterized the continent, which necessitated continuous intervention by the constitutional judge in the political sphere to strike balance and reproduce the constitutional order.¹² This is done by framing the processing of the political mandate, which constitutes the cornerstone and the mechanism through which the elected person contributes to forging “the general will”¹³ by securing its transition (1) and overseeing its practice (2) to ensure the harmonious functioning of the institutions.

1. The Constitutional Judge and Securing the Transition of the Political Mandate

As a point of departure, the political mandate does not exclusively include the elected positions¹⁴ although it is: "an electoral burden, which allows its holder, during a period of time, to participate in forging the general will."¹⁵ In addition, the possibility of making the elected political mandate appears clearly is attributed to more realistic reasons than political reasons since democracy is representative¹⁶

Adopting only this aspect of the concept of the political mandate excludes the idea of positions appointed by the President of the Republic, such as members of the National Assembly or members of the constitutional advisory councils... These positions also fall within the scope of the political mandate because of their "authoritative" and prestigious nature in the political sphere¹⁷. This authority and prestige emerge from the theory of the nation, which is concerned with "the participation of the nation to a great extent and directly in the form of a unit in the exercise of the political authority."¹⁸ This means that the exercise of the political mandate can emanate from the authority of appointment that the President of the Republic holds, and this falls within the framework of a direct delegation to the political authority of the people to their representatives.¹⁹

In the same context, the political mandate is distinguished from the administrative one in its "teleological" aspect, since the latter is represented in the burden granted to the representatives of administrative bodies in its general form, which derives its form, provisions, and mechanisms of operation from the concepts of the theory of administrative activity. It is also distinguished from it in its objective aspect, which results from linking the administrative mandate to the public function that exercises administrative tasks directed to the public according to specific procedures that are subject to the review of²⁰ the administrative judge in the area of disputes.

Above all, the political mandate is distinguished from others by its direct link with the constitutional judge in the event of the rise of a new form of a constitutional dispute that is based on the regulatory function. The African constitutional judicial experience has given it a special and qualitative reading²¹ aimed at amending the term of the political mandate (1-1),²² which has proven its effectiveness on several critical situations due to the determinative ordering authority that the constitutional judge holds in this type of dispute (1-2).²³

1.1. Amending the Political Mandate:

It can be said, implicitly, that the constitutional judge has the power to amend the functional mandate of constitutional bodies - except the permanent ones. The temporal framework, set by the constitutional constituent of the political mandate of the President of the Republic or the Parliament, for example, is subject to amendment by the constitutional judge based on principles of constitutional value that revolve around the idea of the functional continuity of institutions.²⁴ The interventionist role of the constitutional judge in amending the electoral mandate appears in cases that threaten the proper formation of the political mandate due to the suspension of its transitional path or the embodiment of a transition contrary to the constitution,²⁵ which has been addressed by the constitutional judge's regulatory function has addressed through extending the term of political mandate (1-1-1), and also shortening it (1-1-2) based on new constitutional readings.

❖ **The Constitutional Judge and Extending the Political Mandate:**

Being more inclined to the pragmatic approach to the adoption of constitutional techniques, the foundational work of African states was characterized by the absence of legal structures regulating the transition of the political mandate in a sound manner, and those structures related to the functional process of their institutions in critical cases. This resulted in the appearance of the African constitutional judge as: “The preserver of the institutional harmony of the state”²⁶ as an amendment to the foundational work that affects the aspect of “the immediate effectiveness of the standard rule”²⁷ by granting an institutional legitimacy outside the constitutionally-defined deadlines through the exercise of review over acts to ensure the material and legal impossibility of the exchange of authority and thus impede the formation of the political mandate.

It is also worth noting that this review drives the constitutional judge to search for and identify all the principles of constitutional value that he consider appropriate to justify the extension of the political mandate using the basic units contained in the preamble²⁸ and the spirit of the constitution²⁹, in addition to its text which tackles major foundational standard concepts that go beyond the written text, since the text is a written expression of the standard rule rather than the standard rule itself³⁰. The text can have multiple readings, including those related to the functional continuity outside the constitutional deadlines of the institutions, which is confirmed through many judicial examples and readings of cases of paralysis of the transition of the political mandate that has been addressed by the constitutional judge using an interpretation contrary to some of constitutional rules that are fixed and fundamental in their content and interpretation.³¹

There is a clear example for this view in the Algerian constitutional experience of 2019. Due to the state of social unrest against the extension of the electoral mandate of President Abdelaziz Bouteflika leading to a political deadlock. The indicators of this deadlock appeared after he dismissed the chairman³² and members of the Independent High Commission of the Electoral Review,³³ in addition to canceling the summon of the electoral body for the presidential elections, which was met with a state of tensions and widespread popular rejection expressed through huge weekly demonstrations³⁴ that led to the resignation of the president finally and his replacement by the Speaker of the National Assembly as Head of State on an interim basis to oversee the holding of the presidential elections within 90 days,³⁵ which in turn did not take place due to the lack of candidates.

In the light of all this, the Constitutional Council, in its decision No. 20/19 dated 1st June, 2019, decided to extend the political mandate of the President of the State by re-organizing the electoral process, considering the “impossibility of holding elections on the scheduled date”. This resolution was based on the following: “The spirit of the constitution, which guarantees the functional continuity of the constitutional institutions which entrusts the President of the State with the task of overseeing the election of a President of the Republic, and assumes the responsibility until the elected President of the Republic takes the constitutional oath of office.”³⁶

This is also evident in the extension of the political mandate by the constitutional judge through developing rules of constitutional value based on giving them an interpretation different from the usual meaning in order to overcome all the problems that may arise and the transition of the political mandate, which was confirmed by the experience of Benin. The constitutional judge depended on the text of Article 114 of the Constitution of the Republic of Benin³⁷ in postponing the presidential elections of 2006 in recognition that the Constitutional Court is “responsible for regulating the processing of institutions and the activities of public authorities” and on the basis of the request of the Independent National Electoral Commission to postpone the elections due to lack and insufficiency of the financial resources represented in the logistic unreadiness of most polling stations to oversee the elections in an organized manner”. Based on this capacity, and fearing that the transition of the presidential political mandate would not be made in accordance with the

constitution, the constitutional judge ordered the extension of the political mandate of the current president and, as a result, ordered the postponement of the elections for some time³⁸

❖ **The Constitutional Judge and Shortening the Political Mandate:**

The amendment of the political mandate in the judicial practice of African constitutionalism is striking. Through numerous experiences happened gradually, the judge dominated over the timeframe of the political mandate, which is considered a large overseeing area because it includes institutions and public authorities based on the meaning of the text of Article 185 of the Algerian Constitution and other constitutions of African countries - which can be summarized in the set of mechanisms and legal structures that frame one's act within the society".³⁹ We are talking about the institutions of the republic, as well as the essential institutions of democratic societies and social institutions... Its characteristics are represented in the following: "Human dynamism, and subject and legal existence"⁴⁰. It can also be divided into: administrative, judicial and political institutions, central or local authorities, and civil and sports institutions... Thus, it covers a wide area. The general nature of drafting constitutional texts adds to its widespread⁴¹.

Through this widespread, le juge constitutionnel officier (lit. Overseeing Constitutional Judge), has acknowledged for himself an important interventionist role that covers the political field in general and through which he determines the pace of the institutional process outside the usual frameworks to allow state institutions to operate and perform their tasks, even if this requires the precedent termination of the political mandate⁴².

The African political experience has shown the definitive suspension of the term of office of a President of the Republic by the Constitutional Court on several occasions, relying on the regulatory function for fear of a duality of positions, especially in cases where the constitutional text does not explicitly specify how to secure the transition and work in the event of the appearance of a vacancy in political positions⁴³. This is criticized in many African constitutional texts that establish the idea of holding political mandate - especially that of the President of the Republic - for a lifetime, which may be suspended by death or disability during its course, which causes a textual and institutional vacuum.

This is what characterized the decision of the constitutional judge of Burundi by ordering the need to resort directly and without delay to take the oath of office by the newly elected president in order to fill the existing vacuum⁴⁴. Especially the constitution of his state does not include any procedures or legal solutions that address the way of transition and securing the position of president in the event of a vacancy in the office of president, the constitutional judge is obliged to fill the textual gap and adopt a wait-and-see policy within a legal framework that embodies principles closely related to the safety and existence of the constitutional system using a judicial amendment to the constitution⁴⁵ and political practice with the exclusion of the assumption of the recurrence of similar vacancies in the future, given the nature of the authority that the judge holds in these cases.

1.2. The Determinative Ordering Authority of the Constitutional Judge

Given the legitimacy of the constitutional judge's review from a classical perspective, the constitutional judge does not have the final say⁴⁶. Especially since his authority is centered on the objective standard dispute, as he does not have the power to prosecute natural or legal persons or to establish their rights due to his original jurisdiction, which is overseeing the constitutionality of laws. This jurisdiction recognizes the absence of any ordering authority⁴⁷ over political institutions, in line with the principle of separation of powers and parliamentary sovereignty.⁴⁸ The judge's primary role is to declare whether laws voted on by the parliament are "in conformity with the constitution or not. He appears as a judge who excessively use the legislative power". The

declaration of the unconstitutionality of a standard act is sufficient in itself, as it is an effective mechanism aimed at the direct removal of the overseed standard work from the legal system.

Based on this functional legal approach, it is inconceivable that the constitutional judge has an ordering authority as he does not need it and the constitutional basis for it does not exist. Most constitutions do not explicitly admit any ordering authority similar to that prescribed by the law to the administrative and ordinary judge⁴⁹. Such authority appears to be out of the authority of the constitutional judge (2-1-1), who ended up adopting it judicially through the regulatory function in order to secure a smooth transition of the political mandate (2-1-2).

1.3. The Constitutional Order, an External Authority

One of the main reasons that proves the external and unusual form of the constitutional judge's determinative ordering authority is the absence of its explicit embodiment in the concepts of the constitutional law and the texts of the constitutions of countries that adopt the centralized or decentralized constitutional review, in addition to the limits related to the jurisdictions of the constitutional judge, which can be principally limited to the constitutional review of laws, the protection of fundamental rights and freedoms through prior and subsequent review of texts, as well as overseeing the validity of electoral processes and international obligations,⁵⁰ which, despite their importance, do not admit any ordering authority for the constitutional judge.⁵¹

In addition, the ordering authority is considered "a set of recommendations, procedures, and corrective orders that oblige the recipient to follow in order to correct an illegal or unconstitutional act".⁵² It is a powerful tool that, if overused by the judge, could threaten the constitutional foundations of the state of law and violate the principle of separation of powers⁵³. This principle aims to avoid arbitrariness by avoiding the gathering of powers through establishing the principle of separation of powers⁵⁴. The ordering authority is embodied in the definition of the field of law as well as the field of organization, and establishing a distinction between the functions of the parliament and the government. Therefore, thinking of any judicial review over it is interpreted into a direct interference by the constitutional judge into the work of the institutions by instructing the parliament how to enact laws, on the one hand, and determining how shall the executive authority understand and apply laws, on the other hand, which may make the constitutional judge appear to be the person of the two fields, i.e., "the legislator judge".⁵⁵

It is also worth noting that the idea of the existence of an implicit ordering authority for the constitutional judge contradicts with the concept of parliamentary sovereignty, which rejects any interference from the judiciary in the functions of the legislator, who holds general and absolute sovereignty⁵⁶ as the body expressing the general will and producing sacred values in its activity that do not accept any form of review. The overseeing nature of the constitutional judiciary in general, and detailing the basic principles contained in the constitution deny any internal link that could enable the constitutional judge to possess an ordering authority, which is confirmed by several constitutional jurisprudences that ruled the constitutional judge's none- jurisdiction to issue orders against the legislative or even the executive authority.

1.4. The Regulatory Function of the Constitutional Ordering Authority

Professor Louis Favoreu believes that the constitutional judiciary was founded to do the task of constitutional review of laws, and then found a role in protecting fundamental rights and freedoms to clarify the content of constitutional law⁵⁷. The regulatory function oversees the acts of political actors, considering "regulating review" an additional degree in the structure of jurisdictions of the Constitutional Courts, which essentially seeks to make balance and continuous production of the political system⁵⁸.

The only chairperson of the Constitutional Court in Gabon also confirmed that the regulatory function of the constitutional judge "goes beyond the primary task of constitutional

review of laws,⁵⁹ “as it gives the constitutional judge the authority to intervene to choose a single solution among the legal solutions”⁶⁰. The holder of this authority has a margin of initiative that is not presented in the authority to give an interpretation of a specific standard text, but rather through ordering intervention in the institution actions in a way that oversees its harmony and secures its running.

Moreover, upon a careful reading of the numerous constitutional judicial jurisprudences addressing the overseeing function of processing of institutions and the activity of public authorities, the development of the overseeing jurisdiction of the constitutional judge⁶¹ and the expansion of his scope to determine principles of constitutional value that are inspired by the spirit of the constitution and by which he has given himself a determinative ordering authority by taking all measures that he deems appropriate "to eradicate the deadlock and secure the transition of the political mandate."

Above all, the ordering authority of the constitutional judge becomes clear in his deviation from his main path, as his role has not only gone beyond the idea of repealing the legal rule that violates the constitution, but exceeds to question the results that may arise from it⁶², especially in the context of regulating the institutional process. This is made by instructing the parliament and the government on several occasions the procedures that must be applied, the actions that he confirmed to be taken, ways that required to be followed, and goals that he ordered to be achieved⁶³. As stated in the decision of the Constitutional Court of Benin No. 09-002 and the following ones regarding the case of the composition of the Supreme Court, which is considered one of the prominent examples in this context⁶⁴.

It must be initially emphasized that, according to Article 135 of the Constitution of Benin, the Parliament has the authority to elect 6 deputies to the composition of the Supreme Court, which added this time to the appointment of the 06 deputies among 04 political blocs out of a total of 07 blocs, which led to filing a lawsuit of the unconstitutionality of the electoral process, where the Constitutional Court confirmed "the absence of any special and specific procedures in the constitutional text or even in the Organic Law relating to the Supreme Court regarding the technique of electing its members. The democratic obligations based on plurality (majority / opposition) shall be embodied in any electoral process as “a principle of constitutional value”. The Constitutional Council added in the same decision “that the representation of the National Council as a body in the various institutions of the state necessitates being in a democratic form" and ended its decisions with the need to complete the election of members within a timeframe not exceeding 15/02/2009.

The Constitutional Court may return by a subsequent order directed to the National Council, calling upon them to comply with and implement the proposals of its legal committee on dividing the number of seats in the composition of the Supreme Court equally between the opposition parties and alliance parties and “considered that any disregard for its decision would be a violation of the constitution”. It also requested to be informed of all the data related to this electoral process by providing it with the minutes of the electoral sessions on a daily basis until it is completed and the members of the Supreme Court are appointed.

In the face of the boycott of the electoral process by the alliance parties under the pretext of dissatisfaction with the proposals of the legal committee of the parliament for the equal division of seats. The Constitutional Court ruled in a clear language of threat to give deputies belonging to alliance parties a short period of time to join the electoral process, and also ordered the council to meet by the deadline and complete the electoral process without them if they do not join.

2. The Judicial Review Judge

African political practice and its constitutional judicial experience have shown a shift in its functional role from a legal review role like textual review to a political review by political actors based on a judicial framework for the political sphere⁶⁵, which includes exclusive political choices.

The political exploitation of the constitutional law by political actors has changed with the transformation of the constitutional judge into an important political actor who considers his work to be a purely political mortgage through securing the external boundaries of the political sphere⁶⁶ and ensuring that it remains within the framework specific to critical or non-critical stages through the exercise of his regulatory authority to remove the institutional paralysis and to discipline political actors⁶⁷ from a judicial rather than textual perspective.

From this perspective, the constitutional judge's framing of the political practice has become necessary to fill the constitutional gap that characterizes the institutional process of developing countries, which has revealed a functional distortion⁶⁸. Given that the functioning of the system is ideal, this distortion only appears in developed countries in a fully integrated and homogeneous manner⁶⁹, on the one hand, and that the constitutional principles find their primary source in the Western experience, which has shown the existence of differences when adopted in Africa.

These legal differences, and, in particular, political differences have changed the procedural typical image of constitutional justice and transformed it from a means of legitimizing the regime to an effective and teleological mechanism overseeing the functional process of its institutions⁷⁰. This is done by making up the deficiency in the constitutional guarantee of its political mandate (2-1) in order to contribute to validating the principles of democracy (2-2).

2.1. Lack of the Constitutional Guarantee for the Political Mandate

Undoubtedly, "the institutions of constitutional justice represent the main guarantee for the founding function and for the effectiveness of the constitutional founder"⁷¹ through their role in giving "a meaning" to the specific texts of the constitution, through their interpretative work, and their judicial experience that complements the work of the founder in cases where it fails to ensure the function of anticipating some critical situations that threaten the political system, due to the existence of incomplete or - more precisely⁷² insufficient texts that do not keep up with or cannot be applied to the presented social and political data. (2-1-1)

The constitutional founder sometimes resorts to adopting modern constitutional techniques through a "constitutional amendment", and in other cases leaves the matter to the judge through the function of review in a creative interpretative work to find a solution to unexpected constitutional crises through stabilizing political positions and improving their function⁷³ (2-1-2).

❖ Judicial Completion of the Founding Work:

Through a philosophy of intervention, the African constitutional judge contributed, through his effective review of the institutional process, to addressing the relative deficiencies of the constitutional founder by incorporating transition directives to facilitate the formation of the political mandate threatened with paralysis, in order to assign: "the constitutional law to the role of finding solutions to political crises"⁷⁴.

The judiciary tends to maintain the functional continuity of institutions, especially the sensitive ones because the legal framework, that defines their activities and processes, has deficiencies and flaws that cannot be applied in a way that "guarantees the continuity of the state in a homogeneous way", which is considered one of the main concerns and necessary goals of the public law.⁷⁵

In this way, the constitutional judge contributes to the founding work by filling the textual gaps and adapting them to reality through a *Téléologique* (lit. Teleological) approach that aims primarily at completeness and continuity⁷⁶. This was confirmed by the decision of the constitutional judge concerning the establishment of the political office of the National People's Assembly of the Republic of Benin issued on 05/07/2003⁷⁷. The facts of the case are summarized in the suspension of the elections aiming at renewing the members of the National Office of the Council due to the political stance of the chairperson of the session, who was from the opposition parties, and her tendency to oblige the new deputies to take into account the opposition parties in the political composition of the Office. When they refused, the chairperson suspended the electoral session several times to call on the majority of deputies to reconsider their position, but to no avail.

Faced with this deadlock, the constitutional judge exercised his regulatory jurisdiction by assessing the constitutionality of the acts showed by the chairperson of the session, which he considered unconstitutional on the basis of the minutes of the election session. This was clear in the continual interruption of the electoral process made by the chairperson of the session from 11:55 to 15:29, which ended up with the postponement of the session to the next day.

In addition, the constitutional judge grounded his ruling on Article 35 of the Constitution, which: “oblige every citizen entrusted with a public function or elected to a public office to carry it out in a spirit of integrity, conscience, competence, and devotion”. The judge considered the act of the chairperson of the session contrary to the provisions of the constitution”.

However, in view of the chairperson's continued intransigence in refusing to implement the above-mentioned decision of the Constitutional Court and her postponement of the electoral session, especially since the Parliament's internal rules do not address the procedures to be followed in the event of a postponement of the induction of the members of the Office. Under multiple cases filed against her, the Constitutional Court was forced to reintervene by issuing directives “requiring the chairperson of the session to summon the members of Parliament; and oversee the elections for the establishment of the Office of the Council continuously in the same session - i.e. without interruption - within 48 hours of the date of the decision, taking into consideration that the entire electoral process must be completed before the midnight of 14th May 2003.”

The overseeing constitutional judge also added that, in exercising his review role and overcoming the deficiencies of the text regulating the elections of the political office, he may replace the chairperson of the session with a younger deputy to oversee the elections in the event of her non-compliance with his decision⁷⁸. By this way, and by overcoming for the deficiencies and inadequate integration of the legal texts framing the political mandate with political data sometimes, the constitutional judge contributed to securing its transition through a regulatory constitutional review of elections that differs from the one entrusted to him, in terms of the subject of review that addresses the constitutionality of political acts, and in terms of the effect of review aiming to ensure the functional continuity of institutions through an improved guiding mechanism *Perfectionner l'ordre juridique* (lit. perfecting the legal order) in the political practice

❖ **Judicial Constitutional Review, an Improvement of the Legal System:**

The constitutional judge improves the legal system in general, including that applicable to the vacancy of the political mandate of the parliament, the president of the republic, and others, by incorporating effective mechanisms that aim to fill the gap made by the head of the executive or legislative authority and others, provided that these mechanisms secure stability and continuity of the functional and authoritative performance,⁷⁹ especially since the existing legal system does not achieve this, as evidenced by practice, which has proven the sudden interruption of the political mandate on several occasions.

The constitutional judge strives to develop the institutional legal system by completing it and establishing its components legally and politically in order to achieve the functional continuity of the state's components through tirelessly seeking to avoid any vacuum, especially in the event of the inadequacy of the texts. When we refer to the aforementioned decision of the Algerian Constitutional Council⁸⁰, it becomes clear that the constitutional judge determined the procedures to be followed for holding presidential elections, and specified that the presidency of the state comes outside the constitutionally stipulated deadlines, i.e., until the election of a new president within five months approximately.

Moreover, if we consider the constitutional judge a member of the constitutional body, which represents the whole of the institutions and techniques that guarantee the supremacy of the constitution unlimitedly⁸¹, we can reach the conclusion that the African constitutional judge exercised his power differently based on all institutions and techniques that guarantee, without any restriction, the sanctity or the non-violation of the constitution as a whole⁸². His task is to ensure the complete protection of the constitution, especially its institutional components, by ensuring their existence and stability within their functional framework by determining all the constitutional existing and necessary requirements⁸³ to homogenize the legal system completely.

Grounded on the exercise of his overseeing authority granted based on a judicial adaptation of a constitutional provision in cases where the legal system does not contain a standard rule that can be applied to the raised political phenomenon⁸⁴, or in the case of neglecting to incorporate a specific standard rule by the founder, the judge then resorts to maintain the functional continuity of the institutions with a thought that requires a specialized jurisdictional nature given the sensitivity of the institutions subject to review and included at the head of the sections of the constitution, considering that any functional disruption to them may threaten the existing constitutional system through the overseeing role, which considers all techniques and procedures that ensure the balance and reproduction of the same system with the same components⁸⁵, especially since the African continent has witnessed a political experience characterized by the transformation of the basic ideas contained in the constitution, such as the exchange of authority, for example.

The African political system has not undergone a real application of this principle, especially with regard to the position of the president or the chairperson of the parliament in particular, which has mainly affected the non-compliance with the number of electoral terms due to the political exploitation of the constitution by amending it periodically while respecting its procedures, despite affecting its spirit.

Therefore, African countries were classified as "formal republics" due to the large number of constitutional amendments related to the extension of the political mandate, which were implemented in a way that complies with the constitution by respecting the procedures that must be followed to amend the constitution, although they destroyed its content, considering it "a procedure that requires full respect for the text of the constitution and a complete rejection of its spirit"⁸⁶ in order to achieve political or even personal goals in some cases.

Through this, the African constitutional founder sought to protect his legal will from political manipulation through the margin of initiative that he gave to the overseeing constitutional judge to take all measures he deems appropriate⁸⁷ to protect previous legal gains and avoid their abolition, which would cause a complete disruption of the functional homogeneity of the system. This is clearly evident in the grounds for the decision declaring the unconstitutionality of the constitutional amendment to Article 80 of the Constitution of Benin, which was voted on by the Parliament on 26th June, 2006, and through which the deputies wanted to extend their electoral term from 4 years to 5 years⁸⁸.

The constitutional judge relied on the outcomes of the National Forum of Active Political Forces in February 1990 to declare the amendment unconstitutional; even though the constitution specifies how it can be amended, and the amendment to Article 80 was made in accordance with this process, the people of Benin have declared their rejection of the seizure of their power and their desire to establish a state of law that embodies multi-party democracy and legal security...These are considered essential conditions that frame any amendment to the constitution⁸⁹.

This role enabled the constitutional judge to abrogate a decision issued by the Commissioners of National Sovereignty, expanding his review and work to a broad textual reference that protects the legal harvest and activates the principles of democracy.

2.2. Contribution to the Power of Democratic Principles

It can be said that the level of democracy in countries is determined according to several criteria that are mainly found in running institutions continuously, holding periodic and transparent elections, besides the judicial protection of the rights and freedoms of citizens.⁹⁰ This makes the constitutional judge central to the democratic founding⁹¹ system as he has jurisdiction in the area of overseeing elections in order to protect the popular will, and has a role in protecting the basic rights of individuals through subsequent constitutional review of texts. In addition, the judge has an overseeing role in the functional institutional field to establish political appeasement (2-2-2) through judicial framing (2-2-2). This shows him as a guardian of the political and institutional life of the state.

❖ Judicial Framing:

Considering the principle of the functional continuity of state institutions as one of the basic democratic principles, which is embodied in the field of constitutional legal sciences in the form of the continuous production of an enhanced structure of legal standards based on the constitutional rule that is characterized by supremacy because it is the one that gives life to the subsequent legal rule and establishes its validity.⁹² Protecting it from any internal or external disturbances is considered a necessary matter to ensure the consistency of the following rules, especially since they are vulnerable despite being considered the most direct expression of the identity, thought, and goals of the sovereign.

Therefore, the African constitutional founder found the necessity to solidify these principles through an overseeing function that would be in accordance with a qualitative aspect that required a legal convergence with the political transformation that these countries are witnessing in embracing democracy.⁹³ This would be done through approving the judicial overseeing in relation to acts and even simultaneous permits during the process of the political mandate, which can go so far as to declare them unconstitutional.

Through this, the constitutional judge “discipline” (lit. discipline) all political actors, given his position in the institutional structure of states, which places him outside the political conflict. This is because the latter is a specific and temporary intellectual expression that changes with the change of the social class, data, and goals, and requires internal and continuous review to determine its scope, and separate its impact and severity from the cessation of functional activity.

This framing is also embodied in the intervention of the constitutional judge even in the political composition of the institutions and its re-adjustment through his instructing of principles of constitutional value - with which he protects his legal system - by determining a time limit for their enforcement.

Through the numerous readings of the judicial jurisprudences in this context, we notice that the judge gives a precise time limit to the political actors that must not be exceeded to secure the regular process of the institutions.⁹⁴

❖ Political Appeasement:

The political experience of newly independent African countries has been described as a continuous state of instability, as they have found it difficult to instill the principles of Western liberal democracy due to their collision with historical, religious, and ethnic specificities that have been characterized by the use of violence in the political sphere.

As a result, the constitutional path and the regular processing of institutions are suspended which has been overcome by military intervention, even if temporary, to amend or reconsider the existing constitutional system by searching for a common ground for achieving a consensus among the political actors through national political conferences or transitional stages that are considered in their entirety a constitutional contract that embodies a temporary solution to the state of instability, which has proven to be ineffective due to the continuity of the states of instability.⁹⁵

What drives the constitutional judge to intervene and play the role of overseer of this instability was his interpretative boldness⁹⁶ in affirming the existence of a metaphysical body of principles independent of any written text, which is the spirit of the text⁹⁷ that is considered the rule and political philosophy of the nation, and that any tampering with it may threaten the social and political unity of the state.

Depending on his final ordering authority over the entire political and institutional field and the binding nature of his decisions in this regard, which are final and not subject to any reconsideration, in addition to his broad interpretative vision, the constitutional judge establishes a democratic power in the form of overseeing acts in the pursuit of preserving the functional continuity of institutions by understanding the reasons of different points of view in the matter and reconstituting it under the standard, or even philosophical framework since it lacks any written text - to ensure the constitutional continuity of a living and evolving society.

Conclusion

In short, the African constitutional judiciary has played a crucial role in securing the functional continuity of institutions through developing a creative constitutional structure to address the founding flaws and adapt them to the standard need during critical phases of transition of political mandate.

In addition to a free dominant interpretation of constitutional provisions based on invisible (lit. invisible) principles, the constitutional judge has been granted full-time dominance over the political mandate through his authority to extend or shorten it outside its constitutional terms in order to avoid any institutional paralysis. The overseeing role of the constitutional judge, in particular, has shown him as a secondary legislator who compensates and adapts the associations' deficiencies, and through which he gives vitality to the constitutional text, considering that the constitution is not a tent for sleeping.

Above all, judicial experience has shown on many occasions the effectiveness of the regulatory function in establishing the functional continuity of institutions through the determinative ordering authority that contributes directly to the resolution of political disputes in a judicial manner during critical phases of the transition of the political mandate, besides understanding the political practice and determining the scope and manner of its practice based on the principle that "the processing of state institutions is not completely free and can only operate within the space defined by the constitution."⁹⁸

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