



The role of constitutional justice in protecting public rights and freedoms:

A critical study of the stages of the promotion of rights and freedoms in Algerian constitutions from independence to the 2020 constitutional amendment

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Abstract	Article info
<p><i>The Algerian Constitution is a model in the history of legal systems that aims to promote public rights and freedoms. This fact shows the embodiment of constitutional justice through the foundation of the rule of law and a state of institutions that safeguards these rights and freedoms. This article deals with a critical descriptive study aimed at highlighting the effectiveness of the historical stages of the regulation of rights and freedoms in the Algerian Constitution. This study aims to highlight the effectiveness of the historical stages of the organisation of rights and freedoms in the Algerian constitution from independence until the last constitutional amendment in 2020 and show the role of the Constitutional Court in affirming the supremacy of the constitution as a fundamental guarantor for the protection and promotion of rights and freedoms, and concludes by emphasising the existence of an effective contribution in the Algerian legal history to promote the protection of public rights and freedoms.</i></p>	<p><i>Received</i> August 02 ;2024</p> <p><i>Accepted</i> September 03 ;2024</p>
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1. Introduction

Constitutional justice reflects the existence of the rule of law and supremacy of the constitution in the pyramid of the state's legal system, and it highlights its effective role in safeguarding and protecting public rights and freedoms, which in historical periods of time have been the title of persecution and tyranny in many regimes. This was the result of wars and civil conflicts and the cause of historical revolutions such as the English, American and French revolutions, which lived a major shift in legal history and the building of ancient legal civilisations that are famous for their superior attention to the promotion of fundamental rights and freedoms.

In its legal history from independence to the present day, Algeria has witnessed many changes in the composition of institutions in charge of monitoring the constitutionality of laws aiming at promoting public rights and freedoms. What makes critical these institutions is its weakness resulting from their dependence on the French state in organising this monitoring. The Constitutional Council was created as a constitutional body in charge of preliminary monitoring of the constitutionality of laws in imitation of the

situation prevailing in French law, then replaced by the Constitutional Court, whose organisation was determined by Articles 185 to 198 of the Constitution (Algerian Constitution of 1989, amended by Presidential Decree No. 20-442). This institution is charged with investigating the conformity of legislative and regulatory texts with the Constitution. It is empowered by Article 171 of the Constitution to create rules of constitutional value that are binding on the public administration and subject to mandatory application by the judge. It also plays a role in protecting rights and freedoms by providing the advice that executive institutions are obliged to request from the Constitutional Court whenever decisions are taken in areas related to rights and freedoms, or by exercising the plea procedure for unconstitutionality before the courts, whereby the lawsuit is referred to the Constitutional Court to decide on the constitutional plea petitioner in matters related to human rights (Mahfoud, 2021, p. 490). This shows a development in the creation of constitutional structures guaranteeing rights and freedoms, compared to the Constitutional Council and the Constitutional Court in the opportunities available to monitor the conformity of laws with the Constitution,

especially in the field of public rights and freedoms, as the Constitutional Council was closed during the early stages after independence to impose political control prior to the issuance of laws, a control that neither litigants, judges nor those addressed by these laws interfere with, but exercised by other constitutional institutions such as the National People's Assembly and the Nation's Council. However, the creation of the Constitutional Court under the 2020 constitutional amendment allowed multiple and diversified methods of notification to request the exercise of this control, in addition to entrusting the Constitutional Court with the authority to develop legal rules characterised by constitutional value. It deals to expand the guarantees for the promotion and preservation of rights and freedoms. As a result, Algeria has moved through all these historical stages in which the Constitution witnessed the establishment of constitutional institutions from a stage that defined the Constitutional Council as an institution that basically guarantees the supremacy of the Constitution to a stage characterised by the creation of a Constitutional Court that goes beyond that guarantee to protect and promote rights and freedoms.

The effectiveness of the promising role of constitutional institutions from the date of independence until the 2020 constitutional amendment in Algeria varies based on the consideration that the Constitutional Council monitors the respect of the constitution and the rights and freedoms it guarantees in a way that seems more vital and with a realistic and practical result because it is a court that has a role in regulating the work of constitutional institutions and regulating political stability by resolving crises that the country may be exposed to, especially on electoral occasions or in cases of voids that are exceeded by the constitution or legal texts in the state. This provides reassurance that there is constitutional justice in the state that looks after all legal and political crises that may affect political stability or public rights and freedoms.

The subject of this study has a scientific importance that lies in discussing the historical development of constitutional justice in Algeria from the date of independence until the last constitutional amendment in the country, and knowing the scope of the reforms that the protection of rights and freedoms has undergone in the Algerian constitutions. In order to achieve this importance and monitor its results, it is worth asking the question: **How effective**

have the changes introduced in constitutional institutions since independence been in embodying a constitutional justice that guarantees institutional development that safeguards and protects public rights and freedoms?

Thus, the issue at hand deals with the pattern of development of the promotion of public rights and freedoms in Algerian constitutions in terms of enshrinement and protection. This issue is based on a discussion of the reality of enshrining the components of public rights and freedoms guarantee during the early stages which saw a start since the promulgation of the 1963 Algerian constitution (in the first section), before the advent of a new era that saw their promotion in a way that embodies a constitutional will based on the activation of the values of the rule of law (in the second section), using a critical descriptive method aimed at highlighting the effectiveness of the historical stages witnessed by the regulation of rights and freedoms in the Algerian constitution from independence until the last constitutional amendment in 2020.

2. First section: Enshrining the components of the guarantee of public rights and freedoms: A beginning that lacks effective means and structures

The existence of the constitution in society to represent the pyramid of the legal system that regulates the affairs of its members is a transformation that reflects the sophistication of human thought in the

search for ways to organise the various affairs of life. (Mohyi Shawki Ahmed, 1986, p. 255).

According to the preamble of the Algerian Constitution, the Constitution reflects the aspirations of the people, which recognises the service of rights and freedoms and strengthens the building of values to establish a state that advances the aspirations of society. However, the beginning of the enshrining of guarantees to protect these rights and freedoms lacked effective structures and means to achieve the results of these aspirations, and this is what the legal system suffered from in 1963 and 1989 to give effect to the requirements of the principles of the Algerian Constitution.

2.1 The reality of the protection of public rights and freedoms under the 1963 Constitution

The Algerian Constitution of 1963 witnessed the one-party era, ratified as the first constitution of independent Algeria on 08 September 1963, in which the constitutional founder was not fair between rights and freedoms in terms of enshrining them in a balanced manner, as his interest in rights appeared more than freedoms, and his interest in social and economic rights was more prominent, while his attention to public freedoms was superficial and transient, not reflecting the existence of a coherent political will directed towards activating the components of a rule of law

that protects freedoms as stipulated in Articles 12 to 22. This may reflect one-party fears of expanding the scope of regulation of rights and freedoms, or it may reflect a lack of consideration of the factors of building a rule of law that extends to guaranteeing these rights and freedoms.

The rights enshrined in the constitution during the time period of Algerian independence were numerous. Articles 12 to 22 of the Constitution enumerate the responsibility of the state to guarantee the right to equality between individuals in society without sexual or racial discrimination, the right to raise the standard of living of workers, the right to education to eradicate illiteracy which was one of the effects and consequences of the occupation of the country by the French colonial forces, the right to housing, the right to health care, the right to vote, the right to privacy of the home, the right to confidentiality of correspondence, trade union rights, the right to strike and the right to establish associations (Azzouz, 2008, p. 34).

In 1963, the Constitution recognised some basic freedoms, included in Article 19, which clearly enshrined freedom of the press and freedom of the media, but the reality that accompanied the implementation of this constitutional

principle lacked the structures which really express the guarantee of these freedoms because the effective political administration during the promulgation of this Constitution did not allow the existence of opposition to the directions of the one party that dominated the government and the management of all sectors and institutions in the country, so that the written and audio-visual media were all affiliated with the state and announced in all their programmes that they agreed with the regime and supported the aspirations of the ruling party without showing through the programmes, activities and aspirations any approach involving constructive criticism aimed at highlighting the exercise of freedom of expression and freedom of the press and media.

Although the FLN was the only ruling party in the country's political arena when the 1963 Constitution was promulgated, and there was no indication in the articles of the Constitution to establish the freedom to create political parties that expresses political maturity and acceptance of the opposition aimed at building the country's social, economic, political and cultural affairs. However, this Constitution did enshrine the freedom of assembly, which expresses the most prominent aspects of

popular democracy, but in the absence of the constitution founder's aspirations to open the way for political pluralism, the freedom of assembly became sterile and did not know any practical implementation among the members of society. Even the establishment of the right to found and establish associations has been closed and restricted in practice, both in its actual existence and in highlighting its active role in criticising and calling on state institutions to reform the various affairs of life, as the existing associations, like the media institutions, support the orientations of the political regime (Boutib, El Awadi, 2016, p. 86).

Although Article 11 of the 1963 Constitution stipulates that Algeria recognises the Universal Declaration of Human Rights, a recognition that reflects a practical acceptance of all the rights and freedoms enshrined in this declaration, the practical reality has shown a clear blockage in the exercise of these rights and freedoms.

2.2 The promotion of fundamental rights and freedoms in the 1976 and 1989 Constitutions

Under the Algerian Constitution of 1963, the constitutional founder feared the expansion of public rights and freedoms in a way that compromised the prevailing political ideology of the ruling one-party mentality, until these rights and freedoms

lost their vitality. They were emptied of their content, and their existence only served to legitimise the work of the prevailing government. Algerian history witnessed a military coup against the first President Ahmed Ben Bella on 19 June 1965, paving the way to President Houari Boumediene to exercise power in the name of the Revolutionary Council. He then abolished the 1963 Constitution and the decree of 10 July 1965 provided for the formation of a new government pending a new constitution, and thus the 1976 Constitution was promulgated and ratified in the referendum of 19 November 1976. In general, it was in the area of establishing principles calling for the protection of public rights and freedoms, a constitution that calls for the stability of institutions in the state, and the Algerian president considered a common document that unites people's unity with the great principles of the Republic, and consecrated human rights to make them social standards that guide human behaviour and provide that they remain inherent to each person, and consecrated the principle of equality and stated that the state must stand to ensure the protection of all rights and freedoms inherent to the status and being of the human being, with a focus on detailing regulation of their protection under local

and international laws. However, the practical exercise of these rights and freedoms has remained in the form of constitutional slogans, referring in the contents of their texts to the introduction of important reforms that culminate in the building of a state of institutions and law, but in practice they are subject to restrictions that fall short of the liberal concept that actually and realistically recognises constitutional justice that guarantees existence and practice.

The closure of the exercise of rights and freedoms enshrined in previous constitutions led to the outbreak of demonstrations, political events and riots in the Algerian street on 05 October 1988 under Algerian President Chadli Bendjedid, which left a catastrophic toll of dead and missing persons and flagrant violations of rights and freedoms. These facts were the first nucleus of the motives of the 1989 Constitution that removed the socialist orientation from the exercise of public rights and freedoms after it was redefined with some liberalism (Azzouz, 2008, 37).

The 1989 Constitution, ratified in the referendum of 23 February 1989, marked important changes in the regulation of rights and freedoms, especially in light of its orientation towards the adoption of

multiparty pluralism. This orientation was accompanied by the textual and practical enshrinement of many rights and freedoms, as it was confirmed in the field of exercising the freedom of the press guaranteed by Article 35 of the Constitution, and the legislative will was consistent with the constitutional enshrinement of this freedom through the promulgation of Law No. 90-07 of 03 April 1990 on information, which demonstrated the State's contribution to the promotion of press freedom by expanding the scope of exercise of the right to information. As a result of the liberalisation and pluralistic orientation of the Constitution, giving effect to the freedoms enshrined in its contents, Algeria initiated the promulgation of a law calling for the creation of associations of a political nature and another law ending the political monopoly of the National Liberation Front (FLN). Pursuant to these legal provisions that enshrine the implementation of multipartism, the Islamic Salvation Front, the Rally for Culture and Democracy, the Socialist Vanguard Party, the Islamic Liberation Front and the National Party for Solidarity and Development were created in 1989, in addition to the National Party for Solidarity and Development. The 1989 Constitution also established a

parliamentary system consisting of the National People's Assembly and recognised the right to private property and the independence of the judiciary as an important and prominent guarantee in the protection and promotion of rights and freedoms. (Dif, 1998, p. 154).

In the early 1990s, Algeria witnessed a deteriorating security and political situation as a result of the acts of violence and terrorist crimes that ravaged the country for ten years, which changed the de facto situation in the promotion of rights and freedoms, as several decrees and orders were issued imposing security measures that restricted fundamental rights and freedoms in order to control the deteriorating security situation and ensure the stability of the country. However, the issue of promoting and developing the protection of rights and freedoms remained stagnant in light of the inevitable security measures to face the new circumstances on the political front in particular, until the will of the constitutional founder appeared in 1996 by holding a referendum to amend the 1989 Constitution in order to resume the reform programme aimed at ensuring the protection of human rights, marking the beginning of a new Algeria in this field.

3. The second section: Enshrining the promotion of public rights and freedoms in Algeria: Realisation of a constitutional will with the values of the rule of Law

The date of the constitutional amendment referendum on 28 November 1996 coincided with the beginning of a new transitional phase from a state suffering from its political, security and social

conditions, suffocating and disdained locally and internationally as a state that does not know its rationality in promoting human rights and fundamental freedoms to a state open to reforms in all fields and fronts, internal, regional and international, then legal reforms extended to openness towards private individuals and attract foreign investment that reflects the improved security situation and the flexibility of domestic laws and their suitability for a foreign dealing atmosphere, until the constitutional founder accompanied this reform process with a constitutional amendment occurred in 2008, another amendment in 2016, and another again in 2020. To say the least, the constitutional will was present with values that call for ensuring the foundations of governance and building the state of law.

3.1 Evolution of the protection of public rights and freedoms in constitutional amendments between 1996 and 2016

In the amendment to the 1989 Algerian Constitution by the referendum of 28 November 1996, the constitutional founder expanded the scope of the protection of rights and freedoms in an attempt to highlight the role of the state in restoring the stability of society and to guarantee a certain level of respect for these rights and freedoms despite all the political and security crises that the country is going through. Thus, he recognises in Article 41 of the Constitution the freedom of the press and the establishment of associations with submission to censorship

in accordance with the law. This recognition has been well received, especially in the adoption of the written press. However, the prosecutions of media organisations and journalists after the 1996 constitutional referendum raised a debate about the restriction of the exercise of rights and freedoms in Algeria. This reflects part of the responsibility of the state to protect them and ensure their exercise (Marzouk, 2005, p. 23). This was the case of the freedoms enshrined in the constitutional amendment, especially the freedom of assembly and the establishment of political parties; Algeria has witnessed a great expansion in the establishment of associations and openness to the establishment of popular gatherings with multiple social, political, professional and functional purposes, as well as the emergence of many political parties. However, the judicial control exercised to implement the laws regulating them has become a reflection of the restrictions on public rights and freedoms in the country and affects the potential of the Algerian state to achieve good governance and reflects the relative inability of constitutional institutions to ensure the protection of citizens' rights and freedoms.

As a result of these criticisms and shortcomings, the Algerian constitution was amended in 2008 and 2016 without a

popular referendum. The most important thing that the constitutional founder achieved as a guarantee to establish the foundations of the rule of law from the front of protecting public rights and freedoms is more political and related to the establishment of participatory governance with the strengthening of the control of the constitutionality of laws as a means of control to ensure the protection of constitutional rights and freedoms. In 2008, a clear will emerged by the constitutional founder to enhance the political participation of women by guaranteeing their share in the lists of candidates for elected councils, while in 2016 this will emerged especially in the establishment of judicial control over constitutionality of laws in accordance with Article 188 of the Constitution and the provisions of Organic Law No. 18/16 of 02/09/2018, which defines the conditions and means of exercising unconstitutionality plea.

3.2 Ensuring the promotion and protection of public rights and freedoms in the 2020 constitutional amendment

The constitutional founder envisaged the creation of independent advisory and administrative institutions and bodies that are responsible for expressing their opinions on draft laws in order to further ensure respect for rights and freedoms (Lebad, 2011, p. 76). These institutions and administrative bodies are mainly represented by the National Human Rights Council, which is placed with the President of the Republic as the protector of the Constitution and specialises in preparing

reports that translate the practice of monitoring respect for human rights, in addition to the High Council for Youth, which is a legislative body that makes recommendations on youth affairs and concerns. In addition, The National Authority for the Prevention and Combating of Corruption was also established as an independent administrative body tasked with monitoring the management of public property and funds, and the Independent High Authority for Monitoring Elections was created to promote the legitimacy of elections and respect the right to vote freely.

The Algerian Constitution has taken an important note of the role of the lawyer in ensuring respect for rights and freedoms by stipulating in Article 170 that the performance and exercise of the legal profession is guaranteed freely, with the state guaranteeing the protection of lawyers from all forms of pressure during or in connection with the performance of their profession in order to ensure the defence of rights and freedoms without hindering the lawyer in this regard.

The 2020 constitutional amendment addressed important and fundamental

changes affecting many principles related to the guarantee and promotion of rights and freedoms to consolidate the foundations of the rule of law and embody the democracy of a new Algeria by opening up the role of civil society in sharing the management of public affairs, limiting electoral terms, and enshrining other principles related to the organisation of judicial work, such as the introduction of two-tier litigation in administrative matters by establishing an administrative court of appeal as a second instance instead of exercising the right of appeal before the former State Council, which burdens it and robs it of the quality of judgments and indirectly infringes on the rights of litigants, With the establishment of a Constitutional Court to replace the Constitutional Council in exercising control over the constitutionality of laws, ensuring the supremacy of the Constitution by investigating the extent to which legislative and regulatory work conforms to the Constitution, and ensuring legality through the authority granted to it by Article 171 of the Constitution to establish legal rules that bind the judge and the public administration to apply them, the fact which embodies a strong pillar in promoting and ensuring the protection of public rights and freedoms (Mahfoud, 2023, p. 138).

4. CONCLUSION

The constitutional protection of public rights and freedoms has been affected by the degree of stability of the political process and the security situation in the country. While the challenges were focused on the effects and remnants of French colonialism with the first Algerian constitution the security and political circumstances have been quickly complicated due to the military coup against the first Algerian president Ahmed Ben Bella. State institutions continued to explore ways of reforms aimed on the one hand to control the stability of the country and on the other to ensure an appropriate level of protection of rights and freedoms. In the years following the coup, Algeria witnessed justifiable restrictions until Algeria opened up to clear reforms, starting with the 1989 Constitution and subsequent amendments addressing the essence of constitutional justice, which defines the true concept of the foundations of building a rule of law and establishes the responsibilities of state institutions against violations of various rights and freedoms, ending with the 2020 constitutional amendment that created the Constitutional Court as a protector of the Constitution and a judicial body tasked with enforcing the requirements of legitimacy in the country.

The Constitutional Court remains a promising constitutional institution for further reforms that promote public rights and freedoms, especially from the oversight it can achieve through the force of law by providing compulsory consultations when it comes to rights and freedoms, and through its working system, which can be convened through the exercise of the plea before the ordinary or administrative courts to refer the request to address the constitutionality of laws before resuming consideration of the case file in which the unconstitutionality plea was raised, or the oversight jurisdiction can be convened through the legally defined notification processes to monitor the integrity and conformity of the legal text with the Constitution in light of any violation of rights and freedoms it may entail.

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