



Door 3

## THE ALGERIAN CONSTITUTIONAL COURT

Algeria's constitutional history shows that the process which led to the adoption of the form of the Constitutional Council went through many stages.

First, it was in 1963, following the elaboration of the country's first constitution, after independence that a Constitutional Council entrusted in accordance with articles 63 and 64 of the Constitution: "*with ruling on the constitutionality of legislative laws and ordinances*" was created. However, this Council was not put into place and it could not carry out its constitutional prerogatives due to the political situation which prevailed then.

The second stage was the constitution of November 26<sup>th</sup>, 1976. It does not refer explicitly to constitutional review although it stipulates in its article 186 "*political control vested in leading organs of the Party and the State shall be carried out in conformity with the national Charter and with the provisions of the Constitution*".

In the third stage, the idea of the creation of a constitutional review mechanism became the subject of political debate again. Indeed, in December 1983, the 5<sup>th</sup> NLF party Congress called "*for the creation of a supreme body under the authority of the President of the Republic, Secretary General of the party entrusted with ruling on the constitutionality of laws with a view to guarantee the respect of the supremacy of the Constitution, reinforcing the legitimacy and the sovereignty of law and fostering and enhancing accountable democracy in our country*". This recommendation was not constitutionalized.

In the fourth stage, the council was finally set up again on the occasion of the important constitutional revision of February 23<sup>rd</sup>, 1989 which in addition to the establishment of political pluralism, public freedoms and the adoption of the principle of separation of powers, created a Constitutional Council and granted it more important prerogatives than those of 1963, notably in the area of constitutional review and electoral disputes as well as consultative prerogatives in some particular circumstances.

The rebirth of the Constitutional Council, an important step in the process of achieving the rule of law, was followed by the constitutional revision of November 28<sup>th</sup>, 1996, which introduced other innovations. Indeed, it extends the prerogatives (jurisdiction) of the Constitutional Council to include mandatory control of organic laws before their promulgation and grants the power of referral to a new constitutional authority, the President of the Council of Nation, and raised the number of the Council members from seven to nine, later by the new constitutional revision of March 6<sup>th</sup> 2016, which increased the formation of the constitutional council into 12 members, also the power of referral which is guaranteed for the Prime Minister, fifty (50) members of the National People's Assembly, thirty(30) members of the Nation's Council, people also have the right of referral before a dispute in front of the Supreme Court or the State Council.

The last & recent stage is about the Constitutional Court, which is created by the 2020 constitutional revision established in November 1<sup>st</sup> 2021, replacing the Constitutional Council. It is composed of 12 members appointed or elected for a single six-year term, and is governed, among other matters, by articles 185 and 186 of the Constitution.

## I-BASIC TEXTS:

The Constitutional Court is governed by the Constitution of November 1<sup>st</sup>, 2020, which defines its membership, prerogatives, the authorities which may refer matters to it, as well as the effects of its decisions. Other texts complete the list of its jurisdiction and determine its rules. These are the organic law concerning the electoral system and the regulation setting out the rules of its functioning published in the Official Journal n° 04 of January 22<sup>nd</sup> 2023.

## II- ORGANIZATION OF THE CONSTITUTIONAL COURT

### 1- MEMBERSHIP:

Following the Constitutional revision of November 1<sup>st</sup>, 2020, the Constitutional Court is made up of twelve members. The President of the Republic appoints four members, one member is elected by the Supreme Court, one other by the Council of the State, six are elected among & by constitutional law professors within general secret ballots.

The President of the Constitutional Court is appointed for a single mandate of six years. He must fulfil the conditions stipulated in article 87 of the constitution (*conditions required for the President of the Republic candidacy*), except the age condition which is set for 50 years old. Other members are elected or appointed for a single mandate of six years. However, half of the membership is renewed every three years.

Certain provisions of the Constitution guarantee the independence and impartiality of members of the Constitutional Court. Thus, the term of office for the members of the Court set at six years is non-renewable and their functions are incompatible with those of a member of Parliament of Government or any other public or private activity. They must be 50 years old at the date of their election or appointment. The affiliation of any member of the Constitutional Court to a political party is unlawful. The interruption of a member's mandate (term of office) may occur following his death, resignation, or lasting impediment. Moreover, members dare under an obligation of restraint, which prohibits them from adopting any public position on questions concerning the deliberations of the Constitutional Court. The elected members must have at least 20 years' experience as a law professor. All members of the Court including the President must swear before the First President of the Supreme Court as the following:

"I swear to Allah the Great to exercise my functions impartially, to preserve the confidentiality of the deliberations and to refrain from taking a public position in any case under the jurisdiction of the Constitutional Court"

"أقسم بالله العظيم أن أمارس وظائفى بنزاهة وحياد. وأحفظ سرية المداولات وامتنع عن اتخاذ موقف علي في أي قضية تخضع لاختصاص المحكمة الدستورية"

Members of the Constitutional Court shall enjoy immunity for their acts while they perform their duties, for that they shall not be subject to any legal prosecution for acts not falling within the scope of their duties only after explicit waiver of the concern's immunity or by authorization of the Constitutional Court, as stipulated by the article 189 of the Constitution.

### 2- ATTRIBUTIONS

The Constitutional Court is an independent institution responsible for ensuring respect for the Constitution. It is the regulator of the institutions functioning and the public authorities' activities.

The Constitutional Court may be referred by the concerned referral authorities for the purpose of deciding whether or not to lift immunity.

The Constitutional Court is entitled to many prerogatives such as: the constitutionality review of treaties, laws and regulations. It may be referred about the constitutionality of treaties before ratification and of laws before promulgation, also on ordinances. It may also be

referred about the constitutionality of regulations within one month from the date of their publication.

The Constitutional Court must be referred by the President of the Republic on the conformity of organic laws with the Constitution after their adoption by the Parliament and before their promulgation. It shall **rule** by a decision on the whole text. It shall also rule by the same form on the conformity of internal regulations of each of the two Houses of Parliament

The Constitutional Court examines appeals concerning **the preliminary results** of the presidential elections, legislative elections and referendums then proclaims the final results.

### 3- THE POWER OF REFERRAL:

The constitutional Court may be referred by the President of the Republic, the President of the Council of the Nation, the President of the National People's Assembly & the Prime Minister or the Head of Government, as the case may be. It may also be referred by forty (40) deputies or twenty-five (25) members of the Council of the Nation.

The Constitutional Court may be referred of **an exception of unconstitutionality** on reference from the Supreme Court or the Council of State, where one of the parties to **the trial** submits before a court that the legislative or regulatory provision on which the outcome of **the dispute** depends **infringes** its rights and freedoms as guaranteed by the Constitution.

Where the Constitutional Court is referred on the basis of the above, its decision shall be **rendered** within four (4) months of the date of referral. This period may be extended only once by a maximum of four (4) months on a reasoned decision of the Court notified to the referring court.

### 4- ORGANIZATIONAL STRUCTURE

The organizational structure of the Constitutional Court is fixed by the presidential decree n° 22-93 of March 8<sup>th</sup> 2022, on the rules relating to its organization. it is **endowed** with the following structures and organs:

- An office (Cabinet);
- A general secretariat;
- A general directorate for Legal Affairs and constitutional justice;
- A research and documentation directorate;
- A computer systems and tele-communication techniques;
- A resource administration directorate;
- **A registry service.**

## III- JURISDICTION

The Constitutional Court has many competences. It carries out review of the constitutionality and compatibility of certain legal texts with the Constitution. It also rules on the legality of referendums, the election of the President of the Republic and parliamentary elections, as well as having other competences in certain exceptional situations.

### 1- REVIEW OF LEGAL TEXTS

The Constitutional Court rules, on an optional basis, on the constitutionality of treaties, laws and regulations, and on a **compulsory basis**, on the compatibility of organic laws and internal regulations of both houses of Parliament with the Constitution. The Constitutional Court delivers decisions in the first case and opinions in the second.

Decisions of the Constitutional Court shall be taken by a majority of the members present, in the event of an equality of votes; **the session's chairman** shall have **the casting vote**. Decisions on the review of organic laws are taken by an absolute majority of the members; this is so called *the Rule of Quorum* ROQ.

### 2- JURISDICTION OVER ELECTORAL MATTERS

The Constitutional Court rules on the legality of referendums, elections for President of the Republic, including the ruling for the candidacy and parliamentary elections.

The control of legality of major national political consultations includes the examination of **appeals** made under the conditions and in accordance with the procedures set out in the electoral law and the control of **campaign accounts**.

### 3- JURISDICTION OVER OTHER MATTERS

The Constitutional Court is consulted by the President of the Republic prior to a declaration of a state of exception and prior to the conclusion of armistice agreements and peace treaties. At the end of the term of the state of exception, the President of the Republic submits the acts taken during this period to the Constitutional Court for an opinion.

The President of the Constitutional Court is consulted by the President of the Republic in case of a declaration of a state of emergency or state of siege, and moreover in the case of proclamation of war, as stipulated by the constitution. The Court's opinion is also required in the case of a Constitutional revision.

In the event of the resignation or death of the President of the Republic and the vacancy of the Presidency of the Council of the Nation, for whatever reason, the Constitutional Court meets as of right and finds by a three-quarter majority (3/4) the final vacancy of the Presidency of the Republic and the incapacity of the President of the Council of the Nation. In this case, the President of the Constitutional Court assumes the office of Head of State under the conditions in article 96 of the Constitution. He cannot be a candidate for the Presidency of the Republic.

### IV- NATURE AND EFFECTS OF DECISION

The Constitutional Court rules on the constitutionality of treaties, laws and regulations, either by way of an opinion, in event that they not yet in force, or by a decision if they are in force.

When the Constitutional Court declares a treaty, agreement or convention to be unconstitutional, its ratification cannot take place. When it declares a legislative or regulatory provision or ordinance to be unconstitutional, that provision ceases to have effect as of the day of the Court's decision.

No appeal lies from the decisions of the Constitutional Court. These are final decisions, and they are binding on the public authorities.

#### ⊕ QUESTIONS:

- TRANSLATE THE UNDERLINED TERMS INTO ARABIC.
- GIVE AN ABSTRACT (IN ARABIC) TO THE TOPIC.