

## The Role of the Constitutional Court in Presidential Elections

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### Abstract:

The constitutional amendment of 2020 introduced, for the first time, a Constitutional Court within Chapter One of Part Four entitled “Oversight Institutions,” and stipulated that it is an independent institution entrusted with ensuring respect for the Constitution. It was assigned several powers, including competencies in the field of presidential elections, which constitutes the objective of this study. This is done by shedding light on its competencies in this field in order to guarantee and respect rights and freedoms. One of the most important results of this research is that both the Constitution and the Organic Law on the Electoral System of 2021 entrusted the Constitutional Court with a set of guarantees, whether related to the organic or functional aspect, to enable it to perform its competencies impartially and effectively in the field of presidential elections.

**Keywords:** Constitutional Court, membership, presidential elections, announcement of results, appeal.

### Introduction

Through the various successive constitutions, the constitutional founder in Algeria has sought to establish the foundations of a political system based on democratic principles and enshrining the values of justice, freedom, and equality. This is clearly evident through the adoption of the electoral system as one of the necessary mechanisms for forming the various authorities and assuming power, as presidential elections represent one of the effective tools for embodying the principles of genuine democracy and establishing a political system that enshrines the values of justice and equality and guarantees various individual and collective rights through the peaceful and democratic alternation of power by means of free, fair, and transparent elections.<sup>1</sup>

The citizen's right to participate in the management of public affairs of the state through free and fair elections has become one of the fundamental pillars leading to the establishment of a democratic system, and an effective tool for the people to express their will in choosing and changing their rulers. Elections constitute one of the manifestations of the democratic system, as there is no democracy without elections and peaceful alternation of power<sup>2</sup>. However, this system cannot be achieved except through the existence of one of its basic pillars, namely the participation of the people with full freedom and democracy in these elections and the provision of the necessary mechanisms to ensure their integrity. For this purpose, the constitutional founder in Algeria subjected presidential elections to several forms of oversight, including constitutional oversight exercised by the Constitutional Court<sup>3</sup>.

To ensure the effectiveness of the Constitutional Court's performance, it is necessary that the Constitution guarantees it complete independence from any authorities or other bodies in the exercise of its powers. This independence grants the Court stability and full freedom, which contributes to enabling it to carry out its duties in the most efficient and accurate manner. In addition, it is important that the members of the Court enjoy sufficient independence to feel confidence and security while performing their duties. To achieve this goal, the legislative authority must take into

account a set of standards and guarantees related to the establishment of the Court and the scope of its powers, in order to ensure its independence and efficiency<sup>4</sup>.

This study aims to identify the importance of the Constitutional Court and its role in overseeing presidential elections, given that it was introduced for the first time by the constitutional amendment of 2020, and that the Organic Law on the Electoral System of 2021 addressed this role and brought new elements in this regard, all in an effort to ensure respect for the principle of the supremacy of the Constitution, protect rights and freedoms, and build a state governed by the rule of law. In light of the foregoing, the research problem can be formulated as follows: What is the role of the Constitutional Court in the field of presidential elections?

In order to answer this question, we deemed it appropriate to apply the analytical method by examining the provisions of the constitutional amendment of 2020 and the provisions of Order No. 21-01 containing the Organic Law on the Electoral System, through analysis and scrutiny, in order to derive the actual role of the Constitutional Court in overseeing presidential elections.

This research is divided into two parts. The first part addresses membership in the Constitutional Court by explaining its composition through addressing the number of its members and the method of their selection, the conditions required of them with mention

of cases of incompatibility, then dealing with the term of office in the Constitutional Court and the issue of renewing its members and their enjoyment of immunity. The second part is devoted to studying the competencies of the Constitutional Court at the various stages of presidential elections, including its role during the candidacy phase, whether in examining appeals regarding the validity of candidacy or its role in the event of a candidate's withdrawal from the presidential elections, or in the event of death or the occurrence of a serious impediment. It also addresses its role in adjudicating appeals it receives regarding provisional results, announcing final results, and adjudicating appeals against the decisions of the Committee for Monitoring the Financing of the Electoral Campaign.

### **First: Membership in the Constitutional Court**

A set of conditions must be met by the members of the Constitutional Court in order to enable it to perform its oversight role over presidential elections with full integrity and independence. This is what the Algerian constitutional founder has adopted, as it consists of twelve members, four of whom are appointed by the President of the Republic, while the remainder are elected by the body to which they belong. It also required that they meet conditions that collectively constitute a guarantee of its independence, and prohibited them from continuing to exercise their functions, tasks, activities, or professions once

they assume their duties as members of the Constitutional Court, in order to select the best competencies to perform their tasks with neutrality and integrity. The period of service of the members of the Constitutional Court should be determined in a manner that ensures their effective performance of their functions, with a periodic renewal of half of the members to introduce new individuals who contribute their skills and legal knowledge, particularly in the constitutional field. In order to ensure that they perform their duties without being affected by any external interference and to preserve the independence of the Constitutional Court, the constitutional founder granted them immunity against judicial prosecution related to their acts. A member of the Court may not be held judicially accountable for acts outside the scope of his duties, unless he expressly waives his immunity or with direct authorization from the Constitutional Court itself.

### **1. Composition of the Constitutional Court**

The Constitutional Court is composed of twelve members, some of whom are selected by appointment and others by election, all of whom are subject to conditions specified by law. Once elected or appointed, the members of the Constitutional Court cease to exercise any membership, function, assignment, mission, any other activity, or any liberal profession.

### **1.1. Number of Members of the Constitutional Court**

The Constitutional Court consists of twelve members:<sup>5</sup>

- Four members appointed by the President of the Republic, including the President of the Court;
- One member elected by the Supreme Court from among its members, and one member elected by the Council of State from among its members;
- Six members elected by ballot from among professors of constitutional law, with the President of the Republic determining the conditions and modalities for electing these members. In this regard, Presidential Decree No. 21-304 was issued, which specifies the conditions and modalities for the election of professors of constitutional law as members of the Constitutional Court<sup>6</sup>.

The constitutional founder combined the methods of appointment and election in the composition of the Constitutional Court, with the aim of avoiding all pressures that may result from the executive authority in the case of relying solely on appointment, and political pressures that may affect elected members in the case of relying solely on election<sup>7</sup>. However, it is evident from the foregoing that the executive authority,

represented by the President of the Republic, dominates in terms of the number of its representatives within the Court, as they are appointed by the President of the Republic without being elected like the rest of the members, which makes them subordinate to the President and may affect their neutrality and independence<sup>8</sup>.

It is also noted from this composition that members of Parliament are excluded from the composition of the Constitutional Court, perhaps due to the affiliation of most of them with a political party, so that they may not be biased toward their party, especially when adjudicating electoral appeals, most of whose parties are political parties<sup>9</sup>. This enhances the independence of the Constitutional Court. However, the appointment of the President of the Constitutional Court by the President of the Republic instead of his election by its members hinders this independence, especially since the President has the casting vote in the event of a tie. Accordingly, it would have been more appropriate to leave his selection to election by all members of the Court, in order to achieve real independence for the Constitutional Court and its members and enable them to perform their duties with full freedom and credibility<sup>10</sup>.

The legislator could also have maintained the number of judges representing the Supreme Court at two, and those representing the Council of State at two as well, given their experience in the field of law and procedures, in addition to the great importance of their presence in shaping the concept of oversight due to their training and knowledge that are compatible with the tasks related to constitutional disputes<sup>11</sup>.

## **1.2. Conditions of Membership in the Constitutional Court and Cases of Incompatibility**

Members of the Constitutional Court must meet specific conditions stipulated in the Constitution for all its members, and conditions contained in Presidential Decree No. 21-304 with respect to the election of professors of constitutional law as members, and the Constitution also clarified cases that are incompatible with membership in the Constitutional Court.

### **1.2.1. Conditions of Membership in the Constitutional Court**

Certain conditions are required to assume membership in the Constitutional Court, which differ between those prescribed for its members and those required of its President.

#### **A. With regard to members**

It is required that the elected or appointed member of the Constitutional Court meet the following conditions:<sup>12</sup>

- He must be at least fifty years of age;
- He must have legal experience of at least twenty years, including specialized study in constitutional law;
- He must enjoy full civil and political rights and must not have been convicted of any penalty restricting his freedom;
- He must not be affiliated with any party activity, and Presidential Decree No. 21-304 specified, in the last part of Article 9, a condition stipulating that the member must not have joined any political party for a period of at least three years prior to election. These conditions collectively constitute a guarantee for the Constitutional Court to perform the competencies entrusted to it effectively. The age of fifty represents maturity and prudence, and the requirement of at least twenty years of experience in law with training in constitutional law ensures the selection of highly qualified members to perform their tasks in the best possible manner. The absence of party affiliation constitutes a guarantee of their neutrality and independence from any party whatsoever, all with the aim of distancing the members of the Constitutional Court from anything that may threaten their independence.

#### **B. With regard to the President**

The President of the Republic appoints the President of the Constitutional Court, provided that he meets the conditions stipulated in Article 187(1) of the Constitution mentioned above, that is, the same conditions required of all members of the Constitutional Court, in addition to the conditions required of a candidate for the office of President of the Republic stipulated in Article 87 of the Constitution, with the exception of the age requirement<sup>13</sup>. Accordingly, the conditions required of the President of the Constitutional Court in general are as follows:

- He must be fifty years of age on the day of appointment;
- He must have at least twenty years of experience in the field of law, in addition to having received special training in constitutional law;
- He must enjoy full civil and political rights and must not have been sentenced to imprisonment;
- He must be independent of any party activities for a period of not less than three years prior to appointment;
- He must hold Algerian nationality by origin and must prove that his parents also hold Algerian nationality by origin;
- He must not hold any other nationality;
- He must be Muslim;
- He must enjoy full civil and political rights;
- He must prove that his spouse holds only Algerian nationality by origin;
- He must prove permanent residence in Algeria alone for a period of not less than ten years prior to appointment;
- If he was born before July 1942, he must prove his participation in the Revolution of 1 November 1954;
- He must prove that he has performed national service or provide a legal justification for not performing it;
- He must prove that his parents did not participate in any activities against the Revolution of 1 November 1954 if he was born after July 1942;
- He must submit a public declaration of all his movable and immovable property inside and outside the country. The objective of requiring the President of the Constitutional Court to meet the conditions required of a candidate for the office of President of the Republic is to give importance to this position as the third highest position in the Algerian state, so that he is qualified to assume the position of Head of State in the event of a dual vacancy of the offices of President of the Republic and President of the Council of the Nation<sup>14</sup>.

### **1.2.2. Cases of Incompatibility with Membership in the Constitutional Court**

Once the members of the Constitutional Court are elected or appointed, they cease to exercise

any membership, any function, assignment, or mission, or any other activity or liberal profession<sup>15</sup>.

It can be said that several cases of incompatibility with membership in the Constitutional Court have been determined. Accordingly, a member who is appointed or elected ceases to practice his previous activity, whether he was appointed by the President of the Republic, or was a judge at the Supreme Court or the Council of State, or was a university professor, throughout the duration of his membership in the Constitutional Court, in order to devote himself to performing his new mission with full neutrality, away from anything that may affect the credibility and independence of this constitutional institution.<sup>16</sup>

The rationale behind establishing cases of incompatibility also lies in avoiding temptations and conflicts of interest for members of the Constitutional Court, and in ensuring that their efforts are focused on their duties and that they are not driven by their personal professional, functional, or economic ambitions<sup>17</sup>.

## **2. Term of Membership in the Constitutional Court and the Immunity Granted to Its Members**

The President of the Constitutional Court is appointed for a single term of six years, and its members perform their duties for a single term of six years, with half of them being renewed every three years. During this period, the

members of the Constitutional Court enjoy immunity for acts related to the exercise of their duties.

### **2.1. Term of Membership in the Constitutional Court**

The President of the Republic appoints the President of the Constitutional Court for a single term of six years, and the members of the Constitutional Court perform their duties for a single term of six years, with half of their number renewed every three years.<sup>18</sup>

The principle of non-renewal aims to strengthen the independence of members vis-à-vis the bodies that selected them, in order to avoid any attempt at pressure or inducement related to renewal. Non-renewal of the members' term frees them from dependency on the appointing or electing authority, as they do not seek to please it in their actions for the purpose of renewal. This is considered a fundamental guarantee of the desired independence, making the decisions of the Constitutional Court impartial and free from any dictates or pressures, especially in the field of presidential elections.<sup>19</sup>

The principle of periodic renewal of half of the members of the Constitutional Court is considered an important mechanism to ensure continuity and to introduce new, competent elements that may contribute to enhancing the effectiveness of the Court's oversight work<sup>20</sup>. The objective of this renewal, as perceived by the constitutional founder, is to preserve the renewal of ideas and the exchange of expertise

between new and former members, in addition to ensuring the independence of members from the bodies that selected or appointed them. It also aims to prevent favoritism and susceptibility to any external pressures, thereby enhancing members' sense of security and self-confidence. This confidence encourages them to adhere to the principles of neutrality and integrity, thus contributing to the consolidation of the independence of the Constitutional Court<sup>21</sup>.

Before assuming their duties, the members of the Constitutional Court take an oath before the First President of the Supreme Court, according to the following text:<sup>22</sup>

"I swear by Almighty God to perform my duties with integrity and neutrality, to preserve the confidentiality of deliberations, and to refrain from taking any public position on any matter falling within the jurisdiction of the Constitutional Court."

Through the text of the oath, the constitutional founder emphasized integrity, neutrality, the preservation of professional secrecy, and non-bias. The taking of the oath by the members of the Constitutional Court before assuming their duties enhances their sense of the weight and importance of the trust placed upon them. Taking the oath before the First President of the Supreme Court, instead of before the President of the Republic, ensures the independence of the Constitutional Court from the executive authority and restores the prestige of the judicial authority represented by

the President of the Supreme Court, the highest body in the judicial hierarchy, which has priority in receiving the legal oath, as it is the constitutionally established body for the protection of citizens' rights and freedoms.

## **2.2. Immunity Granted to Members of the Constitutional Court**

The immunity of the members of the Constitutional Court must be guaranteed. This includes freeing its members, whether they perform their work individually or collectively, from pressures and external influences. In this context, the Algerian constitutional founder emphasized immunity as a means of protecting members of the Constitutional Court against all types of threats that could affect their membership and rights. To protect them from the possibility of exploitation by the body that appointed or elected them<sup>23</sup>. Article 189 of the Constitution stipulates: "Members of the Constitutional Court enjoy immunity for acts related to the exercise of their duties. A member of the Constitutional Court may not be subject to judicial prosecution for acts unrelated to the exercise of his duties except with his explicit waiver of immunity or with authorization from the Constitutional Court." Immunity also constitutes one of the fundamental guarantees for members of the Constitutional Court, as it ensures their protection against criminal prosecution during their constitutional service. This legal protection grants members of the Court a



degree of freedom in performing their duties. No member of the Constitutional Court may be prosecuted or arrested unless the Court lifts his immunity or the member explicitly declares a waiver thereof<sup>24</sup>.

This guarantee, by virtue of which a member of the Constitutional Court, including its President, may not be subject to judicial prosecution except after an explicit waiver or the lifting of immunity, should not serve as a shield against accountability for acts that affect the prestige and high standing of the Court. Rather, the purpose of immunity should remain to secure the work of the Constitutional Court from attempts to influence its members<sup>25</sup>.

## **Second: The Competencies of the Constitutional Court in Presidential Elections**

The Constitutional Court intervenes in the field of presidential elections at various stages as a guarantee of their integrity and for the protection of rights and freedoms. It adjudicates appeals related to candidates' files rejected by the National Independent Authority for Elections<sup>26</sup>, verifies the existence of a serious impediment affecting a candidate whose candidacy file has been accepted, thus allowing him to withdraw his file, and declares the rerun or postponement of elections when the conditions for resorting to these two cases are met. The Constitutional Court also issues a declaration regarding the results of the first round of elections and determines, if necessary, the persons qualified to contest the

second round. It adjudicates any appeals submitted to it concerning the provisional results of the presidential elections and announces the final official results. In addition, the Court adjudicates complaints related to the decisions of the Committee for Monitoring the Financing of the Electoral Campaign.

### **1. Competencies of the Constitutional Court during the Candidacy Phase**

During the candidacy phase for presidential elections, the Constitutional Court is competent to adjudicate appeals filed by candidates whose applications have been rejected. It also approves, by decision, the final list of candidates for the election of the President of the Republic. In this case, a candidacy that has been accepted may not be cancelled unless there is a serious impediment facing the candidate, which must be confirmed by the Constitutional Court. In addition, the Court assumes responsibility for declaring the rerun of all electoral stages or postponing them under special circumstances.

#### **1.1. Approval of the Final List of Candidates**

The declaration of candidacy is submitted within a period not exceeding forty days following the publication of the presidential decree calling the electorate. The candidacy file is submitted personally by the candidate to the President of the National Independent Authority for Elections, and a receipt for submission of the file is delivered. One or more

rapporteurs are then appointed by the National Independent Authority for Elections to investigate and examine the file and prepare a detailed report on the candidacy file for the purpose of deciding on it.

The National Independent Authority for Elections decides on the legality of applications for candidacy for the Presidency of the Republic by issuing a reasoned decision based on legal grounds, within a period not exceeding seven days from the submission of the application. The candidate is notified of the decision immediately after its issuance. If the candidacy is rejected, the candidate himself or his legal representative has the right to submit an appeal against the decision before the Constitutional Court within a period not exceeding forty-eight hours from the receipt of the decision<sup>27</sup>. The Independent Authority sends its decisions related to candidacies, accompanied by the candidacy files, to the Constitutional Court within a maximum period of twenty-four hours from the date of their issuance. These are deposited with the General Secretariat of the Constitutional Court against a receipt of submission<sup>28</sup>. The Constitutional Court then approves, by decision, the final list of candidates for the election of the President of the Republic, including adjudication of appeals, within a period not exceeding seven days from the date of sending the last decision of the Independent Authority, arranged alphabetically by surnames<sup>29</sup>. It should be noted that if the Constitutional Court accepts

the appeal, it registers the appellant candidate on the final list of candidates for the election of the President of the Republic<sup>30</sup>.

The National Independent Authority for Elections is thus the body responsible for receiving candidacy files for presidential elections, while the Constitutional Court is considered the body of appeal for those whose files have been rejected<sup>31</sup>. That is, the submission of the candidacy file for the position of President of the Republic, the examination of its validity, and the subsequent acceptance or rejection fall within the competence of the National Independent Authority for Elections and not within the competence of the Constitutional Court. This ensures the integrity and transparency of the elections.

## **1.2. Competencies of the Constitutional Court in the Event of Death or the Occurrence of a Serious Impediment to a Candidate**

After the approval of presidential election candidacies by the Constitutional Court, a candidacy may not be cancelled unless the Court confirms the existence of a serious impediment affecting the candidate or in the event of his death, in accordance with Article 95(1) of the Constitution. In this case, a new deadline is granted for the submission of new candidacies, provided that it does not exceed the month preceding the election date. If the death of a candidate or the appearance of an impediment occurs after the approval of

candidacies and their official announcement, the election date is postponed for a period not exceeding fifteen days<sup>32</sup>.

In the event of a candidate's withdrawal, the incumbent President of the Republic or the acting Head of State remains in office until the newly elected President takes the oath. If a candidate withdraws from the second round, the electoral process continues without taking this withdrawal into account. In the event of the death of a second-round candidate or his exposure to a legal impediment, the Constitutional Court declares the necessity of repeating all stages of the election anew, with the extension of deadlines for organizing the new elections for a period not exceeding sixty days. In these cases, the incumbent President of the Republic or the acting Head of State remains in office until the new President takes the constitutional oath<sup>33</sup>.

What must be noted is that whether the withdrawal or death of a candidate occurs under the aforementioned conditions, the position of President of the Republic does not remain vacant. Rather, the incumbent President of the Republic or the acting Head of State continues in office until the official transfer of power to the new President, thereby ensuring continuity of the position of Head of State in accordance with Article 94 of the Constitution.

## **2. Competencies of the Constitutional Court in Adjudicating Appeals and**

### **Announcing the Results of Presidential Elections**

The Constitutional Court is competent to adjudicate appeals submitted to it against the provisional results of the presidential elections announced by the President of the National Independent Authority for Elections. After adjudicating these appeals, if any, the Constitutional Court announces the final results of the first round and determines, where appropriate, the candidates invited to participate in the second round. It is also competent to adjudicate appeals against the decisions of the Committee for Monitoring the Financing of the Electoral Campaign.

#### **2.1. Adjudication of Appeals against the Provisional Results of Presidential Elections**

Each candidate or his agent vested with legal authority has the right to submit an appeal against the validity of the voting process by recording his objection in the counting register at the polling station. The National Independent Authority for Elections is immediately notified of the objection to take the appropriate decision<sup>34</sup>. The candidate or his legal agent is also granted authorization to monitor all stages of voting, vote counting, and tallying in all halls where these operations take place<sup>35</sup>.

The results of the presidential elections at each polling station are recorded in an official report prepared in three original copies. The National Independent Authority for Elections

announces the provisional results of the presidential elections within a period not exceeding seventy-two hours from its receipt of the reports of the provincial electoral committees and the electoral committee for residents abroad<sup>36</sup>. Under the supervision of the National Independent Authority for Elections, all stages of recording and announcing the results of the election of the President of the Republic are carried out, providing a guarantee for protecting the electoral process from potential violations. Appeals related to the provisional results must be submitted to the registry of the Constitutional Court within a period not exceeding forty-eight hours after the announcement of the provisional results. Thereafter, the Constitutional Court notifies the candidate declared the winner against whom the appeal has been lodged, in order to submit his written defense within a period not exceeding seventy-two hours from notification. The Constitutional Court adjudicates the appeals within three days, and if it finds the appeals justified<sup>37</sup>, it redraws the amended result reports by a reasoned decision. It is important to note that the constitutional founder could have granted candidates the right to litigate against the decision of the Independent Authority for Elections announcing the provisional results before the judiciary, represented by the Council of State, prior to resorting to appeal before the Constitutional Court, thus granting an

additional opportunity for objecting candidates to demand a review of the validity of these results.

## **2.2. Announcement by the Constitutional Court of the Results of Presidential Elections**

After examining any objections submitted against the provisional results of the presidential elections, the Constitutional Court announces the results of the first round and determines, where necessary, the candidates qualified to contest the second round<sup>38</sup>. The date of the second round is set to be fifteen days after the announcement of the results of the first round, provided that the time period between the two rounds does not exceed thirty days<sup>39</sup>.

The Constitutional Court announces the final results of the presidential elections within ten days from its receipt of the records from the President of the National Independent Authority for Elections.<sup>40</sup>

It is important to note that the decisions of the Constitutional Court are taken by a majority of the votes of the members present, and in the event of a tie, the President's vote is decisive<sup>41</sup>. These decisions are final and binding on all public, administrative, and judicial authorities<sup>42</sup>.

Accordingly, the decisions of the Constitutional Court, especially those related to elections, are absolutely authoritative, final, and immediately enforceable, and are not subject to any form of appeal before ordinary

or administrative justice. Thus, they become binding on all bodies and authorities in the State, whether executive, legislative, or judicial<sup>43</sup>.

### **2.3. Adjudication by the Constitutional Court of Appeals against the Decisions of the Committee for Monitoring the Financing of the Electoral Campaign**

The electoral campaign represents the legal means used by candidates to present their electoral programs to voters with the aim of gaining their support and votes. Given the great importance of electoral campaigns in the electoral process as a whole, the Organic Law on the Electoral System has imposed a set of rules and standards to ensure their integrity<sup>44</sup> and to monitor their accounts. Candidates must submit their electoral campaign accounts to the committee concerned with monitoring the financing of electoral campaigns, established within the National Independent Authority for Elections<sup>45</sup>, within two months from the announcement of the final results of the elections. Upon the expiry of this period, candidates or lists will not be able to benefit from any reimbursement of their electoral campaign expenses<sup>46</sup>.

The Committee for Monitoring the Financing of the Electoral Campaign evaluates the validity and legality of the transactions recorded in the campaign account. Within a period of six months, the committee issues a decision confirming the validity of the account,

amending it, or rejecting it. After the expiry of this period, the account is deemed approved<sup>47</sup>. Decisions of the committee may be appealed before the Constitutional Court within a period of one month from the date of notification thereof<sup>48</sup>.

Previously, the Constitutional Council was the body authorized to review electoral campaign accounts without the possibility of appealing its decisions. It is now possible for candidates to appeal the decisions of the National Independent Authority for Elections before the Constitutional Court, which has also been entrusted with adjudicating such cases. This constitutes a positive step that enhances the transparency and credibility of the electoral process and contributes to reducing potential corruption.

The oversight exercised by the Constitutional Court over candidates' electoral campaign accounts seeks to support genuine democracy and ensure the integrity of elections. This process mainly concerns the regulation and monitoring of the financing of political parties and their electoral campaigns within a legal framework aimed at preventing the monopolization of political activity by a particular group through the alliance of money, media, and political parties. This preserves the essence of democracy and ensures equality in serving the nation by enhancing effective popular participation in the political process<sup>49</sup>.

### **Conclusion**

Through the study of the topic *The Role of the Constitutional Court in Presidential Elections*, we have arrived at a set of findings, which can be summarized as follows:

- The members of the Constitutional Court are selected through a combination of appointment and election, with its President being appointed by the President of the Republic.
- A set of conditions is required for membership in the Constitutional Court, ensuring that it performs its functions effectively, particularly the oversight of presidential elections.
- With regard to the President of the Constitutional Court, the same conditions required of candidates for presidential elections are stipulated, except for the age requirement, which is legally justified given that the President of the Court assumes the presidency of the State when necessary.
- The determination of situations incompatible with membership in the Constitutional Court enhances the neutrality and independence of its members in their role as overseers of presidential elections.
- The non-renewability of the term of office of the members of the Constitutional Court, including that of its President, in their capacity as overseers of presidential elections, constitutes a guarantee of their independence vis-à-vis the authorities that selected them.
- The establishment of the principle of immunity for members of the Constitutional Court, which has competencies in the field of presidential elections, places them beyond the reach of frivolous or unfounded prosecutions.
- The Constitutional Court rules on appeals submitted by candidates against decisions rejecting their candidacy files and announces the final list of candidates; it also determines, where appropriate, the occurrence of a serious impediment affecting a candidate whose file was accepted, and declares the obligation to restart all electoral operations in the event of the death of one of the candidates for the second round or their being subject to a legal impediment.
- The Constitutional Court announces the results of the first round and, where appropriate, designates the candidates for the second round, and examines appeals concerning the provisional results of presidential elections.
- The Constitutional Court rules on appeals lodged against decisions of the Commission for Monitoring the Financing of Electoral Campaigns,

thereby enhancing the integrity and credibility of presidential elections.

In order to remedy the shortcomings affecting the Constitutional Court in its role as an overseer of presidential elections, we propose the following:

- The selection of the President of the Constitutional Court from among its members through election by its members.
- Increasing the number of judges within the composition of the Constitutional Court, given their experience and

training in the legal and procedural fields.

- Extending the term of office of members of the Constitutional Court to nine years, non-renewable
- Allowing appeals against decisions of the National Independent Authority for Elections rejecting presidential candidacies or relating to the provisional results of elections to be brought before the judiciary prior to recourse to the Constitutional Court.

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<sup>5</sup> **Article 186 (1)** of the 2020 Constitutional Amendment, issued in the Official Gazette No. 82 dated 30 December 2020.

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<sup>12</sup> **Article 187 (1)** of the 2020 Constitutional Amendment.

<sup>13</sup> **Article 188 (1)** of the 2020 Constitutional Amendment.

<sup>14</sup> **Abdel Fattah Qashti Nabila**, *The Powers of the Constitutional Court: A Comparative Study between Egypt and Algeria*, Journal of the Constitutional Court, No. 01, June 2022, p. 65.

<sup>15</sup> **Article 187 (2)** of the 2020 Constitutional Amendment.

<sup>16</sup> **Gharbi Ahsan**, *A Reading of the Composition of the Constitutional Court in Light of the 2020 Constitutional*

*Amendment*, Journal of Legal and Social Sciences, No. 04, December 2020, p. 576.

<sup>17</sup> **Onissi Linda**, previously cited reference, p. 41.

<sup>18</sup> **Article 188 (1) and (2)** of the 2020 Constitutional Amendment.

<sup>19</sup> **Ben Ziane Ahmed**, previously cited reference, p.

<sup>20</sup> **Al-Majdoub Mohamed**, *Constitutional Law and the Political System in Lebanon and the Most Important Constitutional and Political Systems in the World*, Al-Halabi Legal Publications, Beirut, 2002, p. 471.

<sup>21</sup> **Jmam Aziz**, previously cited reference, p. 45

<sup>22</sup> **Article 186(2)** of the 2020 **Constitutional Amendment**.

<sup>23</sup> **Atouta Samira**, *Judicial Review of the Constitutionality of Laws in Algeria: From the Constitutional Council to the Constitutional Court*, PhD thesis in Public Law, Faculty of Law and Political Science, Mohamed El Bachir El Ibrahimi University, Bordj Bou Arreridj, 2021, p. 235.

<sup>24</sup> **Moulay Brahim Abdelhakim, Al-Ra'ï Al-Eid**, *The Constitutional Court in Light of the Algerian Constitutional Amendment of 2020*, Ijtihad Journal for Legal and Economic Studies, Vol. 10, No. 03, 2021, p. 821.



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<sup>25</sup> **Al-Bahri Hassan Mustafa**, *Constitutional Judiciary: A Comparative Study*, Damascus, 2017, p. 137.

<sup>26</sup> **Article 246 of Order No. 21-01** dated 10 March 2021 containing the Organic Law on the Electoral System, Official Gazette No. 17.

<sup>27</sup> **Article 56** of the regulation defining the rules of procedure of the Constitutional Court dated 22 January 2023, Official Gazette No. 04.

<sup>28</sup> **Article 55** of the regulation defining the rules of procedure of the Constitutional Court.

<sup>29</sup> **Article 252 of Order No. 21-01**, and **Article 59** of the regulation defining the rules of procedure of the Constitutional Court.

<sup>30</sup> **Article 58(2)** of the regulation defining the rules of procedure of the Constitutional Court.

<sup>31</sup> **Koussa Ammar**, *Constitutional Disputes*, lectures delivered to first-year Master's students specializing in Public Law, Faculty of Law and Political Science, Mohamed Lamine Debaghine University, Setif 2, 2021/2022, p. 11.

<sup>32</sup> **Article 255 of Order No. 21-01**.

<sup>33</sup> **Article 95 of the 2020 Constitutional Amendment**.

<sup>34</sup> **Article 258 of Organic Law No. 21-01**, and **Article 57(1)** of the regulation defining the rules of procedure of the Constitutional court

<sup>35</sup> **Laabadi Samain**, *Electoral Disputes: A Comparative Study of the Algerian and French Experience in Presidential and Legislative Elections*, PhD thesis, Faculty of Law, Mohamed Khider University, Biskra, 2013, p. 364.

<sup>36</sup> **Articles 259(1) and (3), 272 and 275 of Order No. 21-01**.

<sup>37</sup> **Articles 259(4) and (5) and 260(1) of Order No. 21-01**, and **Article 61** of the regulation defining the rules of procedure of the Constitutional Court.

<sup>38</sup> **Article 256 of Order No. 21-01**.

<sup>39</sup> **Article 257 of Order No. 21-01**.

<sup>40</sup> **Article 260(2) of Order No. 21-01**.

<sup>41</sup> **Article 197(1) of the 2020 Constitutional Amendment**.

<sup>42</sup> **Article 198(4) of the 2020 Constitutional Amendment**.

<sup>43</sup> **Fetnassi Abdelrahman**, previously cited reference, p. 163 and following pages. **Belghoul Abbas**, *The Constitutional Council and Its Role in Supervising Presidential and Legislative Elections and Referendum Processes*, Dar Al-Kitab Al-Hadith, Cairo, 2015, pp. 380–383

<sup>44</sup>. **Ahfaidhia Samir, Koussa Ammar**, *Oversight of Presidential Elections in Algeria under Organic Law No. 16-10 as Amended and Supplemented by Organic Law No. 19-08*, Sawt Al-Qanoun Journal, Vol. 07, No. 01, May 2020, p. 528.

<sup>45</sup>. **Article 115 of Order No. 21-01**

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<sup>46</sup>. **Article 116 of Order No. 21-01**

<sup>47</sup>. **Article 118 of Order No. 21-01**

<sup>48</sup> **Article 121 of Order No. 21-01**, and **Article 64** of the regulation defining the rules of procedure of the Constitutional Court

<sup>49</sup>. **Georges Corm**, *Integrity in Parliamentary Elections: Its Foundations and Mechanisms in Arab Countries*, First Edition, Arab Anti-Corruption Organization, Center for Arab Unity Studies, Beirut, 2008, p. 102