

THE NEW DEVELOPMENTS IN THE MEMBERSHIP OF THE CONSTITUTIONAL COURT - A STUDY IN LIGHT OF THE 2020 CONSTITUTIONAL AMENDMENT AND THE INTERNAL REGULATIONS OF THE CONSTITUTIONAL COURT-

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ABSTRACT

In the 2020 constitutional amendment, the Algerian constitutional founder created an independent constitutional oversight institution to replace the Constitutional Council, and entrusted it with the task of ensuring respect for the constitution and controlling the functioning of constitutional institutions and the activity of public authorities, called the Constitutional Court.

Therefore, this research paper aims to shed light on the most important developments brought by the constitutional amendment of 2020 and the rules of procedure of the Constitutional Court regarding the membership of the Constitutional Court, especially those related to the conditions for candidacy for membership of the Constitutional Court, the term of membership, the renewal of the mandate and the legal guarantees that enshrine the impartiality and integrity of members.

Keywords: *Constitutional amendment of 2020 - Constitutional Court - Rules of Procedure - Conditions of Membership.*

INTRODUCTION

Since the Constitution stands at the pinnacle of the hierarchy of laws forming the state's legal system, it establishes constitutional rules that define state authorities and regulate their powers. It also governs the relationship between the rulers and the governed by outlining the rights and duties of each party. Additionally, it includes the establishment of constitutional oversight institutions that reinforce democracy and the rule of law. This responsibility has been entrusted to a body whose designation varies from one country to another, commonly known as the Constitutional Court or the Constitutional Council.

In the case of Algeria, the 2020 constitutional amendment introduced a constitutional institution that replaced the Constitutional Council, named the Constitutional Court. The constitutional legislator regarded this court as an independent oversight body responsible for ensuring compliance with the Constitution and overseeing the functioning of institutions and public authorities. This represents a new approach by the Algerian constitutional legislator, aimed at emphasizing a change in the nature of oversight and the character of the institution. The designation was altered from a "body" to an "institution," and it was granted a separate chapter within Title IV, titled "Oversight Institutions," unlike the 2016 amendment, which did not allocate a specific chapter to the Constitutional Council. The composition, membership conditions, and competencies of this court were defined through constitutional provisions, while further details were left to regulatory texts, such as the internal regulations, which were issued two years after its establishment.

Any research on constitutional law topics is inherently significant, and this significance increases when the subject pertains to public rights and freedoms or judicial oversight in general, particularly constitutional oversight. The importance becomes even more pressing when both aspects are involved, especially when the topic has not been adequately studied and analyzed. This research topic encompasses all the factors that make it particularly significant, as it concerns the vital role of the Constitutional Court within the institutional and judicial framework. The court cannot effectively fulfill its role without being supported by a composition that meets the necessary standards for carrying out its important function.

Accordingly, this research paper aims to shed light on the legal status of the President and members of the Constitutional Court in terms of appointment conditions, mandate renewal, immunity, and other relevant aspects, in light of the 2020 constitutional amendment and the internal regulations of the Constitutional Court.

This study raises the following central question:

What are the new developments introduced by the constitutional legislator regarding the organization of the membership of the Constitutional Court?

To answer this question, both the descriptive and inductive methods will be adopted, following the plan outlined below:

1. Justifications for the Establishment of the Constitutional Court
2. Conditions for Membership in the Constitutional Court
3. Composition of the Constitutional Court
4. Term of Membership in the Constitutional Court
5. Immunity of a Constitutional Court Member

I. JUSTIFICATIONS FOR THE ESTABLISHMENT OF THE CONSTITUTIONAL COURT


The establishment of the Constitutional Court as a replacement for the Constitutional Council was not a coincidence. Rather, it was driven by several justifications that specialists consider to be the main reasons behind this transformation. These justifications are based on the necessity of granting the judiciary a role in constitutional oversight that goes beyond merely filtering or screening objections of unconstitutionality, as is the case in the French model.

Through analysis, it has been determined that several justifications such as the equality of powers, the elimination of discrimination, and the recognition of the judiciary as a power and as the guardian of rights and freedoms require acknowledging the judiciary's role in constitutional oversight. Among the justifications on which the Algerian legislator relied in establishing the Constitutional Court are the following ¹:

A- The Intent of Political Reform

Algeria has undergone significant changes in its system of governance in recent years, coinciding with the adoption of a new Constitution aimed at addressing the shortcomings of the previous one. In this context, it can be stated that constitutional justice in Algeria has experienced successive reforms since the country's first Constitution. These reforms have been gradual and have accompanied the evolution of the Algerian political system.

One of the key changes introduced by the 2016 constitutional amendment was the establishment of the mechanism for raising objections of unconstitutionality, which granted litigants the right to challenge the constitutionality of legislative provisions before the Constitutional Council. This marked a significant leap in the history of Algeria's constitutional system. Given this development, it became logical to move towards the establishment of a new entity—the Constitutional Court—as a replacement for the Constitutional Council.



On this basis, the Algerian legislator took steps to enhance constitutional oversight by entrusting it to the Constitutional Council, which had undergone numerous reforms since its inception to improve its performance, particularly in relation to its composition, which had long been criticized by many constitutional law scholars. Through the establishment of the Constitutional Court, the legislator sought to rectify these issues and contribute to the reform of the country's political system, especially in light of recent political events. While this transformation may appear to be political in nature, it is, in reality, a shift from a political model of constitutional oversight to a judicial model of constitutional oversight.

The intent behind political reform necessitates adherence to the principle of a flexible separation of powers. Since the Constitution establishes this principle, constitutional oversight must be binding and authoritative—a goal that can only be achieved through an independent constitutional institution of a judicial nature. For this reason, the Constitutional Court—a judicial body—was introduced, replacing the Constitutional Council, which had a political nature and had been the subject of much debate and criticism regarding its effectiveness in the political sphere.

B- The Global Shift Toward Constitutional Judiciary

Scholars of constitutional law, researchers in the field, and international law experts all agree that judicial oversight, both in terms of executive actions and the constitutionality of laws, is one of the fundamental guarantees of the rule of law and the protection of rights and freedoms. This general trend is evident in countries worldwide.

The model of constitutional oversight through a Constitutional Council, as originally developed by the French Constitution, is unique to France within Europe. Even Eastern European countries, including those that previously followed the socialist system or those that separated from the Soviet Union, have adopted the judicial oversight model through Constitutional Courts. Thus, it can be said that the French model of oversight through a Constitutional Council has not contributed significantly to constitutional justice on a global scale, as it has only been adopted by a limited number of countries, particularly former French colonies, most notably in Africa.

Among these was Algeria, whose legislator adopted the Constitutional Council as a mechanism for constitutional oversight for many years. However, in 2020, Algeria shifted towards the Constitutional Court, departing from the French model that had been in place for more than 30 years since the 1989 Constitution.

Observations from periodic meetings of presidents of constitutional courts, constitutional councils, and specialized constitutional oversight bodies worldwide indicate that the number of constitutional courts has increased significantly compared to constitutional councils, a stark contrast to previous decades. In the past, most European and African countries followed the French political system by adopting constitutional councils. However, over time, these countries recognized the need to transition to constitutional courts to ensure the independence of constitutional oversight from the political system and to uphold the rule of law.

The practice of using a constitutional council tends to make it a political institution affiliated with the executive authority, even if it appears independent in form. In contrast, a constitutional court ensures greater independence than other forms of constitutional oversight institutions.²

C- The Role of the Judiciary in Upholding the Constitution and Laws

In most countries that follow a dual judicial system, the constitutional judge is one of the most important figures responsible for establishing rules that ensure respect for laws and legislation. The constitutional judge enforces the principle of the hierarchy of legal norms, but always within the limits of the law and the Constitution. A constitutional judge does not invalidate an ordinary law unless it is determined that its content contradicts constitutional provisions, in which case it must either be annulled or lead to a constitutional amendment in accordance with the legally established

procedures. This necessity of turning to the Constitutional Court arises from the increasingly significant role of constitutional justice in ensuring compliance with the Constitution and laws.³

On the other hand, it is well known that modern states and political systems around the world uphold the principle of constitutional supremacy. This principle is universally accepted in constitutional law doctrine, even if some constitutions do not explicitly state it. Therefore, the Constitutional Court is a more suitable institution than a Constitutional Council, which has a political nature. The judicial authority of a Constitutional Court ensures effective enforcement of constitutional supremacy, making it a key mechanism for maintaining the rule of law.

D- The Constitutional Court as a Mechanism for Upholding the Principles of the Rule of Law

If the separation of powers is one of the fundamental guarantees of the rule of law, then judicial oversight is the essential safeguard for enforcing this principle. Through constitutional justice, constitutional courts play a crucial role in adjudicating cases related to abuse of power on the one hand and protecting rights and freedoms on the other.

While the legislative authority has full discretion in enacting laws, it must ensure that the laws it enacts do not contradict the Constitution. However, the legislative body cannot oversee itself, nor can it ensure compliance with the Constitution on its own. Such oversight can only be carried out by an independent authority with a judicial nature.

For this reason, in the vast majority of democratic countries, constitutions have entrusted this constitutional oversight to the judiciary, specifically in the form of Constitutional Courts, to ensure the effective enforcement of constitutional principles and the separation of powers.

II- CONDITIONS FOR MEMBERSHIP IN THE CONSTITUTIONAL COURT⁴

The Algerian legislator introduced new conditions for membership in the Constitutional Court, aligning with the new political system governing the state following the events the country experienced and the 2019 presidential elections.

The 2020 Algerian Constitution explicitly outlines the conditions for membership in the Constitutional Court. Article 187 of the Constitution specifies a set of eligibility criteria, which can be categorized as follows:⁵

A- General Conditions

These are the standard conditions required for any sovereign position in the state, typically related to the individual's qualifications and status. Among these conditions are the following:

- **Age Requirement:**

Article 187 of the 2020 Constitution stipulates that a member of the Constitutional Court must be at least 50 years old on the day of their election or appointment. In contrast, the 2016 constitutional amendment regarding the Constitutional Council required only 40 years.

This raises questions about the Algerian legislator's reasoning, especially considering that the presidency, the highest office in the state, requires only 40 years, while membership in the Constitutional Court requires 50 years. However, this requirement likely stems from the legislator's intent to prioritize experience, given that the Constitutional Court is the official body responsible for overseeing laws and ensuring their constitutionality.

A notable criticism of this provision is the absence of an upper age limit for members. It would have been more appropriate to align it with the legal retirement age, allowing qualified individuals to participate while maintaining institutional renewal. However, the lack of an upper age limit suggests that the legislator aimed to maximize expertise, as reflected in the requirement of a minimum age of 50 years.⁶



- **Enjoyment of Civil and Political Rights:**

Another general condition introduced by the 2020 Constitution is the requirement that members must enjoy full civil and political rights, without having been sentenced to a custodial penalty. Compared to the 2016 constitutional amendment, this is a new addition by the Algerian legislator.

This requirement likely stems from the need for members of the Constitutional Court to have an unblemished judicial record, ensuring integrity and credibility. Interestingly, this condition was not required under the Constitutional Council, even though it is a common requirement for sovereign positions.⁷

- **Non-affiliation with Political Parties & Non-engagement in Political Activities:**

The 2020 Constitution also introduced a requirement for political neutrality, stating that members must not belong to political parties or engage in political activities. This condition is a positive step that strengthens the Court's independence and guarantees neutrality among its members.

However, the exact interpretation of this provision is unclear: does it mean that a member must never have been politically affiliated at any point in their life, or does it apply only during their term of office? The first interpretation seems more likely, given that the composition of the Court excludes members of Parliament, who are typically affiliated with political parties. This suggests that the legislator sought to ensure the complete independence of the Constitutional Court, emphasizing its judicial rather than political nature—unlike the former Constitutional Council.

- **Taking the Oath:**

Swearing an oath is a fundamental requirement for holding any political or judicial office in Algeria. This requirement was maintained in both the 2016 and 2020 Constitutions. According to Article 186(5), before assuming their duties, members of the Constitutional Court must take an oath before the First President of the Supreme Court.

By doing so, members commit to neutrality, integrity, and confidentiality in carrying out their constitutional duties.

B- Specific Conditions

The Algerian legislator, through the latest Constitution, introduced a set of specific conditions that were not present in previous constitutional texts. These conditions are mainly related to the nature of the Constitutional Court and its functions. The key conditions include:

- **Possession of Legal Competence:**

The Algerian legislator placed great emphasis on constitutional competence, given the significant responsibilities assigned to members of the Constitutional Court in ensuring the supremacy of the law. Accordingly, Article 187 stipulates that a candidate must "possess at least twenty years of legal experience and have received training in constitutional law."

This provision raises an important issue: the legislator did not specify the exact scope or type of required expertise, unlike the 2016 Constitution, which explicitly listed professional experience fields and set the required experience at 15 years instead of 20 years.

- **Training in Constitutional Law:**

In addition to 20 years of legal experience, the Algerian legislator also required that members of the Constitutional Court undergo constitutional law training, particularly for those who do not hold a specialization in constitutional law.

This condition allows for the appointment of members who are not necessarily specialists in constitutional law but have received relevant training. This was not a requirement in the former Constitutional Council.

A key question arises here: Does this requirement apply only to appointed members or also to elected ones? The legislator did not explicitly clarify this in Article 187. However, it is understood that this requirement applies only to appointed members by the President of the Republic, as elected members are chosen by their respective professional bodies, and their qualifications are already validated through the election process.

Another notable issue in this context is that while the Algerian legislator specified the required duration of legal experience, it did not establish clear guidelines regarding the duration, nature, or certifying authority for the constitutional law training requirement. Moreover, there is no defined mechanism for how a member of the Constitutional Court can prove their training in constitutional law, particularly in the case of judges and lawyers, unlike academics, who may have studied constitutional law at the university level, conducted research, or contributed to the field through scientific publications.

In this regard, Presidential Decree 21-304, which regulates the conditions and procedures for electing constitutional law professors as members of the Constitutional Court,⁸ provides further clarification. Article 9 of the decree outlines the eligibility criteria for candidates representing the category of law professors, which include:

- Being at least 50 years old on the date of election.
- Holding the rank of professor.
- Having at least five years of experience as a professor of constitutional law.
- Being actively employed at a higher education institution.
- Enjoying full civil and political rights.
- Not having been convicted of a custodial sentence.
- Not having been a member of a political party for at least the past three years.

Additionally, eligibility for presidential candidacy is a prerequisite for membership in the Constitutional Court. This condition is directly derived from Article 87 of the Constitution, which outlines the legal requirements for presidential candidacy. The rationale behind this provision lies in the succession mechanism outlined in Article 101, specifically its final paragraph, which states that in the event of a simultaneous vacancy in the Presidency of the Republic and the Presidency of the Council of the Nation, the President of the Constitutional Court assumes the responsibilities of Head of State. Consequently, ensuring that Constitutional Court members meet the legal criteria for presidential candidacy is a necessary and integral component of their eligibility.

III- COMPOSITION OF THE CONSTITUTIONAL COURT⁹

The Algerian legislator defined the composition of the Constitutional Court through the 2020 constitutional amendment. According to this amendment, the Constitutional Court consists of 12 members, appointed and elected as follows:

- Four members appointed by the President of the Republic.
- One member elected from among the members of the Supreme Court.
- One member elected from among the members of the Council of State.
- Six members elected by a vote from among constitutional law professors.

Previously, we examined the eligibility conditions for membership in the Constitutional Court. Additionally, the Algerian legislator stipulated that the President of the Constitutional Court must be chosen from among the members appointed by the President of the Republic.

This measure, however, raises a critical issue regarding the independence of the Constitutional Court. The fact that a quarter of its members, including the President, are appointed by the executive authority contradicts the principle of separation of powers.

However, the Algerian legislator attempted to safeguard the Court's independence by explicitly determining the number of its members, rather than leaving this decision to the executive or legislative branch. This differs from cases where the constitutional legislator remains silent on the number and selection of constitutional oversight body members, which could negatively impact its independence and open the door to potential influence from public or executive authorities.

In contrast, under the former Constitutional Council, the President of the Republic appointed four members, including the President and Vice President. Additionally, two members were appointed by the People's National Assembly, two by the Council of the Nation, while two members were elected from the Supreme Court, and two from the Council of State.

1- Forms of Diversity in the Composition of the Constitutional Court

Through the 2020 constitutional amendment, the Algerian legislator sought to introduce diversity into the composition of the Constitutional Court. This diversity has clear justifications, as discussed earlier, particularly in the transition from the political nature of the Constitutional Council to the judicial nature of the Constitutional Court. The main forms of diversity include:

a) Addition of a New Category to the Court's Composition

In addition to the previous composition of the Constitutional Council, the 2020 Constitution introduced a new category of members from academia, specifically scholars and professors of constitutional law. This category holds the largest share in the Court's composition, accounting for six members—half of the total 12 members. These members are elected through a vote by constitutional law professors.

This approach marks a first-time shift, as the former Constitutional Council did not include law professors among its members.

Regarding the distribution of these members across universities, the six seats are allocated through elections supervised by regional and national university councils. Each regional council is assigned two seats, and a national electoral committee, established at the level of these regional councils, oversees the process.

The transition from the political nature of the Constitutional Council to the judicial nature of the Constitutional Court necessitated changes in its membership as well. This prompted the Algerian legislator to introduce this new and significant category among the Court's members. Moreover, granting this category the majority of seats reflects the legislator's intent to establish a strong constitutional oversight system by relying on the expertise of constitutional law specialists.

b) Diversifying the Selection Process: Election vs. Appointment

The Algerian legislator also sought to balance the methods of selecting members of the Constitutional Court by combining appointment and election. While the President of the Republic retains the power to appoint certain members, the majority—eight members—are elected from various professional bodies, ensuring a more representative and independent Court structure.

2- Diversifying the Selection Authorities for Constitutional Court Members

The constitutional legislator ensured the composition of the Constitutional Court by including four members representing the executive authority, who are appointed by the President of the Republic. In doing so, the constitutional legislator secured the President's share in the membership, reinforcing his prominent role in shaping the Court's structure.

On the other hand, the legislator also sought to protect the judiciary's share in the Court, though it reduced the number of judicial representatives to two members instead of four, as was the case in the Constitutional Council.

- One member is elected from the Supreme Court, whereas previously, there were two representatives.
- One member is elected from the Council of State, whereas previously, there were also two representatives.

This reduction is justified by the constitutional legislator's intent to distance political elements from the Constitutional Court.

3- Forms of Exclusion in the Composition of the Constitutional Court

The constitutional legislator aimed to introduce a radical transformation in the constitutional oversight bodies of the country. With the transition from the Constitutional Council to the Constitutional Court, the legislator sought to implement changes in the Court's composition by excluding certain categories or powers. The main forms of exclusion include:

A- Exclusion of a Category from the Court's Composition

In the 2020 constitutional amendment, the constitutional legislator eliminated the formal and numerical balance between the branches of government in the composition of the Constitutional Court, specifically by excluding the legislative authority from representation within the Court.

Previously, in the Constitutional Council, the People's National Assembly elected two members, and the Council of the Nation also elected two members. However, the 2020 Constitution limited representation to only the executive and judicial branches, without maintaining numerical balance:

- The executive authority is represented by four members.
- The judicial authority is now represented by only two members instead of four. Previously, the Supreme Court elected two members, and the Council of State also elected two members.¹⁰

Thus, under the latest constitutional amendment, the constitutional legislator eliminated parliamentary representation in the Constitutional Court. Formerly, the Constitutional Council included four parliamentary members, with two elected by the People's National Assembly and two elected by the Council of the Nation.

The primary justification for this change is likely to ensure the independence of the Constitutional Court. The exclusion of legislative representatives appears to be driven by the recognition that Parliament is subordinate to the President of the Republic, meaning that parliamentary members are not entirely independent. This rationale led the Algerian legislator to exclude the legislative authority from the composition of the Constitutional Court.

B- Exclusion of the President's Authority to Appoint the Vice President of the Constitutional Court

Article 183 of the 2016 Constitution granted the President of the Republic the authority to appoint both the President and the Vice President of the Constitutional Court. However, the 2020 Constitution modified this provision by stating that the President of the Republic appoints only the President of the Court, thereby removing the constitutional legislator's authority to appoint the Vice President.

This raises the question of the fate of the Vice President's position. It appears that the legislator abolished the position altogether, limiting the President's appointment power to the President of the Court. The President of the Constitutional Court now holds broad powers, including presiding over and organizing sessions, as well as having a casting vote in the event of a tie.



C- Reduction of the Term of Membership

The Algerian legislator reduced the term of membership in the Constitutional Court to six years, with half of the members being replaced every three years. Previously, under the Constitutional Council, the term was eight years, with half of the members being renewed every four years, as stipulated in Article 183 of the 2016 constitutional amendment.

This reduction likely aims to allow new members to join after six years, especially since the legislator did not set an upper age limit for membership in the Constitutional Court.

IV- TERM OF MEMBERSHIP IN THE CONSTITUTIONAL COURT

The 2020 constitutional amendment established the term of membership in the Constitutional Court at six (6) years, which is non-renewable and applies to both the President of the Court and its members. However, the composition of the Court is subject to partial renewal every three (3) years.

This partial renewal does not apply to the President of the Constitutional Court, who serves a full six-year term. This differs from the former Constitutional Council, where membership lasted eight (8) years and was also non-renewable. In the Constitutional Council, the President, Vice President, and other members served for eight years, with half of the members being replaced every four (4) years, but without affecting the President and Vice President, who were appointed by the President of the Republic for a single term. Compared to the 2020 amendment, this was a significantly longer duration.

As previously mentioned, members of the Constitutional Court serve a single six-year term, with half of the members replaced every three years. According to Article 10 of the Internal Regulations of the Constitutional Court, the renewal process must be completed within the ninety (90) days preceding the end of the current term.

The partial renewal includes:

- Two (2) members from those appointed by the President of the Republic, excluding the President of the Constitutional Court.
- One (1) member from among the two (2) elected representatives of the Supreme Court and the Council of State.
- Three (3) members from the six (6) elected constitutional law professors.

The first partial renewal is conducted by drawing lots in a public session, presided over by the President of the Constitutional Court, in the presence of all members, the court registrar, and the court's senior officials. The rules and procedures for this process are outlined in Articles 12 to 16 of the 2020 Internal Regulations of the Constitutional Court.

V- IMMUNITY OF CONSTITUTIONAL COURT MEMBERS

The immunity granted to members of the Constitutional Court can be defined as a privilege established by the constitutional legislator to protect members in the performance of their duties. This protection allows them to carry out their responsibilities freely and without external pressure, ensuring they remain shielded from judicial prosecution during their tenure.

Judicial immunity is a constitutional principle and represents an exception to the general principle of equality before the law. However, this privilege is not granted for the personal benefit of the member, but rather to protect the Constitutional Court as an oversight body, ensuring its members can perform their duties independently and without undue influence.

According to Article 189 of the 2020 Constitution, members of the Constitutional Court enjoy immunity for acts performed in connection with their duties. The immunity of a member cannot be lifted for acts unrelated to their official functions unless:

- The member voluntarily waives their immunity.
- The Constitutional Court grants permission for immunity to be lifted (Article 189, 2020 Constitutional Amendment).

This provision indicates that immunity extends beyond criminal offenses (felonies and misdemeanors) to include minor infractions as well. As a result, the Public Prosecutor's Office cannot initiate proceedings against a Constitutional Court member for committing an infraction without prior authorization from the Constitutional Court.

The request to lift immunity must be submitted to the President of the Constitutional Court by the Minister of Justice, and only concerns acts unrelated to the member's official duties.

A member of the Constitutional Court can voluntarily waive their immunity and appear before the judiciary to defend themselves. However, to preserve the Court's independence, a member's waiver of immunity should not be an individual decision but should instead require prior approval from the Constitutional Court. The member must submit a written request to the Court, as judicial immunity is not a personal right but a public interest measure aimed at safeguarding the Court's constitutional functions.

If a member refuses to waive their immunity, the Constitutional Court convenes to examine the request for lifting immunity. The Court hears the concerned member, who may be assisted by legal counsel, and then decides by majority vote in the shortest possible timeframe, without the presence of the concerned member.

The principle of immunity was retained in the 2020 constitutional amendment, as it was already established in Article 185 of the 2016 constitutional amendment. However, a notable difference exists between the two versions: Article 189 of the 2020 Constitution does not explicitly specify the scope of immunity, whereas Article 185 of the 2016 Constitution clearly stated that Constitutional Council members had judicial immunity in criminal matters.

CONCLUSION

The study of the membership of the Constitutional Court required an examination of the legal status of the President and members of the Constitutional Court, particularly in terms of appointment conditions, term renewal, and immunity, among other aspects. This analysis was conducted in light of the 2020 constitutional amendment and the Internal Regulations of the Constitutional Court.

Through this study, several findings and recommendations were reached, which are presented as follows:

I- Findings

- The constitutional legislator allocated half of the Constitutional Court's membership to academic experts, specifically constitutional law professors, with six (6) members. The remaining half is distributed between the executive and judicial branches, with four (4) members from the executive authority and two (2) members from the judiciary. The legislative branch was excluded from representation in the Constitutional Court, whereas it previously had four members in the Constitutional Council. This exclusion aims to shield the Court from political and partisan conflicts.
- The President of the Republic's involvement in the appointment and election of Constitutional Court members poses a threat to their independence, which could undermine the Court's ability to uphold constitutional supremacy and safeguard democracy.
- The constitutional immunity granted to Constitutional Court members for actions related to their duties, along with the restriction on lifting immunity for acts unrelated to their duties, serves as a significant constitutional safeguard that ensures members can perform their functions independently.


- The partial renewal of the Court every three (3) years does not apply to the President of the Constitutional Court, who serves a full six-year term.
- The requirement for specific conditions for the President of the Constitutional Court is due to the highly sensitive nature of the position, as the President of the Court holds the third-highest constitutional rank in the state and can assume the duties of Head of State in the event of a vacancy in the Presidency of the Republic. Additionally, the President of the Constitutional Court performs critical advisory functions.
- The appointment of the President of the Constitutional Court by the President of the Republic reinforces executive dominance over the Court. Given its current structure, the Constitutional Court may not be able to effectively and independently fulfill its role as the guardian of the Constitution.

II- Recommendations

- It is recommended that the selection of the President of the Constitutional Court be conducted by the members of the Court, under the supervision of the National Independent Authority for Elections, rather than being appointed by the President of the Republic.
- It is suggested that the President of the Constitutional Court be subject to the partial renewal system, similar to the other members of the Constitutional Court.
- In line with the principle of equality, it is proposed that the eligibility criteria for membership in the Constitutional Court under the category of university professors be expanded. Instead of restricting eligibility solely to constitutional law professors, the opportunity should be extended to all professors specializing in public law, provided they meet the necessary conditions. This would allow experts in administrative law, public international law, and international humanitarian law to be considered, given that the Court's activities are closely linked to these fields.
- Lastly, the 2020 constitutional reform represents a significant advancement, particularly in strengthening the powers of the Constitutional Court in ensuring compliance with the Constitution, overseeing the functioning of institutions and public authorities, and enhancing the protection of rights and freedoms. This progress is further reinforced by the membership eligibility criteria, particularly the inclusion of constitutional law professors.

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