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Controlling the Constitutionality of laws before the 2020 Constitution

الرقابة على دستورية القوانين قبل دستور 2020

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Abstract :

Constitutional censorship is very important and sensitive in the state The aim of the research is to indicate the censorship of Algerian legislation before the 2020 Constitution and its positive and negative effects through the provisions of the various constitutions before 2020. We used the descriptive approach to describe what exists in the constitutions before 2020. We concluded that constitutional censorship in the 2002 and 2008 constitutions was the basis of constitutional control that we are now the symbol of democracy of the Algerian State erian State.

Keyword: The Constitution; Censorship; Antiqities; Laws; Constitutionality.

ملخص :

المنهج الوصفي من أجل وصف ماهو موجود بالدساتير قبل 2020، وتوصلنا إلى أن الرقابة الدستورية في الدساتير تعتبر الرقابة الدستورية من الأمور المهمة جدا و الحساسة في الدولة ، ويهدف البحث إلى بيان الرقابة في التشريع الجزائري قبل دستور 2020 وبيان آثارها الايجابية و السلبية من خلال ما نص عليه مختلف الدساتير قبل 2020، واستخدمنا 2002و 2008 كانت أساس الرقابة الدستورية التي نحن عليها الآن والتي تمثل رمز الديمقراطية للدولة الجزائرية.

كلمات مفتاحية: الدستور؛ الرقابة؛ آثار؛ القوانين؛ دستورية.

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1- Introduction:

The Constitution is one of the most important features of the State. All States proceed in accordance with the Constitution. This document is a reference and State course. Everything that concerns the State is placed in it. This must not be contrary except in exceptional cases where the Constitution does not operate in a state of war.

Since the Constitution is of great importance, the laws promulgated by the legislature "Parliament in its two chambers" must not be contrary to it, so-called law control and conformity with the Constitution. The Algerian Constitution, in each amendment, provides for new control in order to fill gaps that may affect the Constitution or the constitutionality of laws. The following problems may therefore be raised:

-What are the mechanisms for monitoring the constitutionality of laws in Algeria's Constitution before 2020?

This makes us sub-problematic:

-Does control over the constitutionality of laws before 2020 have positive effects?

-Does control over the constitutionality of laws before 2020 have negative effects?

The importance of research is to identify the censorship of the constitutionality of laws in the Algerian Constitution before 2020 in order to highlight the pros and cons, and to try to make readers and researchers aware of what was done before the Constitutional Amendment 2020, so we address our research through:

2.Oversight under the 2002 Amendment, 2008

Censorship of the constitutionality of laws is among the most important stages known to most constitutions in various countries of the world. In spite of their different approaches and policies, Algeria has been engaged in this aspect, as can be seen from the study of the State's constitutions as well as through constitutional amendments. law ", since the State seeks transparency by bringing the law into conformity with the Constitution, this is in order to achieve justice in the State, especially as societies evolve and their daily requirements and future hopes diversify. State ", which prompts the State to undertake constitutional amendments at every stage necessary, in order to bring the Constitution into line with the realities of the pension, we are studying in this study the control of the constitutionality of laws under the amendment of the Constitution of 2002 and 2008 in the following two demands:

The Constitution is the highest body in the State and derives its legitimacy and its system of government. All laws must not be contrary to it. Otherwise, this is considered to be contrary to the law. Therefore, certain bodies have been assigned to oversee the constitutionality of laws in order to achieve justice and not make the law contrary to the Constitution.

So, we try to show this in the following branches through:

2.1. Positive effects.

When comparing the composition of the Constitutional Council, which is charged with overseeing the constitutionality of laws in the 1989 Constitution and the 1996 Amendment amended in 2002, Algeria's legislature has taken great interest in the oversight aspect by increasing the number of members of the Constitutional Council from seven to nine. s desire to control the constitutionality of laws was on track for democracy and justice in the Algerian State (al hussein, 2016,p29)

The establishment of the State Council, the Supreme Court and the National Assembly and the establishment of elected members, including members of the Constitutional Council, is a manifestation of transparency and the participation of categories of people's representatives in

constitutional control of laws through the Constitutional Council is an attempt to eliminate bureaucracy and bring laws into conformity with the Constitution, which is the supreme document of the State and determines its destiny and future.

Members of the Constitutional Council, when appointed to the Council, must also be full-time. and not to engage in any other work whatsoever, including the job they previously held or to assign another task s work ", pursuant to article 164, paragraph 2, of the 1996 Constitution Amendment 2002, since such full-time work means concern for their work and lack of any other preoccupation.

Full-time work means how important and difficult it is at the same time and must be taken care of in view of its future dimensions and its effects on the State, justice and democracy, Because the constitutionality of laws is not easy, they can make a country develop and prosper in the future. And it may make the State flounder in internal disputes and conflicts and can even outsider by frequently talking about them in foreign media, this has a bearing on its silence, economy, tourism and..., in addition to the possibility of coups d 'état, which no one wants. (Raji, 2015,p65)

In addition, organic laws are promulgated by Parliament, but their subject matter is always related to both constitutional systems and bodies. and these laws differ from ordinary laws in terms of areas and procedures to be developed and amended, in terms of the conditions for their implementation and promulgation, if ordinary laws can be promulgated by the President of the Republic immediately after their ratification by Parliament, the situation with regard to organic laws is different, They can be issued only after they have been submitted to the Constitutional Council and subject to compliance control for broadcasting.

2.2. Negative effects.

The Constitutional Council is considered to exercise political control because it is defined and competent by the Constitution. The negatives of such control therefore affect the constitutionality of laws, including:

-The purely political nature of the watchdog urges that political considerations prevail over the law and thereby skew this body towards political and partisan interests and neglect the purpose of the oversight function, The Council consists of elected persons from the two chambers of Parliament, the judiciary and others appointed by the President, which makes them more politically inclined than legally because they are already - especially those elected by Parliament - whose trends are political and belong to parties that have brought them to Parliament, so they will remain loyal to them. Even if the Constitution prevents them from

belonging to it after assuming office in the Constitutional Council, this is a negative aspect of the constitutionality of the Algerian State's laws at that time.

-The most important feature of the supervisory body is independence and impartiality, which is precluded from being available under a political body in any manner whatsoever. It remains dependent on those who form it. Thus, the assumption of office in the Constitutional Council is regarded as a leap and prestige for the elected person alone. (Debib, 2015,p19)

The manner in which he is elected to Parliament in both chambers may be the result of a majority, i.e. agreement on his appointment and access to the Constitutional Council as a result of his services to them. or promises to them something in the future.

-The right to notify the watchdog is usually limited to certain institutions, and individuals are excluded from exercising this right. "Appeal against unconstitutionality", which deprives them of an important means of safeguarding their constitutional rights and freedoms, as a citizen may see a specific law that does not conform to the Constitution, by virtue of its high academic level "Doctor's degree or professor", but he cannot challenge the constitutionality of laws because the Constitution did not allow him to do so. This is a pension reality since the Council may not express a negative view of a particular law, convention or treaty. law, treaty, convention or... even though reality proves to be unconstitutional But the Constitutional Council says that it is constitutional, this contradiction is a negative aspect and has a very significant impact on the credibility and democracy of the State. rights and duties ", because a citizen has rights and obligations and is entitled to express his or her opinion because his or her view may be fully correct and consistent with reality and the Constitution, even though the Constitutional Council sees the exact opposite.

-The Algerian Constitution does not require certain characteristics in the elected or appointed member of the Constitutional Council. The constitutional founder did not require that members of the Constitutional Council be elected or appointed from among the competencies and personalities specialized in law, since constitutional oversight examined legal texts and followed quasi-judicial procedures.

Members of Parliament, for example, are people ' The level of science also varies between members, of whom there is a high standard, and when one of them is appointed to the Constitutional Council by election, that person may be below the level and reach the Council as soon as he is elected for a particular reason that we do not know.

A person with or without a limited standard of access to the Constitutional Council puts us at a loss and says what is his role in censoring the constitutionality of laws and he may not know the law or even know how to read well?

These cases are exceptional, but the 1996 amended Constitution in 2002 did not provide for the required level of science to reach the Constitutional Council and assume oversight of the constitutionality of laws representing the State and their orientation towards democracy and future safety.

-Unequal membership, since the Constitution of 1996 amended 2002 made members of the Constitutional Council unequal in number. For example, the legislative power represented in Parliament in its two chambers is represented in the Constitutional Council by four persons. "Two for the National People's Assembly, two for the National Assembly" The judiciary is represented only by two "one for the Supreme Court, one for the National Assembly". and that the number of members of the judiciary should be equal or more than the number of members of the legislature.

The members elected by the two chambers of Parliament are representatives of a legislative authority and therefore both legislators and supervisors of the law, which is unreasonable. It should be the supervisory authority of persons away from the legislature and not from them. (Youssef &, Fattah, 2022,p127)

In the event that the constitutionality of a particular law is considered, it may be the majority that imposes itself and here the majority is represented by representatives of Parliament in its two chambers, namely the legislative branch, and we therefore say that the number of persons appointed or elected to the Constitutional Council is not equal. This means the negative impact on the outcome of the consideration of the constitutionality of laws.

Most of the people elected to Parliament in both chambers are individuals belonging to a particular political party. and therefore, even when they reach the Constitutional Council, they will remain grateful to this party and provide it with the services of not expressing negative opinions on the constitutionality of laws. political parties ", although the Constitution prohibits members of the Constitutional Council from working in any area whatsoever, including belonging to political parties.

The unilateral appointment of three members of the Constitutional Council by the President of the Republic makes us wonder what that means? Since the President appoints members without any preconditions provided for by law, the President can appoint whoever he deems appropriate or who he wishes to serve as a member of the Council or President. This makes those appointed members subject to the orders of the President of the Republic because he appoints them to that office.

3.Oversight under the 2008 's amendment

After the 2002 constitutional amendment, which did not address much except for the introduction of Amazigh language only, the 2008 constitutional amendment was an attempt by the Algerian State to fill gaps that had not been addressed in the previous constitutional amendment. In various areas, however, the important aspect of our topic is the censorship of the constitutionality of laws, in which we find that nothing has been amended and has remained the same from the 1996 Constitution to this 2008 amendment. (Bouboum, 2015,p25)

Oversight of the constitutionality of laws is both difficult and important in view of their effects on the State and its future and on individuals' rights. the Constitution is in an inappropriate position as the highest law and it cannot be tolerated that a law is dealt with in the State which is unconstitutional, in view of the importance of the topic, the control of the constitutionality of laws in this 2008 Amendment also has positive and negative effects and is addressed in the following sections:

3.1. Positive effects.

In considering the constitutional amendment of 2008, he did not speak of the dismissal of those elected or appointed to the Constitutional Council, but it was explicitly stipulated in the system established by the rules of operation of the Constitutional Council of 2000, since the independence of the members of the Constitutional Council from the authority by which they were appointed or elected was a prerequisite for the Council's success in the impartial performance of its functions.

Noting that the Constitution left this to the rules of procedure of the Constitutional Council is a positive thing to control the constitutionality of laws, because the removal of a member who has breached his or her functional obligations is relative and internal. The members of the Constitutional Council are the first to study the situation and issue their decision, as stipulated in article 55 of the statute establishing the rules of operation of the Constitutional Council (Basoud, 2020,p124).

The failure of any other party outside the Constitutional Council to consider the removal of a member is a way of helping the Constitutional Council to solve its internal problems without pressure from any other authority. and thus, this Council is free in its resolutions and the way it is conducted, Thus, acting in complete relief without fear or pressure, while abiding by the obligation of the reservation, this has very positive implications for the way in which it works and for studying the constitutionality of the laws legislating in the Republic of Algeria. Article 54 of the statute establishing the rules of operation of the Constitutional Council."

The Constitutional Council derives its basic law from the Constitution, which defines the principles of its composition and defines its competence. It also determines the number and

method of appointing or electing its members and determines the term of custody; It determines the impact of his opinions and decisions, which supports his independence from other authorities. More than any judicial body, since there is no judicial body with these guarantees, Even the Supreme Court and the Conseil of state are the two highest judicial bodies in Algeria's judicial system, whose composition is not determined by the Constitution, but by its legality. (Sharmat, 2021)

The Constitutional Council is legally protected from prejudice to its Statute, both in terms of its composition and functions, as evidenced by the fact that these matters are enshrined in the Constitution, thereby preventing it from the influence of the public authorities under its control. Neither Parliament nor the executive branch can prejudice its existence and powers.

It also underpins its independence that the Constitutional Council itself sets the rules for its work. It should also be noted that one of the most important manifestations of the Constitutional Council's independence, which supports the presumption of its judicial nature and distances it from the political description, is to put it away from the political realm, whether with regard to its decisions or even its existence, by preventing the membership of the Constitutional Council of Political Parties.

Censorship of the constitutionality of laws is very important, as the President of the Republic cannot determine the country's exceptional situation as a result of imminent danger until several bodies, including the Constitutional Council, have been consulted; This demonstrates this Council's role in the State and its very great place. to safeguard the rights, freedoms and constitutionality of any law promulgated in the country even during exceptional situations, as provided for in article 93 of the Constitution.

3. 2. Negative effects.

The principle of control over the constitutionality of laws has always been one of the important constitutional subjects of jurisprudence that inspired their writing and research in search of clarification of the concepts associated with it, and an attempt on their part to lay the foundations and mechanisms to reflect it, given the great importance that this principle and its role in governance and the maintenance of many other constitutional principles, most notably the principles of its primacy and separation of powers.

When reviewing the Constitutional Amendment 2008, we find that it did not provide for a certain age of membership in the Constitutional Council, and it was advisable to determine the age of maturity and experience so that the composition of the Council is not young people without experience or from retired elders who are no longer able to give.

Merely stating that members are elected and appointed under article 164 of the Constitution without specifying age or level, the Constitution opens up many questions about this, since a person of 30 years of age may be elected from the National People's Assembly and reach the Constitutional Council with no experience in the field. How can he consider the constitutionality of the country's laws?

This gap has negative implications for the constitutionality of Algeria's laws in the 2008 Constitutional Amendment, which was accepted by the 2002 Amendment and the 1996 Constitution, since the age factor has significant implications through expertise, training in the field, knowledge of the matters and concealment of laws and the way in which the laws are researched and deepened the constitutionality of laws.

Secret meetings of the Constitutional Council do not make sense but have negative effects on the constitutionality of laws, through the possibility that the President of the Council may compel members to vote on the constitutionality of a law, even though it is not constitutional. This is in accordance with certain instructions or a desire to achieve the interest of a particular person, and may be compelled by a particular body to make such a decision. (Belaribi & Shiban, 2015,p8)

However, if the hearing was public, such acts or interpretations would not be the same, and there would be transparency in expressing an opinion on the constitutionality of the laws, but the Constitution made it a secret session and therefore interpretations abound even though the confidence of the persons elected or appointed by them might be appropriate.

Moreover, the 20-day period set by the Constitution for the expression of an opinion by the Constitutional Council in our opinion is insufficient Because it may be complicated and require a good examination and research so that the response is correct, and this period is rather short, and it makes the members of the Constitutional Council do the research in a quick way so that the deadlines don't end. This has negative effects on the constitutional control of laws by the Constitutional Council and that this is fateful and cannot be manipulated or underestimated, His right must take time to make the reply appropriate.

Noted on these articles that all of them request to be expedited by the phrase " "Immediately", which is explicit and means expediting the maximum capacity to present an opinion, this way of speeding up leaves no room for members to search and delve into. rather, it is superficial and not serious as a result of the speed with which the resolution resulted, It is known that the speed of making decisions for the average person in his daily life makes him mistake and falls into grave mistakes that may cost too much Therefore, the request for speedy expression of opinion adversely affects the control of the constitutionality of laws and does not give them the right to be valid and does not have consequences for the State and citizen in the future.

Are parliamentary and executive bodies considered to be keen on the judiciary's primacy of the Constitution? Are these bodies more specialized than judicial bodies in discovering or raising suspicions of unconstitutionality than judicial bodies? Why do these legislative and executive bodies give the right to notify the Constitutional Council, which has contributed to the preparation and ratification of laws that are contrary to the Constitution, compel the judiciary to remain silent, surrender and apply those provisions that are contrary to the Constitution, and not even give them mere warning of those violations?

4. Conclusion:

Constitutional censorship is one of the most prominent provisions of the Constitution in any country. State and individual ", because of its importance to both the State and the individual, Algeria's constitutional control before 2020 has been marked by change in every new Constitution. This demonstrates the Algerian legislature's desire to protect the State and the laws by which it applies in order to provide and protect citizens' rights and democratization.

We say that the censorship of the constitutionality of laws prior to the 2020 Constitution has had a very positive impact on the success of the State and its progress towards a better future than it was. This is what made the last Constitution 2020 a constitution that stipulates constitutional control in completely new forms and is of great importance and in line with the realities of the living in order to achieve democracy in the Algerian State.

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