

The Legal System of the Supreme Judicial Council in Algeria in Light of the New Judiciary Law: A Comparative Study with the French System

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Abstract

This academic article examines the legal system of the Supreme Judicial Council (Conseil Supérieur de la Magistrature) in Algeria in light of the profound reforms introduced by the 2020 Constitutional Amendment and the new organic laws of 2022 (Organic Law 22-11 relating to the Supreme Judicial Council and Organic Law 22-12 containing the Basic Law of the Judiciary). The study aims to analyze the new composition of the Council, its powers, and guarantees of its independence, while conducting a comparative analysis with its French counterpart. The article highlights the radical transformation in the presidency of the Council in Algeria, where the President of the Republic now presides over it with the possibility of representation by the First President of the Supreme Court, and the expansion of its composition to include elected judges and personalities from outside the judicial system. The study also discusses the strengthening of the Council's powers in the fields of appointment, promotion, and disciplinary action, and compares this with the structural duality of the French Council (the composition of judges and the composition of prosecutors). The study concludes that the Algerian reforms represent an important step towards establishing the independence of the judicial authority, despite the persistence of some practical challenges that require genuine implementation of the legal provisions.

Keywords: Supreme Judicial Council, Organic Law 22-11, Organic Law 22-12, judicial independence, French system, appointment, discipline.

First Section: Constitutional and Legal Development of the Supreme Judicial Council

The Supreme Judicial Council in both Algeria and France has witnessed successive constitutional and legal developments that reflected the trend towards strengthening the independence of the judicial authority and activating the role of the Council as a fundamental guarantor of this independence.

First Topic: Constitutional and Legal Framework in Algeria

The Supreme Judicial Council in Algeria was established as a constitutional mechanism to ensure the independence of the judiciary, and it has gone through several reform stages culminated by the 2020 Constitutional Amendment and the organic laws of 2022.

First Branch: Constitutional Recognition (2020 Amendment)

The 2020 Constitutional Amendment brought about a qualitative shift in the status of the Supreme Judicial Council. Article 180 of the Constitution stipulated that "the Supreme Judicial Council ensures the independence of the judiciary," which represents an elevation of the Council's role from merely an advisory or administrative body to a constitutional guarantor of independence [1]. The Constitution also reconsidered the composition and presidency of the Council, removing the Minister of Justice from the position of vice-president, which is an important step in separating the executive authority from the management of judges' professional careers [2].

Second Branch: New Legal Framework (Organic Laws of 2022)

In implementation of the constitutional provisions, Organic Law No. 22-11 dated June 9, 2022, relating to the Supreme Judicial Council was enacted, which repealed the previous Organic Law 04-12 [3]. This law precisely defined the composition of the Council, its operations, and its powers. In parallel, Organic Law No. 22-12 containing the Basic Law of the Judiciary was enacted, which reorganized the professional career of judges (appointment, promotion, transfer, discipline) and linked it closely to the powers of the Supreme Judicial Council [4].

Second Topic: Constitutional and Legal Framework in France

The French Supreme Judicial Council (CSM) is one of the most venerable institutions guaranteeing the independence of the judiciary in Europe, and it has itself undergone important constitutional reforms.

First Branch: Constitutional Recognition (1958 Constitution and Its Amendments)

Article 64 of the French Constitution of 1958 stipulated that the President of the Republic is the guarantor of the independence of the judicial authority, assisted in this by the Supreme Judicial Council [5]. This Council has witnessed fundamental reforms, most notably the 1993 Constitutional Amendment that separated the composition of judges from the composition of prosecutors, and the 2008 Constitutional Amendment that ended the presidency of the Republic over the Council, making it presided over by the First President of the Court of Cassation (for the judges' composition) and the Prosecutor General at the Court of Cassation (for the prosecutors' composition) [6].

Second Branch: Legal Framework (1994 Organic Law)

The operations of the French Supreme Judicial Council are regulated by the Organic Law enacted on February 5, 1994 (and subsequently amended) [7]. This law defines the mechanisms for electing judge members, procedures for appointment and discipline, and how to express opinions on draft laws related to justice [8].

Second Section: Composition of the Supreme Judicial Council (Comparative Study)

The composition of the Supreme Judicial Council is the basic standard for measuring its independence from the executive authority and the extent of its representation of the various components of the judicial family and society.

First Topic: Composition of the Supreme Judicial Council in Algeria

Organic Law 22-11 introduced a new and expanded composition of the Supreme Judicial Council, aimed at promoting democratic representation of judges and involving personalities from outside the judicial system.

First Branch: Presidency and Appointed Members

According to Article 180 of the Constitution and Article 4 of Organic Law 22-11, the President of the Republic presides over the Supreme Judicial Council [9]. However, the novelty is the assignment of the vice-presidency to the First President of the Supreme Court, instead of the Minister of Justice who was completely removed from the Council's composition [10]. The Council also includes members in their capacity (President of the State Council, President of the National Bar Association), and personalities appointed by the President of the Republic and the heads of the two parliamentary chambers from outside the judicial system [11].

Second Branch: Elected Members

Organic Law 22-11 strengthened the electoral representation of judges. According to Article 5, the Council includes 15 elected judges representing various judicial bodies (Supreme Court, State Council, Courts of Appeal, Administrative Courts of Appeal, Courts, and Administrative Courts) [12]. These judges are elected by their colleagues for a four-year term that is not renewable, which ensures the renewal of blood and avoids monopolizing representation [13].

Second Topic: Composition of the Supreme Judicial Council in France

The French Supreme Judicial Council is characterized by a dual structure that reflects the traditional distinction between judges (Magistrats du siège) and prosecutors (Magistrats du parquet).

First Branch: Structural Duality (Judges' Composition and Prosecutors' Composition)

The French Council is divided into two separate compositions. The composition responsible for judges is presided over by the First President of the Court of Cassation and includes elected judges, a prosecutor, and external personalities [14]. As for the composition responsible for prosecutors, it is presided over by the Prosecutor General at the Court of Cassation and includes elected prosecutors, a judge, and external personalities [15]. This duality aims to take into account the specificity of each corps, especially the subordination of prosecutors to the hierarchical authority of the Minister of Justice [16].

Second Branch: Openness to External Personalities

Like the Algerian system, the French Council includes personalities from outside the judicial system (personalities appointed by the President of the Republic and the heads of the two parliamentary chambers, and a lawyer appointed by the President of the National Bar Association) [17]. This openness aims to prevent the judiciary from closing in on itself (Le corporatisme) and to involve society in managing the affairs of justice [18].

Third Section: Powers of the Supreme Judicial Council in Managing Professional Careers

Managing the professional careers of judges (appointment, promotion, transfer) is one of the most important powers of the Supreme Judicial Council and is the practical guarantee of their independence.

First Topic: Powers of Appointment, Promotion, and Transfer in Algeria

Organic Law 22-11 and the Basic Law of the Judiciary 22-12 expanded the Council's powers in managing judges' professional careers, reducing the intervention of the Ministry of Justice.

First Branch: Appointment and Promotion

According to Article 44 of Organic Law 22-12, judges are appointed and promoted based on a proposal from the Supreme Judicial Council [19]. The law defined objective criteria for promotion based on seniority, competence, and performance, which are evaluated by the Council [20]. The Council is also responsible for deciding on judges' appeals related to evaluation and promotion [21].

Second Branch: Transfer and Movement of Judges

Organic Law 22-12 established the principle of the immovability of judges (Inamovibilité) except upon their request or for reasons of public interest or as a disciplinary measure [22]. In all cases, a judge cannot be transferred except with the approval of the Supreme Judicial Council (Article 52) [23]. This represents a strong guarantee against arbitrary transfer that could be used as a disguised punishment [24].

Second Topic: Powers of Appointment and Promotion in France

The powers of the French Council differ according to the composition (judges or prosecutors), reflecting the difference in the degree of independence of each corps.

First Branch: Powers of the Judges' Composition

The judges' composition enjoys broad powers. It proposes the appointment of judges of the Court of Cassation and presidents of courts of appeal and trial courts [25]. As for other judges, it is the Minister of Justice who proposes their appointment, but it is required to obtain a "conforming opinion" (Avis conforme) from the Council, which means that the Council has veto power [26].

Second Branch: Powers of the Prosecutors' Composition

The Council's powers over prosecutors are less strong. It is the Minister of Justice who proposes their appointment, and the Council's role is limited to expressing a "simple opinion" (Avis simple) that is not binding on the Minister of Justice [27]. Although successive Ministers of Justice have informally respected the Council's opinion, this situation remains criticized for not providing sufficient guarantees for the independence of the public prosecution [28].

Fourth Section: Disciplinary and Advisory Powers of the Council

In addition to managing professional careers, the Supreme Judicial Council performs a disciplinary role to ensure judges' compliance with their duties and an advisory role in preparing legal texts.

First Topic: Disciplinary Powers

Discipline is one of the most serious procedures affecting a judge, so this task was entrusted to the Supreme Judicial Council to ensure a fair disciplinary trial.

First Branch: Discipline in the Algerian System

According to Article 181 of the Constitution and Article 68 of Organic Law 22-11, the Supreme Judicial Council is responsible for deciding on disciplinary proceedings against judges [29]. Organic Law 22-12 (Articles 83 onwards) defined disciplinary offenses (such as breach of the duty of discretion or commission of a serious professional error) and the penalties prescribed for them (from reprimand to dismissal) [30]. Disciplinary procedures are surrounded by guarantees of the right to defense, as the judge is notified of the facts attributed to him, and he has the right to access the file and be assisted by a lawyer or colleague [31].

Second Branch: Discipline in the French System

In France, the judges' composition acts as a real disciplinary council that issues binding decisions with disciplinary penalties against judges [32]. As for prosecutors, the competent composition merely expresses an opinion to the Minister of Justice who has the authority to impose the penalty [33]. One of the important developments in France (since 2008) is the possibility of bringing the Supreme Judicial Council directly by litigants (Les justiciables) in case a judge commits a professional error, which is a mechanism not present in the Algerian system [34].

Second Topic: Advisory Powers

The Supreme Judicial Council is consulted on draft laws related to justice to ensure their compatibility with the principle of judicial independence.

First Branch: Advisory Role in Algeria

Article 182 of the Constitution and Article 19 of Organic Law 22-11 stipulated that the Supreme Judicial Council expresses its opinion on draft laws related to the judiciary and the administration of justice [35]. The Council is also tasked with preparing a code of ethics for the judicial profession and ensuring its observance [36].

Second Branch: Advisory Role in France

The French Council enjoys broad advisory powers, as it is mandatorily consulted on draft laws related to the basic statute of judges [37]. The President of the Republic can also consult it on any matter related to the independence of the judiciary [38]. The French Council has issued a code of ethics for the judicial profession (Recueil des obligations déontologiques) which is an important reference for judges [39].

Conclusion

Through this comparative study, it is clear that the legal system of the Supreme Judicial Council in Algeria has witnessed a notable positive development in light of the 2020 Constitutional Amendment and the organic laws of 2022 (22-11 and 22-12). The removal of the Minister of Justice from the Council's composition, the expansion of electoral representation of judges, and the linking of professional careers (appointment, promotion, transfer, discipline) to the Council's powers are all steps that strengthen the independence of the judicial authority and limit the intervention of the executive authority.

Comparing with the French system, we find that the Algerian system adopted a unified structure of the Council that includes both judges and prosecutors, while the French legislator preferred structural duality to take into account the specificity of prosecutors. Although the French system appears more advanced in some respects (such as the presidency of the Council by judges and the possibility of bringing the Council by litigants), the Algerian system has made up for many of the previous shortcomings.

However, the textual establishment of the independence of the Supreme Judicial Council is not sufficient in itself, but requires practical implementation through the Council's exercise of its powers with transparency and impartiality, and the establishment of a culture of independence among the judges themselves. The real challenge lies in transforming these advanced legal provisions into tangible reality that ensures the Algerian citizen an independent, honest, and effective judiciary.

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