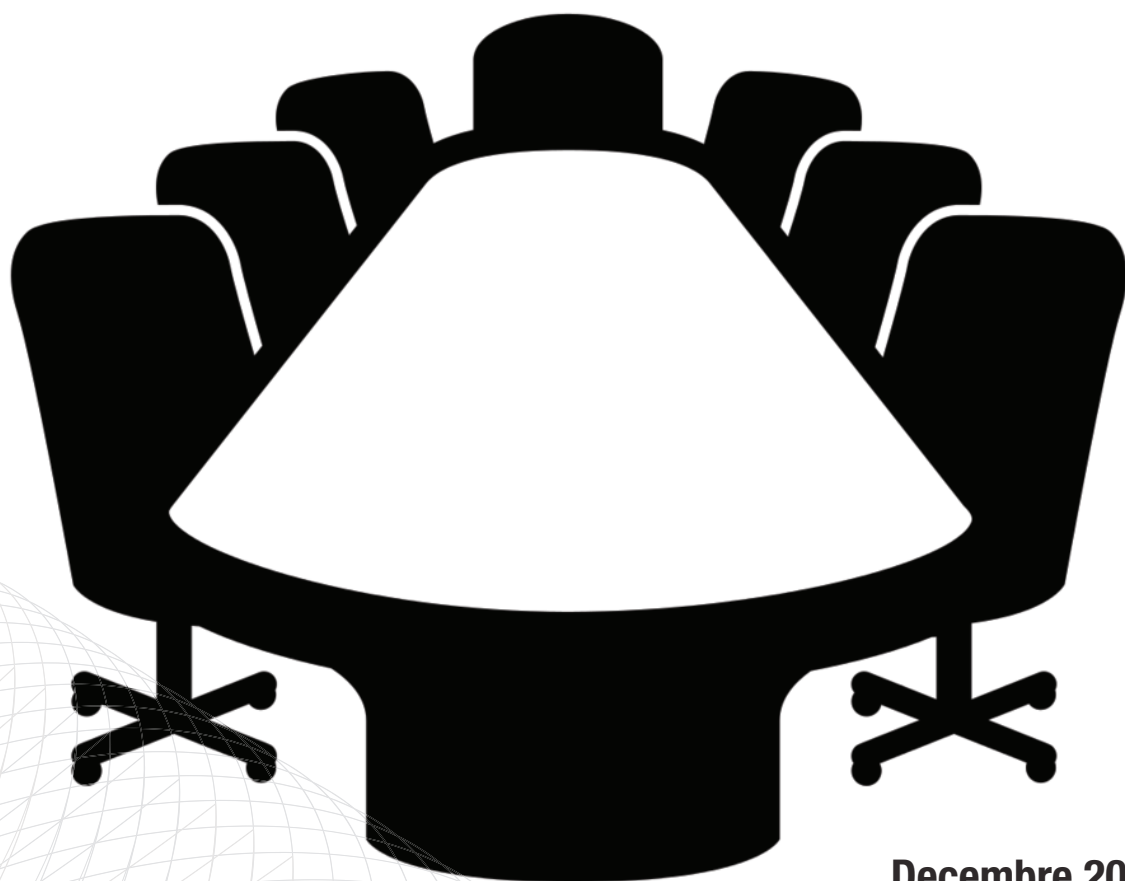


**REPORT ON REALITY AND PROSPECTS  
INDEPENDENT CONSTITUTIONAL BODIES IN TUNISIA**



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# REPORT ON REALITY AND PROSPECTS INDEPENDENT CONSTITUTIONAL BODIES IN TUNISIA

## Report

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## Executive summary

Independent bodies emerged at the beginning in the form of independent administrative bodies, then they turned into independent public bodies and in the end they turned into independent constitutional bodies. This prominence leads to a review of the foundations of the establishment of the administration, and the principles of administrative and political organization of the state, as it came as an answer to the crisis of state legitimacy from the 1970s, and specifically to the crisis of trust towards the state, especially towards Traditional methods of intervention in the social and economic sphere, and the arguments between the two sides, the first is that the state has proved its inability to respond to the specificity of some sectors, and second, is the authoritarian trend that threatened some of the fundamental rights and freedoms. But the legislator did not formulate an integrated theory for this new class of public law persons, "which contributed not to take the value it deserves,

These moral entities emerged for the first time in French law in 2008, and in Tunisian law with the 2014 constitution, and this constitutional dedication to preserving the accumulation that took place after the revolution in 2011 came.

Tunisia experienced three waves of independent bodies, as the first wave emerged from the nineties. Under the 1959 constitution, several independent bodies were created, all of which were described as independent administrative bodies, and essentially a regulatory nature to limit the dominance of the state as the framework for some competitive sectors and its monopoly over the larger side of these activities through public institutions and public facilities at the same time, although the constitution did not include any Reference for this category.

The second wave of bodies was from 2011 until the ratification of the 2014 constitution, as several bodies were created at the beginning of the democratic transition, and before the constitution was suspended, these bodies were adapted as independent public bodies.

The third wave of independent bodies, with the issuance of the constitution of January 27, 2014, as a whole Title was devoted to independent constitutional bodies, is the sixth Title, which reflects the desire of the National Constituent Assembly to maintain constitutional bodies as a supporter of democracy. Title 6 contained a number of guarantees, in return, the founding authorities were not keen to materialize the provisions of Title Six, as many bodies remained until the year 2017 in a dead letter, while the other remained under the weight of provisions of laws that did not take into account the privacy of independent constitutional bodies.

This led to a question about the prospects of independent constitutional bodies in Tunisia, and about how to support the choice that the founder established so as not to undo its constituents?

This report will attempt to start by presenting the privacy of the Tunisian constitutional option (Part 1), to determine when the principle of the independence of constitutional bodies (Part 2) through the supervision of the constitutional bodies (Part 3) to finally reach coordination between the independent constitutional bodies (Part 4)

## INTRODUCITON

Constitutional experiences have shown the failure of the principle of separation of power in confronting tyranny, especially since the partisan phenomenon confirmed that the majority party can simultaneously control the executive and legislative authority, which effectively leads to a mixture of power. It was necessary to think about developing methods of governance, even if this is at the expense of some fundamental rules of constitutional law.

This prompted the creation of a new arrangement that would halt the executive branch, by establishing independent bodies (autorités indépendantes). The emergence of independent bodies can be traced back to the United States of America, since what became known as independent agencies, since 1887, was the first agency of the Interstate Commerce commission, and some considered these agencies part of the fourth Branch of government<sup>1</sup>, and the use of these agencies extended to Scandinavia. Then to Britain, then to the rest of the European countries.

In France, these bodies began in 1978 in the form of independent administrative bodies, with the creation of the National Committee for Internet and Freedoms, CNIL, then independent public bodies emerged, by enjoying some administrative bodies with the independent legal personality, to reach the independent constitutional bodies starting from the year 2011. It happened that the administrative body was transformed into an administrative body (le Conseil Supérieur de l'Audiovisuel), and an independent public body may also turn into an independent constitutional body from that of the High Independent Authority of Audiovisual Communication (la HAICA).

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<sup>1</sup> Cf. ZOLLER, Elisabeth. L'encadrement constitutionnel des agences indépendantes aux États-Unis ; Revue du droit public - 01/03/2014 - n° 2 - page 379 .

It is necessary to beware of the chaos of terminology, in addition to mixing some between the independent public body, the independent administrative body and the independent constitutional body, others add another level of complexity by talking about regulatory bodies and counter authority, in talking about independent constitutional bodies without discrimination between them.

It should be noted in this regard that talking about regulatory bodies does not mean the existence of a new class of public structures per se, but rather reflects the adoption of a new functional approach<sup>2</sup>. While the term independent bodies depends on a structural approach, and accordingly, while the regulatory bodies are active mainly in the economic field, especially in the competitive areas of them, they fall under the category of independent bodies in general, whether they take the form of independent administrative bodies, independent public bodies or independent constitutional bodies.

It must be emphasized that the constitutional status is the most important criterion that distinguishes the independent constitutional bodies from other bodies. However, the common and the different between them must be defined, as among the independent constitutional bodies, themselves we find a “consultative” body, a body that contributes to policy and monitoring, and a body that “administers, organizes and supervises” the entire field.

The emergence of independent bodies has led to the return of the old debate on the distinction between judicial and administrative structures. The necessity is that a number of independent bodies have been assigned functions similar to those carried out by judicial structures by granting them the powers of tracking and powers to impose penalties, which led to the subjection of that category of bodies when exercising these powers and tasks, it is

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<sup>2</sup> PORROND, Thomas. La fonction contentieuse des autorités de régulation en France et au Royaume-Uni ; « Alors que la notion d'autorité administrative indépendante met en relief une caractéristique organique, la notion d'autorité de régulation met, elle, l'accent sur un élément fonctionnel et, celle d'autorité de marché le contexte dans lequel ces instances se sont développées, c'est-à-dire l'économie de marché ». p 63.

necessary to adhere to the general principles and procedural controls adopted by the judicial structures and related mainly to fair trial rules and guarantees and without this preventing them from excluding the actions of those bodies from judicial oversight.

It is necessary to know the changes brought about by the emergence of independent bodies in the common law. Before their emergence, the unity of administration was enshrined by the existence of two “organic connections”, as Jacques CHEVALIER described it: a hierarchy that takes the form of direct dependency relations, and the supervisory authority that subjects the diagnosed structures to state control<sup>3</sup>.

Structures that have emerged outside the hierarchy of administration have emerged in the world of administration, are exempt from every power to direct or supervisory control, and enjoy a freedom of action legally guaranteed.

This prominence leads to a foundations review of the administration establishment, and the principles of administrative and political organization of the state. According to Pierre ROSANVALLON, “The strong rise of these bodies introduces a revolutionary change to the traditional reference to formulating the democratic issue, as the legislator changed and renewed public governance by creating independent bodies, but it did not develop an integrated theory for this new class of public law persons.”<sup>4</sup>

Some French jurists have warned about the extent of this change, considering that, up to the limits of the 1980s, questions and discussions fell within a terminological field that did not change much<sup>5</sup>, as questions about parliamentary democracy, the theory of separation

<sup>3</sup>En effet, avant l’apparition de telles autorités, l’unité de l’administration était généralement, comme l’explique Jacques Chevallier, « assurée par l’existence de deux types de liens organiques: la hiérarchie, qui prend la forme de rapports de subordination directe, et la tutelle, qui soumet les organes personnalisés au contrôle de l’Etat.

<sup>4</sup> Rosanvallon, Pierre. « la montée en puissance de telles institutions révolutionne le répertoire classique de la formulation de la question démocratique. La légitimité démocratique : Impartialité, réflexivité, proximité ; Paris :2008 ; ed Du Seuil, p 22.

<sup>5</sup> Furnémont, Jean-François. Quelle gouvernance pour des autorités administratives indépendantes? <https://legalworld.wolterskluwer.be/fr/nouvelles/domaine/droit-public/carte-blanche-jean-francois-furnemont-quelle-gouvernance-pour-des-autorites-administratives-independantes>.



of powers, and guarantees of human rights remained within the same limits., and in almost the same political terms.

However, with independent bodies, the rules associated with the pursuit of democratization of institutions registered a kind of cut with previous perceptions, by focusing a new form of organization for public structures that combined some democratic rules and modern administrative behavior based on concepts of efficiency, impartiality and transparency in the management of public affairs. And given the shortcomings in its crystallization intellectually, it did not take the extent it deserves, and it seems that "and considering the default in theory as original political forms, these institutions have not found the position they deserve within the democratic system<sup>6</sup>."

To define independent constitutional bodies, it can be said that we do not find neither a juridical nor legal definition of these moral subjects, but it is possible from the characteristics that the Tunisian constitution came to say that they are public, enshrined in the constitution, and enjoy legal personality and financial independence, and they are not subject to the mission defined by the constitution, not to an authority Supervision, not to serial authority.

They are distinguished from independent public bodies in their constitutional basis as the latter occurs by law, while independent administrative bodies, which are the former form of independent bodies, usually do not have legal personality, and French law No. 2017-55 dated January,20, 2017 confirmed this distinction in its second article. Note that Law No. 54 of 2017 dated January 20, 2017, stipulated that the creation of independent bodies, whether public or administrative ones, can only be by law.

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<sup>6</sup> Ibid, La nouvelle grammaire des institutions démocratiques dans laquelle s'inscrivent les autorités indépendantes marquent une rupture avec ce précédent univers. Mais faute d'avoir été élaborée intellectuellement (elle n'a pas eu son Sieyès ou son Madison), son ampleur n'a pas été perçue à sa juste mesure.

The emergence of independent bodies, specifically independent constitutional bodies, came as an answer to the crisis of state legitimacy from the 1970s. The crisis of confidence towards the state emerged, especially towards traditional methods of intervention in the social and economic sphere, and the arguments ranged from two sides. The first is that the state has proven not to its ability to respond to the privacy of some sectors, and the second, is the authoritarian tendency that threatened some basic rights and freedoms. The independent administrative bodies emerged in France from the seventies of the last century, specifically in 1978, then the independent public authorities emerged, to reach independent constitutional bodies from 2011.

It is worth noting that during the past forty years, democratic countries have witnessed a multiple decline and regression in the role of the state<sup>7</sup> vis-à-vis the market and towards society. The first was to push the state to abandon a monopoly or direct management of a number of economic sectors, especially those of a competitive nature, based on the existence of conflicts of interests between the role of the state as an economic player and as a moderator and framer of these activities, it ended up limiting the role of the state to the amendment function while opening that mission to the participation of representatives of economic actors and giving more transparency and imposing controls that guarantee impartiality and independence of the structures overseeing the amendment function, while the state's retreat toward society is mainly represented by the state's abandonment<sup>8</sup>, especially the executive authority, to manage a number of sensitive areas closely related to

<sup>7</sup> Jean-Bernard Auby « Quelles que soient les orientations politiques des leurs gouvernements ; les démocraties occidentales ont connu, dans les trente dernières années un double mouvement de réduction de l'espace de l'Etat au profit de celui du marché, et de réduction de l'espace de l'Etat au profit des citoyens. Ce double mouvement peut être qualifié comme traduisant un phénomène commun de « désétatisation » de la société, même si, en vérité, il apparaît à beaucoup d'égards comme abritant davantage une transformation des modalités de l'intervention publique qu'une véritable régression de celle-ci » ; La bataille de San Ramano Réflexions sur les évolutions récentes du droit administratif, p4.

<sup>8</sup> Marie-Charlotte ROQUES-BONNET ; « A cet égard, la montée en puissance des AAI relève d'une révolution de la logique administrative : la décentralisation fonctionnelle. Elle signifie la fin de l'Etat omnipotent et omniscient : en démembrant le pouvoir réglementaire et administratif en autorités spécialisés, l'Etat a opté pour un éclatement de compétences, une déflation des responsabilités mais surtout plus d'efficacité » ; « Les blocs de pouvoirs « éclipsés » par les autorités administratives en réseau vers la fin de contrepouvoirs » , p 12.

fundamental freedoms and rights and assigning them to completely independent and impartial structures from them while subjecting them to the legislative authority and to public opinion by subjecting their actions to transparency controls and the citizen's right to access information.

In Tunisia, it is possible to talk about three waves of independent bodies, as the first wave emerged from the nineties. Under the 1959 constitution<sup>9</sup>, several independent bodies were created, all of which were described as independent administrative bodies, and essentially a regulatory nature to limit the state's dominance as framing some competitive sectors and its monopoly over the greater aspect of these activities through public institutions and public facilities at the same time, although the constitution did not include any indication of this category, however, the Constitutional Council at the time clearly defined the nature of some of the updated institutions as independent administrative bodies, namely the Capital Market Authority (1994)<sup>10</sup>, the National Communications Authority (2001)<sup>11</sup>, the National Authority for the Protection of Personal Data (2004)<sup>12</sup> and the General Authority for Insurance (2008)<sup>13</sup>.

This first generation of constitutional bodies falls within the framework of the policy of economic openness and Tunisia's involvement in the policy of free exchange with several economic spaces. Perhaps the most prominent of them is the European Union at the end of the last century and the consequent of these options are the need to reduce hegemony and direct intervention of the executive authority in managing competitive economic activities and ensuring freedom of initiative and securing the process of regulating these activities by

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<sup>9</sup> Ghrib, Hedia, The Constitution and Independent bodies, The Legal Journal of Legal and Political Studies, No. 3-2014, p. 383.

<sup>10</sup> The Capital Market Authority has been established pursuant to Law No. 117 of 1994 related to the reorganization of the financial market.

<sup>11</sup> Created according to Article 63 of Law No. 2001- 01 dated January 15, 2001.

<sup>12</sup> Created the provisions of the Organic Law No. 2004-63 dated July 27, 2004.

<sup>13</sup> It was created by virtue of Law No. 2008-08 dated February 13, 2008 related to the revision and completion of the insurance Journal.

regulatory bodies that ensure the participation of actors in these Journals and ensuring a great deal of transparency, integrity and efficacy in the regulation process.

The second wave of bodies was from 2011 until the ratification of the 2014 constitution, as several bodies were created at the beginning of the democratic transition, and before the constitution was suspended, these bodies were adapted as independent public bodies, and it is necessary to point out that the creation of independent bodies characterized by fluctuation and inaccuracy in determining the legal characteristics of these bodies. Four independent public bodies have been created: the higher authority for realization of the objectives of the revolution, political reform and democratic transition (February 18, 2011), the National Commission to investigate on corruption and embezzlement (February 18, 2011)<sup>14</sup> and the National Commission of inquiry on Abuses Registered during the period from December 17, 2010, Until its removal (February 18, 2011)<sup>15</sup> and the national independent commission for Media and Communication Reform (March 2, 2011)<sup>16</sup>.

It is necessary to point out that the emergence of these bodies was marked by a legal paradox, which was first in the big differences in nominations despite the issuance of the four decrees on the same day, so the nominations ranged between a higher body, a national committee and a national body, although the four texts indicate that they are independent public bodies, but without reference to the legal personality or financial independence, as we know that the category of independent public bodies came in France, to distinguish the bodies that enjoy legal personality from the independent administrative bodies that do not have this personality. This may be attributed to the nature of the tasks entrusted to those bodies, which are mainly advisory and investigative in nature on specific issues, and given the situational nature of their tasks mainly represented in framing and securing the first

<sup>14</sup> Decree No. 7 of 2011 dated February 18, 2011, related to the creation of National Commission to investigate on corruption and embezzlement.

<sup>15</sup> Decree No. 8 of 2011 dated February 18, 2011, related to the creation of the National Commission of inquiry on Abuses Registered during the period from December 17, 2010 until its removal.

<sup>16</sup> Decree No. 10 of 2011 dated March 2, 2011 related to the creation of and the national independent commission for Media and Communication Reform

period of the political transition stage, as well as the failure of these bodies to have a general mandate to supervise and manage a specific area which negates the need to grant them a legal and independent personality in financial management.

The first independent public body with legal personality was the supreme independent high authority for elections, which was created under the provisional organization of power and after the suspension of the constitution in accordance with Decree No. 14 of 2011 related to the provisional organization of the authority. The characteristics of two previous bodies having legal personality and financial independence, which are the high independent authority of the audiovisual communication, have been reviewed by virtue of Decree No. 116 of 2011 dated November 2, 2011 related to freedom of audiovisual communication and the creation of an independent higher audiovisual communication body. And the National Anti-Corruption Commission, which replaced National Commission to investigate on corruption and embezzlement, which in turn replaced in 2017 the Good Governance and Anti-Corruption Agency<sup>17</sup>.

After the success implementation of the independent high authority for elections according to Decree No. 27 of 2011 in organizing and managing the first fair and transparent elections and securing the focus of the National Constituent Assembly, the founder went within the first founding text to dedicate the idea of permanent independent bodies<sup>18</sup> by laying down the independent high authority for elections despite the provisional nature of the founding text, with the intent to cut off definitively with the legacy of tyranny marked by the lack of transparency and the absence of the integrity of the elections that were organized during more than half a century and the confiscation of voters' voices, which prevented the peaceful transfer of power.

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<sup>17</sup> Organic law No. 2017-59 dated August 24, 2017 related to the good Governance and Anti-Corruption Agency

<sup>18</sup> The founder singled out a Title for the Electoral authority (Title Seven) along the lines of the legislative authority, the executive authority, and the judiciary. Article 25 of the Constitutive Law of December 16, 2011 related to the temporary organization of public authority included that the National Constituent Assembly created a permanent independent public body For the elections.

The creation of independent bodies has continued, as three independent bodies were established, which is the Independent high Authority for Elections under the organic Law No. 23 of 2012 dated 20 December 2012 related to the Independent high Authority for Elections and the National Authority for Prevention of Torture under an organic Law, and the Truth and Dignity Commission under organic Law Number 53 of 2013 dated 24 December 2013, establishing and organizing transitional justice.

The third wave of independent bodies, with the issuance of the Constitution of January 27, 2014, as a whole Title was devoted to independent constitutional bodies, is Chapter VI. With the importance of this Title in the Tunisian constitutional construction, however, to this day its various provisions have not been applied, but that some constitutional bodies have not been created at all, and the previous legal texts continue to be applied to the emergence of the category of independent constitutional bodies, and the government has submitted a draft organic law in this regard. In the framework law of independent constitutional bodies, this project when presented to independent constitutional bodies, it was strongly opposed, especially in the written remarks officially submitted by the independent high authority for elections to the Ministry of the relationship between constitutional bodies and human rights., and views of the Independent High Authority for Audiovisual Communication and the National Anti-Corruption Commission are addressed to the National Constituent Assembly. The original version of the law was retracted in favor of another format called an organic law related to the provisions common to the independent constitutional bodies. This project, in turn, sparked great discussions amounting to challenging its constitutionality, and the provisional Authority to monitor the constitutionality of the draft laws issued its decision number 04/2017 on August 8, 2017 Related to the organic Law No. 30/2016 related to the provisions common to independent constitutional bodies, in which it recognized the unconstitutionality of one of the articles of

the draft law while recalling the issuance of the organic Law No. 59 of 2017 dated August 24, 2017 related to the Good Governance and anti-corruption Authority.

The emergence of independent constitutional bodies in Tunisia has been characterized by the emergence of positions rejecting this new class of bodies based on the high cost of their implementation and management and considering them as an additional burden that bears on the state budget or exceeds the scope of its authority, to the extent that some of the public authorities of these bodies are called upon to move towards the state as if those bodies are active outside State space without taking into account that it was created to fulfill powers that were soon entrusted to the executive branch. While others are defective on those bodies not to fulfill them with the full powers entrusted to them, such as modifying some activities related to the audiovisual scene in relation to the commission for audiovisual communication, or even those areas that are not subject to their reference, such as the field of financing control of political life in relation to the independent high authority for Elections.

Whereas while the work of some constitutional bodies has begun, some hindsight has been made in the discharge of the tasks entrusted to them, the lack of transparency in their work, and the absence of a clear distribution of the rules of competence within their governing structures and operational organs, In some forms, they do not comply with the judicial decisions and the views of those judicial bodies, but the recent experience and lack of proper legal frameworks governing the functioning of those bodies are compatible with the provisions of the Constitution on the one hand, and the special nature of those public structures on the other, pushes to study the legal, regulatory and procedural system that governs the work of constitutional bodies, the extent of their suitability the will of the founder of these bodies, the revision of the rules concerning the control of the composition of constitutional bodies, how to select members of their Council, the harmonization of powers between their different editorial and policy structures, the enforcement of legal and

judicial controls and the rules of transparency and good governance in a manner that increases the efficiency of their performance and supports their independence in particular on behalf of the executive authority, it enhances the balance of citizen confidence in these bodies and pushes for a more comprehensive development of public affairs management and increases the performance of other public structures.

It is clear that the constitutional bodies today in Tunisia are experiencing great difficulties, some of which have not yet seen the light, while others still face difficulties related to the inadequacy of the old legislative rules contained in the provisions of the Constitution set out in Title VI, which creates the paradox of subjecting new constitutional structures to the texts of the past, and in finding the necessary resources to perform the tasks. On the other hand, some organizations are facing internal crises that negatively impacted the image of these bodies, as well as the inability of some of them to achieve the goals that they were sent for, which has contributed to the perception that these bodies are expensive compared to their lack of efficiency, raising questions about their respect for governance rules and the good disposition of public resources.

All of this leads to the question of the location of constitutional bodies today within the new constitutional structure? What mechanisms must be adopted to ensure the functioning of the bodies? What control methods would guarantee the principles of accountability and the rule of law without prejudice to the independence of the bodies?

These questions come within a central problem: The question of the horizons of independent constitutional bodies in Tunisia, and how to consolidate the choice that the institution has devoted so that its components will not be reversed?

This report will attempt to begin by presenting the specificity of the Tunisian constitutional option (Part 1), to stand up when the principle of the independence of



constitutional bodies (Part 2) is adopted through the control of constitutional bodies (Part 3), finally to achieve coordination between independent constitutional bodies (Part 4).

## **Part one: The specificity of the Tunisian constitutional choice**

The Tunisian constitution, in the section on constitutional bodies, following discussions and hearings of legal experts on the lessons learned from the 2011 experience, particularly with regard to the independent high authority for elections.

Comparative experiences have not been helpful, most constitutions were not subject to independent constitutional bodies, while some other constitutions were different from the requirements of the Tunisian constitutional context.

All of this has won the Tunisian constitutional choice an important specificity, making it different at the same time from the comparative constitutional choices. Contrary to the previous legislative framework of constitution, which does not suit most of the constitutional bodies' spirit, as mentioned in the sixth part of constitution.

The specificities of the Tunisian choice can be determined in the legal framework of bodies (1), the number of bodies,(2) and constitutional guarantees.(3)

### **Section 1: Legal framing of bodies**

The Tunisian constitution devoted a new kind of public law, the independent constitutional bodies, making the constitutional status of the bodies the first guarantee of non-return by canceling the presence of these bodies and returning their powers to the executive authority. Some voices today recall from the option of a return to the organization of elections by the Ministry of the Interior represents a reversal of the philosophy of the constitution and a clear violation of its provisions. Moreover, the Tunisian constitution is

not only devoted to the institution but also to its constitutional framework, in terms of the fundamental mission "bodies support democracy, and all state institutions facilitate its work" (article 125 of the constitution). Its composition, representation, methods of election, organization and accountability are regulated by a organic Law (article 65 of the Constitution), which made it impossible to adopt a framework law for constitutional bodies. It should be noted that this option is in the same direction as the Constituent Act No. 6 of 2011 of December 16, 2011, concerning the provisional regulation of the public authorities. Freedom, human rights, the right to work and the right to trade unions have been organized on this basis by the independent high authority for elections, its truth and dignity commission, and the national authority for prevention of torture e under organic laws, although the two latter will not become constitutional bodies.

It should be noted that the devotion of independent bodies to the very core of the Constitution was aimed, as highlighted by the discussions that have marked the work of the Constituent Committee in charge of constitutional bodies, at giving those public structures a top place within the hierarchy of public institutions and structures<sup>19</sup>. In this way, the independence of these bodies will be respected by the rest of the State institutions, and the institutional awareness will be given to the authoritarian legacy and the one-party involvement, whether the executive power and the various parts of the public structures, on the one hand, and will be able to make the work of these bodies more effective, transparent and fair.

The constitution has set the basic elements of the legal system of independent constitutional bodies, providing that these bodies enjoy the legal personality and the administrative and financial independence", and that they are elected by the People's

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<sup>19</sup> The Constituent Committee on Constitutional bodies discussed the question of the legalization of independent bodies. A number of members of the committee have argued that the primacy of constitutional bodies, based on constitutional formalization, should not be over-extended compared to other public structures. The report issued by the committee on September 26, 2012 included in its sixth page that "the committee members agreed not to give the "higher" status to any constitutional body within its name, considering that a presence within the constitution would gain the necessity of this status".

Assembly with an enhanced majority", without specifying this enhanced majority, which means they exceed the absolute majority.

It provided for the duty of the bodies to submit an annual report to the People's Assembly, which would be discussed for each body in an ad hoc plenary meeting.

It stated that "the (organic) Act shall regulate the composition, representation, methods of election, organization and accountability of such bodies".

The constitution defined the number of the Council members (nine members) for two constitutional bodies, namely the independent high authority for elections and the high independent authority for audiovisual communication. For the rest of the bodies, however, only talk about the terms of selecting members to be "independent, impartial and fair", except for the Commission for Sustainable Development and the rights of future generations, in which they were not required to be independent.

## **Section 2: Number of bodies**

The Tunisian Constitution has two main features: The first is the control of a clear number of independent constitutional bodies and the second does not distinguish between different constitutional systems.

As for the number, and in reference to comparative law, this type of body is new, since most constitutions do not make provisions for this new type of body, and the French Constitution is in this area. Again, when 2008 created one independent constitutional body, the protector of rights, which was established by a organic Law in 2011, it created a new kind of common law subject in French law.

In Algeria, an independent high authority for elections Observation was created in accordance with Article 194 of the March 6, 2016 Constitution.

In Morocco, while the Moroccan Constitution enshrine "institutions and bodies" of an independent constitutional nature (articles 161-170), entitled "institutions and bodies for the protection of rights and freedoms, new governance, human development, sustainable development and participatory democracy"; It did not give it the same legal status or even the same legal title, but it was distinguished according to three fields between "bodies for the protection and promotion of rights", which are four: The National Council for Human Rights, the mediator, the Council of the Moroccan Community abroad, The bodies responsible for the equality and combating of all forms of discrimination,, and the "good Governance and regulation bodies", the High Organization for Audiovisual Communication, the Competition Council, the National Commission for Integrity, Prevention and Combating Bribery, promote human and sustainable development and participatory democracy bodies, The higher Council for Education, Training and Scientific Research, the Consultative Council for the Family and Children and the Youth and Community Action Advisory Council; In the articles, it displays the tasks, it is the constitution of the institution and the tasks assigned to it without devoting guarantees of its independence. Article 171, which states that "it shall be determined by the laws establishing the formation, powers, organization and rules of operation of the institutions and bodies provided for in articles 160 to 170 of this Constitution."

Libya's draft constitution, submitted in 1992-2017, allocated a seventh Titles to independent constitutional bodies, but went in a different direction from what was mentioned in the Tunisian constitution in two ways, devoting six constitutional bodies<sup>20</sup>, each of which was allocated a separate Articles. Article 163 was then devoted to other bodies, which read "regulated by an Administrative Control Authority Act, a transparency

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<sup>20</sup> And the Libyan draft constitution dated July 29, 2017, it has devoted a seventh chapter containing ten chapters to independent constitutional bodies, and the project has devoted two classes of bodies, it has devoted a special chapter to each of the six bodies is the Independent High Electoral Commission, the Audit Court, the National Council for Human Rights, the Council The National Committee for the Protection of Cultural and Linguistic Heritage, The Sharia Research Council, the Commission for Sustainable Development, and was devoted by another chapter entitled "Other Bodies",

and Anti-Corruption Authority, an Statistical Commission, a higher Council for Media and the Press, a Council for Science, Technology and Innovation, the composition, terms of reference and the system of operation of which are defined by law, guarantees of independence and impartiality of its members, as provided for in this section.

In its Chapter Six, the Tunisian Constitution devotes a chapter to each of the five independent constitutional bodies, and this number is exclusively limited, meaning that today only 5 independent constitutional bodies can be talked about.

Contrary to some of the constitutions already mentioned, we do not find discrimination in the constitutional status of the consecrated bodies within Chapter VI of the Constitution.

### **Section 3: Constitutional guarantees**

The choice of the Tunisian constitution reflected, on the one hand, the first lessons learned from the experience of the independence state over forty years, and its marked dominance of the executive authority identifying with the one party in all areas related to fundamental rights and freedoms, confiscation of opinions and voices of citizens in expressing their opinions and choosing their representatives within the councils Elected in the absence of free, pluralistic and fair elections, and taking into account the experience of the Independent Supreme Commission for Elections in 2011 and 2014 on the other hand, by cutting with the prevailing model and assigning management and supervision to those areas of public women enjoying some of Administrative and financial Stqlalah, but he acknowledged the other hand, the need to submit to the control of parliament.

Referring to the cradle of independent bodies, which is the United States of America, we note the distinction between independent and non-independent agencies that are called executive agencies. For independent agencies, it is characterized by the inability to isolate

its functioning apparatus from the head of state except for a good reason (for cause) which is committing a crime of public right, or wrong A professional (neglect of duty, inefficiency) (ou une faute professionnelle); or a personal error (malfeasance in office). In addition to this guarantee, American jurisprudence adds five conditions, which are first defining the term of the mandate, which can reach 14 years for members of the Board of Governors of the Central Bank. Second, the formula is partially renewed to ensure periodic and orderly renewal. Third: The structure that takes into account the representation of the Republican and Democratic parties. Fourth: The council nature of the agency's administration. Fifthly, it is obligatory to submit an annual report to the Congress, which exercises political and financial control.

With reference to the provisions of Chapter VI of the Constitution, we note the dedication of the most important of these elements except for the representation of the two parties, which is not warranted to be introduced in Tunisia.

The Tunisian constitution has sometimes been exposed to some details and particles to ensure that the spirit of the constitution is not deviated, and through the discussions that took place in preparing the texts, some MPs reacted by referring to the experience of 2011.

But it must be noted that the provisions of Chapter Six of the 2014 Constitution remain to this day among the provisions that have not yet entered into force, some bodies did not see the light of day to a while, while two bodies remained to this day living according to the old composition that came before the previous texts to enter the constitution in effect. This hesitation and delay in focusing the constitutional bodies stipulated in the constitution is highlighted after a period of nearly four years has passed since the ratification of the constitution. And the reluctance of the executive authority to enable direct bodies from it to operate even temporarily from work means similar to providing work headquarters and from a budget necessary to start its work and carry out the tasks entrusted to it due to the lack of a real will from the executive authority to abandon management of sensitive areas

closely related to basic freedoms for the benefit of bodies Independent, as long as the creation of independent bodies leads in the end to withdrawing the authority to manage and supervise a number of areas, from the executive authority and strengthening Parliament's oversight of the bodies in charge of overseeing these areas on the occasion of discussing their activity reports and its financial reports and during the discussion and approval of its annual budgets.

Even worse, some constitutional provisions have been violated, including the last paragraph of Chapter 126 of the Tunisian Constitution, which provides for the renewal of one third of the members of the Independent High authority for elections. This paragraph has been violated on two occasions, which calls for thinking at a first level in a way to stop the continuation of the violation, and on the other hand in a perception that keeps us away from the possibility of violating the constitution in the future.

## **Recommendations related to the first part**

If it turns out that the options that the founder went to are able to always be correct, as he chose to enter sometimes in some parts, including limiting the number of members of the Council of some bodies to nine, which is a negotiable option, and determining the renewal time, which contributed to the complexity of the status of renewal of some bodies, we have become in an unconstitutional situation, given that the periodical renewal was deficient in the delay of Parliament in renewing, for example, a third of the Independent High authority for elections.

While it is not correct to propose amending the constitution to solve such problems, because this may gradually lead to a contempt for the constitution, by trying to adapt it to political practices, and the assumption is that political practice is the one that must be compatible with the requirements of the constitution.

Therefore, resorting to legislation to deviate from the provisions of the constitution may be the most appropriate solution. Legislative reform is a solution at the same time due to the delay in the renewal of members or the delay in the election of the president of the body. Several solutions can be proposed to avoid disrupting the election of the president of the commission, including limiting the right to run for the presidency in some specialties, as is the case with the Authority for Access to Information, so the right to run is restricted to judges and university professors, for example, given the traditions of neutrality that are related to these specialties.

On the other hand, it is necessary to review the procedures for electing the president, in order to avoid a return to square one whenever the plenary session fails to choose the candidate by an absolute majority, so a third role can be added, in the event that none of the last two candidates obtain the absolute majority, and the candidate who won the most votes in the third round shall be declared the winner.

Perhaps the option to develop a Journal for constitutional bodies seems, today, to be the most appropriate in Tunisia, as the legislator's adherence to developing a law for common provisions will not lead to solving the outstanding problems for constitutional bodies, but may present additional problems related to the multiplicity of texts and their conflict of provisions, so the Journal is composed of a first chapter that includes common provisions between bodies, to frame the privacy of each body through the sections specific to each body.

Part Two: Adopting the principle of the independence of constitutional bodies.



## Part Two: Adopting the principle of the independence of constitutional bodies

While the circumstances that led to the original constituent authority or subsidiary constituent authority to create constitutional bodies and their approval are at the heart of the constitution, this dedication is the culmination of historical and legislative development in the establishment and development of the category of independent administrative bodies and grant them an important legal impetus to devote and protect human rights and fundamental freedoms similar to the French experience in this field, or in order to create public structures that enjoy a great deal of independence from the executive authority to limit the excesses of this authority and to give more transparency and integrity to the way of managing and supervising a number of sensitive jobs. It is related to the rights and freedoms to break with the authoritarian inheritance, similar to the Tunisian model, and the significant decline in the approach of the citizen's confidence in the integrity and neutrality of the executive authority<sup>21</sup>, especially in the absence of political pluralism and the overlap between the administration and the executive authority that is conflicting with the one party, in its management. For those issues and considering them as a threat to the state of law and institutions on the one hand, and in response to urgent and evolving requests related to adding more transparency in carrying out these tasks on the other hand.

The dedication of these bodies within the constitution comes within a horizontal redistribution<sup>22</sup> within the executive authority by assigning the management of certain tasks to structures independent of the executive authority, and to a distribution of authority

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<sup>21</sup> "The constitutional body is the one that is stipulated in the constitution's concept or specialization ..... and the founder believes that it is better to assign it to independent bodies due to his lack of confidence in the authority or to avoid overloading it," the report of the Committee of Constitutional Bodies on the draft constitution, dated September 26 2012.

<sup>22</sup> The January 27, 2014 constitution included a redistribution of the horizontal power of the executive authority by establishing independent constitutional bodies and a redistribution of power at the vertical level by devoting the local authority exercised by each of the municipalities, regions, and regions.

between the executive and the legislative authority to ensure and enhance the independence of these bodies from the executive authority, on the one hand, and granting them overhead. These bodies are at the heart of administrative organization, on the other hand.

As a result of the foregoing, while the tasks entrusted to these bodies are of an executive nature, they enjoy, during the exercise of their tasks, a great degree of independence from the executive authority and in resolving any aspect of presidential oversight or supervision by the latter.

It should be noted that, while the constitutional bodies have varied and multiple areas of intervention, the common feature of them is their enjoyment of independence, as the approval of the independence of the bodies is the most prominent characteristic of these structures and an essential condition for carrying out its tasks the necessity that the incentive of granting them independence finds its basis in the nature and scope of intervention of those sensitive and related bodies mainly supporting democracy and protecting fundamental rights and freedoms<sup>23</sup> to limit the dominance of the executive authority<sup>24</sup> in these areas and to ensure respect for the rule of law and institutions, on the one hand, and to reduce the inadequacy of classic mechanisms of executive power and public structures in its management in a number of issues with the growth of new and urgent demands of citizens to give more transparency, integrity and participation in the management of public affairs, on the other hand.

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<sup>23</sup>Abdoulaye DIARRA ; « La redéfinition des rapports entre administration et administrés par la création d'organes de régulation et de contrôle semble être l'un des moyens les plus efficaces pour protéger les libertés et les droits des citoyens dans les domaines les plus sensibles de la vie politique » ; Les autorités administratives indépendantes dans les Etats francophones d'Afrique noire ; p2.

<sup>24</sup>A.DIARRA « Le législateur va s'employer à limiter l'emprise de l'administration sur les secteurs sensibles de la vie politique » ; op cit ; p 7.

These bodies enjoy independence from the executive authority guaranteed by the constitution and a number of laws implemented for them, to varying degrees, whether at the structural level or at the functional level.

While the frequency of quotation, at the heart of the provisions related to constitutional bodies, on the independence of these bodies, the legislative approach to the concept of independence varied from one legal framework to another according to the nature and scope of each agency's intervention and according to the circumstances that surrounded it with regard to the features and limits of that independence. While the legislator initiated the establishment of a common legal framework for these bodies through the enactment of a law related to setting common provisions between independent constitutional bodies, it has not succeeded in establishing the independence of these bodies, whether at the structural or functional level, in a manner consistent with the will of the founder and in line with best practices in this regard.

## **Section 1: Structural Independence**

The second paragraph of Chapter 125 of the Constitution requires that "these bodies enjoy the legal and administrative and financial independence and are elected by the People's Assembly with a strengthened majority ...

The law determines the composition, representation, organization, and accountability of these bodies.

The main motive for granting structural independence to constitutional bodies is not only to ensure that the executive does not interfere in and influence those bodies' activities, but also to increase the efficiency of its work and its ability to adapt to the growing need for more specialization and experience, especially with regard to the development of modern technology and its impact on individual and public freedoms.

The features of structural independence emerge by assigning the task of running the bodies to a collective structure (first section) and in the manner of appointing its members (second section) and the duration of their representation (third section) and emphasizing avoiding conflicts of interest during the membership period (4).

The first branch: the collective nature of the administration of constitutional bodies

### **Section 1: the collective nature of the constitutional bodies management**

While the founder, at the core of Chapter 125 of the Constitution, approved the principle of decisional authority and supervision on constitutional bodies by a collective body represented in the Authority's Council, the determination of the number of councils varied from one body to another. While the number of members of each of the Independent High authority for elections and the high independent authority of audiovisual communication was limited to nine members, it was left to determine the number of members of the Council of each of the Human Rights Authority, the Authority for Sustainable Development and the Rights of Future Generations and the Good Governance and Anti-Corruption Authority, to the legislative authority. As long as controlling the number of members of councils of bodies is not considered one of the basic guarantees of the independence of these bodies, it was intended to give more flexibility and harmony between the provisions related to constitutional bodies by referring control of the number of members of councils of bodies to the legislative authority.

The collective nature of the management method, as we have seen, is one of the basic and fundamental elements that constitute the principle of the independence of bodies and a guarantor of their neutrality by allowing non-exclusivity in decision-making by one person and giving way to the possibility of discussing and discussing a number of important and sensitive issues collectively by the various members of the Authority's Council who represent various and multiple specializations to ensure objectivity and seriousness in its

work. And to secure these goals, it tends to be the collective nature<sup>25</sup> of the work of the councils of the bodies, active<sup>26</sup> and not a mock, whether by imposing the availability of a certain quorum for the possibility of convening the council of the commission in the presence and participation of the largest possible number of members and ensuring effective participation of most of its members, from that Chapter 18 of the organic Law No. 2012-23 dated 20 December 2012 related to the Independent High Authority, "Meetings of the Council of the Independent High Election Commission shall be held at the request of its president or half of its members and shall only take place in the presence of two thirds of its members<sup>27</sup>." We also insist on the necessity of having a certain majority to endorse the council's decisions in order to make them legitimate and guarantee a degree of objectivity without the implementation of that condition leading to the disruption of the work of these councils. In order to ensure the effective and effective collective character of the work of councils of bodies, most legal texts framing the work of constitutional bodies tend to impose automatic penalty of abandonment in the form of the frequent absence of a member from the work of the authority's council meetings without a legal justification<sup>28</sup>.

However, that penalty depends on the regularity of the periodicity of the meetings of the Authority's Council, especially for the bodies that witnessed a significant change in the pace of their work during the year (similar to the Independent high Authority for Elections and the high independent authority of audiovisual communication, especially outside the electoral periods), which requires summarizing the body of the law related to constitutional bodies<sup>29</sup> on the minimum periodicity of its board meeting, especially since the members of

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<sup>25</sup> Etudes et documents du Conseil d'Etat ; n 52 ; 2001 ; la documentation française ; p 291.

<sup>26</sup> Assemblée Nationale ; rapport d'information ; Les autorités administratives indépendantes ; Comité d'évaluation et de contrôle des politiques sur les autorités administratives indépendantes ; 28 octobre 2010 ; p

<sup>27</sup> The legislator stipulated in Chapter 44 of the organic Law No. 59 of 2017 of August 24, 2017 related to the Governance and Anti-Corruption Authority that provides the same quorum for the possibility of the body's council to be convened.

<sup>28</sup> Chapter 16 of the organic Law No. 23 of 2012 above-mentioned.

<sup>29</sup> It should be noted that in the period of establishment of constitutional bodies, the councils of the commission are invited to allocate the largest portion of their field of work to building and concentrating the various executive bodies, building their human and logistical capabilities, and controlling the various

most of the constitutional bodies are devoted full time under the law in order to carry out their duties at the center of the commission, with a view to their regular follow-up of the work of the executive body and their continued participation in the process of supervising the running of the body.

On the other hand, the council nature does not mean that the matter will turn into collective management, a distinction must be made between the powers of the Authority's Council, whose role is mainly to define the strategy and define major policies and options, and to ensure oversight of the proper functioning of the body and the approval of the orderly decisions, the budget and The results of the elections and the powers of the executive body. The executive body must be a neutral and permanent professional body, in a manner that represents a guarantee in the form of council breakdowns or in the form of taking decisions that violate the rules of proper conduct.

However, the texts related to the various constitutional bodies did not include precise concepts and a clear distribution of powers within the body of the commission or between the council and the president of the body and between the council and the executive branch. Some constitutional bodies have witnessed, despite the short period of commencement of their work, serious difficulties regarding adherence to the proper distribution of powers between each of the council and the executive and between the council and the president of the body, which led to the authority's council exceeding its reporting authority and oversight powers, to directly interfere in the work of the executive along the lines of disposition In human resources (assignments / transfers / leasing ..) or in budget implementation, and in the event that the council took charge of controlling and approving the budget as well as studying and approving the annual human resources program that includes the council's vision regarding disposition of human resources both in terms of delegating, promoting, or organizing training sessions for the year covered by this

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organizational and procedural frameworks, which requires an intensive and regular presence of the members of the commission.

for a program provided that the executive body under the supervision and authority of the president of the commission undertakes the implementation of both the budget and the human resources program, and the council can evaluate the compliance of the executive body with the licenses granted to it for this purpose on the occasion of preparing the budget of the next year or on the occasion of its study and discuss it for the draft financial report.

Experience has shown that the bodies complained that the councils exceeded their reporting and oversight powers and their competition with the original and original powers held intuitively to the president of the commission in his capacity as head of management and an order to spend its budget or to the executive. This is evidenced by the interference of members of councils of bodies in the daily behavior, which contributed to disrupting the work of these bodies and prevented the completion of the focus of an executive body that meets the conditions of professional and craftsmanship and ensures the sustainability of that organ and consequently the sustainability of the bodies on the one hand, and to the difficulty of accountability of that body and the identification of responsibilities and subject to periodic evaluation of the lift From the effectiveness of the work of these bodies, on the other hand.

The problem related to governance within independent bodies is strengthened in the absence of a clear distribution between the powers of the council and the powers of the president of the body, whether within the legal texts relating to constitutional bodies or the core of their internal regulations, and the fact that the president of the authority plays a central role to collect it between the status of the president of the authority's council regarding the organization of the periodicity of meetings and calling for them and controlling its agenda and setting priorities regarding the issues that calls for presentation to the attention of the Council, and described the head of the Department shall conduct the executive arm through his commitment to the work of the disposition of human resources and authorization regardless of the budget approved by the legislative authority and issuing

decisions to regulate the internal interests of the authority and represent them in front of the various judicial and administrative authorities.

This ambiguity surrounding the process of distributing jurisdiction between the head of the commission and its council has led to a conflict in the jurisdiction between these two bodies and the disruption of the work of some bodies in view of the inadequacy of the work mechanism at the core of the body of the body represented mainly in the collective nature, which requires the availability of a quorum to ensure the meeting sessions are held And the necessity of obtaining the various issues presented to his eyes on the absolute majority and the requirements of daily and behavior, and the need to fulfill the urgent and periodic pledges of the body from them, on the one hand, and the implementation of the Council's discretionary authority while deciding on a number of issues related to daily behavior, whether related to act in the human or financial resources to act in the case that the work of the normal disposition of the body under the legal system and strict ordinal prevent the realization of any appropriate for the resolution and decision.

The worsening of conditions in some bodies has led to the resignation of some of its members, and although the resignations known to some bodies such as the higher body to achieve the goals of the revolution, democratic transition and political reform, are a natural phenomenon in the context of democratic transition, especially since some members did not present their candidacy but were suggested, then its steadiness In more than one constitutional body, and in a manner that sometimes affects the possibility of continuing to work successfully and precludes the quorum of the possibility of meeting the body of the body, it pays to stand at this phenomenon to extract lessons and know what must be done to avoid crises within the bodies or at least to ensure their good conduct.

Regardless of the withdrawal of some candidates after their election to Parliament, because they were not elected to head the commission, the wave of resignations began with the Truth and Dignity authority, which knew three waves of resignations, then was



followed by the high independent authority of the audiovisual sector, which knew 4 resignations in three batches, then the independent high authority for elections, which saw three resignations at once, including the resignation of the president and his deputy.

The twelve resignations can be read by referring first to their reasons, otherwise the vocational affiliation of the independents is formed. As for the reasons for the resignations, the majority revolves around the intense disagreement within the councils, and accusations about the lack of respect for the message for which the body was sent.

As for the professional affiliation of the independents, it turns out that seven of the independents are legal men, whether they are judges or university students, and the number rises to eight who have legal training, as we returned to the nature of the university formation of the independents, which means that the matter relates to a specific form of good law enforcement.

In order to limit cases of conflict of competence between the council and its president and between the council and the executive body, it tends to include the powers of each of the body and its president in an audited manner and enumerate the most important powers assigned to each authority without the enumeration process being of an exclusive nature, provided that those powers are detailed and sub-issues related to them are determined within the internal system of the body, which must be subject to the advisory advice of the administrative court, as well as the need to think about reviewing the composition of councils of bodies through a dual procedure, the first is to reduce the number of members of councils of bodies as long as the members of those councils are legally invited to devote themselves directly. The second procedure relates to reviewing the necessary and required competencies for the conduct of independent constitutional bodies in view of the nature of the tasks entrusted to them and the connection of part of them with the regulation of

sensitive issues closely related to fundamental rights and freedoms<sup>30</sup> and the necessity of strict adherence to legal controls and observance of a number of basic legal principles related to the essence of democratic practice in a way that guarantees the fundamental rights and freedoms of individuals and groups, effective and effective.

It is necessary to distinguish between the role of the president of the commission as the legal representative, the chief of exchange, and the head of management from his role as head of the authority's council. It is natural for a conflict of jurisdiction to arise between the president and the council, given that most constitutional bodies require the emptying of members, unlike some bodies in the comparative law that make attendance of members of the councils of the bodies, linked to invitations to attend meetings of the commission's council to approve important decisions, including the Central Elections Committee in Palestine. If the law requires the full devotion of all members, the terms of reference should be distributed in a way that reduces the issue of conflict from that and determining the jurisdiction assigned to the body of the body by preparing the list of powers that belong to the authority of the council, and what came out of it is the authority of the body's president.

On the other hand, there were deficiencies in the legislation and texts related to the bodies, which resulted in disruption in management and paralysis in performance, especially in the absence of precise provisions that facilitate the continuation of work without any disruption, such as the absence of provisions for delegating the powers granted to the president or the council or the executive branch, and this has emerged in particular following the resignation of the Chairman of the Independent high authority for Elections,

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<sup>30</sup> It is worth noting that both the jurisprudence of the Tunisian and French administrative courts, as well as the jurisprudence of the European judiciary, similar to the jurisprudence of the European Court of Human Rights jurisprudence, are subject to the independent bodies that carry out revisionary functions and have powers of tracing and investigation and the imposition of penalties to the necessity of observing the terms and conditions of a fair trial to which the bodies are subject Judicial, including the need to separate the investigation and tracking agencies from the agencies that are qualified to impose penalties, ensure the right to defense, adopt contradictory procedures and explain the decisions issued by those bodies.

as it became clear that the Vice-President, who was appointed by the Council of the authority, cannot fully compensate him for taking various decisions.

## **Section 2: How to appoint members of constitutional bodies**

While the method of appointing members of constitutional bodies in the comparison systems varied between assigning that task to the executive authority in view of the administrative nature of the tasks of those bodies and previously managed by the executive authority, or assigning it to the legislative authority considering that it has electoral legitimacy, or distributing the authority to appoint between those two authorities, with the direction of the French legislator, in recent years, towards the assignment of broader powers to the legislative authority to appoint members of those bodies and give them the right to object to the proposals of the executive authority regarding the selection of candidates for membership in the field of independent bodies, the Tunisian founder, since his inauguration, went on to consider that "the legislative authority is the party qualified to elect" members of these bodies "for their enjoyment of the legitimacy of democracy"<sup>31</sup> provided that the issue of defining the composition of councils and how to select members is referred to the laws of each body.

In order to ensure that a party or a particular political body does not dominate the process of selecting members of independent bodies, most reports and studies in this field recommend that members of councils of bodies be elected by a reinforced majority, which was approved at the heart of the constitution with a reference to the legislative authority, the question of how to choose and elect members of councils of the body.

It should be noted that the adoption of a reinforced majority in the method of electing and selecting members of councils of bodies is a necessary condition to ensure that a party or political entity does not dominate the selection process, but it is not sufficient to ensure

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<sup>31</sup> Report of the Constitutional Bodies Committee on the draft constitution, dated September 26, 2012., p. 6.

the selection of candidates with competence and integrity in the manner required by the constitution and the legal texts related to constitutional bodies, the necessity of the candidates selection process must be conducted according to transparent procedures and based on objectivity and adherence to the results of the screening and evaluation process. The files of the candidates in various parts of the procedures for selecting and electing members.

And while the Tunisian legislator adopted a mechanism for sorting and evaluating the files of the candidates for membership in the councils of bodies according to an evaluation scale to arrange and set the initial list of the first accepted candidates that are referred to the plenary session of the Parliament to elect the members according to the specialization, it has been proven in return that the screening committees do not comply with the evaluation process according to the criteria included in the peace The evaluation, which is a waste of a basic guarantee approved by the legislator to ensure that the candidate and the competence condition is available to the nominated member, which undermines the legitimacy of the work of these committees and becomes vulnerable to cancellation by the administrative judge<sup>32</sup>.

Access to the law relating to the Independent High Authority for Elections and the Good Governance and Anti-Corruption Authority shows that the legislator, while adopting the open candidacy mechanism, has assigned the process of screening and nominating applications and nominating them to a special committee in the legislative Council that

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<sup>32</sup> The judge suspended the execution within frequent decisions issued on the same date regarding challenges to the results of the work of the screening committee stipulated in Chapter 6 of the organic Law No. 23 of 2012 related to the Supreme Independent Authority for Elections according to the format presented before the amendment that "as long as the legislator requires the arrangement of candidates to adopt the peace The assessment that the Special Committee approves and publishes in the official pioneer of the Republic of Tunisia, the tasks of the Special Committee in charge of studying and sorting the files for candidacy for membership in the Council of the Independent Higher Commission for Elections are limited to studying and sorting the files of candidates and applying the evaluation scale according to The second paragraph of Chapter 6 of the organic Law No. 23 of 2012 related to the Independent Supreme Authority for Elections is explicit and that voting by a majority of three four members according to the results of the evaluation scale is that failure to comply with the arrangement through the necessity of establishing the evaluation scale, and that the plenary session alone has a discretionary power in selecting members for the secret vote way. "

reflects the representation of parties in the above-mentioned council and that is responsible for controlling an evaluation scale that adopts a set of criteria to estimate the element of competence and experience of the candidates, arrange them according to merit, and refer a list thereof according to the competence to the plenary session. And while Chapter 37 of the organic Law No. 59 of 2017 related to the Good Governance and Anti-Corruption Authority in its second paragraph required that "the committee in charge in accordance with the internal system of the People's Parliament receives the nominations and decides on them according to an evaluation scale that is set for the purpose according to objective and transparent criteria and is published in the official Gazette of the Republic of Tunisia when opening the candidatures "to the effect that it is necessary to adopt objective and transparent criteria for the evaluation scale and the need to adhere to this scale in the process of evaluating files and arranging the candidates. The procedure remains limited and insufficient to ensure the selection of the most worthy and those with competence. The necessity of the plenary session is not required to abide by its vote by arranging the candidates according to each specialty, which is evident from the results of the voting process during the selection of some members of the Independent high Authority for Elections in 2013 or on the occasion of the partial renewal of its council or paying the vacancy in its council during the year 2017 and the adoption of a consensus mechanism in selecting the candidate regardless of the outcome of the process of arranging the candidates who are primarily accepted by the Special Committee, which nullifies the work of this committee from its content and prevents the adoption of a viable mechanism for selecting those with competence and experience and subjecting the process of selecting members of the authority's council of the bodies to party quotas, Despite the adoption of voting by a strengthened majority, as required by the constitution and laws related to constitutional bodies.

This conclusion is reinforced by the length of time it took for the elections of the members of the Independent high authority for Elections to be held, whether at the time of its creation or the partial renewal of its council, or on the occasion of paying its vacancy by following the change in the voting pattern and the votes assigned to the candidates from one plenary session to another, And without paying attention to the arrangement process that the screening processes and the study of the files of the candidates led to by the Special Committee, and without justification for the change in the results of the voting from one public session to another, which takes away any objective nature from the mechanism for selecting the candidates and prevents guaranteeing the presence of candidates with competence and experience within the bodies' councils, which calls for a review of the selection process for candidates, by reviewing the approved evaluation scale. However, these procedures and their importance, they do not rise to be an adequate guarantee to secure the selection of candidates with competence and experience as long as the powers of preparing the evaluation scale and the authority to sort the files of the candidates and the authority to decide on them, and the arrangement of the candidates primarily accepted to the conditions of candidacy as well as the authority to accept objections to that list and decide on them with a single body represented in the Special Committee, whose composition and its members are set according to the rule of proportional representation similar to the rule adopted in selecting members of the continent and special committees And in a way that reflects the composition of the plenary session.

This focus of incompatible powers would prevent the selection of qualified and experienced members and prevent the path of selection of candidates who were initially accepted from party or political considerations. In addition to the short deadlines for objection and failure to explain the decision to reject the candidates by the committee and publish them to the public in order to guarantee the effective right to object to these decisions and guarantee the rights of defense.

Whereas it is recognized that the plenary session has discretion in the selection process for the members of the councils of bodies, the events that are conducted by the plenary session should not lead to the emptying of Chapter 125 of the Constitution from its content, which emphasized that the members of the bodies are chosen with expertise, competence, integrity and impartiality. To ensure that the legislative authority respects the will of the founder in the manner set out above, a distinction is made between the party that submits nominations and the party that decides that the special committee should set up a minimal list of the first accepted candidates within the limits of 3 or 4 names and refer them to the plenary, as well as The necessity of submitting procedures for submitting and studying objections to the preliminary lists of candidates and deciding on them to controls that guarantee the right of defense and support the transparency of the work of the body responsible for deciding on objection requests, as follows:

- The necessity of publishing the decisions of the committee responsible for controlling the initial list of candidates,
- Set reasonable deadlines for filing objection requests,
- Enabling the objector to be acquainted with the objected decision and the support upon which the committee relied to issue the said decision,
- To enable him to prepare his means of defense and to provide a hearing for him in order to present his arguments and perform his support,
- The necessity of explaining the decisions of the authority responsible for deciding on the objection demands and publishing them in a way that ensures the objector to challenge it before the competent court and facilitates the latter's work in extending its control over the work of the committee.

### Section 3: Mandate

The founder adopted a unified rule for determining the parliamentary term for membership of the various councils<sup>33</sup> of constitutional bodies, which is to set a single parliamentary term for the membership of these councils for a period of six years<sup>34</sup> that cannot be extended.

One of the important guarantees of the independence of its members is determining the parliamentary term of membership of councils of constitutional bodies. The report issued by the French General Assembly regarding independent bodies included a recommendation that a single representative period of membership of independent bodies should be circulated, not renewable, with a reasonable and sufficient period of time to carry out the tasks and follow-up of projects decided by the authority's council ranging from 5 to 7 years<sup>35</sup>, depending on the nature of the tasks of each body.

The adoption of a single parliamentary term is considered one of the elements that would enhance the independence of the elected member, by avoiding the possibility of being subject to pressure from the party that elected him, or avoiding the member giving up at the end of the parliamentary period his impartiality and independence for the benefit of one or a number of parties represented in Parliament, In order to ensure that he is renewed for a second term. In addition, restricting the membership period to a single representative period would prevent the possibility of exempting or suspending the membership of an elected member<sup>36</sup> except in specific cases exclusively within the law, similar to the image of

<sup>33</sup> Review Chapters 127, 128, 129 and 130 of the constitution

<sup>34</sup> Except for that is the parliamentary term for the largest part of the members of the first elected council that goes to the rule of partial renewal, with the parliamentary term of which is two thirds of the members of each of the members of the Independent High authority for Elections, the high independent authority of audiovisual communication, the good governance and anti-corruption authority less than 6 years.

<sup>35</sup>Assemblée Nationale ; rapport d'information ; Les autorités administratives indépendantes ; Comité d'évaluation et de contrôle des politiques sur les autorités administratives indépendantes ; 28 octobre 2010 ; p 99.

<sup>36</sup> Review Chapter 8 of Decree No. 116 of 2011 of November 2, 2011, on freedom of audiovisual communication and the creation of a high independent authority for audiovisual communication.



a member committing a serious mistake<sup>37</sup>, and this can only be done with respect for a set of procedures guaranteeing the right to defense<sup>38</sup> and litigation<sup>39</sup>, or upon conviction under a ruling that was made for intentional misdemeanor or felony.

It should be noted that moving the procedures related to the exemption are confined to the Authority's council with the approval of a certain majority, whether simple or reinforced, in order to ensure the independence of the member concerned with the exemption procedure, whether from the Legislative Authority or from the members of the Authority's Council, with the need for the Council to guarantee the rights of defense The member concerned through hearing and enabling him to discuss the errors attributed to him and including that in the body of a reasoned report referred to the legislative authority. The required majority to approve the decision regarding the exemption of a member from a simple majority varied with regard to the high Independent authority for elections<sup>40</sup> and the independent high authority of audiovisual communication<sup>41</sup> requirement to provide an enhanced majority for the body of good governance and resistance to corruption is the two-thirds of the members of the Commission and to allocate it to the People's Assembly.

The French Council of State has concluded that it is necessary to observe the rule of not permitting or suspending the membership of an elected member throughout the term of his membership, even in the absence of an explicit provision on the purpose<sup>42</sup>. Therefore,

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<sup>37</sup> Review Chapter 15 of the Basic Law No. 23 of 2012

<sup>38</sup> By hearing the concerned member by the council of the Authority and ensuring his right to discuss the breaches attributed to him and the necessity of issuing a dependent report on the Council that allows the abolition judge to extend his control over the legitimacy of the exemption decision.

<sup>39</sup> Challenging the legitimacy of decisions issued by constitutional bodies is a priori guaranteed by the principle that those bodies are subject to the supervision of the administrative judge and in view of the general nature of the claim of transgressing the authority that is implemented even in the absence of an explicit text. And stipulating the right of the member concerned to exempt or not at the heart of the text of the law does not preclude guaranteeing his right to appeal the decisions issued in this regard. This concluded that the temporary body to monitor the constitutionality of the draft laws was concluded in its decision No. 7/2017 of August 17, 2017 related to the draft organic law number 38/2017 related to the good governance and anti-corruption authority.

<sup>40</sup> Review Chapter 15 of the organic Law No. 23 of 2012.

<sup>41</sup> Review Chapter 8 of Decree No. 116 of 2011 of November 2, 2011.

<sup>42</sup> Etudes et documents du Conseil d'Etat ; n 52 ; 2001 ; la documentation française op cit; p 291.

identifying exemptions, while providing guarantees of the right of defense to the member concerned<sup>43</sup> with that procedure, would enhance the independence of the commission and the neutrality of its members and limit the interference of the executive authority and various pressure bodies in a manner that supports the neutrality and impartiality of the bodies. However, the legislator included the main body of the draft organic law related to controlling common provisions between independent constitutional bodies in its chapter 33 new cases of termination of membership that were not included in the statute regulating the independent high commission for elections and the decree related to the creation of a high independent Authority of audiovisual communication that is the withdrawal of confidence in a member by The People's Assembly, by a two-thirds majority of its members, based on a reasoned report by one-third of the members of the People's Assembly in the event that the member concerned commits serious breaches of the duty of impartiality or the duties carried by him under the law.

Whereas, the inclusion of the confidence-withdrawal mechanism by the People's Assembly departs from the mechanism for appointing members of the bodies and the nature of their duties, as long as they are directly elected by the legislative authority for a single period, which precludes the possibility of withdrawing confidence from them, the necessity that this mechanism applies to sponsorship processes in the appointment by Parliamentary councils are similar to submitting government action directly to the recommendation of parliament, and in the event that elected members of the bodies enjoy electoral legitimacy, which may not be limited except in very specific cases, such as the case of exemption for the member committing a serious error or being convicted under a final ruling for intentional crimes or felony.

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<sup>43</sup> « Or, votre rapporteur estime qu'une telle procédure doit constituer une garantie statutaire de l'indépendance des membres des AAI à l'égard de l'extérieur mais aussi des autres membres de l'autorité à laquelle ils appartiennent, ce qui devrait motiver l'intervention du législateur. Aussi votre rapporteur estime-t-il que la loi devrait énumérer de manière exhaustive les cas justifiant une révocation (empêchement, manquement à une obligation, incompatibilité) en exigeant qu'elle soit prononcée par le collège à une majorité qualifiée. Cette procédure devrait être adaptée pour les autorités ne comptant pas de collège, en recourant à un tiers » ; Sénat, Rapport d'information sur les autorités administratives autonomes 2006-2014 : bilan ; Patrice Gélard ; p41.

And while the temporary authority to monitor draft laws within its resolution number 04/2017 dated August 8, 2017 related to the draft organic law number 30/2016 related to the common provisions between independent constitutional bodies ended in declaring unconstitutional Chapter 33 of the draft law that included providing for a mechanism to withdraw confidence as the measure is inconsistent, and the principle of the independence of the constitutional bodies, it did not explain its position based on the incompatibility between this mechanism and the specificity of appointing members of the constitutional bodies as described above, but rather the budget theory adopted by the administrative judge did not consider that the withdrawal mechanism does not meet “the required proportionality between the principles of accountability and independence, as it contradicts the requirements of accountability of these bodies stipulated in the constitution.” Indeed, the picture contained in Chapter 33 of the draft organic Law relating to the regulation of common provisions between independent constitutional bodies falls within the cases of exemption and not within the provisions related to the accountability of bodies that relate mainly to the subjection of their actions to the control of the legislative authority, whether on the occasion of discussing its budget or on the occasion of its periodic reports, whether it is related to its activities or its financial disposition.

In view of the extent to which this represents the limit of the independence of the members of the boards of bodies and their conflict with the provisions of the Constitution, the legislator assumed these provisions during the plenary session of the People's Assembly on October 27, 2017 by reviewing the above-mentioned chapter 33 and abandoning the adoption of the concept of withdrawing confidence and replacing it with the concept of exemption while stipulating the need to observe Defense and litigation rights of the member concerned.

Chapter 33 of the draft law on controlling the provisions common to independent constitutional bodies required that “in the event of a breach of the duties carried on the

members of the Assembly's council and stipulated in Chapters 2 and 9 of this law, a third of the members of the People's Assembly may propose the exemption of one or more members of the Assembly's Council According to a justified request submitted to the Speaker of the People's Assembly, a duty is referred to the member concerned.

The request for exemption shall be decided by the People's Assembly after 60 days from the date of submitting the justified request, and after the People's Assembly has contacted the written response of the member concerned to the request for the exemption, which must be returned to the People's Assembly within a period of one month from the date of notification of the aforementioned request. The failure of the People's Assembly to receive the response of the member concerned in the period prescribed above does not preclude the voting in the plenary session, whose approval of the exemption request is by two-thirds of the members.

Whereas, within the final drafting of Chapter 33 mentioned above, the legislator relinquished the concept of withdrawal of confidence but adopted a concept on its face related to the exemption procedure, but in its essence and in the system of related procedures related to the system of withdrawing confidence, the necessity that the People's Parliament monopolizes, in this form, the automatic pledge mechanism by requesting an exemption for a member of the commission upon a request issued by at least one third of the members of the People's Assembly. However, that referral is not deliberated and discussed by the plenary before 60 days have passed from the date of submitting the justified demand for the member's exemption, and subjecting the endorsement to a reinforced majority instead of the simple majority approved to withdraw confidence from the government is nothing more than an automatic realization of the principle of parallel formulas and forms and the case is that the exemption is not usually subject to the principle of parallel formulas and shapes, rather, it requires the competent authority to take the

decision to exempt, observance and guarantee of the defense rights of the person concerned with the exemption procedure.

As a result of the foregoing, the legislator's review of the content of Chapter 33 of the organic Law relating to the regulation of common provisions between constitutional bodies, following the statement of the provisional Authority to monitor draft laws is not considered an honest application of the aforementioned body's decision that the Authority should not have rejected the challenge of the unconstitutionality of Chapter 11 of the draft law above-mentioned, especially the provisions of the last paragraph<sup>44</sup> of it related to the exemption of a member of the Council, but based on the availability of a fundamental guarantee represented in the separation between the entity that undertakes to raise the availability of exemptions and referring the file of the concerned member to the attention of the legislative authority represented by the Council, on the one hand, and the competent body to decide on that referral and estimate the availability of the conditions for exemption from its absence, which are entrusted to the People's Assembly and the ratification or rejection of that proposal, on the other hand<sup>45</sup>, which is not available in the photo mentioned in Chapter 33 in its amended form after the issuance of the decision of the Provisional Authority to monitor the constitutionality of laws is necessary That the authority of the undertaking, the assignment, the authority of discretion, and the approval of the exemption proposal have been collected by the People's Assembly, which represents a waste of that

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<sup>44</sup> Chapter 11 (last paragraph) of the draft law related to controlling common provisions between independent constitutional bodies states that: "A member of the Council may be excused by a decision of two-thirds of the members of the People's Assembly and by a reasoned request by two-thirds of the members of the People's Assembly that applied the reasons, conditions and procedures stipulated within the law of each body.

<sup>45</sup> Whereas, the temporary body to monitor the constitutionality of the draft laws ended the core of its decision number 04/2017 on August 8, 2017 related to the draft organic law number 30/2016 related to the provisions common to the independent constitutional bodies, and therefore there is no suspicion of unconstitutionality in assigning the authority to exempt one of the members of those bodies stipulated Chapter 11 of the draft law contested in its last paragraph, as long as the exemption takes place at the beginning of a reasoned request and is surrounded by adequate guarantees, which is a two-thirds majority in the request for exemption and in decision-making on the one hand, and the separation between the party submitting the request, which is the body of the body and the decision-making body which is the Parliament on the other hand, provided that the person in all cases reserves the right to appeal.

fundamental guarantee and is an explicit violation of the decision of the Interim Authority to monitor the constitutionality of the draft laws.

As a result of that, the amendment made to the drafting of Chapter 33 of the organic Law related to controlling common provisions between constitutional bodies is contrary to the decision of the temporary body to monitor the constitutionality of draft laws and is inconsistent with the provisions of Chapter 11 of the same law. The procedures provided for in the final drafting of the said chapter do not provide an important guarantee sufficient to the independent constitutional bodies from the interference of the legislative authority and political parties in the work of the commission, and to an end to the guarantees that members of these bodies should enjoy and affirmed by the principle of independence and inconsistent with the philosophy of the procedure for subjecting the selection Members of constitutional bodies to the election.

It is the position that supported the crucifixion of the Temporary Authority's Resolution No. 09/2017 dated November 23, 2017, which concluded that the sufficiency of the phrase "withdrawing confidence from the Authority's council or one or more members" with the phrase "exempting one or more members of the Authority's council" is not lifted from The aforementioned chapter defects the unconstitutionality.

Whereas, what was included in Chapter 33 of the draft law, as amended, that the possibility of exempting one or more members of the Authority's council in the photos stipulated in Chapters 2 and 9 is inconsistent with the principle of proportionality between the independence of constitutional bodies on the one hand and their accountability on the other hand and leads to confusion between the individual accountability procedures for members of the Authority's council and the procedures for holding the body accountable, which would cause inconsistencies, clarity, and bad readability of the provisions regulating exemption within the constitutional bodies, as the individual accountability measures established by Chapter 11 and Chapter 9 set out in its first and second paragraphs of its

scope can only be launched with It is the responsibility of the members of the Assembly's Council to either hold the Authority accountable to the People's Assembly on the meaning of the provisions of Chapter 24 of the proposed draft law, which can be launched at the initiative of the members of the People's Assembly, so it can in any case lead to undermining the quorum required for the Authority to continue its constitutional duties, the matter It is imperative that a different formulation of Chapter 33 coincides with the principle of proportionality between the independence of constitutional bodies on the one hand and their accountability on the other hand stipulated in Chapter 125 of the Constitution and avoids confusion between the individual accountability procedures for members of the Council and the accountability procedures of the body itself.

#### **Section 4: The duty to declare conflicts of interest**

As long as the creation of independent bodies aims to protect fundamental rights and freedoms and impartiality and transparency to the management of a number of sensitive issues by devoting and strengthening the independence of these bodies, the sensitivity of the member's mission to the body of the body calls for him to take care of the necessity of declaring any cases of conflict of interests and refrain from participating in decision-making, which enhances its independence and reduces the possibility of being subjected to pressures during the exercise of its duties, which limits its independence in decision-making, and in what enhances the authority's neutrality and supports the balance of confidence in it.

It should be noted that cases of conflict of interest are usually stipulated in view of the specificity of some jobs, or only the principle is devoted to being assessed by the body of the body case by case according to the circumstances and circumstances of the work of each body. This is what the legislator adopted in the text of the legal texts organizing for both the High Independent Authority for Elections, the Independent High Authority of Audiovisual

Communication<sup>46</sup> and the Good Governance and Anti-Corruption Authority. The question of examining the existence of a conflict of interest with a member or not remains one of the releases left to the jurisprudence of the Authority's council, which must adopt an expanded concept<sup>47</sup> of conflict of interest cases to enhance the independence of the body and enhance confidence in it.

In support of the independence of the independent bodies, the legislator has removed the body member's concealment, in the event of conflicts of interests of the serious error<sup>48</sup> that results in his exemption by the People's Assembly, pursuant to the principle of parallel formulas and forms, as the body that undertook the election of members of independent constitutional bodies<sup>49</sup>, based on a reasoned report issued for the purpose issued On the authority's council, while guaranteeing the right of the person concerned to defend.

It concludes from the foregoing that the legislation related to independent constitutional bodies includes the most important elements guaranteeing structural independence, but that independence requires further strengthening and work to secure harmony between legal provisions, especially those related to the adoption of objective measures to assess the qualifications and competence of candidates for membership of those bodies and

<sup>46</sup> Review the last paragraph of Chapter 11 of Decree No. 116 of 2011 of November 2, 2011 regarding freedom of audiovisual communication and the creation of an independent high authority of audiovisual communication

<sup>47</sup> <sup>47</sup>« Certes, l'on pourrait considérer que les causes d'incompatibilités doivent être strictement interpréter en ce qu'elles limitent le pouvoir de nomination et l'accès aux charges publiques, mais il faut au contraire affirmer que les incompatibilités étant ce qui établit l'indépendance qui se donne à voir, principe consubstantiel aux autorités administratives, doivent être interpréter **largement** »; Sénat; Les autorités administratives indépendantes : évaluation d'un objet juridique non identifié ( Tome 2 : Annexes ).

<sup>48</sup> Chapter 13 of the organic Law No. 23 of 2012 and Chapter 55 of the organic Law No. 59 of 2017 referred to above

<sup>49</sup> It is worth noting that the temporary body to monitor the constitutionality of the draft laws ended in its decision No. 04/2017 on August 8, 2017 related to the draft organic law number 50/2017 related to the common provisions between the constitutional bodies, considering that "and that the responsibility of the independent constitutional bodies before the People's Assembly is the result of what concerns this council by nominating its members, and accordingly, there is no suspicion of unconstitutionality in assigning the authority to exempt one of the members of those bodies stipulated in Chapter 11 of the draft law contested in its last paragraph as long as the exemption is carried out at the request of a justification and is surrounded by adequate guarantees, which is a majority of the third Yen in the request for exemption and decision-making on the one hand and the separation between the party submitting the request, which is the body of the body and the party taking the decision which is the People's Assembly on the other hand, provided that the concerned person in all cases retains his right to appeal.



adherence to what the evaluation process favors Selecting the members of the bodies of an objective nature and ensuring the availability of a large degree of competence and experience of the elected member to carry out his duties in a professional and neutral manner in order to support and consolidate the independence of the independent bodies and their integrity and transparency and Increases the legitimacy of its work.

However, the structural autonomy of the constitutional bodies, even though it is a necessary condition for securing the independence of this new class of public structures, ensuring functional independence is the guarantor of achieving this independence effectively in a climate characterized by the dominance of the executive authority and the actual single party over the administration and over the areas currently assigned to independent constitutional bodies for a period of more than half a century.

## **Section 2: Functional independence of constitutional bodies**

Independent constitutional bodies emerged as a result of the failure of public structures in their old form to carry out tasks closely related to fundamental rights and freedoms in a neutral and transparent manner, in addition to searching for strengthening the balance of citizen trust<sup>50</sup> in how to manage public structures for public affairs by assigning these tasks and functions to bodies that enjoy a large amount of independence and impartiality And transparency, which requires providing an important degree of functional independence for the constitutional bodies, which requires that they are not subjected in the exercise of their duties to presidential authority or the supervision control (first section) and work to align their resources with the tasks assigned to it or by securing the necessary human and financial resources to secure its tasks (second section).

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<sup>50</sup> « Instruments de la transparence démocratique, les AAI doivent « rassurer » l'électeur, en dehors de toute intervention des pouvoirs publics, qui ne sauraient en l'espèce être juges et parties » ;Marie-Charlotte Roques-Bonnet ; Les blocs de pouvoirs « éclipsés » par les autorités administratives en réseau : vers la fin des contrepouvoirs ; p 5.

## Section 1: Not subject to presidential authority or supervision

The creation of independent bodies is an exception to the failure of the administration to submit to the presidential authority or oversight of the executive authority represented in the government, by assigning administrative tasks and functions to independent public structures that are not subject to the presidential authority or supervision in order to avoid the dominance of the executive authority over the administration, given the lack of impartial conditions. And the independence of the latter, which led to a shrinking balance of citizen confidence in the neutrality and transparency of public administrations. Therefore, independent constitutional bodies exist at the heart of the state but outside the classic administrative<sup>51</sup> hierarchy and are not subject to any aspect of their activities in their field of activity by not subjecting their actions to any supervision or approval.

Chapter 4 of the draft law on controlling common provisions between independent constitutional bodies requires that "bodies have administrative and financial independence in accordance with the constitution and the provisions of this law. The bodies are not subject to the exercise of their functions by any presidential or supervisory authority, and they do not receive any instruction in their work conduct. "

Despite the administrative nature of the activities and activities of these bodies, they are not subject to any prior presidential control as long as the founder granted them a legal personality as well as not subject to supervision oversight and what this type of control usually requires in the relationship of the central authority to the decentralized authority was dirt or artistic and the consequent necessity of the various structures Decentralization to abide by the instructions or subject its actions to ratification as a condition for gaining its decisions the executive nature or the possibility of canceling its decisions by the supervisory authority, whether within the framework of Shari'a oversight or the appropriateness control

<sup>51</sup>A. DIARRA « ....les autorités administratives indépendantes le sont précisément parce qu'elles sont tout simplement extérieures à l'administration centrale et déconcentrée de l'Etat tout en faisant partie de l'administration de l'Etat. Ce sont donc des autorités de l'administration de l'Etat » ; op cit ; p 20.

conducted by the authority to supervise the work of the decentralized departments It is what allows the authority to interfere in the supervision of the activity and the powers of the latter.

As a result of this, independent bodies are eligible to take decisions, whether of an organizational<sup>52</sup> or individual nature, without the obligation to refer them and subject them to the approval of the executive authority<sup>53</sup>, which gives freedom to act and carry out the tasks for these bodies with full independence and prevents the executive authority from interfering in the management and running of these bodies. However, it remains subject to judicial oversight similar to the rest of the public structures, whether before the administrative judge as the natural judge of this category of disputes in view of the administrative nature of these bodies and the scope of their intervention and activity<sup>54</sup> or before the judicial judge if the legislator is explicitly assigned the competence to decide disputes related to decisions and actions issued by These bodies refer to the judicial judge, especially with regard to disputes related to the exercise by some of the authorities of the powers of tracing and imposing penalties.

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<sup>52</sup> It should be noted that the assignment of constitutional bodies to a specialized ordinal authority or not is not one of the specific elements of the independence of the bodies, the necessity that the nature of the tasks of some bodies does not require that they have a regulatory authority as long as their role is limited to expressing opinions. This is evident through the Tunisian constitution. If the founder acknowledges that the Independent High authority for elections, high independent authority of audiovisual communication, the good governance and anti-corruption authority have a specialized, arranging authority, he has not granted this authority to the Human Rights Commission, the Commission for Sustainable Development, and the rights of future generations.

<sup>53</sup> Marc Gjidara ; Le contrôle exercé par le juge administratif sur les autorités administratif indépendantes ; « Si l'Etat a transféré aux AAI une partie de ses pouvoirs (notamment de sanction), cela n'a pu se faire qu'en contrepartie d'un contrôle équivalent à celui qui s'exerce généralement sur l'appareil de l'Etat. Toute autorité qui n'est ni juridictionnelle ni législative ne peut être qu'administrative. S'agissant d'un mode d'administration dérogatoire, il est normal que son fonctionnement obéisse à certains principes. De la façon dont sont contrôlés les AAI, dépendent leur légitimité et leur efficacité. Ne pouvant se situer hors du droit, leurs décisions doivent pouvoir être contestées devant le juge administratif, dans le cadre d'un contentieux objectif d'annulation ou d'un contentieux subjectif de responsabilité. Les mécanismes de contrôle de leur mise en œuvre sont les mêmes que ceux usuellement pratiqués ; p 279.

<sup>54</sup> Marc Gjidara ; Le contrôle exercé par le juge administratif sur les autorités administratif indépendantes ; « Si l'Etat a transféré aux AAI une partie de ses pouvoirs (notamment de sanction), cela n'a pu se faire qu'en contrepartie d'un contrôle équivalent à celui qui s'exerce généralement sur l'appareil de l'Etat. Toute autorité qui n'est ni juridictionnelle ni législative ne peut être qu'administrative. S'agissant d'un mode d'administration dérogatoire, il est normal que son fonctionnement obéisse à certains principes. De la façon dont sont contrôlés les AAI, dépendent leur légitimité et leur efficacité. Ne pouvant se situer hors du droit, leurs décisions doivent pouvoir être contestées devant le juge administratif, dans le cadre d'un contentieux objectif d'annulation ou d'un contentieux subjectif de responsabilité. Les mécanismes de contrôle de leur mise en œuvre sont les mêmes que ceux usuellement pratiqués ; p 279.

Although the Tunisian legislator, whether within the law related to the provisions common to the constitutional bodies or the core of laws related to some bodies, such as the Independent High Authority for Election and the Good Governance and Anti-Corruption Authority, has recognized the independence of decision-making issued by the body of the body, that independence remains limited, especially at the level of the independence of the bodies In controlling the legal framework governing the disposal of the professional paths of its agents (1) or by subjecting its financial behavior to supervision of the legislative authority (2).

### **(1) Subjecting statutes related to the constitutional bodies' agents to the approval of the executive authority**

Chapter 15 of the draft organic Law regarding the regulation of common provisions among independent constitutional bodies requires that “the commission’s agents are subject to a general statute for the agents of the constitutional bodies.”

Within the scope of the general principles outlined in the law referred to above for each body to control its basic rules by a special statute that is approved by a government order. “Chapter 31 of the organic Law No. 23 of 2012 mentioned the above that” sets the basic system for the agents of the Independent High authority for elections by order according to a proposal from its council<sup>55</sup>. “While the legislator did not specify the nature and scope of the executive’s intervention regarding the approval order, in accordance with the terms of Chapter 31 mentioned above, Although whether by referring to the title of Governmental Order No. 1137 of 2016 dated August 26, 2016 related to the ratification of the articles of

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<sup>55</sup> The reference is directed to the legislator not adopting a unified approach regarding the regulation or issuance of texts related to the regulation of the statute for the staff of the constitutional bodies. While it was stipulated that the statute be issued to the staff of the Independent High authority for elections in accordance with a government order, the text on the good governance and anti-corruption body did not include provisions related to this. The class of decisions and the authority qualified to issue it. Perhaps the preparation of this law and its discussion after the drafting and discussion of the draft law on controlling common provisions between the independent high authority for elections may justify this, especially since the organic Law included in the Chapter 2 of it that it “applies to the body the legislation related to controlling common provisions between independent constitutional bodies and the provisions of this organic Law.”

association of the Independent High Authority for elections, or the first chapter of it, we conclude that the executive authority's role is limited to approving the statute of the Authority's employees, the drafting of Chapter 31 of the organic Law of 2012 allows the executive authority to interfere in controlling and defining the content and the most important options related to framing the process of disposing of human resources for the authority, which means that the executive authority interferes in disposing of the Authority's human resources, the necessity that the draft order prepared by the Authority's council remains merely a proposal, and the executive authority regains all its authority in extending its control over the work of the Authority's council, and it has the right to make substantial adjustments to the draft order presented or refrain from issuing it in a way that impairs the authority's work and prevents it from adopting an official legal framework for the disposal of human resources. This was examined at the level of application, as the Independent High authority for elections undertook the preparation of a draft statute for its agents and referred it to the government during the month of June 2014 in conjunction with its organization of legislative and presidential elections, but the government refused to issue the order related to controlling the statute of the commission's officials in reasonable deadlines and ratification was not approved It was only on September 26, 2016, which negatively affected the authority's ability to attract talent and the social climate at the core of the authority. One of the risks to the integrity of the electoral process was the delay in issuing the certification order.

It should also be noted that the technique for approving administrative decisions, whether they are individual or ordinarily dependent in the relationship of the central authority to the decentralized authority, allowing extensive control by the central authority to implement the decentralized authority, as it is not limited to monitoring the legitimacy of the decisions issued by those structures, rather, it extends to conducting proper monitoring of its actions to assess the suitability of those actions and decisions with the public interest

and the goals drawn by the central authority, and allows the latter to interfere in the way the decentralized authority is managed, or even to disable it and replace it in some forms.

As a result of this, subjecting some decisions issued by constitutional bodies to ratification of the executive authority is inconsistent with the privacy of these bodies as public structures independent of the executive authority. This calls for the appropriateness of these provisions not to subject the decisions related to controlling the statutes of the constitutional bodies to the approval of the executive authority. On the other hand, there is a tendency to think about setting a general basic system related to controlling the rules related to the management of human resources for independent bodies, provided that the special statute of each body is set in accordance with the provisions contained in the general statute, and it is possible to ensure that the bodies adhere to those provisions by subjecting the projects of special statutes to the obligatory consultation of the Administrative Court. The need to separate the independent constitutional bodies is confirmed by a general basic system in view of the specificity of the tasks entrusted to them and the necessity of subjecting their agents to the duty of independence and impartiality and non-conflict of interests<sup>56</sup> in addition to providing flexibility in the manner of their assignment and disposition of their career path in view of the technical nature of a number of the tasks of these bodies and the circumstantial nature of the mandate period are similar to the mandates built into the Independent High Authority for elections and the High independent Authority for Audiovisual Communication.

The intervention of the executive authority is not only limited to approving whether or not decisions related to controlling the legal frameworks for the authorities' disposal of their agents, but extending that in terms of controlling its budget and the aspects of controlling the disposal of that budget.

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<sup>56</sup> Some jurisdictions at the core of constitutional bodies may call for the subordination of agents, even some of their departures from the work of independent constitutional bodies, to the duty of impartiality and avoid conflicts of interest similar to the frames mandated by the media or field operations at the core of the Independent High authority for elections.

## **(2) Subjecting the financial management of constitutional bodies to supervisory control of the legislative authority**

Although Chapter 125 of the Constitution requires in its second paragraph that “these bodies enjoy the legal and administrative and financial independence and are elected by the People's Assembly with a reinforced majority, and they submit an annual report to it that is discussed in relation to each body in a public session devoted to the purpose” then Chapter 25 of the draft law related to controlling common provisions among constitutional bodies requires that “the commission prepare an annual financial report and present it within a maximum period of 30 June of the following year to the People's Assembly attached to the financial statements and an observer report or auditors.

The People's Assembly approves the financial report by a majority of its members present ...”Also included in the same context is the second paragraph of Chapter 30 of the organic Law No. 23 of 2012 related to the Independent High Authority for Elections on similar provisions.

The reading of the provisions referred to above highlights that, while the intention of the founder tended to subject the work of independent constitutional bodies to political oversight of the People's Assembly represented in the necessity to include the work of those bodies within a unified annual report without distinguishing between the aspect related to the activity and the aspect related to financial disposition, and presenting it to the council's discussion in plenary session, the legislator added, at the heart of the law related to controlling common provisions between independent constitutional bodies, new provisions related to the necessity of singling out financial disposition with a special report and subjecting it to the approval of the People's Assembly with approval of special provisions in the form if the report Financial with the approval of the parliament, or the deadlines set for referring the report to the council have been exceeded, which is inconsistent with the provisions of the constitution and with the nature of independent

constitutional bodies. Through the implementation of supervisory oversight mechanisms that relate to either researching the legality of disposition work or establishing appropriate oversight over it in contravention of its independence principle, which requires that it is not subject to any aspect of supervision oversight. In fact, the intention of the institutions was to subject these bodies to political oversight of the Parliament, as it has the electoral legitimacy and is qualified to elect or excuse the members of these bodies.

It should be noted that the Temporary Authority to Monitor draft laws has included Resolution No. 04/2017 related to the organic Law No. 30/2016 related to the provisions common to the constitutional bodies, considering that “assigning the People's Assembly the power to ratify the financial reports<sup>57</sup> of the bodies stipulated in Chapter 24 of its four first paragraphs, it does not contradict the principle of the independence of these bodies as long as this approval is confined to verifying the integrity of their financial statements in terms of their legality and reliability without delving into the feasibility of their association with the core of the constitutional tasks for which they were created.

Contrary to what the temporary body to monitor the draft laws ended, subjecting the financial behavior of the constitutional bodies to a specific system of oversight exercised by the People's Assembly independently of its control over public behavior and the activity of the constitutional bodies contradicts the provisions of the constitution that limits the role of the council in discussing the annual report of the activities of these bodies Perhaps a proper reading of Chapter 125 of the Constitution goes towards presenting a unified annual report for the constitutional bodies, which includes at the same time a report on the authority's

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<sup>57</sup> Whereas the appellants did not adhere to the temporal body not to expressly stipulate the founder to distinguish between the activity report and the financial report and subject each report individually to the supervision of the council, the temporary body did not rely on the clear formulation of the second paragraph of Chapter 125 of the constitution that used the singular form and set a duty to It is up to the constitutional bodies to prepare and transmit an annual report to the People's Assembly for discussion, which would be with it for individuals to dispose of financially with a special report and subject it to specific procedures. People study and discussion of the financial report in isolation from the need to report activity that the financial report is the financial translation and financial impact of the activity of the Commission throughout the administrative year.



activity throughout the administrative year and a report on its financial behavior, accompanied by financial statements and the auditing of auditors. The People's Assembly is not allowed to extend its control at the same time to the authority's activity, its financial disposition, and the reliability of its financial lists, based on a unified document in view of the close link between the activity report and the financial report, and in such a way as to limit the increase in the number of documents referred to the legislative authority and to provide sessions to discuss them both. At the committee level or at the plenary level. Adopting this alignment would ensure proper application of Chapter 125 of the Constitution and ensure the effectiveness of oversight by the People's Assembly on the reports of the bodies in a manner that guarantees their sessions and raise the effectiveness of that oversight, as well as by drawing on comparative experiences, the reports referred to the legislative authority adopt the same formula described previously As a comprehensive and clear formula that facilitates the work of the competent authority to conduct oversight of the work of the bodies.

It is also worth noting that the legislator's reliance on the concept of approval of financial reports of independent constitutional bodies contradicts the legal system governing these bodies based on independence and not subject to any supervision oversight The necessity that the concept of approval means a priori exercising supervision by the authority to supervise the structure subject to its two types of control, whether related to the matter By controlling the legality of the disposition or by proper monitoring, which is inconsistent with the independence of the independent constitutional bodies, as well as a duplication of oversight mechanisms, the need for the legislator to assign technical oversight and ensure the legality of the financial dispositions to each of the auditors and the Accounting Department, provided that the People's Assembly assumes oversight over the financial disposition of independent constitutional bodies, whether on the occasion of discussing the

financial report or on the occasion of its discussion of the annual activity report as well as on the occasion of its discussion of the draft budget for those bodies.

In spite of the multiplicity of the aspects of financial control by the People's Assembly, as indicated above, the attribution of this control to the plenary session of the People's Parliament prevents the effective and effective exercise of this oversight, given the volume and number of these reports during the same administrative year and also considering the volume draft laws submitted to the plenary session and its agenda, which made it impossible to discuss any financial report despite the receipt of a number of financial reports before the Council without being presented and discussed. What reinforces this conclusion is that the Independent High authority for elections undertook to present three financial reports in the eyes of the People's Assembly related to the succession of the years 2014, 2015, and 2016 without having, to this date, been discussed either by the Committee on Electoral Law and Immunity or by the plenary session<sup>58</sup>. What makes this mechanism lose its effectiveness and its desired purpose.

## **Section 2: Relative freedom to financial resources management**

While granting independent or legal independent bodies is not a condition for the independence of the bodies, the necessity that many comparative systems have adopted the creation of independent bodies without assigning them a legal personality independent of the state, then those bodies enjoy the legal personality, as approved by the founder, would enhance the independence of these bodies and give them freedom Actual level of disposition of its financial resources.

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<sup>58</sup> However, the approval of this type of oversight by the People's Assembly, which has an artistic character with distinction, poses a problem regarding the availability of the necessary mechanisms and technical expertise with the legislative authority to exercise that control over the financial disposition of the constitutional bodies, which is lacking in the legislative authority to give these powers a purely theoretical nature. And it prevents their activation on the ground.

The freedom of behavior of independent constitutional bodies is highlighted by ensuring the freedom to control their budget, which is limited in view of the executive authority's interference in controlling that budget (a) and its dispositions (b).

### **(1) Limited freedom to control the bodies' budget**

Chapter 125 of the Constitution requires in its second paragraph that "these bodies have the legal personality, administrative and financial independence ...", and Chapter 17 also requires the draft law on setting common provisions among independent constitutional bodies that "each body has an independent budget prepared by the director of its administrative apparatus and approved by the Council."

As long as the independent constitutional bodies are not subject to any presidential authority or supervision, which leads to granting them freedom to control their budget, taking into account the provisions related to the state budget rules. In light of the lack of provisions in the basic budget law, how to prepare and approve the budget of independent constitutional bodies in view of the recent emergence of these structures, the legal system related to discussion and approval of the budget of constitutional bodies is ambiguous, allowing the executive authority to extend its control over how to control the budget of these bodies and limit their freedom in tuning its budget.

Chapter 18 of the draft law on controlling common provisions between constitutional bodies requires that "the authority transmits its draft budget to the government for discussion. The committee in charge of finance in the People's Representatives Assembly shall attend the parties to arbitration when necessary. This shall be done according to the procedures stipulated in the basic budget law. The budget of the commission referred to the Parliament of the People's Representatives in the annual work program of the commission. As required by Chapter 20 of the organic Law No. 23 of 2012 related to the Independent High Authority for Elections, it "sets the budget of the commission with a proposal from its

council and is presented to the government for opinion, before referring it to the Legislative Council for approval, the procedures for the state's budget are applied. "However, the provisions related to the basic budget law in effect give wide powers to the Minister of Finance<sup>59</sup> when preparing the state's budget and submitting it to the Cabinet for approval, which gives the executive authority broad authority in determining the budgets of constitutional bodies. Which will be included in the core of the draft state budget referred to by the People's Assembly, dspecially in view of the strict rules governing the state budget from the necessity of ensuring a solid balance between resources and expenditures, in addition to limiting the constitutional deadlines between the date of its study and approval by the Council of Ministers and the date it is presented and discussed by a special parliament at the level of the Finance Committee. This led to the initiative of the executive authority represented by the Ministry of Finance to amend and revise the budgets of some constitutional bodies approved by their councils without prior discussion with the latter or to notify them of the amendments and revisions that occurred in these budgets before or during their referral to the People's Assembly, which prompted For example, the Independent High Electoral Commission, on two occasions in 2015 and 2016, requested to hold an arbitration session at the heart of the Finance Committee in the presence of the Minister of Finance to discuss and defend its financial options and the validity of its financial requests included in the budget approved by its council. The government's initiative to amend its budget allocated to the House of Representatives of the People is an explicit violation of the provisions of Chapter 20 of its organic Law, which requires that the commission undertakes the preparation and approval of the budget and refers it to the government to express an opinion only.

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<sup>59</sup> It is worth noting that the organic draft Law presented to the People's Assembly, while classifying the budgets of the constitutional bodies as programs that are included in special tasks, has been assigned, within Chapter 42 of it, council powers to the Minister of Finance in determining the budget of the constitutional bodies in a manner that limits their independence and conflicts with the provisions contained in the draft law on common provisions Among the constitutional or related bodies of the Independent High Authority for elections.

It is worth noting that establishing the traditions of the request for arbitration by the committee in charge of finance is at the heart of the People's Assembly, and while it is considered a proper application of the spirit of Chapter 20 of the organic Law of the Independent High Authority, and restores the original authority in setting the budgets of the bodies to the competent authority and legally qualified for this, it remains limited efficacy as long as it is implemented at the end of the work of the Finance Committee when it discusses the law of finance in conjunction with its concern to discuss the provisions of the Finance Law that account for an important area of the work of the Finance Committee, This leads in most cases to the approval of the amendments introduced by the government to the bodies 'budget projects, which in the end represents a reduction in the organizations' freedom to control their budgets and limits the independence of its decision to control programs and policies.

As long as discussion and approval of the budget is subject to specific controls, which lead to limiting the powers of the legislative authority to ratify the Finance Law, it tends to include clear and effective mechanisms that ensure the Finance Committee to activate its powers to conduct the arbitration process and to make adjustments to the Authority's budget projects in a manner conducive to operations Arbitration based on the programs of work of the bodies and the determinants of their activity and their privacy, on the one hand, and taking into account the constraints of public finance, on the other hand.

## **(2) A legal system for dealing with the budget is inconsistent with the specificity of the constitutional bodies**

While the budgetary resources of independent constitutional bodies come mainly from the state budget in the form of grants, this does not automatically lead to their subjecting to prior control of public expenses except with regard to the process of opening credits and

referring them to the authority's budget only<sup>60</sup>, the necessity that the funds transferred from the state budget be in the form of granting of exploitation distributed within the limits of the division adopted in the organic Law of the budget between granting exploitation and management, and granting development and investment, without a sub-distribution within each section. Also, subjecting the disposal of expenses drawn in the budget of the Authority to the expenses controller would undermine its independence as long as its control is not limited to ensuring the availability of credits or not and the legitimacy of expenditures but to issues related to appropriateness.

Chapter 27 of the draft organic law on controlling common provisions between constitutional bodies requires that "the authority's expenses are exempt from the prior control of public expenditures."<sup>61</sup>

The Authority is subject to the subsequent supervision of the Accounting Department. Chapter 22 of the same project also required that "the Authority maintains its accountability in accordance with the accounting system for institutions, taking into account the non-profit nature of the authorities."

And while the legislator exempted the disposal of the Authority's budget from the prior control of public expenses and subjecting it to the system of accounting for institutions, which gives them significant independence in the disposal of its budget and greater flexibility in disposition, it remained on the side of the system of prior control of expenditures by subjecting the deals concluded by those bodies to the provisions of the

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<sup>60</sup> The application of the rules of the Public Accounting Journal is limited to the process of opening credits authorized by the Finance Law and referring it to the budget of the Authority. As a result of that, it does not justify the creation of the plans of the assistant exchange directors, as is the case in relation to the rest of the public structures subject to the Public Accounting Journal and the introduction of a degree of flexibility in the budgetary disposal process, whether it is at the heart of the central administration of the bodies or its sub-departments by authorizing the signature to dispose of payment agencies under no circumstances can assignable budgets or funds be disposed of.

<sup>61</sup> Chapter 28 of the organic Law No. 23 of 2012 related to the Independent High Authority for elections included similar provisions.

public deals applicable to public establishments<sup>62</sup>, as long as these provisions are a class of prior control over public expenditures, which makes that arrangement system incompatible with the privacy of independent constitutional bodies, especially since it requires the presence and participation of the state monitored the heart of the various reconciliation committees, the necessity that the presence of the state comptroller is an extension of the system of oversight of public establishments by the supervisory authority, and the independent constitutional bodies are not subject to any presidential authority or supervision, which calls for ensuring compatibility between the provisions of legislations related to constitutional bodies and provisions related to conduct In public transactions in a manner consistent with its legal nature and enhances its independence, while ensuring the transparency of its behavior.

The attribution of behavior in sensitive areas closely related to the fundamental rights and freedoms by these bodies would give effective protection to rights and freedoms, and by developing the relationship between the administration and its perspectives by imparting more neutrality and transparency to the work of public structures, but that depends on the extent to which these structures have independence actively, structurally and functionally, enabling independent constitutional bodies to play an important role in supporting pluralism, the consolidation of democracy, and the development of political life, especially in countries experiencing democratic transition.

It concludes from the foregoing that, despite the founder's keenness to grant constitutional bodies financial independence, the provisions contained either in the core of the draft organic law on controlling common provisions between the constitutional bodies or the core law of the budget or the core of the internal system of the People's Assembly do not fit with the privacy of these bodies and were not severed With the traditional approach of the supervisory authority that the executive authority carries out over other public

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<sup>62</sup> Refer to each of: Chapter 28 of the organic Law regarding the regulation of common provisions between independent constitutional bodies

structures, which gives important powers to the executive authority in controlling the budget of independent bodies and their interference with the powers of the legislative authority in this area.

## Recommendations related to the second part

Working to ensure the independence of the independent constitutional bodies in achieving the goal for which they were established requires drawing lessons from the short experience experienced by some constitutional bodies. In this, the following recommendations can be made:

- A distinction must be made between the powers of the authority's council, the powers of the president of the authority, and the powers of the executive authority. The executive body must be a neutral and permanent professional body, in a manner that represents a guarantee in the form of a breakdown of the council or in the form of taking decisions that violate the rules of proper conduct.
- To limit cases of conflict of jurisdiction between the council and its president and between the council and the executive body, it tends to include the powers of each of the board and its president in an audited manner and enumerate the most important powers assigned to each body without the census being exclusive. Provided that these powers are detailed and sub-issues related to them are fixed within the authority's internal system, which must be subject to obligatory consultation with the Administrative Court.
- It is important to think about reviewing the composition of councils of bodies by reviewing the necessary and required competencies for the functioning of independent constitutional bodies, given the nature of the tasks assigned to them.



- It is necessary to work to ensure the continuity of the work of the commission, even if the presidency of the authority is vacant, by setting precise provisions that facilitate the continuation of work without any disruption, as is the absence of provisions related to the delegation of powers granted to the president, the council or the executive branch.
- Endeavoring to select members who are competent and experienced, in order to prevent the path of selection of candidates who are primarily accepted from party or political considerations. In order to ensure that the legislative authority respects the founder's will in the manner set out above, the distinction is made between the party that submits nominations and the party that decides that the special committee should set a mini-nominal list of the admitted candidates initially within the limits of 3 or 4 names and refer them to the plenary, as well as The necessity of submitting procedures for submitting and studying objections to the preliminary lists of candidates and deciding on them to controls that guarantee the right of defense and support the transparency of the work of the body responsible for deciding on objection requests, as follows:
  - The necessity of publishing the decisions of the committee responsible for controlling the initial list of candidates,
  - Set reasonable deadlines for filing objection requests,
  - Enabling the objector to be informed of the objected decision and the support upon which the committee relied to issue the said decision,
  - To enable him to prepare his means of defense and to provide a hearing to be heard in order to present his arguments and perform his support.
  - The necessity of explaining the decisions of the party responsible for deciding on the objection demands and publishing them in a way that ensures the objector to appeal against it before the competent court and facilitates the latter's work in extending its control over the work of the committee.

- Thinking about setting a general statute related to controlling the rules related to the disposal of human resources for independent bodies, provided that the statute of each body is set in application of the provisions contained in the general statute, and it is possible to ensure that the bodies adhere to those provisions by subjecting the projects of special statutes to the obligatory consultation of the Administrative Court.
- Presenting a unified annual report for the constitutional bodies that includes at the same time a report on the authority's activity throughout the administrative year and a report on its financial behavior, accompanied by financial lists and the auditors' approval, which allows the People's Parliament to extend its oversight at the same time to the activity of the commission, its financial behavior and the extent of the reliability of its financial lists based on a unified document in view of the close link between the activity report and the financial report, in a manner that allows to limit the high number of documents referred to the legislative authority and to provide sessions for discussion, whether at the level of committees or at the level of the plenary session.
- Include clear and effective mechanisms that guarantee in the event of a dispute between the independent constitutional body and the Ministry of Finance, effective arbitration by the Finance Committee.

It should also be noted that the legislator's reliance on the concept of approval of financial reports of independent constitutional bodies contradicts the legal system governing these bodies based on independence and not subject to any supervision oversight. The necessity that the concept of certification means a priori exercising supervision oversight by the authority to supervise the structure subject to its two types of control, whether related to the matter by controlling the lawfulness of the conduct or proper supervision, which is inconsistent with the independence of the independent constitutional bodies.

## Part 3: Supervision upon Constitutional Bodies

The independence of independent constitutional bodies does not mean that they are not subject to oversight. On the contrary, their creation falls within a new corporate governance. Accountability means the responsibility of independent constitutional bodies for all of their actions, and the need to present them in a transparent, continuous or periodic manner, which allows to ensure that their actions comply with the legal, ethical, and financial standards set for them. Achieving the principle of accountability requires providing comprehensive information to the public about its policies, the expected results, and its performance, in addition to the resources it has used and intends to use, including public and other financial resources.

Accountability has a set of positive repercussions on the work and performance of independent bodies, as it contributes to achieving the principle of transparency and the promotion of principles of good governance, and contributes to gaining the trust of citizens and various key players, including political parties and political power in particular.

The creation of new public entities within the Tunisian administrative organization as defined by the constitution, by establishing independent constitutional bodies in order to increase the efficiency of disposition in areas related to fundamental rights and freedoms and to ensure the impartiality and transparency of the authorities entrusted with overseeing and managing these areas, necessitates the establishment of new rules that are appropriate to the privacy of these bodies. At the same time, it guarantees its independence in carrying out the tasks assigned to it, on the one hand, and supports its effectiveness and transparency in its behavior, on the other hand, which requires that the monitoring system be based mainly on verifying the extent of the bodies' respect for good governance controls and on the efficiency of this process. Its freedom and transparency of its behavior are not based on an approach to the extent of adherence to the controls of public behavior,

regardless of the efficiency and good use of public resources, similar to what is approved in other public facilities.

It is not possible to talk about an integrated or appropriate reference for supervision of constitutional bodies. Rather, the framework for oversight of bodies reflects a part of the incompatibility between the constitution's choice to devote new legal entities, with constitutional functions related to a new organization of power, and legal texts dominated by the nature of democratic transition from On the one hand, the reaction of politicians to a precedent or a specific act.

It can be said that the first legal text in Tunisia tried to balance the mission of the independent public body and the nature of governance to be subject to it. Decree No. 27 of 2011 related to the creation of an independent high commission for elections. Chapter 3 of this decree exempted the new body which was charged with organizing free, pluralistic and democratic elections. Within three months (the date of the elections was on July 24, 2011, before it was postponed to October 23 of the same year), from prior control of public expenses and from provisions relating to public deals. On the other hand, the same chapter subjected all financial operations that the commission undertakes to the subsequent supervision of the Accounting Department, which publishes, after the end of the monitoring process, a financial report on this by the official Gazette of the Republic of Tunisia. The Independent High Authority for Elections shall have a special budget and its expenses shall be borne by an account opened in its name. The President of the Authority will manage it by monitoring two members from the Accounting Department and an accountant expert.

The main purpose of this option was not to disrupt the electoral process, and at the same time establish the principle of accountability, as a necessary principle for good governance and fighting corruption.

However, after the successful completion of the 2011 electoral entitlement, which was recognized by various internal and external parties, the opening of the Authority's financial control file was an opportunity for some to question its credibility and integrity, and an entry point to limit the independence of the Commission and subject it to supervisory procedures, which would allow the executive authority to interfere in the field of disposal, by subjecting some of its work to the necessity of the approval usually approved in the supervision control system, similar to the issuance of the articles of association of the commission's employees and to subject its budget to the necessity of prior approval before referring it to the People's Assembly. This prompted the review of the monitoring system for the authority in 2012.

Meanwhile, the High Independent Authority for Audiovisual Communication was established by Decree No. 116 of 2011 dated November 2, 2011 regarding freedom of audio and visual communication and the creation of an High independent Authority for Audiovisual Communication and the Truth and Dignity Authority pursuant to the organic Law No. 53 of 2013 dated December 24, 2013 related to establishing Transitional justice and its organization, and the regulatory system for the two bodies was less severe than the control assigned to the body.

The organic Law No. 23 of 2012 dated 20 December 2012 related to the Independent High Authority for Elections, to highlight on the one hand the extent of concern for the National Constituent Assembly from independent public bodies, specifically from the Independent Higher Authority for Elections, so a number of oversight mechanisms were approved, which later turned out to be incompatible with the nature of the body.

With the exception of exempting the expenses of the Independent High Authority for Elections from the prior control of public expenses, the 2012 law tightened the oversight mechanisms for the Authority, Chapter 29 of the organic Law stipulated that the Independent High Authority for elections establishes an internal control system for

administrative, financial and accounting procedures that ensure the integrity and integrity of the financial statements Its transparency and compliance with the laws in force, and an internal audit and oversight unit headed by an accountant expert, will be established for the purpose.

Chapter 30 of the same law stipulates that “the financial accounts of the Independent High Authority for Elections shall be presented to the auditors designated in the schedule of the Panel of Accountable Experts appointed by the Authority’s Board in accordance with the legislation in effect with regard to public institutions and establishments for a period of three years renewable once.”

Paragraph 6 of Chapter 3 stipulates the preparation of a financial and administrative disposal report that presents the company with the annual report to the auditor, and the approval of the Commission’s board with a majority of members.

In the event the Legislative Council does not endorse the financial report, the call to form an investigation committee consisting of three accountants experts is drawn up in the schedule of the Committee of Accountants Experts chosen by the Legislative Council.

The financial accounts of the Independent High authority for elections are subject to the post-audit of the Accounting Service.

The Accounts Department prepares a special report on the financial disposition of the commission regarding each electoral process or referendum and is published in the official Gazette of the Republic of Tunisia.

The council of the Commission approves the annual financial accounts of the Authority in the light of the report of the auditors. The report is presented to the Legislative Council for approval and published in the official Gazette of the Tunisian Republic and on the Authority’s website no later than 30 June of the following year.

The Internal Audit and supervision Unit performs its work in accordance with international professional standards for the practice of internal auditing through following an annual plan that is approved by the Authority's council and aims to improve performance, risk management and oversight for the whole of the Authority's work. The unit reports to the Authority's council directly and periodically.

Chapter 28 stipulates that "all transactions of the Independent High Electoral Commission shall be concluded and executed in accordance with the procedures for public deals for public enterprises unless they are inconsistent with the provisions of this law."

The experience quickly demonstrated the shortcomings of this control system and its unreality, as the first problem facing the independent high commission after the election of its council and the ratification of the constitution of January 27, 2014 was the inability to take the risk of applying the provisions of the public procurement order in preparation for legislative and presidential elections, which is known only to be held Before the end of 2014, and this is what called the National Constituent Assembly to suspend the implementation of this rule by approving an exception to the chapter of Chapter 175 of the organic Law No. 16 of 2014 dated May 26, 2014 related to the elections and referendum "regardless of the provisions mentioned in Chapter 28 of the organic Law No. 23 of 2012 of F. December 20, 2012 and the Independent High Authority for the elections, and until the expiration of a period of three months from the announcement of the final results of the legislative elections and the next presidential, the Authority shall be exempt from the provisions relating to the expenses of public transactions. "

Although the National Constituent Assembly approved this exception, it was a matter of first and rather the approval of this exception for premature elections, whether for a vacancy in the presidency of the Republic or a solution for Parliament, as it is impossible to adhere to the provisions of public deals to complete elections within a maximum period of

3 months, and in the event that some deals take its preparation and completion are about the same term.

The governance of independent constitutional bodies cannot take place in the same way as traditional public authority governance, nor can it be done typically for different constitutional bodies, but rather it must take into account the nature of the tasks assigned, the volatility of activity, and the philosophy of success and failure in achieving the assigned tasks, so no The accounts of a body charged with running a local election can be monitored or evaluated, without having prior reference to determining requirements, costs and risks, based on the same criteria and rules for which an institution with fifty years of experience and monitoring activity is based on clear references. The Elections Commission has the duty to organize elections in more than 45 countries, in the absence of the necessary human resources necessary to carry out these actions, as the commission is forced to rely on Tunisians abroad who may not have any knowledge of the financial management system in Tunisia, and will demand their compliance with the rules that it adheres to Officials, administrators, and financial professionals in Tunisia are either to the reluctance of Tunisians abroad to participate in the management of elections abroad, or to organize training sessions with what this means of their duty to devote them and the Commission's willingness to bear the cost that such training requires.

The disposition of constitutional bodies poses new challenges, and therefore requires appropriate control frameworks to these specificities.

Which raises the question of any governance for independent constitutional bodies?

The Constitution of January 27, 2014 has enshrined a set of constitutional principles of governance that apply to constitutional bodies. In introducing the constitution, it referred to a "participatory, republican, democratic system in which the right to organize is based on pluralism, neutrality of administration, and good governance." As for the second paragraph



of Chapter Ten, it stipulated the state's duty to "ensure the proper disposition of public money, .. and work to prevent corruption and everything that might affect national sovereignty. The state is keen to properly dispose of public money and take the necessary measures to spend it according to priorities The national economy works to prevent corruption and everything that might harm national sovereignty.

Chapter 11 stipulates the duty to declare the benefits for everyone who assumes the presidency of the Republic, the presidency of the government, its membership, membership of the People's Assembly, membership of independent constitutional bodies, or any job.

Chapter 15 of the Constitution enshrines the rules for the conduct of public administration in accordance with the principles of neutrality, equality and continuity of public utility, and in accordance with the rules of transparency, integrity, efficacy and accountability.

Whereas, Chapter 32 stipulates that the state guarantees the right to information and the right to access information.

In 2017, Basic Law No. 59 of 2017 dated August 24, 2017 related to the Good Governance and Anti-Corruption Authority was issued, and the law relating to the joint provisions of independent constitutional bodies and the Basic Law relating to the Court of Accounts will soon be issued. It can be emphasized that the promulgation of these laws will not establish an integrated system of oversight of independent constitutional bodies, which is what prompts the presentation of a system of oversight of constitutional bodies as approved in Tunisian law by reference to best practices in comparative law. The supervision to which independent constitutional bodies are subject can be classified according to three criteria: The first is the nature of the supervised structure, so it will be judicial control in exchange for parliamentary oversight and civil society and political parties, and it can be classified according to the criterion of supervision, so we distinguish between supervision

of persons, control of accounts and control of the legitimacy of business, and will We adopt the last criterion in presenting the control system to see first the supervision of people (first clause) to move to control the decisions (second paragraph) to finally reach the control of the accounts (third paragraph).

## **Section 1: Control over people**

The supervision of persons is the most sensitive type of control, because while it is normal in the event of a (un-pouvoir hiérarchique) control or in the form of a supervisory authority (un pouvoir de tutelle), the central authority has the power to appoint, transfer and discipline the right of supervising persons at the local level, such as governors and Executive directors at the state level, but as for the elected, they may be suspended or excluded from the elected councils according to the legally defined procedures, the matter differs with independent constitutional bodies, as we find by members elected by reinforced majorities by Parliament, and the absence of a supervisory authority or a serial authority Are subject to her. This is in addition to the immunity they enjoy. But according to the principle of accountability, it is necessary to establish the ability to control people and this is when running (first section) and when performing tasks (second section).

### **Section: Supervision upon candidacy**

Conditions for independence, impartiality and competence are required for candidacy for some constitutional bodies. The law relating to the Independent High Authority for Elections came to require in its seventh chapter to run for membership in the High Independent Authority for elections's Board:

- Voter status,
- Age not less than 35 years,
- Integrity, independence and impartiality,
- Efficiency and experience

- That he is not an elected member of one of the professional bodies - not engaging or active in any political party during the five years preceding the date of the candidacy opening,
- Not to take any responsibility for the dissolved RCD or to appeal to the ousted President of the Republic to run for a new presidential term,
- Not assuming responsibility in the government or assuming the position of a wali, state secretary, accredited, or mayor throughout the term of the ousted president.

Every candidate within his candidacy file shall make a statement of honor relating to the fulfillment of the conditions stipulated above.

Every person who deliberately makes false statements or conceals a barrier to candidacy stipulated by law without being prevented from following him according to the provisions of the penal code, shall be punished with imprisonment for a period of six months and with a fine of 1,000 dinars.

In 2016, the former head of the commission wrote to the president of the People's Assembly to draw attention to the presence of candidates whose initial acceptance had been announced despite the existence of legal prohibitions, and indicated that the authority was ready to express an opinion regarding the competence of the candidates, most of whom worked in the body, that the parliament by requesting the names of those who have legal impediments, which raises the question of how to evaluate the competence of the candidates, especially since the experience of 2014 and 2017 showed that the majority may correspond to at least the efficiency, and you can refer to what was published by the People's Assembly in its evaluation of the candidates, and its choice, for example, for the class assigned to the candidate for the candidate with the lowest number, and who had no experience in the field of elections, while the absence of electoral experience is a matter that can be rectified by the personal qualities of the candidate before the October 2011

elections, the matter is different after the Tunisian Republic organized four major elections in 2011 and 2014.

This calls for a review of the methodology for evaluating the candidates, and the method for evaluating them so that the selection is in conformity with the conditions stipulated by the constitution<sup>63</sup>.

## **Section 2: Supervision when performing tasks**

A violation by a council member of the body of the principles stipulated by the law or the conditions that were required for his election to membership of the body, it is assumed that accountability will occur, and this accountability may lead to the termination of the membership of the violator.

The organic Law No. 23 of 2012 related to the Independent High Authority for Elections stipulated duties, so it came in Chapter 12 - the President of the Independent High Authority for Elections and members of its council are subject to the following duties in particular:

- The duty of impartiality,
- Discretion,
- The duty to attend the sessions of the Authority's Council,
- The full-time assignment for the exercise of the functions of the body,
- Not to run for any elections during the term of membership of the commission and after its expiry for a period of no less than five years,

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<sup>63</sup> Relying on objective and transparent criteria for selecting candidates and assessing their competence is one of the issues imposed by the necessity that one of the reasons for creating independent bodies is to assign management and supervision of sensitive areas to a collective body with competence and experience that increases the efficiency of the performance and professionalism of the bodies and in a manner that enhances their independence from authority Executive.

- Affidavit for the benefits in accordance with the procedures stipulated in the law relating to the affidavit for the benefits of members of the government and some types of public agents.

Chapter 13 of the same law stipulated the duty of both the President of the Independent High independent authority for elections and its members to declare all conflicts of interest throughout the membership period of the Authority.

Any direct or indirect personal interest or a direct or indirect personal relationship that affects the commitment of the member concerned shall be considered a conflict of interests and the duties and duties carried on him and the proper performance of its functions.

The member concerned with conflicts of interest shall declare it to the Board of the Authority and then refrain from participating in the relevant sessions, deliberations or decisions until the Authority's Council decides on the matter within ten days from the date of the declaration.

The council of the commission shall convene after declaring a conflict of interests, and it shall deliberate by a majority of the members without the presence of the member concerned. In the form of evidence of a conflict of interest in time, the concerned person shall be notified that he refuses to participate in the relevant sessions, deliberations or decisions until the prohibition is removed. In the event that a permanent conflict of interest is established, the concerned person shall be notified, who submits his resignation to the President of the Council within the forty-eight hours following the notification.

Upon the occurrence of serious information or information in the event of a conflict of interest, the council of the Commission shall, after hearing the investigation in question, and in the form of evidence that the aforementioned member intentionally conceal a

conflict of interests, be exempted from his duties according to the exemption procedures set forth in Chapter XV of this law.

Chapter 14 of the same organic Law stipulates that it is not possible to track or suspend the president of the Independent high authority for elections or one of its members for actions related to their work or the exercise of their duties at the center of the body except after the immunity is waived by the plenary session of the Legislative Council by an absolute majority of its members at the request of the concerned member or From two-thirds of its members or from the judiciary.

The waiver of immunity is considered on the basis of the request submitted by the judiciary, attached to the case file.

According to the operative of Chapter 15 of the organic Law No. 23 of 2012, the President of the Independent High authority for elections or one of its members is exempted, as well as the image provided for in the fifth paragraph of Chapter Thirteenth of this Law, in the form of a grave mistake in carrying out the duties carried on him under this law, or in the form of a conviction, under a ruling that was made for the purpose of misdemeanor or felony, or if it lost a condition of membership in the Supreme Independent Elections Council.

The request for exemption shall be submitted by at least half of the members of the Council of the Commission and submitted to the plenary session of the Legislative Council for approval by an absolute majority of its members.

Chapter 16 regulates the vacancy situation in the composition of the commission, as it stipulates that in “in the event of an urgent vacancy on the composition of the council of the Independent High authority for elections for death, resignation, exemption, incapacitation or disturbance, the authority’s council shall examine the vacancy status and record it with a special report referred to it by the rest of the file to the council The

Legislative Council, which undertakes to fill this vacancy in accordance with the procedures stipulated in Chapter Six of this law, upon the request of the president of the commission or half of its members.

It is considered abandoning the president or member who, without justification, absent himself from three consecutive meetings of the Board of Directors, despite his summons and warning in every way that leaves a written effect.

We talked about structural independence from some aspects of the accountability of individuals in independent constitutional bodies.

As for the errors of behavior, which are errors identified in accordance with Law No. 74 of 1985 dated July 20, 1985 related to determining the errors of behavior committed against the state and local public institutions and public projects and controlling the penalties applicable to them and by creating the circle of financial restraint, the first chapter of this law defined the behavior errors , In a way that makes it not applicable to independent constitutional bodies, even though the definition is broad and opens a discretionary power to the financial restraining department in this framework. The chapter number has pictures of works considered to be an error of disposal, then he added a paragraph stating that "In general, every action that is performed in violation of the laws, orders, and regulations applicable in the matter of handles, state expenses, administrative public institutions, and local public groups."

The draft organic law on controlling the competences and organization of the Court of Auditors and the procedures followed therein, especially in its amended version, may revive this matter.

It must be noted that it is necessary to accelerate the completion of the legislative texts that depend on the enforcement of some constitutional provisions, and to ensure in this regard taking into account the nature of renewal in completing the legal framework for

independent constitutional bodies, taking into account that the legislator is undertaking a pioneering work in the legal briefing with new legal persons, care should be taken to lay down the appropriate rules with its philosophy, and strive to lay the foundations of governance in line with the nature of these bodies, and work to root the term “public” which characterizes the constitutional bodies and determining their extent. Is that publicity is limited to granting the character to the moral entity or is it related to the application of the rules of public behavior and in this way calls for ensuring compatibility between those rules and the privacy of the bodies or is the public character derived exclusively from their sources of funding without this automatically leading to subjugation The rules of public conduct adopted by the various public structures?

## Section 2: Supervision upon decisions

It is the initial control that must be exercised continuously or periodically on the work of independent constitutional bodies, and this control can be judicial, political or technical.

With regard to judicial oversight of the bodies: This control is divided into legal control exercised by the administrative judge or the judicial judge, and financial control exercised by the Court of Accountants.

It is worth emphasizing that the feature of independence does not prevent the subjection of constitutional bodies to oversight, and the administrative court had the opportunity in 2011 to recall this postulate that "the electoral commission is an independent public body that is not exempt from all oversight, and that saying otherwise does make the authority of the aforementioned authority absolute, and In the end, it is exempt from the decisions issued by it from submitting to the principle of legitimacy on the one hand, and reducing the



rights of individuals to exercise their right to object to it, to make their means of defense and to contend with the arguments that the body relied on the other hand.<sup>64</sup>

This concurrence comes in the consecration of the jurisprudence of the French Constitutional Council<sup>65</sup> and the French State Council<sup>66</sup>, considering that these bodies exercise the powers of the public authority, which requires that they, like other public structures, be subject to oversight of the legitimacy of their actions or accountability, and their restructuring in the form of whether their actions result in harm to others before the administrative judge as the natural judge of the actions Those bodies in view of the nature of their field of activity and its close connection with the administrative field and their wearing during the exercise of their duties with the powers of the public authority to be included in that consistency of jurisprudence judiciary by the legislator whether the core law related to controlling the provisions Shared between the constitutional bodies or the core of the basic law on all constitutional body.

Referring to the experience of the Independent high authority for elections, as it is until now the only constitutional body that actually exists, it can be emphasized that the conflicts of the commission fall within "the so-called special disputes that have arisen, or the objective, newly created judiciary, based on bilateral interference between the judicial judge and the administrative judge<sup>67</sup>." A distinction can be made between oversight of non-electoral acts and control of electoral actions.

<sup>64</sup> Appeal Judgment No. 28946, September 22, 2011, N, St., Head of the National Unity List in Sousse v. Chair of the Subsidiary Body in Sousse, Decision Group, p. 175.

<sup>65</sup> Conseil Constitutionnel ; Décision du 18 septembre 1986 ; déclarant à propos de la CNIL, que comme toute autorité administrative elle est « soumise à un contrôle de légalité qui pourra être mis en œuvre tant par le gouvernement qui est responsable devant le parlement de l'activité de l'administration de l'Etat, que par toute autre personne qui est intéressé » Marc Gjidara ; Le contrôle exercé par le juge administratif sur les autorités administratives indépendantes.

<sup>66</sup> Le Conseil d'Etat avait consacré la notion elle-même dans un arrêt rendu le 6 décembre 1968, Ministre des armées c/Ruffin. Et c'est par analogie que le Conseil d'Etat a appliqué ce label à la COB, considérée jusque-là comme une institution spécifique créée en 1977 : C.E., 5 novembre 1993, COB (cette qualification par le juge étant reprise par la loi du 2 juillet 1996) ; op cit..

<sup>67</sup> Ghribi, Hedia Ibid., P. 413.

Regarding non-electoral work, the judiciary's interference varied with regard to the authority's obligation, and the cases varied from operational cases, to compensation claims, overruns and criminal cases.

As for electoral disputes, which are specific, as they are realistic, they sometimes assume pragmatic solutions, especially in the level of outcome conflicts.

It is worth noting at this level a problem specific to electoral disputes, but it has a significant impact on the management of elections and on the viability of some constitutional provisions for implementation and related to the comprehensive and literal application of the principle of litigation in two degrees, and this application has led to a significant waste of irreducible terms which affected the length of the calendar Elections, and to make Tunisia unable to organize elections in terms close to those in comparative experiences.

And remains the last level of technical oversight to which constitutional bodies can be subjected to, namely, auditing in the field of information safety and rules for dealing with databases. Most constitutional bodies are called upon by the nature of their actions to manage sites, dispose of databases and use of personal data, which calls for keenness to respect legal texts related to information safety, protection of personal data, and access to information. It is worth noting that the bodies are invited to develop an information safety policy, in which they are bound first by the national legislation on information safety, specifically Law No. 5 of 2004 dated February 3, 2004 related to information safety, specifications and best practices in the field, and in this asylum it is possible according to a specific calendar To audits conducted by specialized companies according to certain conditions brochures, and it would be useful to cooperate with the Information Safety Agency to implement the best standards to protect the data and protect the institution.

The executive authority, and the absence of transparency and impartiality in managing a number of sensitive areas closely related to sensitive freedoms and rights, are called to the necessity of strict adherence to the rules of transparency and ensuring the citizen's right to access the information while preserving personal data from it in a manner that enhances citizen confidence in it in a manner that respects the safety-related controls. The approved systems, the method of their treatment, and the necessity of subjecting them to periodic monitoring and informing the public of their results in a manner that enhances confidence in the integrity of the behavior of these bodies.

### **Section 3: Supervision upon accounts**

Auditing of accounts is subject to three levels of control, which are auditing (first section), auditing of the Accounts Department (second section), and Parliament's audit of the financial report (third section)

#### **Section 1: Financial Audit**

A distinction must be made between internal and external auditing. For internal auditing, it is the duty of independent constitutional bodies to establish an internal control system for administrative, financial, and accounting procedures that ensure the integrity, integrity, transparency, and conformity of financial statements to the work in progress, and an internal audit and oversight unit headed by an accountant expert is established for the purpose.

This unit performs its work in accordance with the international professional standards for the practice of internal auditing through following an annual plan approved by the Authority's board and aims to improve performance, risk management and oversight for the whole business of the authority. This perception of the internal control unit has been circulated to all independent constitutional bodies under Chapter 23 of the draft organic Law relating to provisions common to independent constitutional bodies.

As for the external auditing, it is taken over by the Independent Higher Authority for Elections according to the operative part of Chapter 30 of the organic Law No. 23 of 2012, Chapter 30 - The financial accounts of the Independent Higher Authority for Elections are presented to auditors inscribed on the Board of Accountable Experts appointed by the Authority's Council in accordance with the legislation in effect in relation to public institutions and establishments for a period of three years, renewable once. Chapter 24 of the organic Law on Provisions Common to Constitutional Bodies has approved this consistency, while affirming that the selection of one or more auditors is within the framework of respecting the principles of competition, transparency and equality.

Paragraph 6 of Chapter 27 states that the commission must prepare a financial and administrative disposal report that presents the company with the annual report to the auditor, and the approval of the board of the commission by a majority of the members.

## **Section 2: Supervision upon auditing department**

The financial accounts of the Independent High authority for elections are subject to the post-audit of the Court of Auditors.

It is worth noting the lack of clarity in the provisions of the organic Law regarding reporting,

The Accounting Department prepares a special report on the financial disposition of the commission regarding each electoral process or referendum, and it is published in the official pioneer of the Republic of Tunisia.

By this, we have doubled the control mentioned in the constitution.

While the legislator has subjected the Authority's financial behavior to that of the Accounting Department, the determination of the nature and extent of that control has seen

a variation in the level of implementation. While the supervision of financial disposition is limited by virtue of the nature of the oversight structure represented by the Accounting Department as the judicial structure for overseeing the disposal of public finance, making it competent to monitor the proper disposition of public funds in accordance with the principles of legitimacy, efficiency and transparency, the department was not limited, on the occasion of its control over the conduct The financial responsibility of the independent high commission for the elections of 2011 and 2014 to conduct legal supervision and verify the good respect of the authority for the principles of good conduct, transparency and equality. Rather, it extended to extending its control over the performance of the latter<sup>68</sup>, and the situation is that monitoring performance differs significantly between Supervision of the legitimacy of the conduct and leads to in-depth supervision on how to set strategic goals, and the extent to which the supervised structure is successful in achieving it, passing through an assessment of the effectiveness of the mechanisms adopted in carrying out the tasks and good employment of resources<sup>69</sup>. This necessitates checking the concept of monitoring the financial behavior of constitutional bodies by the Accounting Department, such as determining their nature Its mechanisms and extent.

In this regard, two draft laws can be referred to, namely the organic Law relating to provisions common to independent constitutional bodies, and the organic Law relating to

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<sup>68</sup>Clémence Monvoisin ; L'évaluation de la performance dans les organisations culturelles non lucratives ; « Afin de ne pas faire du dilemme lexical un facteur d'inertie, nous dirons, avec Annick Bourguignon, que « d'une façon générale, la performance désigne la réalisation des objectifs organisationnels... au sens strict (résultat, aboutissement) ou au sens large du processus qui mène au résultat (action) ». Elle s'articule autour des notions de succès, de résultat (d'une action), le plus souvent positif, rejoignant la notion de succès, et de l'action elle-même, comme processus » ; p 14.

<sup>69</sup> <sup>69</sup> "Un système de mesure de la performance peut être considéré comme un portefeuille de mesures permettant de délivrer une évaluation équilibrée de la performance de l'organisation, c'est-à-dire pondérée de tous les éléments le constituant. Plus précisément, il s'agit d'un système qui « permet de prendre des décisions et de mener des actions avisées à la lumière de l'efficacité et l'efficacité des actions passées, grâce à l'acquisition, la vérification, le tri, l'analyse, l'interprétation, et la diffusion des données appropriées ». Il s'agit donc d'un outil d'aide à la décision pour les gestionnaires. L'efficacité du système repose sur l'optimisation des étapes énoncées ci-dessus, et son infrastructure – le système d'information – mais avant tout sur la pertinence des mesures effectuées. Traditionnellement, les indicateurs développés doivent être en mesure de quantifier les effets d'une décision et de l'action corrélée : ce sont des variables construites pour caractériser la réalisation d'un processus, qui permettent d'établir des objectifs précis et d'en vérifier l'atteinte. A ce titre, les systèmes de mesure de la performance sont liés à l'élaboration de la stratégie de l'organisation " ; op cit ; p 14..

the control and organization of the competences of the Court of Accounts and their procedures.

Chapter 27 of the draft joint provisions affirmed that the bodies are subject to the subsequent supervision of the Court of Auditors.

The draft law has evolved in the direction of not limiting responsibility for conduct errors in the head of independent constitutional bodies, but rather making it include “chiefs of agents” of independent constitutional bodies and amendment bodies. The phrase “chiefs of agents is not free of ambiguity”. The first was to talk about agents, bankers and representatives of the commission, as is the case with other structures subject to the supervision of the Court of Auditors.

Reference may also be made to what was mentioned in Chapter 13 of the organic Law relating to the Courts of Accountability powers, which stipulates that “the Court of Accountants has the right to obtain from any authority whatever information and documents related to the disposal of public funds of any kind. It also has the right to access Databases of the controlled bodies. ”

A question arises as to what is meant by “the authorities’ information databases.” In the event that the auditing department includes all the documents in the possession of the commission, and the interpretation of this phrase may be the dispute that occurred between the team of the auditing department and the independent high electoral commission regarding the request to obtain a copy of the electoral record, Or the right of access to it, which the commission considered unjustified as it is trustworthy in the record, and all data and outputs can be provided, or the court judges can use the authority’s organs

in the presence of the body's frameworks, but this was considered insufficient by some judges of the supervision team.<sup>70</sup>

On the other hand, the provisions of Chapter 118 of the draft law of the Court of Auditors are considered in addition to ensuring the proper disposal of public funds, as it was authorized for the heads of independent constitutional bodies to file cases related to errors of disposal with the Court of Accountants.

### **Section 3: Parlement Supervision**

Chapter 125 of the constitution stipulates a report that every constitutional body submits annually to Parliament for discussion in a general purpose session, which is important for the principle of transparency and accountability.

The organic Law No. 23 of 2012 stipulated for his part to prepare a special report on the progress of each electoral or referendum process within a maximum period of three months from the date of announcing the final results, to be presented to the President of the Republic, the President of the Legislative Council and the Prime Minister and published in the official pioneer of the Republic of Tunisia and on the website of the commission .

Preparing an annual report on the Authority's activity for the past year and its program of work for the following year, to be presented to the plenary session of the Legislative Council on the occasion of voting on the Authority's annual budget and to be published in the official pioneer of the Tunisian Republic and on the Authority's website.

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<sup>70</sup> It is necessary that a distinction should be made between monitoring how the commission relies on public databases related to current cases, in the electoral record to set the final number of voters and distribute them by electoral constituencies, allowing the Accountability Department to ensure the integrity of the way in controlling the amounts of public grants to fund election campaigns and spending ceilings legally permitted by all Department, oversight, and how the commission accesses data from the general reference rules and using them to update and develop the electoral record, and to verify the validity of that data and secure its preservation and the approved controls when publishing a part of it to the public or when referring These are the general partner structures in the electoral path management that fall outside the jurisdiction of the Accounting Department, and the electoral commission is subject to that only by judicial oversight according to the nature of the conflict, whether it is of an administrative nature before the judge of the results, the judge of nominations, or the criminal judge in the matter of cases that have a criminal or a criminal nature, as the case may be.

As for Parliament's oversight of independent constitutional bodies, it is worth noting that insofar as this oversight is logical, given that the bodies were elected by Parliament to protect them from interference by the executive authority, and their budget is approved by Parliament, which imposes the need to monitor how funds are disbursed by Parliament, especially since constitutional bodies are not subject to control of expenses by the executive branch. In its 125th chapter, the constitution states that "Constitutional bodies submit to Parliament an annual report that is discussed for each body in a public session devoted to the purpose." This session will be suitable for a discussion between the commission and the deputies, for criticism and clarification.

It was found that many bodies were not able to deliver their reports within the time limits specified by law. The high independent authority of audiovisual communication did not submit any financial report to Parliament, and the Truth and Dignity authority did not

The National Anti-Corruption Commission did not submit any annual report on its activities for the years 2012, 2013, 2014 and 2015.

Although the Independent High authority for elections was late in submitting the financial report for 2014, given that the pursuit of the three electoral benefits in 2014 made it difficult to complete the expenditures related to the second presidential session before the end of the first trio of 2015, but it retracted the order to hand over the 2015 and 2016 reports in the deadlines. However, to this day Parliament has not considered the first report of 2014, which raises questions about the feasibility of this oversight when it is so delayed.

The experience of the Independent high authority for elections was important in this field. After submitting the report on the 2014 elections, she was invited to discuss the report in a public session, and the discussion was an opportunity to lift the confusion that surrounded some aspects of the commission's work, an opportunity to present the



Commission's perceptions regarding the lessons learned from the 2014 elections, and discuss its recommendations to amend the electoral law.

Then it was invited to discuss the draft budget, and it was another opportunity to return to the evaluation of the work of the commission, especially the evaluation of its projects in relation to the upcoming electoral benefits, or for its projects in a non-electoral year.

Finally, the financial report was supposed to be discussed and approved so that it can be published in the official pioneer, but despite the fact that Law No. 23 of 2012 stipulated a deadline for submitting the financial report for approval by Parliament, and set special procedures in the event of non-approval, but experience has shown that no To date, none of the three financial reports submitted by the authority have been approved successively in the years 2015, 2016 and 2017, which may raise the issue of the feasibility of late approval of a financial report, especially since the members of the authority's council who administered the 2014 elections, most of them left the commission.

In spite of the importance of the accountability mechanism of the bodies on the occasion of discussing their activity reports and financial reports and evaluating their performance entrusted to the People's Assembly, the latter has offered to exercise that authority. It is perhaps paradoxical that, while singling out the founder of the constitutional bodies with a complete chapter on the core of the constitution, the legislator did not single out the core of its internal system a special mechanism for extending its control over the activities of the bodies, and no specialization or creation was made, a committee concerned with constitutional bodies not at the level of the continent committees or within the special committees. The specific chapters of the scope of consideration of these committees, even if there is a reference to overseeing the work of the constitution's bodies, contrary to what was included in the provisions of Chapter 160 of the council's bylaws, which required that "the bureau's office transmit the report of each of the concerned bodies as soon as they are received to the competent committee..." which would be with the identification of the

authority Competent to study the report, discuss it, and prepare a report in this regard, which is left to the diligence of the office of the Council, in a way that prevents a clear determination of the competence of the committee in charge of studying the reports, establishing traditions and ensuring the accumulation of experience that would allow raising the performance of the Council's oversight functions throughout the parliamentary period.

Although the eleventh chapter of the internal system was devoted to what the legislator called "dialogue with the bodies", that section was not limited to the independent constitutional bodies stipulated exclusively in the constitution, but also included other and various items such as the National Authority for the Prevention of Torture, and the Truth, Dignity authority and the structure representing the judicial authority which is the Supreme Judicial Council of the Parliament. A representative of the judiciary represented by the Supreme Judicial Council of the Parliament.<sup>71</sup>

While chapter 160 of the bylaws contained precise procedures and deadlines for studying and discussing the report by the relevant committee, and including its observations and recommendations within a report and referring it to the plenary session, it did not set, in return, specific and brief deadlines for presenting these reports to the attention of the session in order to discuss them. In addition, the internal system did not single out the financial reports of independent constitutional bodies with specific provisions, contrary to what was included in the organic Law that includes provisions common to the constitutional bodies or provisions contained in the basic laws of the high Independent Authority for Elections or the Good Governance and Anti-Corruption Authority, which empties these provisions of their content and loses that category Oversight, i.e. efficiency and effectiveness, and precludes the functioning of the parliamentary accountability mechanism.

<sup>71</sup> Review Chapter 195 of the bylaws of the People's Assembly

Perhaps it is a paradox that we find some independent bodies, like the Independent high authority for Elections, more keen than the People's Assembly in activating this mechanism of supervision, by asking the latter and reminding them on more than one occasion to the necessity to start discussing the financial reports deposited with them, However, the Council was reluctant to fulfill the requirement and offered to apply the legal provisions applicable to this purpose. And that the behavior of these bodies in the aforementioned manner reflects the desire of them to abide by the law, on the one hand, and in order to strengthen the transparency of their behavior and demonstrate the efficacy of their work in order to consolidate the balance of trust in them, on the other hand, especially since they are in urgent need to build and strengthen confidence during the foundation period.

The draft organic law on provisions common to independent constitutional bodies has literally restored the date of 30 June as the deadline for submitting the financial report, knowing that election dates may sometimes necessitate a change in the budget preparation format, which makes the date of 30 June inaccurate and inappropriate for the independent high body For the elections by way of mention.

Chapter 25 of the organic Law on Common Provisions between Independent Constitutional Bodies, and of the chapters that were added in the last version of the draft, came to establish a penalty of non-respect for the 30th of June, leading to a total exemption of the Commission's Council. The project chapter stated that "the commission prepares an annual financial report and submits it within a maximum period of 30 June of the following year to the People's Assembly, attached to the financial statements and an observer report or auditors.

The People's Assembly approves the financial report by a relative majority<sup>72</sup>, and publishes the financial report and financial lists in the official Gazette of the Republic of

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<sup>72</sup> It should be noted that, in addition to that the internal system of the People's Assembly did not include special provisions related to the approval of the financial reports of independent constitutional bodies, despite the legislator's keenness in the law relating to the regulation of joint provisions between independent bodies

Tunisia and on the website of the body concerned. In the event that the commission does not submit its financial report in the legal deadline without justification, or the People's Parliament refuses to endorse it, the parliament creates a legislative investigation committee, and the committee selects two accounting experts who are drawn in the schedule of the Organization of Experts in the Tunisian Country and at least a chief observer or its equivalent for one of the public supervision bodies with the intention of preparing and submitting a report on the purpose to the committee. The inquiry committee presents its report attached to the expert report to the People's Assembly, which it discusses in a plenary session. In light of the report of the investigation committee, the expert report and the discussion of the plenary session, the People's Parliament can resort to the requirements of Chapter 36 of the draft law.

Chapter 36 of the draft (before changing its arrangement) stipulates that parliament may withdraw confidence from the assembly's council or one or more members with the approval of two-thirds.

These provisions that the organic Law related to the provisions common to the constitutional bodies are very dangerous, as submitting the financial report is a complex process, in which more than one party interferes, and it can coincide with electoral entitlements as was the case in 2014, when the second session took place From the presidential elections on December 21, as if it could be held if additional appeals were filed on December 28, it was not possible to submit the financial report before June 30, and we can imagine organizing the municipal and / or regional elections on March 25, 2018,

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or the crucifixion of the various basic laws of these bodies, the internal system of the parliament included the core of its separation 159 It "adjusts the office of the Council annually to public meetings for dialogue, especially with the bodies .." which is inconsistent or in principle preventing the approval of financial reports with special sessions and therefore does not justify the discussion of these reports except on the occasion of the discussion of the annual activity report in a manner consistent with philosophy Chapter 125 of the Constitution and the close link between the activity report and the financial report is the necessity that it does not justify discussing the financial report in isolation from the activity report and vice versa.

knowing that partial elections are for a constituency Germany will take place on the 17th of December 2017, it will be difficult to comply with the June 30 date.

And if we know that most of the constitutional bodies have not been focused yet, this means that these bodies will face, in addition to the difficulties of focusing the executive and financial difficulties, the obligation to submit their financial report with the financial statements and the auditors' report before June 30 next year. This would make this separation a hanging sword that can be resorted to whenever it is necessary to pressure a certain body, or to seek excuses for this delay.

On the other hand, the use of the term trust withdrawal reflects a linguistic confusion between the system of bodies and the system of government's relationship with parliament. It is not possible to talk about members of constitutional bodies that are independent of granting confidence, withdrawing trust or even offering confidence. These terms are related to the parliamentary systems in which the government emerges from the parliament, nor they can implement public policy only on the basis of the confidence of the parliamentary majority, while constitutional bodies must carry out their duties within the framework of what has been called the duty of ingratitude (*le devoir d'ingratitude*) which is the duty to exercise tasks without regard to the body that nominated or elected the member.

And the procedures that the draft law came up with do not provide adequate guarantees not to deviate from the procedures and turn the issue into a mechanism for pressure on the bodies.

## Recommendations related to part 3

The governance of independent constitutional bodies cannot take place in the same way as traditional public authority governance, nor can it typically take place for different constitutional bodies, but rather it must take into account the nature of the tasks assigned, the volatility of activity, and the philosophy of success and failure in achieving the assigned tasks.

The disposition of constitutional bodies poses new challenges, and therefore requires appropriate control frameworks to these specificities. This necessitates the establishment of new rules that are compatible with the privacy of these bodies, and at the same time ensuring their independence in carrying out the tasks assigned to them, on the one hand, and supporting their efficiency and transparency of their actions, on the other hand, in a manner that requires the monitoring system to be based mainly on verifying the extent to which the bodies respect the controls. Good governance and the effectiveness of its intervention and the transparency of its behavior are not an approach to the extent of adherence to the controls of public behavior regardless of efficiency and good use of public resources, similar to what is approved in other public facilities.

The question of how to evaluate the competency of the candidates, especially since the experience of 2014 and 2017 showed that the majority may meet at least the competency,

This calls for a review of the methodology for evaluating the candidates, and the method for evaluating them so that the selection is in conformity with the conditions stipulated by the constitution.

It is worth noting at this level a problem specific to electoral disputes, but it has a significant impact on the management of elections and on the viability of some constitutional provisions for implementation and relates to the comprehensive and literal

application of the principle of litigation in two degrees, and this application has led to significant waste of irreducible terms which affected the length of the calendar Elections, and to make Tunisia unable to organize elections in terms close to those in comparative experiences.

It should be noted that the authorities are invited to develop an information safety policy, in which they are bound, on the one hand, by the national legislation on information safety, and on the specifications and best practices in the field on the other side.

The necessity of strict adherence to the rules of transparency and ensuring the citizen's right to access the information while preserving personal data from it in a way that enhances the citizen's confidence in it in a manner that respects the controls related to the safety of approved systems and the way they are addressed and must be subject to periodic oversight and inform the public of its results in a manner that enhances confidence in the integrity of the behavior of those bodies .

Work to take into consideration the privacy of independent constitutional bodies when reviewing the legislation related to the organic Law of the budget and the Court of Auditors to ensure that the new rules of governance are taken into account in the work and control of independent constitutional bodies.

## Part 4: For effective coordination between the constitutional bodies

Chapter 125 of the Tunisian Constitution stipulated in its first paragraph a common denominator linking the various independent constitutional bodies, which is support for democracy, as it was mentioned in this chapter, "Independent constitutional bodies work to support democracy."

While this denominator suggests that there is a kind of overlap in the importance of some bodies, which requires the necessity of coordination between them, it does not mean denying the role of the rest of the institutions within the state in achieving democracy, and in implementing some of the tasks assigned to the five independent bodies, as there are some powers that fall within Special jurisdiction of some other body or institution.

Considering that, as of the writing of this report, the establishment of independent constitutional bodies has not been completed, it will be limited to the experience of the Independent High Authority for Elections and the High independent Authority for Audiovisual Communication regarding an essential element in supporting democracy, namely the electoral process, and on this basis lessons can be drawn to provide recommendations For the future.

It can be said that the coordination of the two bodies was based on three main axes:



- 1. Visualization of legal texts
- 2. Ensure equitable access to the media
- 3. Monitor media coverage

## Section 1: Developing the legal system

Like most independent constitutional bodies, the two bodies have an unequal consultative function in developing laws. Chapter 127 of the constitution provides for mandatory counseling for the audiovisual communication body in related draft laws. Whereas Chapter 3 of the organic Law No. 23 of 2012 related to the Independent High Authority for Elections states that among the powers of the commission are to submit proposals to develop the electoral system, and to express an opinion on all draft texts related to elections and referendums,

Chapter 66 stipulates that “the commission, in consultation with the independent high commission for audiovisual communication, shall set the rules for the use of candidate lists for electoral districts abroad for foreign audiovisual means of communication.”

Chapter 67 - that the commission, in consultation with the independent high commission for audiovisual communication, set the general rules and conditions that the media must adhere to during the campaign.

The Commission and the High Independent Authority for Audiovisual Communication shall define by a joint decision the rules of the campaign for the media and audiovisual communication, its procedures, conditions for the production of programs, reports, and paragraphs related to election campaigns.

In this context, a joint decision between the two bodies was issued on July 5, 2014 regarding the regulation of the special rules for the electoral campaign and the referendum campaign by the media and audiovisual communication and procedures. This decision,

which was issued in difficult circumstances, in light of the recent composition of the two bodies, as the audio-visual sector board was appointed in May 2013, while the members and the president of the independent high commission for elections were only elected on January 2014, a success in exercising a joint arrangement authority And, in a participatory manner, it enabled the two bodies to work together in organizing direct expression quotas for legislative and presidential elections, and to monitor electoral propaganda during the electoral period. This decision was supposed to be amended to suit local elections, whether municipal or regional, but the amended decision has not yet been issued.

And while the legislator assigns to the independent bodies an advisory mission in the matter of bills related to their field of intervention and bestows that task with an obligatory character, the legislative authority has not always adhered to these provisions. The House of Representatives offered to consult the Independent high authority for elections from seeking its opinion regarding a number of bills, such as the Basic Law relating to controlling common rules between independent bodies, the draft organic Law for the Budget and the draft Local Communities Journal, although these projects include provisions that are closely related to the work of the Commission. Therefore, the Council's failure to seek the opinion of the constitutional bodies regarding draft laws related to its field of intervention as well as its violation of the law represents an end to the development of the legal organization and prevents the provision of legal frameworks compatible with the nature and constraints of the work of these bodies.

## **Section 2: Ensuring access to the media**

Chapter 65 of the Independent High Authority for Audiovisual Communication entrusts the guarantee of the right to access to audio-visual means of communication for all political groups during the pre-campaign or pre-referendum campaign on the basis of pluralism.

As well as ensuring the plurality and diversity of the audio-visual media during the election campaign and removing obstacles that contradict the principle of access to audio-visual means of communication on the basis of fairness among all candidates, candidate lists or parties.

Considering the shortcomings in the electoral legislation, especially with regard to the complete prevention of any publication of the results of sounding opinions throughout the electoral period, which is undoubtedly arbitrary, and also with regard to the use of foreign media, the views of both the Independent High Authority for elections and the independent high authority for audio-visual communication differed. , On the latter's decision regarding the interpretation of the electoral silence, which prompted the high independent authority for elections to submit a request for the suspension of an execution to the administrative court. While such a conflict between the two bodies is a valid proof that democracy is through the law and that Tunisia has already advanced in the field of policy framing through the law, however, it is possible to avoid these measures if the text of the law was more appropriate, and if consultation took place more before the issuance of the contested decision .

### **Section 3: Control media coverage**

Cooperation has been made between the two bodies to ensure the pluralistic, democratic and free nature of the elections. Coordination has taken place regarding the exchange of reports on the excesses of media coverage, and coordination has occurred with regard to foreign media coverage.

Coordination occurred to obtain records of some electoral crimes, and it can be said that the lack of coordination is as if referring to the Accounting Department, which can be addressed by structuring coordination for the duration of the electoral period through a coordination unit between the two bodies.

Today, it is supposed to work on developing the rules of coordination between the two bodies in the common tasks defined by the law, then extending the scope of this coordination to include first the good governance and anti-corruption body, on the one hand, and coordination at the level of dealing with converging problems, exchanging experiences and studying best practices regarding the governance of independent constitutional bodies .

It is necessary today to take care to prepare for the coming stages to embody the philosophy that challenges the founder in his dedication to independent constitutional bodies, especially in ensuring that there is no return to tyranny in all its aspects, whether related to tyranny by government, corruption or the violation of the fundamental rights and freedoms.

## Recommendations relative to part 4

The necessity of the commitment of both the executive and the legislative authority to present draft laws related to independent constitutional bodies or their tasks to these bodies in order to avoid what happened in relation to the draft basic law related to controlling common rules between independent bodies, the draft basic budget law and the draft of the Local Communities Journal despite the fact that those projects contain provisions for them Closely related to the work of bodies.

Work on developing rules for coordination between bodies in the common tasks defined by the law, then expanding the scope of this coordination to include dealing with converging problems, exchanging experiences, and examining best practices regarding the governance of independent constitutional bodies.

## Final recommendations

The position of independent constitutional bodies within the Tunisian constitutional structure represents one of the characteristics of the January 27, 2014 constitution, in its arrangement of power to prevent a return to tyranny by deviating from the separation of powers and adapting it to serve a partisan majority. But as this idea represents a renewal in the legitimacy of the exercise of power and the development of constitutional and administrative frameworks in administrative work, it still suffers from many difficulties to the extent that some have become skeptical about the seriousness of the political class's commitment to activating the various mechanisms of independent constitutional bodies.

This leads to the suggestion of some recommendations in order to preserve the philosophy of independent constitutional bodies and to activate their role in the constitutional system:

- It is important to work to create a public opinion supportive of the main goals of independent constitutional bodies, especially the spread of a culture of democracy, simplification of the philosophy of independent constitutional bodies, and by strengthening interaction with civil society, and contributing to a higher degree of representation of democracy and the success of the democratic transition experience and its marketing in Tunisia's relations with the international community.
- Reviewing the process of selecting candidates by reviewing the approved evaluation scale by adopting objective, transparent and appreciable evaluation elements, while ensuring compliance with the results of the evaluation processes in order to ensure the selection of candidates within the councils of constitutional bodies with expertise, competence and impartiality, especially considering the sensitivity and importance of the tasks entrusted to them related to the protection of fundamental rights and freedoms What

would enhance the independence of these bodies and increase their professionalism and the efficacy of their performance.

- The necessity of unifying the reports prepared by the bodies, whether related to the activity or financial disposition, and the necessity of ensuring their publication and informing the public about them

- The annual reports prepared by the bodies are not subject to the approval procedure of the People's Assembly, in direct conflict with the provisions of Chapter 125 of the Constitution,

- The necessity of adapting the internal system of the People's Assembly to the legal system of constitutional bodies in a manner that allows activating the parliament's oversight function on the activities of bodies

- Setting clear formulas and procedures for the arbitration process by the financial committee in the form of a dispute between the bodies and the executive authority regarding the budget control.

- The suitability of legislation related to public deals to the privacy of constitutional bodies, with a focus on the need for the latter to adhere to controls of transparency and good governance.

- Ensure the clear and tight distribution of jurisdiction among the special bodies that are active in converging areas in order to avoid cases of conflict of jurisdiction, whether positive or negative.

- Putting practical formulas for coordination between the bodies to take advantage of the accumulation of experience, increase its professionalism and competence, and control its running expenses.

- Setting a general statute related to controlling the rules related to the disposal of human resources for independent bodies, provided that the statute of each body is set in implementation of the provisions contained in the general statute and ensuring that the

bodies adhere to these provisions by subjecting the projects of special statutes to the advisory advice of the administrative court.

- Ensuring compatibility between the provisions of legislations related to constitutional bodies and provisions related to the disposal of public and budget deals and the Court of Accountants, in a manner consistent with their legal nature and enhancing their independence, while ensuring the transparency of their conduct.

- Completing the legislative texts whose implementation depends on the enforcement of some constitutional provisions, and keenness in this regard to observe the nature of renewal in completing the legal framework for independent constitutional bodies,

- The obligation to strictly adhere to the rules of transparency and ensure the citizen's right to access the information while preserving personal data from it in a way that enhances the citizen's confidence in it, with due respect for the regulations related to the safety of the approved systems and the way they are treated, and must be subject to periodic oversight and inform the public of their results in a manner that enhances confidence in the integrity of the behavior of that Bodies.

- The necessity of checking the concept of controlling the financial behavior of constitutional bodies by the Accounting Department, such as specifying their nature, mechanisms and extent.

- Review political oversight to increase its efficiency and develop its methods.

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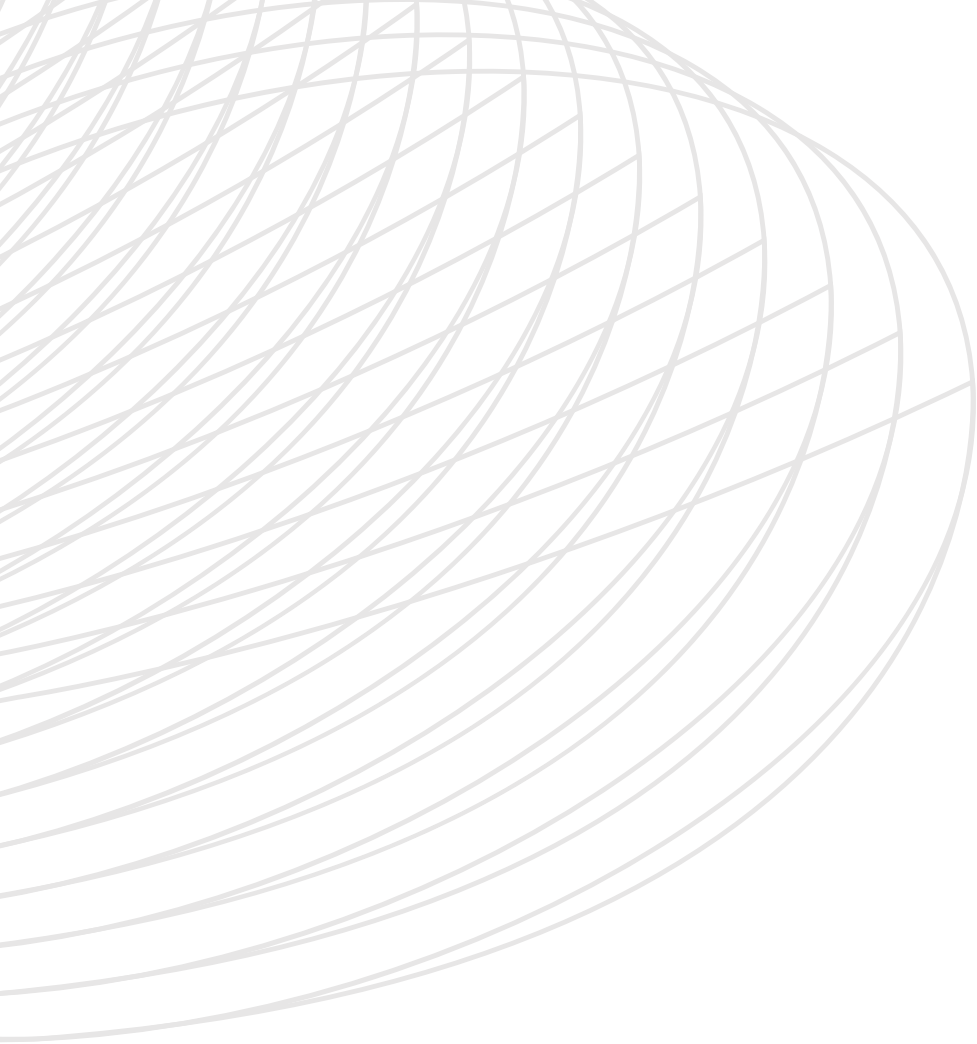
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## Table of Content

Executive summary.....	3
------------------------	---

INTRODUCITON .....	5
Part one: The specificity of the Tunisian constitutional choice .....	16
Section 1: Legal framing of bodies .....	16
Section 2: Number of bodies .....	18
Section 3: Constitutional guarantees .....	20
Recommendations related to the first part .....	22
Part Two: Adopting the principle of the independence of constitutional bodies .....	24
Section 1: Structural Independance .....	26
<b>Section 1: the collective nature of the constitutional bodies management .....</b>	<b>27</b>
<b>Section 2: How to appoint members of constitutional bodies .....</b>	<b>34</b>
<b>Section 3: Mandate .....</b>	<b>39</b>
<b>Section 4: The duty to declare conflicts of interest .....</b>	<b>46</b>
Section 2: Functional independance of constitutional bodies .....	48
<b>Section 1: Not subject to presidential authority or supervision .....</b>	<b>49</b>
<b>Section 2: Relative freedom to financial resources management.....</b>	<b>57</b>
Recommendations related to the second part .....	63
Part 3: Supervision upon Constitutional Bodies .....	66
Section 1: Control over people .....	73
<b>Section: Supervision upon candidacy .....</b>	<b>73</b>
<b>Section 2: Supervision when performing tasks.....</b>	<b>75</b>
Section 2: Supervision upon decisions .....	79
Section 3: Supervision upon accounts .....	82
<b>Section 1: Financial Audit.....</b>	<b>82</b>
<b>Section 2: Supervision upon auditing department.....</b>	<b>83</b>
<b>Section 3: Parlement Supervision .....</b>	<b>86</b>
Recommendations related to part 3 .....	93
Part 4: For effective coordination between the constitutional bodies .....	95
Section 1: Developing the legal system .....	96

Section 2: Ensuring access to the media .....	97
Section 3: Control media coverage .....	98
Recommendations relative to part 4 .....	100
Final recommendations.....	101
List of References .....	103
Jurisprudence of the judiciary .....	105
Legal texts and decisions.....	106
Table of Content .....	107



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