

The Notion Of Constitutional Bodies In Sub-Saharan African States: Reflection On The Study Of The Autonomy Of The Constitutional Council In Cameroon

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RESUME :

La notion d'organe constitutionnel étant plus fonctionnelle que conceptuelle, l'on ne peut essayer de la cerner qu'au moyen de l'un de ses attributs à savoir l'autonomie. Parler de l'autonomie d'un organe revient à montrer qu'il doit pouvoir disposer d'une administration interne autonome par rapport aux pouvoirs exécutifs et législatifs. Cela suppose donc l'existence d'un siège de l'institution distinct et séparé, d'un ensemble d'experts ou d'assistants nommés, rémunérés directement par l'institution, de moyens techniques et bibliographiques adaptés aux missions de l'institution. Dans le cadre des transitions démocratiques, la valorisation de la Constitution sera concrétisée par la consécration des juridictions constitutionnelles chargées d'assurer la démocratie par la Constitution. La Constitution du 18 janvier 1996 a consacré un conseil constitutionnel dont l'autonomie fonctionnelle nous intéresse. L'autonomie fonctionnelle du Conseil Constitutionnel concerne la maîtrise par la juridiction constitutionnelle des règles la concernant. Son statut de juridiction constitutionnelle lui assure la plus large autonomie qui puisse être reconnue à un organe de l'État. Cette autonomie présente deux aspects principaux. La juridiction constitutionnelle a la maîtrise des textes normatifs qui la concernent et, il lui revient, en principe, de gérer ses propres affaires administratives. L'autonomie réglementaire est parfois considérée comme inhérente à l'existence de la juridiction, c'est-à-dire qu'elle existerait même si aucune disposition législative ou réglementaire ne la prévoyait de manière expresse.

Mots clés : *Organe constitutionnel, conseil constitutionnel*

ABSTRACT

The notion of constitutional body being more functional than conceptual, one can only try to identify it by means of one of its attributes, namely autonomy. To speak of the autonomy of an organ amounts to showing that it must be able to have an internal administration that is autonomous in relation to the executive and legislative powers. This therefore

presupposes the existence of a distinct and separate headquarters of the institution, of a set of appointed experts or assistants, remunerated directly by the institution, of technical and bibliographic resources adapted to the missions of the institution. . Within the framework of democratic transitions, the valorization of the Constitution will be concretized by the consecration of the constitutional jurisdictions in charge of ensuring democracy by the Constitution. The Constitution of January 18, 1996 established a constitutional council whose functional autonomy interests us. The functional autonomy of the Constitutional Council concerns the control by the constitutional jurisdiction of the rules concerning it. Its status as a constitutional jurisdiction gives it the widest autonomy that can be recognized as an organ of the State. This autonomy has two main aspects. The constitutional court has control of the normative texts that concern it and, in principle, it is responsible for managing its own administrative affairs. Regulatory autonomy is sometimes considered as inherent in the existence of the jurisdiction, that is to say that it would exist even if no legislative or regulatory provision expressly provided for it.

Key words: *Constitutional bodies, constitutional council*

INTRODUCTION

The expression constitutional body proves to constitute the first criterion for identifying a category of act and a particular type of dispute whose litigation falls a priori within the jurisdiction of a constitutional court simply because the¹ acts made by the said

¹ For the definition of constitutional jurisdiction, see: FAVOREU (L.), "Constitutional Justice", In: Olivier DUHAMEL, Yves MENY, *Constitutional Dictionary*, Paris, PUF, 1992, p. 556; HOLO (T.), "Emergence of constitutional justice", in *Revue Pouvoirs*, n° 129, 2009, pp. 101-11; FROMONT (M.), "The diversity of constitutional justice in Europe", *Anuario Ibero americano de justicia Constitucional*, no. 9, Madrid, 2005, p. 89; AÏVO (G.), "Individual appeals before the Beninese constitutional judge", *The Beninese Constitution of December 11, 1990: a model for Africa?*, Blends in honor of Maurice

bodies are qualified as constitutional acts different from administrative acts. It wrongly designates the organs of the State², constituted powers³ and public powers⁴ in the States of French-speaking black Africa⁵ and can only be determined by means of its attributes which are autonomy and participation in the balance of powers.⁶ The notion of autonomy belongs to the

AHANHANZO-GLÉLÉ, Paris, L' Harmattan , 2014, p. 535-565; NGUELE ABADA (M.), "The recourse of individuals before the constitutional judge", Constitutional justice, Proceedings of the international colloquium of the ANDC, under the direction of OUMAROU NAREY, Paris, L'Harmattan, 2016, pp . 331-353.

²DUGUIT (L.), *Lessons in general public law* , Gallica , 1926, p. 176.

³ BARTHELEMY (J.), DUEZ (P.), *Treatise on Constitutional Law* , Paris, Dalloz, 1933 p. 86.

⁴HAURIOU (M.), *Elementary summary of constitutional law* , 2nd^{ed}, Recueil Sirey, 1930, p. 131.

⁵The expression French-speaking African States designates the States resulting from a process of decolonization. That is to say those having been the subject of French colonial domination in this case, which domination was exercised either in the name of a title of sovereignty proper in the case of territories annexed to a metropolis, or on the basis of an international mandate in the case of trust territories. Concretely, these are the former colonies of French Equatorial Africa: Oubangui Chari (Central Africa), Congo Brazzaville, Gabon, Chad and French West Africa: Dahomey (Benin), Upper Volta (Burkina Faso), Côte d'Ivoire, Mali, Mauritania, Niger, Senegal and former countries under mandate then under trusteeship such as Cameroon and Togo. To these should be added Burundi and the Democratic Republic of Congo, a former Belgian territory whose constitutional developments offer interesting elements of analysis. Read, BIKORO (JM), *Time in African Constitutional Law: the case of French-speaking African States* , Thesis Presented and defended publicly with a view to obtaining the Doctorate / Ph.D in Public Law, UYDE II, 2017, p. 23. For Professor ONDOA Magloire, the expression Francophone Black Africa conveys an underlying idea of underdevelopment which, moreover, seems implicitly to prevail. Because, he continues, directing research towards its field of observation was all the less justified since officially, France applied to its possessions the policy of assimilation, which supposed the submission of the colonies to the rules metropolitan hence its preference for the term developing states. ONDOA (M.), *The law of public responsibility in developing States: contribution to the study of the originality of African rights* , State Doctorate thesis in public law, 3 volumes, University of Yaoundé II, 1997 p. 28.

⁶ See: MAURO BARBERIS "The future past of the separation of powers", *Pouvoirs* , 2012, n° 143, pp. 5-15; HOURQUEBIE (F.), "The construction of jurisdictional power in France, some guiding principles", Democracy in question, *Mixtures in honor of Professor Théodore HOLO*, Press of the University Toulouse 1 Capitole , 2017, pp. 181-190; PIMENTEL CARLOS MIGUEL, "The empty sanctuary: the separation of powers as legal superstition? »,

category of purely abstract concepts which, above all, seem to have meaning only in relation to a very specific field of application. There is no general and precise definition of the concept of autonomy⁷. It can be defined as the ability to govern oneself. It is a rather relative notion. As Marc JOYAU observes, "whether it is used as a qualitative or a quantitative term, autonomy is never defined by these texts⁸". Jurisprudence on the subject being almost non-existent, the doctrine has attempted in its analyzes to define the notion of autonomy. However, and as Doctor KEUDJEU DE KEUDJEU points out, the few studies that seem to intend to take it into account ultimately end up rejecting it or using it without defining it, or even simply apprehending it on a fundamentally quantitative level⁹. The autonomy of a subject or a scientific object, as Professor Magloire ONDOA points out, "is posed in opposition; that is to say in relation to one or more others¹⁰". It allows the entity to find its own identity and legal status, it is analyzed in the relationship of relative independence that exists between the personalized body and the founding body which is the State. Within the attributes of constitutional bodies, the State creates a new subject of law capable of being the holder of rights, or better still, empowered to create legal norms. We have constitutional bodies of a political nature resulting from universal suffrage¹¹ and those of apolitical nature, including the Constitutional Council

Powers , 2002, n°102, pp.119-131; KOFFI AHADZI, "The new tendencies of African constitutionalism: the case of the States of French-speaking black Africa", *Legal and political Africa* , vol 1. N° 2 July-December, 2002, pp.35-86.

⁷METOU (BM), "Internal self-determination and principles of unity and indivisibility of the State in constitutional law of French-speaking African States", *Journal of study and research on law and administration in African countries* , 2009 , p. 235; HERTZOG (R.), "Autonomy in law: too much meaning, too little meaning? », In *Mixtures Paul AMSELEK, Bruylant* , 2005, pp. 443-470.

⁸ JOYAU (M.), *On the autonomy of French local authorities: Essay on the freedoms of local normative power*, Public Law Library, Volume 198, Paris, LDGJ, 1998, p. 106.

⁹ KEUDJEU DE KEUDJEU (JR), *Autonomy of decentralized local authorities in Cameroon* , Doctorate/ Ph.D thesis , University of Douala, 2012, p. 14. See also, MOMO (B.), "Reflection on the Cameroonian communal system: contribution to the study of territorial decentralization in Cameroon", *Juridisperiodique*, n°26, 1995, pp. 81-92 ;. GUIMDO DONGMO (BR), "Constitution and decentralization since the constitutional revision of January 18, 1996", *Legal and political review of French-speaking States* , n°2, 2005, pp. 205-229.

¹⁰ONDOA (M.), *Historical introduction to Cameroonian law: initial training, elements for a theory of the autonomy of African rights*, ed Le Kilimanjaro (EDLK), 2013, p. 26.

¹¹The President of the Republic and the parliamentary assemblies.

¹²with autonomy. Autonomy here is analyzed in the relationship of relative independence that exists between the personalized organ and the founding organ that is the State.

This autonomy is thus qualified and compartmentalised. She knows several semantic shifts from absolute strength to relative power. Therefore, the question that arises is : what is the extent of the autonomy of the Cameroonian Constitutional Council? Answering this question requires a hypothesis that tends to formulate a relationship of significant facts ¹³. To the question asked, we will simply say that the autonomy of the Constitutional Council is ambivalent. Anyone who has been confronted with research knows that the realization of a scientific work is not easy, even more so when the subject matter is rich, complex and, a priori, off-putting ¹⁴like constitutional law, hence the contribution of method of working. The recourse was made for legal positivism ¹⁵leading to an irrational use to which it is rational to conform in particular the use of a binary plan ¹⁶which leads us to a conceded (I) and retroceded (II) autonomy of the Constitutional Council.

I- Autonomy granted to the Constitutional Council

Within the framework of democratic transitions, the valorization of the Constitution will be concretized by the consecration of the constitutional jurisdictions in charge of ensuring democracy through the Constitution ¹⁷. The constitution of January 18, 1996 devoted a constitutional council whose functional autonomy (A) and financial (B) interest us.

A- The functional autonomy of the Constitutional Council

¹²Read articles 47 and 52 of the Constitution of Cameroon.

¹³GRAWITZ (M.), *Method of social sciences* , 11th^{ed} , Paris, Dalloz, 2001, p. 12.

¹⁴DAMAREY (S.), *Public Finances* , 2nd^{edition} , Paris, Gualino , lextenso editions, 2008, p. 15.

¹⁵H. Kelsen, *Pure Theory of Law* , translation by Charles EISENMANN, Paris, Dalloz, 1962, p. 490; B. BARRAUD, *Legal research, op.cit.* , p. 402; S. GOYARD FABRE, "On some ambiguities of legal positivism", In *Notebooks of political and legal philosophy*, 1998, p. 44; A. VIALA, "Legal positivism: Kelsen and the Kantian heritage", Saint-Louis University, Brussels, *Interdisciplinary Review of Legal Studies* , 2011, Volume 67, p. 95 -117; M. BOUDOT, "The doctrine of the doctrine of the doctrine...: a reflection on the continuation of the meta-legal points of view", *Interdisciplinary Review of Legal Studies* , 2007, vol 59, p. 47.

¹⁶B. BARRAUD, "The use of the two-part plan in French law faculties", *Quarterly Review of Civil Law* , 2015, p. 807 et seq.

¹⁷OWONA (M.), "Constitutional developments in French-speaking black Africa: research on the dominant ideology in the elaboration of constitutions in Cameroon (1990-2008)", *Revue du Droit Public*, n°1, 2019, pp. 157-181.

Functional autonomy is a sign of power. It is the law of nature because those who hold power seek to exercise it, seek to increase it and, as Professor Joseph KANKEU points out, "seek to protect it against the influence of other institutional levels" ¹⁸. Functional autonomy is the existence of effective attributions that the law must grant to the organs, of the right of the said organs to proceed freely to the exercise of the administrative function. This autonomy has two main aspects. The constitutional court has control of the normative texts that concern it and, in principle, it is responsible for managing its own administrative affairs.

The functional autonomy of the Constitutional Council concerns the control by the constitutional jurisdiction of the rules concerning it. Its status as a constitutional jurisdiction gives it the widest autonomy that can be recognized as an organ of the State. Regulatory autonomy is sometimes considered as inherent in the existence of the jurisdiction, that is to say that it would exist even if no legislative or regulatory provision expressly provided for it.

In Cameroon, we have the regulatory autonomy inherent in the constitutional status of the jurisdiction. Regulatory autonomy can be defined as the competence for the constitutional jurisdiction to produce itself norms relating to its organization and to the applicable procedure. A sign of the freedom of action which is now vested in it, this regulatory autonomy gives the constitutional judge control of the normative texts concerning him, both in their initiative and in their control. Indeed, Article 9 of Law No. 2004/004 of 21 April on the organization and functioning of the Constitutional Council provides: " *the modalities of internal organization of the Constitutional Council are determined by the internal regulations* ", to this is added Article 66 of the same text which provides: " *the Constitutional Council draws up and adopts its rules of procedure. These regulations are published in the official journal* . Even if the law does not require a condition as we can underline it to that of the rules of procedure of the parliamentary assemblies which must first be referred to the Constitutional Council, let us note all the same the rules of procedure of the Constitutional Council that it benefits from a presumption of legality. Because, the Constitutional Council being the body inhabited to watch over the respect of the constitutionality of the laws could not elaborate laws which are contrary to the Constitution. At this stage of development, he is judge and judged, he gauges his degree of conformity. This functional autonomy is a matter of law and not of the Constitution. Such a situation is not unique to Cameroon.

In France, for example, the Constitutional Council has not expressly claimed the regulatory autonomy

¹⁸ J. KANKEU, "The autonomy of decentralized local authorities: what autonomy? », *Periodical Juridis* n°85, 2011, p. 90-99

inherent in its existence. But it seems that the regulatory autonomy of the Constitutional Council must be considered as having, at least partially, such a basis. Article 56 of the Ordinance of November 7, 1958 provides for the intervention of an internal regulation of the Constitutional Council: “ *the Constitutional Council will supplement by its internal regulation the rules of procedure enacted by Title 2 of this Ordinance* ”. It specifies in particular the conditions under which the investigations and investigative measures provided for in Articles 42 and 43 will take place under the direction of a rapporteur”. The Constitutional Council implemented these provisions by adopting regulations applicable to disputes over the election of deputies and senators¹⁹ and regulations applicable to referendum operations²⁰. Such an analysis makes it possible to consider that even in the absence of a constitutional or legislative provision providing for the competence of the Constitutional Council, the latter can adopt regulatory measures. The competence of the Constitutional Council, or rather of its president, is inherent in its very existence.

The functional autonomy of the Constitutional Council is thus due to its internal organization, the competence of which is attributed to the governing bodies, in particular its President and its Secretary General. This autonomy is also based on the immunity of the members of the said body²¹. It entails the existence of its own administration. As noted by Dean Louis FAVOREU, it is important that “ *the constitutional jurisdiction has an internal administration that is independent from that which depends on the executive and the legislature* ”²². It thus enables the court to exercise control over its organs and to manage its own affairs.

As regards the exercise of regulatory autonomy by the President of the Constitutional Council, the President of the Council exercises the powers and prerogatives conferred on him by the Constitution and the organic law. He is appointed by presidential decree. He ensures the general functioning of the Constitutional Council. He issues, after consultation with the members of the Board, orders which are not subject to any appeal. He presides over the hearings and meetings of the Council, for which he is

responsible. During hearings, meetings or working sessions of the Council, he may, when he considers that public order is disturbed or threatened to be disturbed, call for the police or take all necessary measures, among others, order the closed. He represents the institution in official ceremonies and in acts of civil life. Such provisions are identical to those of the Beninese Constitutional Court²³.

As for administrative autonomy, it is justified by the fact that a body responsible for controlling the legislator and the executive power should not be subject to them as regards its organization and the management of its administrative affairs. One of the conditions of the administrative autonomy of the Constitutional Council is that it has staff subject to its sole authority, just as a parliament usually has its own staff, recruited by it and separate from other the state. Most constitutional courts enjoy such a prerogative. They can freely recruit and dismiss their staff. They also have the freedom to assign him to the tasks they deem necessary for him to perform. In addition, they sometimes have a monopoly on handling litigation relating to their personnel. The Chairman of the Board is assisted by the Secretary General who has enormous prerogatives of which he is the head of the secretariat.

The General Secretariat is responsible for the organization and operation of the administrative services of the Constitutional Council. It is made up of all the administrative and technical services contributing to the operation of the Constitutional Council²⁴. The Secretary General is responsible for the administration, the coordination of all the technical and administrative services and the management of the human, material and financial resources of the Constitutional Council. He is appointed by presidential decree²⁵. As such and as underlined by decree 2018/104 of February 07, 2018 on the organization and functioning of the General Secretariat of the Constitutional Council: “it takes the necessary measures for the preparation and organization of the work of the Constitutional Council”. The²⁶ Secretariat General is the central organ of the administrative organization of the Constitutional Council. The Administrative Affairs Division deals with the general affairs of the Council.

The General Affairs Department is responsible for the management of staff in service at the Constitutional Council in liaison with the Ministry

¹⁹Regulations applicable to the procedure followed before the Constitutional Council for disputes over the election of deputies and senators, adopted in May 1959 and amended in 1986, 1987 and 1991, in Thierry S. RENOUX and Jean-Michel de VILLIERS, *Constitutional Code*, Paris, LITEC, 1995, p. 1045-1049.

²⁰Regulations applicable to the procedure followed before the Constitutional Council for complaints relating to referendum operations, adopted by decision of October 5, 1988, in Thierry S. RENOUX and Jean-Michel de VILLIERS, *Constitutional Code*, *op.cit.*, pp. 1049-1050.

²¹Article 9 of Law No. 2004/005 of April 21 establishing the status of members of the Constitutional Council

²²FAVOREU (L.), *Constitutional Law*, *op.cit.*, p. 227.

²³See article 10 of law n° 91-009 of March 04, 1991 on the organic law on the Constitutional Court modified by the Law of May 31, 2001.

²⁴Article 2 of decree 2018/104 of February 07, 2018 on the organization and functioning of the General Secretariat of the Constitutional Council.

²⁵ See Decree No. 2018/170 of February 23, 2018 appointing Mr. MALEGHO Joseph ASEH as Secretary General of the Constitutional Council.

²⁶Section 4.

responsible for the public service, the Ministry of Finance or any other ministry concerned, for the provisional management of the workforce and the skills of the staff in service to the Constitutional Council, the control of the authenticity and the conformity of career management acts, the follow-up of litigation related to the management of the administrative staff of the Constitutional Council, the discipline of the staff of the Constitutional Council, the training of internships, the preparation of disciplinary files, the study of measures aimed at increasing and improving the performance of personnel, the preparation of acts of retirement, the management of rolling stock, the supply of services with supplies, inventory of movable and immovable property. This service includes a staff office responsible for all questions related to the management of the personnel of the Constitutional Council and finally a material office which is responsible for the management of all questions relating to movable and immovable property of the Constitutional Council.²⁷

Functional autonomy also continues with autonomous management of services and goods. This, in the context of our study, refers to the management capacity of the various services and the capacity to fix the locations of the said services. In the current state, the Cameroonian Constitutional Council does not have any decentralized departments or services. All services are grouped together in the same place, namely Yaoundé, the headquarters of the institutions²⁸ and managed by the main body, the President of the Council.

With regard to personnel management, article 38 of the decree on the organization and functioning of the General Secretariat of the Constitutional Council provides: " *at the request of its president and after consulting the Minister using it, the personnel of the State administrations may be placed at the disposal of the Constitutional Council for the accomplishment of its mission* ". This provision of personnel is a secondment. Secondment is one of the classic positions of an active civil servant. It is equivalent to layoff. To this effect, Article 70 of the SGFPE provides : " (1) *secondment is the position of a civil servant placed temporarily outside his post to serve with him* ". Any secondment is pronounced directly by the user Minister in the form of an order after consulting the host organization. It is a mechanism allowing civil servants, beyond their lasting attachment to the public service and the exclusivity of their service, to invest in other horizons and sectors of activity during their careers. With regard to the destination, the said decree specifies that civil servants can henceforth be seconded not only to serve with a public institution provided for by the constitution, the law or by a regulatory act, local public authorities or companies, organizations public or semi-public, national private companies, private organizations of general interest or

of an associative nature carrying out missions of general interest, but "with international organizations or non-governmental organizations and "automatically seconded to carry out the functions member of the Government, elective public functions or a trade union mandate"²⁹. This is a real mini-revolution in the Cameroonian public service because the openings thus created are so many exit doors open to civil servants in a plethoric public service who would like to put their overflow at the expense of other people.³⁰ It should be noted that this secondment may be terminated at any time by order of the minister who declared it. It is regulated in such a way that the civil servant would not have to give it up for questions related to his remuneration. The work of Mr. NOUBISSI KOUOMOGNE is interesting when it demonstrates that the civil servant continues to benefit from the rights to advancement and pension, thus giving the possibility to the civil servant to be recruited definitively by the community after ten consecutive years of secondment³¹. In addition to seconded staff, the Constitutional Council may proceed to direct recruitment of its staff direct of its staff. On this subject, Professor BON writes: " *it is important that the constitutional jurisdiction has staff subject to its sole authority, just as a Parliament usually has its own staff, recruited by it and separate from other the state*"³².

B- The financial autonomy of the Constitutional Council

First of all, it must be said that the financial autonomy of the council is manifested above all at the time of the execution of the budget. It seems possible to consider that there exists in principle an autonomy of execution of the budget of the constitutional jurisdiction. The constitutional bodies being of a spendthrift nature, it is a question of evoking the basis and the content of their financial autonomy.

Far from being the translation of a favor or a privilege, its existence obeys a real logic. That of guaranteeing the proper functioning of the institution by allowing it to draw up and execute its budget without any outside interference. The financial autonomy of the Constitutional Council stems from respect for the principle of the separation of powers and marks the place it occupies in the State. It signifies the prohibition of any other authority, executive or jurisdictional, from interfering in matters falling under this autonomy. French constitutional case law in its Decision DC of December 27, 2001 recalls that the financial autonomy which belongs to

²⁷ Article 9(1)(2) of the 2018 decree.

²⁸ See Article 1(8) of the Constitution.

²⁹ See Article 70(2) of the SGFPE.

³⁰ BIMELI AMBANGA (A.), *op.cit.*, p. 54.

³¹ NOUBOUSSI KOUOMOGNE (H.), *Decentralization and centralization in Cameroon, the distribution of powers between the State and local authorities*, ed Harmattan 2013, p. 249.

³² BON (P.), *Constitutional justice in Spain*, Paris, Economica, 1984, p. 861.

any “ constitutional power ” guarantees “ the rule according to which the constitutional public powers determine themselves the appropriations necessary for their operation. This rule is in fact inherent in the principle of their financial autonomy which guarantees the separation of powers ”³³. This means that the financial autonomy of the Constitutional Council constitutes one of the main conditions for the independence of this institution vis-à-vis the other organs of the State, in particular the political organs, which it is supposed to control. The absence of financial means can paralyze the functioning of a public institution and the destitution of those who lead it constitutes an open door to possible attempts at corruption or influence.

The financial autonomy of the Constitutional Council thus finds, in the first place, an organic or institutional foundation within the Cameroonian State. The Constitutional Council is one of the constitutional bodies, which therefore implies a normative power of self-organization vested in a body³⁴. In the system of the separation of powers, each organ exercises a well-defined material function within the State. The status of constitutional body is the organic source of its financial autonomy with regard to its close links with the State budget.

Indeed, Article 18 of Law No. 2004/004 of 21 April 2004 on the organization and functioning of the Constitutional Council provides: “(1) The credits necessary for the functioning of the Constitutional Council are entered in the State budget ”. The State budget describes the resources and expenses of the State authorized by the finance law, in the form of revenue and expenditure, within the framework of control, of a budgetary exercise. The situation³⁵ is express in Ivory Coast. Article 9 of Organic Law No. 2001-303 of 5 June 2001 determining the organization and functioning of the Constitutional Council provides: “ *Constitutional Council enjoys financial autonomy. The President of the Constitutional Council exercises the functions of authorizing officer under the conditions determined by the public accounting regulations. The treasurer of the Constitutional Council exercises the functions of accounting officer under the conditions determined by the public accounting regulations* ”. A major consecration which finds an additional textual foundation through decree n° 2005-291 of August 25, 2005 determining the rules, composition and functioning of the Services, the organization of the General Secretariat of the Constitutional Council, as well as the conditions establishment of the list of assistant rapporteurs. Thus in its article 30, we can read: “ *the Constitutional*

Council enjoys financial autonomy. The Chairman of the Board performs the functions of authorizing officer under the conditions determined by the Public Accounting regulations. It mandates the Council's operating expenses ”. This is therefore a legislative autonomy comparable to that enjoyed by the decentralized territorial communities in Cameroon.

The normative power available to the Constitutional Council to ensure its financial independence derives indirectly from the Constitution. The budget preparation procedure is an internal procedure. It does not allow external interference. The provisions it adopts under its financial autonomy are at the same level as the law, in the hierarchy of standards. The Constitutional Council also decides freely on the commitment of its expenses and its allocations. The only condition being that said budget must comply with the State's budgetary policy in accordance with Article 9 of Law No. 2018/012 of July 11, 2018 on the financial regime of the State and other public entities. The financial autonomy from which it benefits, by virtue of the separation of powers, exempts it from having to justify itself to the other constitutional bodies. What about its content?

if we limit ourselves to the single case of constitutional public powers, taking into account the plurality and diversity of meanings that the notion of financial autonomy sees, depending on whether the organs in question are or are not organs of the State, it seems judicious to use the term budgetary autonomy, which implies total freedom in establishing allocations, without intervention outside the organization in question³⁶. The content of the financial autonomy of the Constitutional Council begins with article 18 of law n°2004/004 of April 21, 2004 on the organization and functioning of the Constitutional Council. Two major ideas flow from this article, namely the inclusion of the budget of the Constitutional Council in that of the State and the president of the council considered as the main authorizing officer. To better understand the content of this autonomy, it is the general secretariat that gives us added value.

Indeed, having as principal authorizing officer the President of the Constitutional Council, the financial management of the Constitutional Council is detailed with the decree of 2018 which relates to the organization and functioning of the Secretary General of this institution. In its article 10, we have a department head in charge of the budget. He is among other things competent according to paragraph 1 for “ *the elaboration of the preliminary draft of the budget of the Council and the follow-up of the budgetary procedure, the entry and processing of the pay and accessory of the pay of the staff, the execution of the budget of the Constitutional Council,*

³³JOUANJAN (O.), “A legal coup? » in, *The debate*, n° 196, September-October 2017, pp. 114-119.

³⁴TIMSIT (G.), *The role of the notion of administrative function in French administrative law*, preface by Charles EISENMANN, *op.cit.*, p. 6.

³⁵Article 4 of the 2018 law on the financial regime of the State and other public entities.

³⁶BEAUD (O.), “The Constitutional Council and the treatment of the President of the Republic: a constitutional heresy”, *Jus Politicum*, n°9, 2013, pp. 1-41.

the technical preparation and programming of public contracts, the application of legislative and regulatory texts relating to staff expenditure". Its paragraph 2 continues in these terms: " *the budget service includes a budget preparation office and a budget execution office* ". It is thus an implicit financial autonomy of the Constitutional Council despite it being implicit. The Constitutional Council thus has an annual budget which allows it to function normally like any other institution. It is thus a budgetary autonomy of the Constitutional Council. The preparation of the budget of the Constitutional Council is a competence specific to this body. Indeed, it is the budget service of the financial division of the General Secretariat of the Constitutional Council which is responsible for preparing the draft budget of the Constitutional Council and monitoring the procedure in accordance with Article 10 of the decree organizing the General Secretariat of the Constitutional Council.

Indeed, the registration without modification of the budgetary forecasts of the constitutional jurisdiction allows it to transmit to the Minister of Finance its financial needs. The executive body, by formatting these forecasts in the draft budget law for the year, only ensures the relay through the granting to the constitutional jurisdiction of a formal legal support for its budget. The obligation to explain the necessities is not expressly prescribed in any text. It is a question of allowing in a latent way to be sheltered from need and from all attempts. This privilege is similar to a special fund that the President of the Republic could have. The procedure for drawing up the draft budget by the Constitutional Council does not give rise to any debate on the planned forecasts. Through this internal elaboration, Parliament is a framework for registering and validating the draft budget adopted by the Constitutional Council.

Once the budget is voted, the Council benefits from its free execution. The budget execution phase is very important insofar as it demonstrates financial autonomy. This free execution is manifested in the commitment of expenditure and the control of said expenditure. The constitutional court disposes of the sums allocated to it and available in a special account. The President of the Council, who is the main authorizing officer, orders expenditure that he deems necessary and appropriate for the proper functioning of this institution.

The Board also has freedom to allocate funds ³⁷. The Constitutional Council is not required to respect the said principle of speciality. Through this principle, the budgetary credit is the authorization given to an administrative authority to sign a legal act resulting in the financial commitment of a public entity for a specific expenditure limited in its amount. To facilitate this authorization, a specialization of credits has been set up. The principle of budgetary specialization would require that the authorization of expenditure be given

for a precise expenditure and for a determined amount. This specialization fixes the degree of precision that the authorization of expenditure must reach ³⁸. specific to each of them. Credits are thus specialized by endowment or by ceilings ³⁹. In Cameroon, according to article 7 of the 1959 ordinance, the appropriations opened by the finance laws are allocated to a service or a set of services. They are specialized by chapter grouping the expenses according to their nature or according to their destination ⁴⁰. This is a requirement of the various finance laws. The Constitutional Council is not aware of such a requirement.

There is an admission of offsetting of appropriations within the various accounting headings for the current financial year. The Council thus has the possibility of redirecting or distributing certain budgetary allocations towards other headings. The principle of annuality is not also binding on this institution. Traditionally, the principle of budgetary annuality has two aspects. On the one hand, it means that the State chooses to limit its financial horizon to one year. On the other hand, it means that the government must use the authorizations granted ⁴¹ within the year. The principle of annuality postulates that the budgetary authorization takes place over a calendar year, so that parliament can exercise regular control over government action before being consulted for the following year. This makes it possible to constitute a reserve for unforeseen expenses with the credits not used during the previous financial year. The requirement is sustainability of the state's expectations.

The Constitutional Council is also protected from external control. The financial autonomy of the constitutional courts translates into weak control of public finances. It manifests itself only through internal control. The Constitutional Council thus benefits from extensive financial autonomy which is materialized by the free elaboration and execution. The absence of a control comes to comfort him thus fearing an unhealthy use. In view of the foregoing, the Constitutional Council enjoys functional and financial autonomy. Does this mean that this autonomy is absolute?

II- A RETROCEDED AUTONOMY

Considered a judge of the state, the new council was unanimously hailed by academia and politics as an instrument for revitalizing democracy and the rule

³⁷See article 10 of the law on RFE

³⁸TROTABAS (L.) and COTTERET (JM), *Budgetary law and public accounting*, 5th ed, Dalloz, 1995, p. 61.

³⁹See section 21.

⁴⁰Ordinance n°59-2 of January 2 on the organic law relating to finance laws.

⁴¹BOUVIER (M.), ESCLASSAN (MC) and LASSALE (JP), *Public Finances, op.cit.*, p. 284.

of law⁴². Its mode of operation being identical to the logic of a public service, the autonomy of the Constitutional Council is an aporia both functionally (A) and financially (B).

A- Obstacles to the functional autonomy of the Constitutional Council

The limits linked to the functional autonomy of the Constitutional Council concern not only its essence (1) but also its existence (2). A first debate concerns the legal status of the institution. It would be a question of studying its constitutional status. The analysis is simple: it's already done. There is no need to add to the constitutional text, even to legally qualify the Constitutional Council. The Constitution describes the function of constitutional review and defines the institution. The function creates the organ and that is enough for it to exist. Adding a definition would be unnecessary. The limits are to be seen elsewhere.

Textual obstacles are those that emerge from the law, the latter being of course understood in its broad sense, thus encompassing the Constitution and other legal texts. It is difficult to admit that a law participated in blocking the effectiveness of an institution which it nevertheless created.

The texts applicable to the Constitutional Council, namely the Constitution and Organic Laws Nos. 2004/004 and 2004/005 relating respectively to the organization and functioning of the Constitutional Council and the status of its members, lead us to an observation, namely the hold of the executive power over the legal life of the Cameroonian Constitutional Council⁴³. It is a question of textual hindrances. As limits of the Constitutional Council, we have the absence of independence and irremovability which constitute a condition not totally sufficient but negative for the proper functioning of this institution. The influence of the President of the Republic on the designation of the members of the Constitutional Council is an attack on the independence of the institution. Article 51 (2) provides that the President of the Republic appoints 3 members of the Constitutional Council among whom its president⁴⁴ with a casting vote in the event of a tie. The same provision is repeated in Article 7 of Organic Law No. 2004/004 on

the organization and functioning of the Constitutional Council. The same influence concerns designation by other authorities.

Indeed, the appointment of constitutional judges by other bodies is not unique to Cameroon. It is a sort of apparent compromise in the French-speaking black African states. It is thus a question of affirming the existence of a demonopolization of the power of appointment of the constitutional judge, a source of attenuation of political unilateralism⁴⁵. Article 51 of the Constitution provides that 3 members of the council are appointed by the President of the National Assembly after consulting the bureau, 3 by the President of the Senate after consulting the bureau and 2 by the Superior Council of the Judiciary. The opening of the power of appointment by the Superior Council of the Judiciary can be considered as an important guarantee for the balance of powers. Despite this, its power is limited to only two members and this Council is chaired by the President of the Republic and therefore the head of the executive. It is in fact a designation controlled by the Head of State because he has an influence on the executive, the legislature and the judiciary. The appointment of the members of the Constitutional Council by Decree No. 2018/0105 was not made in compliance with certain requirements. The designation must be transparent and reflect the pluralist composition of the Parliament⁴⁶. This designation is equivalent to the mode of recruitment which underlines the supposed or existing political link between the council and the political power. This a priori link discredits the Constitutional Council. As Professor ATANGANA AMOUGOU points out, " *it is enough to take a look at the mode of recruitment of the members of the Constitutional Council to understand the suspicion that can weigh on this institution and harm its credibility*"⁴⁷. The organic link that binds the members of the Constitutional Council arouses mistrust and doubt as to their independence.

As another limit, we have the appointment of members by the executive authority. We have the President of the Council⁴⁸ of the Secretary General of the Constitutional Council considered as the central

⁴² NGANGO YOUNBI (E.), "The new Cameroonian constitutional council: the great disillusionment", *Revue du droit public*, n°5-2019, pp. 1380-1419.

⁴³ In his aforementioned article, Mr. NGANGO YOUNBI analyzes a double observation, namely an excessive French mimetic influence and a strong presidential influence. The limit to an excessive mimetic influence in our opinion cannot be mentioned. Nothing prohibits a State from making legal provisions applicable to a State. This also raises his autonomy, which can lead him to explore what comes from elsewhere and contextualize it.

⁴⁴ In Benin, on the other hand, the President of the Constitutional Court is elected for a period of 5 years by his peers by uninominal, secret and written ballot. See Article 8 of Law No. 91-009 of March 4 on the organic law.

⁴⁵ DIAKHATE (M.), "The ambiguities of constitutional jurisdiction in the States of French-speaking black Africa", *Review of public law and political science in France and abroad*, n°3, 2015, p. 3.

⁴⁶ On the transparency of the designation, it would be better to see three acts produced by bodies such as the Senate, the National Assembly and the Superior Council of the Judiciary. Even if this work is done upstream, the ordinary citizen should be informed of certain decisions because it is to him that certain decisions apply.

⁴⁷ ATANGANA AMOUGOU (J.-L.), "The constitutionalization of law in Africa: the example of the creation of the Cameroonian Constitutional Council", *op.cit.*, pp. 45-63.

⁴⁸ See decree no. 2018/016 of February 7, 2018 appointing the members of the Board.

organ of the administrative organization. According to a classic law of administrative science, any institution naturally tends to develop its skills, its means, its staff, its influence. One is almost tempted to say that the Constitutional Council derogates from this law by the modesty of its internal organization. Under the authority of the Chairman of the Board, the Secretary General ensures the smooth running of the institution as well as the smooth running of the procedures in progress. We have already had the opportunity to say that the function of secretary general is much more than an administrative function and that, in our view, it practices a mixture of genres, certainly for the proper exercise of the constitutional review most often, but judging is one thing and administering is another⁴⁹.

The General Secretariat is headed by a Secretary General appointed by decree of the President of the Republic⁵⁰. In Benin, for example, the Secretary General is the central organ of the administrative organization of the Constitutional Court. The organization of the General Secretariat of the Court with regard to Article 19 of Law No. 91-009 of March 4, 1991 on the organic law of the said Court is determined by a decree issued by the Council of Ministers on a proposal from the President of the Court in accordance with Article 17 of the Organic Law on the Constitutional Court. In Burkina Faso, the Secretary General leads and directs the administrative services of the Constitutional Council and coordinates them. To this end, he may be delegated by the President to sign all administrative and technical acts. The General Secretariat is headed by a General Secretary chosen from category A scale 1 executives with at least ten (10) years of seniority and known for their competence and experience in legal and/or administrative matters⁵¹. In Cameroon, the presidential influence continues on the exercise of the mandate. In most systems there is the consecration of the principle of irremovability allowing them to practice for life. In Cameroon, the mandate is 6 years, possibly renewable. Even if article 9 of the law n°2004/005 of April 21, 2004 fixing the statute of the members of the constitutional council lays out that the members of the Constitutional Council are irremovable. Their mandate cannot be renewed or revoked, the same text in its article 18 provides: "The Constitutional Council, ruling by a majority of two-thirds of its members, may ex officio or at the request of the appointing authority, put an end, at the end of a contradictory procedure, to the functions of a member who would have disregarded his obligations, violated the regime, incompatibilities or lost the enjoyment of his civil and

political rights, in accordance with the methods fixed by its rules of procedure". While admitting that immunity does not mean impunity, there should be a margin of guarantee. The President of the Republic also appears as the referral authority to the Constitutional Council. This principle is set out in Article 8(6) of the Constitution which provides that the President of the Republic seizes the Constitutional Council under the conditions laid down by law. Beyond the simple referral, he can, regardless of the body that made the referral, ask the Constitutional Council, which normally rules within 15 days, to reduce this period to 8 days.

In addition to the limits of functional autonomy mentioned above, we also have the rather fundamental absence of the rules of procedure applicable to the Constitutional Council. Each institution should adopt its own rules of procedure enabling it to exercise its administrative function autonomously. This limit tells its basis directly from the Constitution. Indeed, under the terms of Article 52 of the Constitution, "*the organization and functioning of the Constitutional Council are determined by law*". The rules of organization and functioning of the Economic Council are fixed by an organic law. This shows sufficiently that the Board does not fully understand its organization and functioning. These are very much external to it except to mention the internal organization methods of the Constitutional Council which are determined by internal regulations⁵². What about the limits linked to financial autonomy?

B- Limits to the financial autonomy of the Constitutional Council

The constitutional court establishes its own budget by freely evaluating its expenditure. It then presents its draft budget to the Ministry of Finance. Such a procedure somehow limits the financial autonomy of the Constitutional Council. While waiting to acquire financial autonomy, the budget of the Constitutional Council continues to depend on the national budget.

Due to a lack of express basis, the Constitutional Council should in principle draw up its budget and submit it directly to parliament for adoption, as is the case with certain French-speaking black African states. In Côte d'Ivoire, where the Council enjoys financial autonomy, it is the members of the Council who draw up their own budgets and submit them directly to parliament for a vote⁵³. The budget is voted by parliamentarians who, in principle, cannot discuss its content within the framework of the general budget. In other words, parliamentarians cannot modify the content of the project presented, by reducing or increasing the said project. This allocation is included in the finance law and must be executed independently by a steward of the counts placed

⁴⁹DRAGO (G.), "Reforming the Constitutional Council? », *Powers magazine*, n° 105, 2003, pp. 73-87.

⁵⁰See Article 3 of Decree No. 2018/104 of February 07, 2018 on the organization and functioning of the General Secretariat of the Constitutional Council.

⁵¹Organic Law No. 011-2000/AN on the composition, organization, powers and functioning of the Constitutional Council and the procedure applicable before it.

⁵²Article 9 of Law No. 2004/004 of April 21 on the organization and functioning of the Constitutional Council.

⁵³KANTE (M), "Constitutional courts in West Africa", quoted by NGANGO YOUNG, *op.cit.*, p. 45.

under the responsibility of the President of the Constitutional Council.

In Cameroon, the Constitutional Council has a budget that is not debated in Parliament. It is not about complete financial autonomy. Their budgets are not debated in Parliament. They are simply allocated an amount. Everything depends on the resources desired by the executive power. The control is sometimes carried out either by the deputy director of financial controls of the MINFI or by an authority appointed by the president of the institutions concerned. Their fund is generally the general pay office.

CONCLUSION

Each constitutional body exercises within it an administrative activity which makes it a legally autonomous entity. This autonomy is approached both organically and financially. The Constitutional Council through its attributes has an ambivalent autonomy. As long as the rules of procedure have not yet been adopted, as long as the organization and functioning of this institution will come under the exclusive competence of the executive, autonomy will remain an aporia. As for the financial aspect, the revenue from which they benefit is collected by the Ministry of Finance through taxes and customs. These bodies are rather spendthrift. The absence of real external control is unfavorable for a rule of law⁵⁴. This reminds us of these expressions of Maxime Bruno AKAKPO: *"when, invested with a public mandate, the constraint of rendering accounts does not weigh on you, you steal, and you plunder. Also, one should not seek further the cause of the failure of a take-off of French-speaking Africa: whatever the field concerned, a management without accountability is a management carrying the genes of corruption."*⁵⁵

⁵⁴Constitutional bodies do not know external accountability. Taking the case of parliamentary assemblies for example, it is the presidents of said assemblies who appoint accounting officers. For the Constitutional Council, the president of the august institution appoints a manager.

⁵⁵ AKAKPO (MB), *Financial democracy in French-speaking West Africa*, Cotonou, Friedrich Ebert Stiftung, 2015, p. 31.