

Religion in Maghreb Constitutions: A Comparative Study

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Abstract

The constitutional consecration of religion differs from one state to another according to the will of constituent authority that grants it within its legal system. There are systems that seek and move towards secularization. Religion has no influence in its legislation. While there are other systems in which religion occupies a central position in its legal system¹. The constitutions of Maghreb in three countries - Tunisia, Algeria and Morocco - differed in constitutional representation of state religion, which is enshrined in form without prejudice to the civil character of state.

Keywords: Constitutions – Maghreb States – Secularism- Identity - Religion

First axis: consecration of religion in Tunisian constitutions

The constitutional reference to religion is linked to the nature of government system philosophy in the state and basis upon which the legal system of state is based. The consecration of religion without prejudice to civil character of state the change in content of (public private) rights and freedoms is restricted to recognition of a social reality in this case; the inclusion of religion is only in constitution, the constitutional right and condition of candidacy for presidency².

Religion has occupied a central place in establishment of Arab and Islamic constitutions, but dispute still exists between those who consider this a mere description of a social reality that lacks any legal value, and those who grant it same legal value as the rest of constitutional provisions. The introduction of constitution is merely a formalization that does not change anything from a civil state

Tunisian experience is somewhat different. The first appearance of constitutions in Arab world was in Tunisia in 1861, but the main constitution is 1959 constitution that came after independence. Despite reputation of Habib Bourguiba as a secularist influenced by Turkish declaration of state secular in Constitution, but Constitution declares in the first article that 'Tunisia is an independent sovereign state and religion Islam and its language is Arabic'. Article 8 prohibits establishment of political parties on a religious basis. Bourguiba believed that change in society towards modernization should be gradual. Second, modernization is by modernizing the religion itself by state control (unlike the Turkish model that has brought religion to private space). Thirdly, state must be rooted in people's passion and religion plays a role in it.

Bourguiba's attempt to modernize, for example, marginalized scholars and dried up their sources of income and closed Zaytouna and stop teaching religious teaching in university education.

There is no doubt that the drafters of the new Tunisian constitution have tried to give Islam and its principles more importance than in 1959 constitution, whose preamble began with 'Basmalah'. The second paragraph stipulates that deputies should adhere to teachings of Islam, while the Constitution of 2014 states in its preamble in second paragraph: On the adherence of our people to the teachings of Islam and its purposes of openness and moderation³ The simple comparison between status of religion in beginning of the 1959 constitution and the Constitution of 2014 note that constitutional institution has exceeded term related to any attachment of people to teachings of Islam and replaced by the adherence of our people and adherence in terms of significance stronger than attachment, the constitutional founder sought to there is no conflict between legal system values And the teachings values of Islamic religion.

¹ Al-Nasser Al-Makeni, Islam and Constitution, Publications of the Al-Atrash Book Complex, Tunis, 2014, p. 19

² Al Namer Sultani, about the problematic religion and the Constitution in Egypt and Tunisia, browsing: 22/01/2017, <http://www.alquds.co.uk/?p=70P>. 121.

³ Al-Nasser Al-Makeni, *ibid*, P. 22.

In fact, constitutional reference to religion and values of human rights in Tunisia came as a true and explicit translation of a profound ideological and political struggle between two streams, one of which is an Islamic one expressing spirit of Arab Islamic nation and a secular trend connected with values of modernity and the gains of human rights⁴ There has been a great controversy over constitutionalization of religion, where secularists see it as an entrance to the building of a religious state. When Muslim people see this as a mere description of a social situation that has no impact on the civic orientations of the state.

The sixth chapter of 2014 constitution forbids any political employment of religion, especially in light of increasing use religious discourse by political parties. It states: The state is a sponsor of religion, a guarantor of freedom belief conscience and the exercise of religious rites, guaranteeing neutrality of mosques and places of worship. The state is committed to spreading the values of moderation and tolerance, protecting holy sites and preventing them from abusing them Atonement and incitement to hatred and violence and against it.

Following the ratification of first version of the chapter, some members of Islamic Renaissance Movement, which has a majority of seats (90 out of 217 deputies), presented their demands to resign from bloc to protest against passing of contents of their enemy, contrary to the teachings of Islam⁵.

Ahmed al-Sammiei, one of deputies resigning from 'Ennahda bloc' regretted the acceptance of his bloc's approval of this chapter, believing that 'a chapter contradicts teachings of Islamic religion and begins to spread kufr, atheism, idolatry and forbids the atonement that came in law of God'

He expressed dissatisfaction with the movement's policy, which went towards satisfaction of internal and external parties until ratification of constitution. He added that he was unhappy about ratification of a principle that guarantees freedom of belief or atheism and even starts to worship and propagate idols, which he sees as 'a danger to the Arab Islamic identity of Tunisian people'

As for the prohibition on calling for takfir, he sees that term "atonement" is vague and does not conform to the provisions of sharee'ah. He pointed out that takfir is purely a doctrinal issue of the jurisdiction of Muslim scholars and expert experts. This position is adopted by Azouz al-Shawali, who confirmed that 'The teachings of the Islamic religion and conflicts with the provisions of the Sharia in the Book of God'⁶

He said that the prohibition of takfir is "wearing, and it is completely incompatible with legal rulings came in the Qur'anic verse such as Surat Al-Kafron." The Quran was separated between the believer and infidel.

He highlighted that atonement resulting from deductions, an oral dispute and advocacy of hatred is haram(forbidden) in the Islamic religion, noting that fatwas of Atonement is an award in Sharee'ah, which is 'the competence of Muslim scholars and specialized experts.'

As for his position on freedom of conscience in new constitution, which culminates in transition period three years after popular revolution, al-Shawali said that 'it will stir up divisions among the Tunisian people and spread sedition and destroy identity'. He pointed out that freedom of conscience is a philosophical theory that derives from change. The individual represents subjective criteria, unlike the conscience of religion, which is based on instinct and absolute faith, and separates good and evil on the basis that virtue is fixed⁷.

Second axis: fundamental dedication of religion in Algerian constitutions

The fundamental consecration of religion in Constitution is that which generates distinct legal effects affect legal, value, cultural and other systems. The centrality of religion in the Constitution makes state religiously neutral, and religion is one of its cornerstones and an institution of its official institutions, which dictates that the legal and legislative organization is derived from Islamic sharia, and Algerian constitutional institution has worked to enshrine religion at the heart of constitutional texts and in various stages and political orientations in the country⁸

Article 4 in the Constitution of 1963 stipulates: Islam is the religion of the State and the Republic guarantees to everyone the respect of their opinions and beliefs and free exercise of rites, which is explicitly enshrined in the Constitution on religion of the state. The provisions of article 39 of same Constitution concerning conditions to be met by President of Republic include, inter alia, the provision of article 39, paragraph 2, which states: Every Muslim of

⁴ Al Namer Sultani, Ipid P.05

⁵ Khamis Ben Brik, The Tunisian Constitution and the Crisis of Chapter Six: Browning 22/01/2017

⁶ Al-Nasser Al-Makeni, Ibid., P. 22.

⁷ Adel Latifi, Differences in Position of Islam in Arab Constitutions, Browning: 23/01/2017

⁸ Abdullah Bouqafa, Constitutional Law, Dar al-Huda Publishing, Algiers, 2008, p. 29.

Algerian origin that has attained his civil and political rights may be elected president. Required to be candidate religion for presidency of Republic Islam⁹.

In accordance with article 40 of 1963 Constitution and prior to commencement of functions of the post, the oath of office the National Assembly is to fulfill the following words: "In fulfillment of the principles of our revolution and the lives of our martyrs, I swear by Almighty God to respect and defend the Constitution and to safeguard the integrity of country, independence, the unity of The People's Democratic Republic of Algeria, the oath, which clearly shows the constitutional consecration of religion in Constitution of 1963, the Constitution of 1976 in article 20 states that Islam is the religion of state, and the text of the second chapter relating to the executive function in Article 107, saying: Originally Algerian, he was convicted of Islam. He was 40 years old on Election Day and enjoyed political and civil rights¹⁰.

In the same chapter in the provisions of Article 110, the President of the Republic shall be sworn in as follows: In fulfillment of the great sacrifices and the lives of the martyrs of our Holy Revolution, I swear by God Almighty to respect and glorify the Islamic religion and to respect and protect the National Charter, the Constitution and all the laws of the Republic. And to preserve the integrity of the national territory and the unity of people and nation, and to protect fundamental rights and freedoms ... And God is what I say martyr.

It is clear through Constitution of 1976 that he maintained that Islam is the religion of state in Article II and this Constitution obligates the President of the Republic to constitutional oath of the need to protect and glorify religion and this was not included in the Constitution of 1963. The Constitutional Constitution in 1989 followed the same trend. Article 2 states that Islam is the religion of state. Article 72 of constitution requires that the president be condemned by Islam. After winning constitutional oath, he is obliged to protect and glorify Islam¹¹.

The Constitution of 1996 does not differ from the 1989 Constitution. Article 2 states that Islam is the religion of state and obligates the President of the Republic to be sworn in. The differences between the 1996 Constitution and the 1989 Constitution are clear, the 1996 constitution prohibits the political employment of religion and prohibits the establishment of political parties on religious grounds.

Article 76 of the Algerian Constitution 2016 states in its preamble "Algeria is the land of Islam" and in its second article "Islam is the religion of the state." Article 73 requires the president to be a Muslim. Article 76 obliges him to swear by God Almighty to respect and glorify the Islamic¹² religion. Article 8 states that the people choose Article 9 as "Institutions may not conduct any behavior contrary to Islamic morality and the values of the November Revolution". Article 41 bis 2, which was added to the draft of the last amendment, invokes the freedom of the press to abuse "the nation's principles and religious and moral values and cultural activities" Article 42 prohibits the invocation of the right to establish political parties" to strike at the basic values and components of national identity. "Article 178 breaks Ground for any attempt to overthrow article 2 of the constitution, which prevents any constitutional amendment from affecting the national constants, including" Islam as a religion Country."

These articles, no doubt, are important in their content to perpetuate the ultimate goal for which the November Revolution broke out. But given its generality and superficiality, it remains insufficient to enshrine status of Islam in a country of which 99% are Muslims. Article 76, for example, obliges the President to swear respect Islam and its glorification, but this text does not necessarily oblige it to apply the principles of Islam and oblige state institutions to implement its laws and teachings. Article 8 obliges state institutions to preserve national identity, and Article 9 prohibits them from engaging in any behavior contrary to Islamic morality, These articles do not explicitly state institutions violations that from the enactment of laws and legislation and issuing instructions violate Islamic law¹³

Third axis: religion in constitutions of Morocco (dialectic of religious state and the secular reality)

The contemplator of constitutional experience in Morocco since the 1962 constitution until the 2011 Constitution draws from a constitutional perspective that political experience in Morocco is governed by the spirit of Khilafah state with its political concepts that revolve around the concept of the Principality of the Believers. Where political power derives its legitimacy from religion in return for popular political legitimacy enshrined in modern political theory. With the promulgation of first constitution in 1962 during the rule of late King Hassan II, the authority of faithful Principality will find its position in chapter 19 of constitutional document proposed by Allal al-Fassi and Abdel-Karim al-Khatib.

⁹ Adel Latifi, Ipid,P.5

¹⁰ Abdullah Bouqafa, Ipid P. 32.

¹¹ Muhammad Ahmed Ali Mufti, The States whose constitutions on Islam, browsing: 24/01/2017

¹² Abdullah Bouqafa, Ipid., P. 36.

¹³ Muhammad Ahmad Ali Mufti, Ipid., P.12

The proposal was to emphasize the Islamic state in the face of leftist spread and pan- Political and cultural circles in Morocco. However, the invocation of the faithful Principality in the constitutional text went beyond its symbolic function and imposed a interpretation of its religious content, inspired by political experience of royal history, which made it an authoritative authority in field of modern state more than three executive authorities, legislative and judicial¹⁴.

The Constitution of the Principality of Believers has been embodied in Chapter 19 since Constitution 62 and repeated in all constitutional amendments (1970-1972-1992-1996), as follows: "The King of Faithful, symbol of unity of nation, guarantor of the permanence of state, And is keen to respect the Constitution, and has the maintenance rights and freedoms of citizens, groups and bodies, which is the guarantor of country independence and the Kingdom's possession in the circle of its borders. The famous chapter appears to be a complete constitution and not a chapter of other chapters. It clearly represents the institution of the Faithful Principality, which has unlimited powers beyond logic of modern constitutional philosophy. The Faithful Prince monopolizes all religious and civil authorities¹⁵.

In 2011, Morocco adopted a new constitution that envisages a guarantee of freedoms and a full section. It also explicitly recognizes the importance of international conventions and covenants on country's domestic laws, especially those relating to human rights.

At the same time, however, this Constitution itself calls for respect for the fixed national identity of Moroccans. Islam also adopts a state religion within the framework of the Principality of the Believers. This issue has received considerable attention recently because of the central role played by the religious figure not only as a mechanism for legalizing and managing conflicts among political actors, but also as a permanent feature in private relations between individuals and groups. Sometimes it may be used to extract rights and immediate gains, others in reaction, accusing the other of employing "sacred" to undermine the social peace, and balance prevailing in the production patterns and proper management of economic and social relations.

This privacy, which is surrounded by a clear danger, imposes the constitutional treatment of religious authority with a kind of caution and more caution. This is the role of constitutional document. It is concerned with establishing general legal framework that frames the important societal issues in its holistic dimension. Shall govern following laws and legislations¹⁶ The preamble is an integral part of Constitution, with preamble of this preamble and its codification of Constitution chapters, or a framework for some chapters, especially those characterized by a sensitive situation such as freedom of religion and belief. Official Gazette No: 5952 bis, dated 17 July 2011; we find it has been referred to the Islamic identity in following locations:

1. The Kingdom of Morocco is a fully sovereign Islamic state ... Moroccan identity is characterized by predominance of Islamic religion ... The second preambular paragraph.
2. The nation is based in its public life on constants of university, is Islamic religion tolerant ... Chapter: 1.
3. Islam is the religion of state, and state guarantees everyone freedom to practice their religious affairs ... Chapter 3:
4. Political parties may not be founded on a religious basis ... and their purpose may not be to prejudice Islamic religion (Chapter 7).
5. The king, faithful and protector of the religion of religion and religion, and guarantor of freedom to practice religious affairs.

The King, the Commander of the Faithful, presides over the Higher Scientific Council, which examines issues it presents. The Council shall be the only competent body to issue officially approved fatwas on matters referred to it, based on the principles and provisions of the Islamic religion and its noble purposes. Chapter 41.

6. No member of Parliament can be pursued, searched, not arrested, neither arrested nor tried, on occasion of expression an opinion or a vote in course of his or her duties, except if the opinion expressed argues in monarchy or the Islamic religion, or includes any violation of due respect For the King Chapter: 64.

7. The review cannot deal with provisions related to Islamic religion, the monarchy of state, its democratic choice, and the achievements in the field of fundamental freedoms and rights set forth in this Constitution (Chapter 175)

All these references do not find the reference to Islam as a law, so there is no chapter that provides Islam is a source of legislation. It is clear that:

- The new constitution does not speak of Islam except as a religion, in other words as a ritual and not as a law.
- The new constitutional document, when it speaks of Islam in this form, it introduces it in a secular sense, i.e. a group of personal worship (doctrine), not a set of rules governing the conduct of political power Sharia.

¹⁴ Mohamed Bouazza, legal fighter for freedom of religion and belief in the Moroccan constitution, browsing: 25/01/2017:

¹⁵ Mohamed Bouazza, Ipid.P.05

¹⁶ Abbas Bou Ghalm, Freedom of Religion Legal Approach, Browsing: 25/01/2017

- The new constitution makes religion at service of state as Islam is its official religion, and this does not exclude secular option because central basis of secularism is launch of state value and thus make everything in its service, including religion¹⁷.

-The provision of Islamic religion in constitutional document confirms the secularism of state in line with example of some secular experiences, which expressly stipulate in its constitutions and laws that Christianity is its official religion. As stated in the preamble to the new Constitution, "The Kingdom of Morocco is an Islamic State... the Moroccan identity is also characterized by primacy of Islamic religion, in the light of the Moroccan people's attachment to values of openness, moderation, tolerance and dialogue, and mutual understanding among all human cultures and civilizations."¹⁸

As stated in preamble to the new constitution, "The Kingdom of Morocco is an Islamic country ... Moroccan identity is also characterized by Islamic religion being the centerpiece of new constitution. The Moroccan people adhere to values of openness, moderation, tolerance, dialogue and mutual understanding among all cultures and civilizations.

The preamble further states that Kingdom of Morocco is committed to:

- prohibit and combat all forms of discrimination, because of race, color, creed, culture, social or regional identity, language, disability or any personal status whatsoever.

- Making international conventions as ratified by Morocco, and within the provisions of Constitution, laws of the

Kingdom and its well-established national identity, immediately upon their publication, are based on national legislation and work on the appropriateness of such legislation, as required by such ratification.

And the text of first chapter of Constitution "... the nation is based in its public life on the constants of the university, is the tolerant Islamic religion, and national unity multi-tributaries ..."

Chapter 3 states that "Islam is the religion of the state, and the state guarantees everyone the freedom to practice their religious affairs." It should be noted that the concept of "freedom of religion" To the king was withdrawn as threatened parties and associations, "Islamic" to disrupt or stop the wheel of the country from rotation if not withdraw this phrase from the draft Constitution, the Commission to remove this phrase from the draft constitution before the referendum. The phrase "and the State guarantees everyone the freedom to practice their religious affairs" in Chapter 3 is quickly abolished by the other chapters presented above, in particular chapter I, which provides that "state", "legislation", "identity" And «the public life of the nation», «the constants of the university, is the Islamic religion». Citizens who do not want to be bound by these "universal constants" in the Islamic religion are destined to become oppressed in the name of this constitution¹⁹.

It seems that the reference to "Islam as the religion of state" is tantamount to an achievement, given that the people of this state are a Muslim people whose religion is Islam. It should be noted at the outset that many constitutions of Arab states stipulate that Islam is the religion of state. It is almost most prominent text in various Arab and Islamic constitutions, and Morocco as an Islamic country does not constitute an exception to rest of the and Islamic countries in this regard. The official religion of state since the Basic Law of the Kingdom, and under the rest of successive Moroccan constitutions. Therefore, the concern for constitution of Islam as a religion of state was intended to emphasize that reference religion of state is Islam, not the only religion allowed, if state recognizes Islam as an official religion, Islam recognizes other religions and does not deny them, The third chapter of constitution only embodies historical reality of Moroccan state, which is mainly religious role of latter²⁰, since the head of state, who is also a religious leader, is keen to protect Islam. , And it should be clarified that the constitutional text used the term "religion of state" and did not use the term "religion of the people" or "the religion of the nation", which means that there may be other religions worshiped by some Moroccans, and in this framework falls Jewish religion, The rule of Islam does not contradict the religion of state²¹.

This constitutional provision, however, raises a further question of why the constitutional norm in this provision is not sufficient to state religion of nation without adding that "the state guarantees everyone the freedom to practice their religious affairs, The reason for adding this phrase is "the presence of religious minorities on Moroccan soil, which has led the legislator to guarantee their religious freedoms through the constitutional text, in order to establish the

¹⁷ Muhammad Bouazza, Ipid. P.08

¹⁸ Abbas Bou Ghalem, Ipid, P.06

¹⁹ Ahmad al-Khannubi, Morocco is a religious state in law, and secular in fact, civilized dialogue: the number 1925, 2007, browsing, 25/01/2017

²⁰ Muhammad Bouazza.Ipid P.09

²¹ Ahmad Al-Khabnoui, Ipid P.03

foundations of religious and ideological stability of the Moroccan regime, by holding State responsible for ensuring the practice of religious affairs of Individual citizens

The religious freedom recognized through this text is a consecration of a long tradition that is inseparable from the spirit of Islam itself. Respect for the other religions on Moroccan soil has never been questioned even in the darkest periods of history. One is free to practice its religious affairs, "explains the historical obligation of the Emir of the Believers to protect the people of the Book. Given that King of the Faithful is the " guardian of the religion of religion ", his job at this level is to protect the " beliefs " Muslims, Jews or Christians. But this constitutional provision does not represent that Islam is the religion of state, an obstacle to the neutrality necessary to guarantee freedom of religion²². In this sense, the absence of a constitutional provision on a religion does not necessarily mean that it is a prohibited religion. The head of the Moroccan state, as the prince of believers, has exclusive jurisdiction over the religious field, and one of his functions is to ensure freedom of religious practice for all citizens.

Another question is that constitutional text referred to the Islamic state of Morocco and fact that Islamic religion is religion of state, but did not address a particular doctrine from within Islam, has not been referred constitutionally to the doctrine of Morocco state, whether the Ashariyah or Hanbali, or to the school of jurisprudence of state Moroccan, if it was on the Sunni or Maliki²³. The Prince of the Faithful heads the Supreme Scientific Council, which is responsible for studying the issues presented to him. The Council is the only competent body to issue fatwas, which are officially adopted, in respect of matters referred to it, based on the principles and provisions of the Islamic religion and its noble purposes. The terms of reference of the Council, its composition, and the manner of its conduct shall be determined by a dahir (decree). The King exercises the religious powers pertaining to the prince of the Faithful, and is exclusively empowered by this chapter by Dahir.

Therefore, the faith of the believers is a religious concept rather than a civil field, in which the king exercises his religious powers by means of dhimmis rather than arbitrarily, which means that confusion between religious and civil remains after last constitutional amendment. Morocco has become a systematic and discriminatory distinction between religious and political. In sense of absolute union.

Finally, it can be said that the foundation of Principality of believers remains the main political and religious actor in Morocco, where the importance and weight of this institution was clearly evident in the followers at home and abroad during the events of the so-called "Arab Spring" in its Moroccan version, with the distinguishing features of the movement in the Moroccan arena With a kind of stability compared to the prevalent in the Arab regimes that saw the dropping of four presidents, and its role in particular in post-outbreak of these events with the multitude of political conflicts between different political parties, which highlights the Royal Institution's Highness at the heart of constitutional document, and its pursuit To maintain its arbitrary function within the political and partisan field, and to the political, social and cultural balances within Moroccan society, and the Maghreb constitutions (Tunisia, Algeria, Morocco) usually take great care of constitutional oath or the values that heads of State abide by, even if We applied a precise definition to candidates for the presidency of States, but we did not consider that presence of most of them was unconstitutional because of rumors of religious sins, hatred and hostility towards Islamic religion.

Fourth Axis: Backgrounds of Constitution of Islam as a religion of states in Maghreb

Despite the lack of religious ideology about the popular movement that has accompanied revolutions of Arab Spring since beginning of 2011, but all the compromises that touched constitutional regimes of the Maghreb did not lose sight of fundamental aspects of religious issue, which took an important place in discussions on amending Constitution, despite the fact that it has received considerable attention since birth of modern constitutions after independence. This interest, which has been translated since writing of basic texts and constitutions of Maghreb countries by granting a fixed constitutional value to religious issue, prohibits any constitutional amendment from touching it. But it hides in return intensity of conflict between social forces over place of religious ideology in political practice when Drafting of all Maghreb constitutions since independence²⁴ the differences over the issue of religion relationship with state have been printed in the political landscape, particularly with regard to the emergence of political parties holding a religious project as an alternative to prevailing economic, social and political systems of²⁵.

²² Ali Qasimi al-temsmani, The reference to Islam in the new constitution does not negate the secular choice of the state, browsing: 26/01/2017

²³ Ahmad Al-Khunbounmi, Ipid P.02

²⁴ Essam Suleiman-Basic guarantees and rights in the drafting of constitutions, paper presented to the International Colloquium on the drafting of constitutions in democratic transitions, organized by the Lebanese Foundation for Civil Peace, held in Beirut, Lebanon on 13 and 14/12/2013.

²⁵ Essam Suleiman-Basic guarantees and rights in the drafting of constitutions.

The consecration of religion in Constitution is seen as a tool for resolving conflict by dominant powers on eve of independence, as it is one manifestation of struggle against colonizer embraced by all national liberation movements, but as a dimension of my identities and not of the ideology of state (01). However, it has become a source for enhancing legitimacy of existing regimes Independence through domination of religious representation (02)

Devoting religion to Constitution: resolving conflict for identity

The relationship between state religions in all Arab countries is reflected in a historical fact that these countries were formed in societies with a Muslim majority²⁶. The Maghreb countries did not emphasize this rule. Religious heritage constituted a fundamental reference to development of constitutional system of these countries and the source of certain legal normative norms. Its range varied from country to country.

The period of struggle against colonization by nationalist movements and their reliance on religious factor in mobilizing rules of struggle was an essential factor in maintaining religious heritage until after independence. - In case of Tunisia, we find that the French colonialism maintained traditional local structures and religious institutions compared to rest of Maghreb countries, which had a significant impact in existence of a resistance movement launched from religious institutions and tried to issue the political scene after independence²⁷, which prompted members of national movements In the wake of independence to adopt measures limiting emergence of political Islam and the phenomenon of religious impact on political practice²⁸, where we find that the first constitution adopted after independence in 1959²⁹ confirmed in first article that "Tunisia is a free and independent sovereign religion of Islam ..." However, it was also prohibited in its article Secure the establishment of parties based on Islamic religion " is intention of confirming domination of religious issue that cannot be ideology of the secular state as much as a tool to de-legitimize religious party activity. To ensure that this is explicitly stated in new Constitution 2014 in Article 6, which states that "the state sponsor of religion ... guarantees freedom of mosques and places of worship for party recruitment" in support of freedom of belief, expression and protect it from any outside official framework³⁰. The same situation has been defined by Algeria from the beginning of the constituent phase after independence until the stage of political pluralism, where the first constitution of 1963, saturated with socialist ideas, was an opportunity to affirm hegemony of state over religious issue and to make religion one of ideological bases of the Algerian revolution, as stated The 1964 national Pact at a stage marked by conflict over identity and ideological project of state³¹. To ensure policy of domination with promulgation of National Pact 1976³², which culminated between socialist and religious ideological project through article 20, which stipulated that the principles of socialism stems from teachings People's religion and granted the Constitution of 1976 constitutional and legal immunity as stipulated in the National Charter³³. As well as the use of official religious discourse to promote socialist ideology³⁴.

However, the transformations brought about by the constitution of 1989 in the Algerian constitutional order by opening up political space and permitting formation of political parties freely allowed for first time to have Islamist-oriented parties in the political arena and to have a key role in enriching the democratic process that has stalled after Cancellation of multiparty legislative elections first results³⁵. The Constitution is re-drafted in the pluralistic phase, with growing fear of a partisan phenomenon (religious or sectarian), where it has been established to prevent establishment of any political party on basis of my identities under the 1996 Constitution, article 42 of which affirms

²⁶ Constitution et religion dans les Etats arabes : la place de la religion dans le système constitutionnel moderne du monde arabe

²⁷ Muhammad Abed Al-Jabri - Religion and the State and the Application of Sharia - Center for Arab Unity Studies, Beirut Lebanon, 1/1996, p.64

²⁸ Eltahir Abdallah, Tunisian National Movement, Dar El Maaref for Printing and Publishing, Sousse, Tunisia, 2/1990, P. 61

²⁹ University of Zaytouna was closed, the unification of civic education, the abolition of religious education and the failure of the Personal Status Law to be subject to the provisions of the Sharia.

³⁰ The Constitution issued by Law No. 57/1959 on 01/06/1959.

³¹ Note that the Constitution of 2014 contributed to the draft members of the movement of the Renaissance with an Islamic orientation, but could not bring the new constitution to pressure the street and the rest of the militants in the Constituent Assembly.

³² Franck FRÉGOSI, Les rapports entre l'islam et l'Etat en Algérie et en Tunisie. Annuaire de l'Afrique du Nord, in Société Droit et religion en Europe. Éditions CNRS-Strasbourg 1995, p 106

³³ Issued by Order No. 76/57 of 05/07/1976 GR No. 61 of 30/07/1976.

³⁴ Article 20 of the Constitution of 76 states that "Islam is the religion of the State" and article 195 of the Constitution grants immunity to article 20 of any amendment to equality with the socialist choice

³⁵ Franck FRÉGOSI, les rapports entre, IPid P.115

this constitutional prohibition³⁶, and state's monopoly on the issue Representation and religious organization as the identity and symbols of state in which no political organization is entitled to establish.

In Kingdom of Morocco, which was characterized by a special status of explicit marriage between political authority and religious authority embodied in the person of king, which is according to Constitution of Faithful Commander³⁷, depending on the proportions of king family origin of Prophet (peace be upon him) And the combination of sanctity of Sharif and the powers of head of the religious community authorized by authority to prevent emergence of any political movements with an Islamic orientation³⁸, and this is reinforced by the Constitution of reform of 2011 in Article VII, which stated that "political parties may not be founded on a religious or linguistic basis Ethnic or regional, and in general, on any basis Discrimination or violation of human rights ". Article 41 of same Constitution also affirms prohibition and hegemony at same time on religious identity of a State founded on freedom to practice religion and freedom of belief.

The constitution of Islam in Maghreb constitutions is not an ideological basis for state and political authority that exists, as it is an expression of religious identity monopoly and its exclusion from the political conflict between the social forces.

The Islamic religion in the Constitution as a basis for legitimacy of existing regimes after independence

It is clear from this that the purpose of Maghreb constitutions is that Islam is a religion of state as a constitutional instrument that allowed existing regimes to monopolize religious and ideological authority not only at the level of official institutions but also at level of political practice. This role increases when this dominance becomes a basis for strengthening legitimacy of existing regimes.

- In Tunisia, after the struggle and political arena witnessed systematic abandonment of all fighters who graduated from religious schools, the existing authority had to search for additional legitimacy to end all competition for the dome of the regime. Therefore, reliance on the religious issue was evident in reinforcing this contradictory trend. The nature of secular state itself³⁹, the constitutions were engineered on secular civil foundations but without undoing idea of state religion constitution along the constitutions lines of some secular Western countries. Despite allowing Islamic-oriented 'Nahdha' movement to participate in government and even participate in adoption of constitution

In Algeria, however, the revolutionary legitimacy on which the regime was based to build a single-party political system and organization was not sufficient unless it was reinforced by a spiritual legitimacy derived from the religion that was basis of armed struggle, which was the subject of a conflict between liberal and conservative social forces⁴⁰.

There was a greater need for religious legitimacy in 1970s, with emphasis on adoption of socialism as an ideological choice whose importance was to cross its principles with teachings of Islam. However, the emergence of Islamic parties in political scene after 1989 and resulting contradictions in constitutional and legal system allowed the existing authority to strengthen its religious legitimacy and remove all identity symbols of state from any partisan conflict or political competition, including the Islamic religion. Who is solely responsible for religious practice and its guarantor⁴¹.

- The Kingdom of Morocco, its religious legitimacy appears more explicit in Constitution as the King is the Prince of believers, which relies on allegiance as an essential element of establishment of political system, which contributes to formation of a special relationship between authority of king and the people based on contract (the nature of social Religious basis) and unconditional submission (on a legal basis)⁴², giving the king's authority dual protection and protection: constitutional and religious.

Fifth axis: The impact of religion's constitution on the reality and future of political practice:

One of the constitutions purposes is to define the basic rules and principles underlying system of government, which must be subject to entire legal state system. These rules and principles are basis for regulating political practice and legislation. The constitutions of religious issue are of importance in Maghreb constitutions in context of countries

³⁶ Several Islamic-oriented parties participated the first multi-party legislative elections in 1991 took the lead in terms of number of seats in first round of Islamic Front party.

³⁷ Article 42 of the 1996 Constitution states: "The right to establish political parties is recognized and guaranteed.

³⁸ Since the first constitution after independence, promulgated in 14/06/1962 in accordance with article 19

³⁹ Hamdam NADAFI, La liberté de religion dans les Etas de droit musulman, thèse en droit public, université Saint Etienne, France 2013, P 204.

⁴⁰ Al-Nasser Al-Maknee-, Islam and the Constitution legal and Fiqh study-al-Atrash complex for the competent writers, Sousse Tunis I 1/2014, P18.

⁴¹ Franck FRÉGOSI, les rapports entre... Ipid .P 118

⁴² Constitution et religion dans les Etats arabes : la place de la religion, Ipid

orientation concerned to adopt option of a civil state according to path of a consensual dialogue. One of the main parties is a religious-oriented political movement⁴³ which ultimately produced constitutions that preserved basic religion in terms of its constitutional functions and its effects on political practice. (01) Although it is not a basic source of legislation, it is possible to foresee future of political parties with a religious orientation and prospects of political practice under the new constitutions and according to dialectic of religion and state (02).

Multiplicity of religion constitutional functions in Maghreb constitutions:
The functions of religion in Maghreb constitutions stand out through three main levels: first preamble, first chapters on the general principles of state, and finally the conditionality of candidacy for post of president of republic

The function of religion in preamble of constitutions

The Preamble of constitutions occupies an important position as having legal and political value no less than provisions of Constitution itself, but is a source of self-constitution as containing general orientations, principles and political philosophy spirit of Constitution. In the preamble to Maghreb constitutions, the religious issue has become an important feature of political constitutions establishment of a system government based on principles and rules that do not conflict with religion itself⁴⁴.

The influence of religion in introduction of Constitution of Tunisia in 2014 begins with beginning of term "in the name of God the Merciful, Compassionate" and concludes with phrase "on the blessing of God". This indicates touch of the members of Renaissance movement and their influence in formulation of settlement. The most significant expression is second one, which is the "teachings of Islam and its purposes of openness and moderation." It is understood that official religion adopted by state is a modern religion that responds to the values of citizenship and the necessity of globalization away from traditional popular concept of Islam⁴⁵. This restriction will appear in the very constitution itself.

The preamble to the Algerian Constitution of 2016, which was enriched and expanded compared to its predecessor in Constitution of 1989 and Constitution of 1996 and subsequent amendments. However, this amendment in the preamble did not affect religious issue, which was mentioned for first time when 1996 Constitution was adopted, considering that Islam is one of elements of identity, like the Arabic and Amazigh language, which state promotes, and no political party has the right to monopolize its representation. In order to avoid repeating the scenario of experience of the first pluralistic elections in which parties participated in names that indicates religious identity as well as linguistic or sectarian identity. The preamble of Moroccan constitution 2011 also did not differ very much from first constitution after independence, where religion is one of the symbols of kingdom identity, which state monopolizes its organization and promotion under spiritual and constitutional authority represented by the king. Which would make it easier to state in constitution that political representation cannot be represented by political parties?

The function of religion in accordance with general principles of state

Most constitutions take precedence over first chapters on defining general principles on which state is based and on which system of government is based. Where the first article of Tunisian Constitution states that "Tunisia is a free, independent, sovereign country, Islam is its religion" Article 2 of Algeria's Constitution 2016 states that "Islam is the religion of state"

Article 3 of the Moroccan Constitution 2011 also refers to the same phrase "Islam is the religion of State"

The phrase contained in most Islamic constitutions may be understood as granting political ideology to state or to political power, which is a tool to determine the nature of political system and the form of governance along the lines of explicit religious states such as Iran and Saudi Arabia⁴⁶. However, the legal and constitutional significance of the term "Islam" in the constitutions of Maghreb states is an expression of identity of people represented by preamble of all constitutions. It is meant to define identity and ideology of people and not state. This is the identity that constitutional order protects and promotes. And remove them from all forms of political conflict or party competition, and make all laws that limit the expression of identity unconstitutional

The interference of religion in matter of conditions of candidacy for the presidency

⁴³ Hind Arob , The Royal Court in Morocco - at <http://www.aljazeera.net>

⁴⁴ Particular reference can be made to the Renaissance Movement in Tunisia, the Justice and Development Party in Morocco and the Homs Movement in Algeria

⁴⁵ Hamdam NADAFI, La liberté de religion dans les Etas de droit musulman, op.cit P 220.

⁴⁶ Constitution et religion dans les Etats arabes : la place de la religion, Ipid.

The issue of determining the conditions of candidacy for the Republic presidency is very important because it is related to most important constitutional institution charged with protection and application of Constitution and fact that the institution of presidency is pyramid of political system.

All Maghreb constitutions have agreed to include religious issue in determining conditions of candidacy. The Tunisian Constitution stipulates in article 74 the requirement of "Islamic religion" to be nominated for post of President of Republic. It is same condition stipulated b Constitution of Algeria 2016 in Article 87. section 03

Under the Moroccan constitution, due to the special character of the queen, the condition of religion is presumed to be legitimate and presumed to be the king of faithful, in which Islam is assumed and the king is entrusted by allegiance according to religious rituals and constitutional procedures established in accordance with Article 41 of the Moroccan Constitution.

The Constitution of Tunisia and Algeria also conforms to the procedures of assuming post of President by requiring swearing in the oath of office, which begins with words "I swear by Almighty God" and with the existence of the Holy Quran (Article 76 of the Tunisian Constitution and Article 90 of the Algerian Constitution)

It appears that religion has many constitutional functions both in preamble and in constitution, although this does not make religion a basic source of legislation or make it a legal system parallel to positive law, especially in Tunisian constitutional system. It is based on the strict separation between Shariah and positive law, where provisions of the Shariah retain its primary status in family and personal matters.

The fact that Islam is considered a state religion does not constitute any constitutional reference that frames political practice or interferes as a normative rule of positive law, which remains independent in all Maghreb countries with no direct impact on religious question⁴⁷.

Sixth axis: religion and state, any future of political practice in Maghreb

Maghreb constitutions in Tunisia, Algeria and the Kingdom of Morocco have sought to engineer a consensus between the socially representative political forces regardless of their actual hegemony. This is clearly reflected in involvement of all political parties in consultations on adoption these religious constitutions, These contradictions are reflected in desire of these parties to give a religious ideology to political practice, in return for adherence of ruling regimes to their dominance and monopoly of religious issue, which is a symbol of the state and a legacy for all people.

The dialectic of religion and state and relationship of religion to politics is still controversial politically legally for most thinkers, and jurists alike since middle of last century about separation or linkage or cooperation and mating between them without dominating one another⁴⁸. However, constitutions after Arab spring revolutions tried to give some flexibility in dealing with issue of relationship of religion to politics. The Maghreb constitutions considered Islam as a religion of state and state itself is its patron. But it also stipulated that state guarantees freedom of belief and protection of other religions.

The state also guarantees rights of citizenship and supremacy of law, as the Tunisian Constitution has pointed out in second article immediately following the word "Islam" as the religion of state, "the Moroccan constitution" In the first article before confirm that Islam is religion of state.

However, he notes the growing role of religious-oriented parties in management of political scene, especially in the Tunisian and Moroccan experience, where recent achievements have resulted in superiority of Islamic parties over other currents in terms of parliamentary number or local seats. Especially in light of introduction of an ideological alternative that is supposed to be prevented by constitution.

In this regard two scenarios can be envisaged for future political practice of these parties:

Scenario 1: It is most likely and appropriate to political scene in all Maghreb countries, namely, the gradual abandonment of these parties from their religious ideology and alliances with dominant national forces in decision-making centers in order to ensure a longer term in the government, Considering the factor that transformation problem of cadres groups in these parties because of participation in governance (tyranny of the category in technocrats at the expense conservatives)

Scenario 2: In the 1990s, Algeria experienced the first pluralistic political experiment, which is less likely. Islamic political parties may strengthen their ideology; impose it as a dominant and popularly popular social and political force. We may see the repetition of state re-taking in name of maintaining the republican or monarchy system and imposing

⁴⁷ Hind Arob , The Royal Court of Morocco - at <http://www.aljazeera.net>

⁴⁸ Particular reference can be made to the Renaissance Movement in Tunisia, the Justice and Development Party in Morocco and the Homs Movement in Algeria.

the application of the constitution. Thus stopping this type of government based on the use of religion for political purposes.

Conclusion

The constitution of Maghreb constitutions in Tunisia, Algeria and Morocco that state is Islamic means that all laws enacted by the legislators in three countries must respect hierarchy of laws and be constitutional since constitution is the highest legal document. (Private law) and that organization of relations between citizens and state (public law) respect for Islam and Islamic law. However, legal reality negates the constitutions that Maghreb states are an Islamic state therefore it is possible to say that the laws are unconstitutional and Maghreb legislation. It is clear that all the current Maghreb laws are not related to Islamic law. They are based on the legal rules derived from the French law.

countries, plays an important role in determining nature of governance and legitimacy of political system, given historical background The religious issue in the Maghreb constitutions, like other Muslim that accompanied establishment of constitutional systems in Algeria, Tunisia and Morocco.

Islam was regarded as a religion of state on the grounds that it was a decisive factor in mobilizing masses to engage in armed struggle. The teachings of Islamic religion reflected principles upon which states founded independence after freedom, justice and equality. On the other hand, The Maghreb to distance Islam from any political conflict or party rivalry because it is a component of the identity of state and identity of people that state monopolizes its organization and protection. Which created some contradictions in structures of constitutional systems of States Concerned?

While Tunisia sought to build a secular state since independence, political situation left by the 2011 revolution necessitated recognition of new revolutionary legitimacy of an Islamist-oriented party and adoption of a new constitution in 2014 recognizing status of religion in state without undoing idea of building a civil state.

In Algeria, the experience of political pluralism at first revealed loopholes of 1989 Constitution and tried to remedy 1996 constitution by re-establishing monopoly of religious issue by state and banning political parties as religion as a natural component of people. The 2016 Constitution enshrined this approach in its preamble and in door of rights and freedoms. The new Moroccan constitution 2011 has preserved king's status as prince of believers and shepherd religion left the field of competition outside the political parties religion regardless their orientation without affecting nature of political practice.

Finally, the following conclusions can be drawn:

-The term Islam is a state religion that does not represent ideology of Maghreb countries, as in Saudi Arabia or Iran, but a component of nature and main identity.

The fact that Islam is a religion of the state does not amount to making religion an essential source of positive legislation. The future of political practice depends on responsiveness and flexibility of political parties with a religious orientation in dealing with certain issues that may conflict with their ideology.

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Zaytuna University was an independent religious institution that contributed to the formation of the militants of national movements on basis of the conservative ideology in exchange for fighters who were in schools of colonizer or those who studied abroad and in a latter managed to resolve conflict for their benefit at expense of the militants of Zaytuna University.

University of Zaytouna was closed, the unification of civic education, the abolition of religious education and the failure of the Personal Status Law to be subject to the provisions of the Sharia.

The Constitution issued by Law No. 57/1959 on 01/06/1959.

Note that the Constitution of 2014 contributed to the draft draft members of the movement of the Renaissance with an Islamic orientation, but could not bring the new constitution to pressure the street and the rest of the militants in the Constituent Assembly.

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Article 20 of the Constitution of 76 states that "Islam is the religion of the State" and article 195 of the Constitution grants immunity to article 20 of any amendment to equality with the socialist choice.

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Several Islamic-oriented parties participated the first multi-party legislative elections in 1991 took the lead in terms of number of seats in first round of Islamic Front party.

Article 42 of the 1996 Constitution states: "The right to establish political parties is recognized and guaranteed.

This right can not be invoked to strike at fundamental freedoms, values and basic components of national identity, national unity, security, territorial integrity, independence of the country, sovereignty of people, and the democratic and republican character of state.

With respect Provisions. This Constitution may not establish political parties on a religious, linguistic, racial, sexual, professional or regional basis.

Political parties may not resort to partisan propaganda. On the elements outlined in the preceding paragraph.

Since the first constitution after independence, promulgated in 14/06/1962 in accordance with article 19

Hamdam NADAFI, La liberté de religion dans les Etas de droit musulman, thèse en droit public, université Saint Etienne, France 2013, P 204.

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