

# Access to Justice and Democratic Governance in Cameroon: Which Lessons in the Light of Constitutional Justice?

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## Abstract

Through the constitutional law of January 18, 1996, Cameroon endowed itself with a constitutional justice. The question is to what extent do the mechanisms of access to constitutional justice contribute to the democratic governance of the country? To analyse this fact, it appears that the mechanisms of access to constitutional justice in Cameroon are highly prohibitive and deny the rule of law and participatory democracy; all things that are resolutely situated at the antipodes of a democratic governance.

**Keywords:** access, constitutional justice, democratic governance, Cameroon

## 1. General Introduction

The expression justice is of a constitutive polysemy. It lends itself to a threefold philosophical-ethical, functional and organic meaning. In the philosophico-ethical perspective, justice is that moral principle that requires respect of law and equity. It is therefore inscribed in the logic of the abstract and the ideal. But justice is also the action that allows the judiciary or an authority to recognize the right or the appropriate right of a person. It is the task of the State to settle disputes between subjects of law and to define antisocial behavior on the basis of the laws of a society. Finally, it is the institution or body responsible for exercising the judiciary, applying the law.

Applied to the constitutional field, justice is understood in both organic and functional sense. It is responsible for upholding the constitution, the fundamental law of the state, through the mechanism of control of the constitutionality of laws. Its purpose is to ensure respect for the supremacy of the constitution over all other legal norms supposed inferior to it. We therefore talk about constitutional justice or constitutional litigation. It is a set of institutions, mechanisms and techniques inherent to the rule of law, and designed to ensure respect for the constitution, its supremacy over all other legal norms of the state. Thus defined, constitutional justice varies according to the country. Indeed, beyond its formal arrangement, the power to

seize the constitutional court, and thus trigger the mechanisms of constitutional litigation, is an eminently political issue, as it is true that it can affect the political orientations of the States<sup>1</sup>, and participates to the democratic governance in these countries.

Democratic governance, it must be remembered, questions the interactions between states and their societies at the political level. Beyond the economic development that was the very firmament of the notion of governance, it is the common challenges of humanity in general that are now put into perspective by governance. Democratic governance thus refers to the political dimension of governance, which is a fundamentally multidimensional concept aimed at guaranteeing the effectiveness and legitimacy of government action in the perspective of the well-being of citizens. It implies the respect of the principles of common government supposed to prevent the abuses in the exercise of the public power, to limit the arbitrary of the public authorities. “The notion of democratic governance clearly expresses the dynamics and enhancement, multidimensional and political nature of governance”<sup>2</sup>

Like many others African countries in the south of the Sahara, Cameroon has a constitutional justice through the constitutional law of 18 January 1996. This institution is part of the democratic constitutional dynamics of the country, thus highlighting its attachment at least theoretical to constitutional justice and the ideals of modern democracy. The question is to what extent the mechanisms of access to constitutional justice in Cameroon contribute or not to democratic governance, as it is a founding value of effectiveness and legitimacy of contemporary political regimes through the world. The current and past posture of constitutional justice in Cameroon indicates that the mechanisms of access to it are highly prohibitive. The excessive centralization of constitutional justice and the power of referral to it is resolutely at antipodes among other things, decentralization, constitutional democracy and participatory democracy, which are pillars of democratic governance. It is the bedrock of exclusionary or reserved justice, rather than inclusion, which would underpin the legitimacy of state action. Access to constitutional justice therefore appears as a politico-legal engineering that is both prohibitive in the service of a hegemonic power (I), but also as a denial of a fundamental right conditioning the exercise of other rights, as well as participatory democracy (II); all things that vibrate against the current of democratic governance.

## **2. A Prohibitive Politico-Legal Engineering Serving a Hegemonic Executive Authority**

The prohibitory nature of access to constitutional justice in Cameroon, since the establishment of the latter with the advent of the Constitutional Law of January 1996 and its implementing legislation, can be traced to its excessive centralization and the quality holders of the power of referral. The latter clearly indicates the politicization of access to constitutional justice, which in turn feeds the hegemonic character of power.

### *2.1 The Prohibitive Character of Access to Constitutional Justice Through Its Centralized Geospatial Configuration*

The Cameroonian constituent has built constitutional justice following the Jacobin model.

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<sup>1</sup> The control of the constitutionality of laws can jeopardize a government's policy options. It was seen in the United States under President Roosevelt where a series of laws participating in the New Deal policy and intended to stem the economic crisis of 1929 had been systematically invalidated by US constitutional judges. We have been able to talk about the government of judges to translate this political dimension of the control of the constitutionality of laws.

<sup>2</sup> Darmuzey (Ph); Lettre n°94 : colloque « Afrique, Europe, demain »; novembre 2007

The latter tends to organize power centrally. The centralization of Cameroonian constitutional justice is, in any case, identifiable through its territorial location. Indeed the Constitutional Judge in Cameroon sits exclusively in Yaounde, the capital of Cameroon. This excessive centralization in terms of its geographical location makes access difficult, and therefore prohibitive. Assuming that the power of referral of the constitutional judge is extended to the citizen who expresses any interest (which is not the case) his geographical location would prevent easy access, as it is the case with the courts of the judicial order and even today, the administrative courts which are geographically closer to the ordinary citizen, because scattered throughout the national territory, at least up to the level of the region understood as administrative district. With such centralization, the idea of governance, which Cameroon seems to have been adhering to for a few decades, is empty of substance. Governance in a state is the art of governing by articulating the management of public affairs at different scales of the territory, from the local to the national scale, by regulating relations within the society and by coordinating the interventions of multiple actors. It will be good or bad depending on the ability of the rulers to respect the principles that encourage the adherence and participation of all stakeholders in the society's policies that affect them. These principles are strongly suggested by a number of norms and values that clearly indicates the normative orientation of governance beyond the other aspects that are consubstantial to it. On the managerial level, Total Quality Management (TQM) expresses a normative message of individual emancipation of workers, social cooperation and self-regulation of production units. It is also based on an ideal of proximity between jurisdictions and the population, thus renewing the aspirations of civic participation in justice. These beliefs, values and images are attached from the instrument itself: they serve both political decision-makers to publicly establish the need for management applied to justice, and the actors on the ground to adapt to the tools put at their disposal. However, this normative core largely covers the assumptions and values that underpin the concept of governance<sup>3</sup>. The norms, beliefs and values associated with the governance topic thus form a kind of constructive and discursive matrix that informs the strategies of the actors present in almost all sectors of public action, creating a sort of "global reference", to take Pierre MULLER and Bruno JOBERT<sup>4</sup>.

As part of the values that underlie governance, decentralization is lacking in Cameroon's constitutional justice system, in its current geospatial configuration. Decentralization as perceived in Cameroon and in sub-Saharan Africa at the beginning of the 21st century cannot be a simple administrative reform, because it induces a more comprehensive reform of the state, a redefinition of the relationship between the citizen and the state<sup>5</sup>. This redefinition does not exclude the relationship between the citizen and the justice, it must be in his territorial organization close to the citizen to allow him to easily access. And yet, neither in its geospatial configuration nor in its referral constitutional justice is open to the ordinary citizen.

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<sup>3</sup> Joel Ficet ; Les ambiguïtés de la gouvernance judiciaire : Autorégulation et qualité dans le ministère public belge ; Revue gouvernance ; printemps 2008, p2

<sup>4</sup> For more details, see *Le tournant néo-libéral en Europe : idées et recettes dans les pratiques gouvernementales* ; Paris, l'Harmattan, 1994 (Dir.)

<sup>5</sup> See the opening speech of the restitution seminar of the study on the modernization of the territorial administration in Cameroon. This speech was delivered in Yaounde on July 11, 2006 by INONI Ephrem, Prime Minister, Head of Government of the Republic of Cameroon, unpublished.

## *2.2 The Power of Referral of the Constitutional Judge: A Prohibitive Construction of the Access to the Justice Revealing the Hegemonic Power of the Executive*

Provided for in Title VII of the Constitutional Law of January 1996, the Constitutional Judge of Cameroon bears the name of constitutional council. The latter is the competent body for constitutional justice. It has jurisdiction over the constitutionality of the laws and at the same time is the regulating organ for the functioning of the state institutions. For this double reason, it decides sovereignly on:

- the constitutionality of laws, treaties and international agreements;
- the rules of procedure of the National Assembly and the Senate, before their implementation, as regards their conformity with the Constitution;
- the conflicts of attribution: between the institutions of the State, between the State and the regions, and between the regions.

The Constitutional Council is seized by:

- the president of the Republic ;
- the President of the National Assembly;
- the President of the Senate;
- one third of the parliamentarians;
- one third of the senators.
- the Presidents of Regional Executives, when the interests of their regions are involved.

Thus, before their promulgation, laws, treaties and international agreements can be referred to the Constitutional Council by the President of the Republic, the President of the National Assembly, the President of the Senate, one third of the parliamentarians, one third of the senators , the Presidents of the Regional Executives<sup>6</sup>.

In this restrictive enumeration of the Constitutional Court seizure power, there is an elitist, and therefore exclusive and prohibitive conception of constitutional justice which does not allow the ordinary citizen, who may have a proven interest, to have access to that power. Therefore, the effectiveness of the control of the constitutionality of the laws is thus affected, because more the referral of the constitutional judge is opened less the laws can coexist with the constitution which collide head-on this one. It is clear from this enumeration that access to the constitutional justice is reserved for persons who have achieved sociopolitical status that is institutionally guaranteed through a national or regional election. However, this is not the case with access to electoral justice. The latter in Cameroon is also within the competence of the Constitutional Council and has political powers such as constitutional justice. This is so because election is in essence a political act. Unlike access to constitutional justice, the problem of access to electoral justice may arise before or after the election. Before the election, we speak of pre-electoral disputes where it is a question for the constitutional council to decide on the disputes concerning the decisions of Elections Cameroon (ELECAM), organ in charge to receive and to validate or invalidate the candidatures to an election. After the election, it will be the post-electoral dispute that allows the Constitutional Council to decide, without appeal, on the contesting of the results of an election. In either case, access to the Constitutional Council as a jurisdiction is more open. The social categories

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<sup>6</sup>See the Constitutional Law of 18 January 1996

that can access it, if they are exhaustively listed as in the case of constitutional justice, are experiencing a relative expansion. These categories are, under the constitution and the electoral law:

- for the presidential and parliamentary elections:
  - the candidates for the election;
  - the representatives of the political parties who took part in the election in the constituency concerned;
  - persons having the status of Government Agent for the election concerned.
- For the referendum election:
  - The president of the Republic ;
  - the President of the National Assembly;
  - The President of the Senate;
  - one third of the parliamentarians;
  - One-third of the senators.

Compared to the constitutional litigation, we note in the matter of electoral litigation an enlargement of the socio-political categories having access to the constitutional council. This enlargement takes place in favor of the categories over which the executive power in its present configuration may have no influence. The presidential elections of October 7, 2018 in fact indicate this enlargement as suggested in Tables 1 and 2 below:

#### 2.2.1 Summary Table of the Pre-electoral Litigation Activity of the Constitutional Council

| Order number | Author of the request   | Quality   | Number of requests | Object of the request  | Outcome  |
|--------------|-------------------------|---|--------------------|--|----------|
| 01           | Bertin KISOB            | Candidate of the Cameroon party for social justice (CPSJ)                 | 02                 | Validation of his candidacy and cancellations of the decree summoning the electorate | Rejected |
| 02           | ENGONO valentin         | Candidate of the Union camerounaise pour la démocratie et l'innovation    | 01                 | Validation of his candidacy  | Rejected |
| 003          | NJOUMOU Léopold St ève  | Candidate of the Union pour le redressement économique du Cameroun (UREC) | 01                 | Validation of his candidacy  | Rejected |
| 004          | GABAN MBIDANHA Rigobert | independent Candidate   | 01                 | Validation of his candidacy  | Rejected |
| 005          | Olivier BILE            | candidate of the Union pour la prospérité et la fraternité                |                    | Validation of his candidacy  | Rejected |
| 006          | KOUM Ane Ihims          | Candidate of the Bilingual  |                    | Rejection of Paul BIYA's   | Rejected |

|     |                     |  |  |                             |          |
|-----|---------------------|--|--|-----------------------------|----------|
|     |                     | Yaoundé political party (BIYA party)                             |  | candidacy                   |          |
| 07  | Généviève ZE AMVENE |  |  | Validation of his candidacy | Rejected |
| 008 | Aboubakar KALMADINE |  |  | Validation of his candidacy | Rejected |
| 009 | Sosthène FOU DA     | Candidate of the Mouvement camerounais pour la social démocratie |  | Validation of his candidacy | Rejected |

Sources ourselves

### 2.2.2 Summary Table of the Post-Electoral Litigation Activity of the Constitutional Council

| Order number | Author of the request  | Quality   | Number of requests | Object of the request              |
|--------------|------------------------|---|--------------------|------------------------------------|
| 01           | Bertin KISOB           | Unsuccessful candidate in pre-election litigation of the Cameroon party for social justice (CPSJ) | 14                 | Total cancellation of the election |
| 02           | GABANG MINDANHA Robert | Independent candidate dismissed in pre-election litigation  | 01                 | Total cancellation of the election |
| 003          | Cabral LIBI            | Candidate of the Union national pour l'intégration de la solidarité (UNIVERS)                     | 01                 | Total cancellation of the election |
| 004          | Joshua OSIH            | Candidate of the social democratic front (SDF)  |                    | Total cancellation of the election |
| 005          | KAMTO Maurice          | Candidate of the Mouvement pour la renaissance du Cameroun  |                    | Total cancellation of the election |

Sources ourselves

A flashback to the access to constitutional justice, which is at the very heart of our concerns, it must be said that the control of the constitutionality of the laws to which it leads, when it is effective, constitutes a counter-power in the political game of MONTESQUIEU'S<sup>7</sup>

<sup>7</sup> In his book *The Spirit of Laws*, Book XI, Chapter IV, 1748

equilibrium of powers. This is a legal counter-power that should allow other powers to be attenuated in their drive to abuse. Legal power, on the other hand, means all institutions which disposes and has authority on the person or institution judged. The Constitutional Justice Law is one of them<sup>8</sup>. If it has a base in the legal sphere, it has an obvious and even dominant political impact, in that “any decision of the constitutional court can only be political, since the law is by nature a political act. The law being by nature a political act, to stop the law is necessarily a political act (...)”<sup>9</sup>. Indeed, as Gustavo ZAGREBELSKY points out, “constitutional justice is the linkage at the same time to the distinction between law and politics, of jurisdiction and legislation”<sup>10</sup>.

In countries where the tradition of constitutional justice is strong and where access to the constitutional judge is largely open as it is the case in the USA, the constitutional judge has even come to be considered as the fourth power, alongside the executive, the Legislative and Judicial<sup>11</sup>. This was the time of the Government of Judges<sup>12</sup>. One remembers the famous formula: “Nine against all or eleven men in anger”. This maximalist approach of the constitutional judge has evolved, and the latter is increasingly seen as a counter-power, because of the ability to prevent other powers from exercising theirs, by pronouncing themselves decisions made by others<sup>13</sup>.

In France, where the constitutional judge’s power of referral is now extended to the citizen, it can be the trigger for a process that allows the constitutional judge to stop the expression of sovereignty (parliament) and what the government wishes<sup>14</sup>. It will be remembered that, in August 1996, this occurred when the Council was seized of five files, of the first three of which dealt with the sensitive political issue of foreigners in France, in particular their status, the control of immigration, the zones of detention. The Council had stopped them on the grounds of unconstitutionality. This censorship of the constitutional judge was considered a sabotage of the government’s program.

This partition of counter-power in the symphony of the game of the powers is not conceivable with the Cameroonian constitutional judge. The “apartheid” imagined by the Cameroonian constituent in the determination of the holders of the power of seizure of this one, coupled with the constitutional choice of paternalistic presidentialism which leads to an unequivocal hegemony of the executive does not allow to think about a constitutional judge against-power. This situation is not unique to Cameroon, since many African countries live it.

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<sup>8</sup> Vivien Romain MANAGOU ; « Contre-pouvoirs, tiers pouvoirs et démocratie en Afrique ASSOCIATION FRANCAISE DE DROIT CONSTITUTIONNEL, Congrès de Lyon, 26,27 et 28 juin 2014, Atelier D : Constitution et contre-pouvoir (en ligne)

<sup>9</sup> Jacques ROBERT ; « Le juge constitutionnel est-il un contre-pouvoir » ; in *Revue internationale de droit comparé* n°3 juillet-septembre 2010, p790

<sup>10</sup> Gustavo ZAGREBELSKY « Le juge constitutionnel est-il un contre-pouvoir ? », In *revue internationale de droit comparé* ; op.cit

<sup>11</sup> Jaques ROBERT ; Ibid p788

<sup>12</sup> During this period, the US Supreme Court had troubled President Roosevelt in his New Deal policy aimed at resolving the economic crisis of 1929, systematically invalidating the laws that he had voted to curb this crisis, on the grounds of their unconstitutionality.

<sup>13</sup> Jacques ROBERT ; Ibid, p789

<sup>14</sup> Jacques ROBERT ; Ibid, p789

“Indeed, the choice of a paternalistic presidentialism in most of the French-speaking states of the continent is incompatible with the theory of the separation of powers. (...) To the extent that the presidential function is conceived as the crossroads of sovereignty, it jeopardizes the competitive exercise of powers”. In this way, the idea of a constitutional judge against power becomes purely “platonic”, to quote Slobodan MILACIC<sup>15</sup>

At the same time as it is prohibitive for more than one reason, to get access to constitutional justice in Cameroon is a denial of a fundamental principle of the rule of law and participatory democracy.

### **3. A Politico-Legal Engineering That Denies an Important Principle of the Rule of Law and Participatory Democracy**

The mechanisms of access to constitutional justice in Cameroon, as constructed by the constituent of January 1996, exclude the ordinary citizen from the enjoyment of a fundamental right which is the right of access to justice. As such, they contribute to the negation of an important principle of the rule of law and of democracy in general. Democratic governance, which emphasizes the consolidation of the rule of law, respect for democratic values and consideration of the prominence of human dignity, is thus put into an adverse mess.

#### *3.1 The Negation of an Important Principle of the Rule of Law: The Right to Justice*

Access to justice is a fundamental principle of the rule of law. In its absence, citizens cannot make themselves heard, exercise their rights, challenge discriminatory measures or engage the responsibility of decision-makers<sup>16</sup>. The rule of law, it must be remembered, is an institutional system in which public authorities are subjected to law. It is based on the essential principle of respect for legal norms or the rule of law, the regulation of social relations by the rule of law. In a state of law, the individual and the public power are each subject to the same right. It is possible for an individual to contest the actions of the State or a political leader, if he considers them to be contrary to the law in force. This form of political organization is marked by:

- the hierarchy of standards, each standard deriving its legitimacy from its compliance with the higher rules;
- the separation of powers, with independent judges;
- the equality of all, natural or legal persons, before the rule of law;
- the submission of the State, legal person, to the law.

Thus defined, the rule of law is primarily a theoretical model of organization of political systems. It is today characteristic of democratic regimes to which it does not identify absolutely, if only in its initial conception<sup>17</sup>. It opposes despotism or police regime where

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<sup>15</sup> Slobodan MILACIC, « Le contre –pouvoir, cet inconnu » ; in M élange Chrétien Laoyade-Deschamps, Presse Universitaire de France, 2003. PP 682-683

<sup>16</sup> UNITED NATIONS AND THE RULE OF LAW: access to justice; [w.w.w.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/](http://www.un.org/ruleoflaw/thematic-areas/access-to-justice-and-rule-of-law-institutions/access-to-justice/)

<sup>17</sup> Originally, the notion of rule of law in its conception had to deviate from that of democracy. This assumes, beyond the respect by the State of the rule of law that it has given itself and that induces the rule of law, other criteria such as the organization of free and competitive elections or rather respect for human rights and fundamental freedoms.



there is arbitrariness without possibility of appeal. The concept of the Rule of Law, a literal translation of the word *Rechtsstaat*, was born in the second half of the nineteenth century within the German legal doctrine. Its objective is, in fact, to regulate and limit, through a set of legal norms, the power of the State. But it is also, ultimately, to slide the Prussian state from a police state to a state of law. The notion of the rule of law in its current meaning is largely dependent on Hans Kelsen<sup>18</sup>. Indeed, during the inter-war period, the Austrian jurist Hans Kelsen will push the notion of the rule of law and self-restraint of the state to the limit, which he will conceptualize in his image of the pyramid standards consisting of legal layers superimposed and coordinated with each other. The Kelsenian theory, however, will find its limits in its excess formalism in so far as, for Hans Kelsen, the Nazi state could be regarded as a rule of law. The discovery in the aftermath of the Second World War of the crimes of Nazi barbarism made it necessary to evolve to get the notion of the rule of law out of this too formalist stalemate into which it had been locked up. Thus, gradually, with strictly formal aspects comes the concern of preserving fundamental rights and freedoms. Maurice Hauriou and Carre de Malbert did much for this evolution, so that from the 1950s, the main facets of the rule of law were well established. As Laurent Cohen-Tanugi has shown<sup>19</sup>, the notion of the rule of law is based on mistrust of the state. The sprawling temptations of a State perceived as the heir of the Old Regime, opposes the reference to human rights and the delimitation of a limited area of jurisdiction for the State. The theory of the rule of law can thus be qualified as liberal in so far as it aims at assigning to the State an area of action, if not residual, at least exceptional. His great strength, but also his relative naivety, lies in a blind trust placed in law as the tool by excellence for the preservation of individual freedoms.

In line with the logic of the rule of law, constitutional justice comes to question the idea that the national sovereignty of the people and its representatives is unlimited and cannot be framed. On the contrary, constitutional justice affirms that it must respect certain fundamental principles and thus makes the states that practice it enter the era of the rule of law, in which democracy is no longer limited to free elections but also presupposes the respect of certain rules and certain essential principles which base the responsibility of the governors vis-a-vis their acts or decisions. The rule of law works with citizens, not subjects. In essence, citizenship is lived only in the light of the rights and duties of the people concerned. Among the fundamental rights that citizens can claim is the right to justice, which includes the right of access to justice. Access to justice allows anyone who has a legitimate interest and who has the required quality of access to a court to decide on its claim. The right of access to justice, because it is intimate to the right to justice, is an essential condition of citizenship; it is consubstantial with the citizenship because the trial has become a public place<sup>20</sup>. This one consists among others in the capacity to participate in a public deliberation in a political space. Hannah Arendt will say in this regard that “there is citizenship if there is a right to always defend your rights in the public debate”<sup>21</sup>.

From its independence until January 1996, the year of adoption of the constitutional law

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<sup>18</sup> Dans sa «Théorie pure du droit », Collection pensée juridique, 2<sup>e</sup> éd, LGD, 1999, 368p

<sup>19</sup> Laurent COHEN-TANUGUI ; La métamorphose de la démocratie française : de l'Etat jacobin à l'Etat de droit ; Paris, Gallimard, 1993

<sup>20</sup> F. ZENATI ; « Le procès, lieu du social » ; in le procès, t39, Sirey, coll. « archives de philosophie du droit » pp239-247

<sup>21</sup> Hannah ARENDT ; Condition de l'Homme moderne ; Calmann-Levy, 1996

currently in vigour, Cameroon has totally ignored constitutional justice. Given the ideal of good governance, as it is today popularized as a factor of socio-political modernization, there was a failure that could justify the ideological obsession of socio-economic development and national unity, but also beyond that, the hegemonic will of the first Cameroonian head of state, Ahmadou AHIDJO<sup>22</sup> The constitutional law of January 18, 1996 which intervenes in a generalized context of liberalization of the political life in Africa, by instituting the constitutional justice, operates a revolution of facade. Indeed, Cameroon's constitutional justice mechanisms deny the ordinary citizen access to it. There is a kind of openness to it that frustrates the latter with an important aspect of his citizenship, which is the right to appeal to the constitutional judge, when he rightly or wrongly believes that the law will be applied in violation of his rights and the hierarchy of norms suggested by the rule of law.

### *3.2 Mechanisms to Get Access to Constitutional Justice in Cameroon and the Negation of Participatory Democracy*

In its simplest sense, democracy is a mode of government that associates the people with the management of the matters of the city. This is at least the meaning that Abraham LINCOLN gave to this expression, when he declared that democracy is the government of the people by the people and for the people. The idea underlying the concept of democracy in its initial approach is that the people, who know best the problems it faces, are also best placed to provide appropriate solutions in which they recognize themselves. The ideals of equality and freedom are at the very heart of the notion of democracy. As Hannah HARENDT points out, "free men, beyond coercion, violence and domination, have equal relations with each other and that, out of a war context, all issues of life together must be treated by discussion and mutual persuasion"<sup>23</sup>. Democracy is thus an ideal that is embodied more or less in reality. It is therefore reflected in varying modalities. In ancient cities, the known and practiced modality was direct democracy. It involved the people directly in decision-making. This modality has not disappeared, because it is still practiced in the framework of modern states through the referendum technique generally used in the democratic modes of adoption of constitutions.

In this perspective, the policy according to Hannah ARENDT becomes "a prerogative of the government and the professionals of the policy which propose to the people to be their representatives through the parliamentary system to represent its interests within the State and, where proper, against the State"<sup>24</sup>.

Marxists see this modality of democracy as a form of domination by the minority bourgeoisie class. Karl MARX writes in this sense that "The bourgeoisie since the establishment of the big industry and the world market, has finally seized the exclusive political sovereignty in the modern representative state. The modern government is only a committee that manages the common affairs of the entire bourgeoisie class"<sup>25</sup>.

Representative democracy thus presents a certain number of weaknesses with regard to the faithfulness of the mandate that representatives receive. Do these, in their position as agents,

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<sup>22</sup> Au sujet de cette obsession idéologique et de la volonté hégémonique du président Ahmadou AHIDJO, voir Florent Guy ATANGANA MVOGO ; « Le régionalisme constitutionnel au Cameroun : réflexion sur un investissement politique » ; in *Juris périodique*, juin-juillet 2003.

<sup>23</sup> Hannah ARENDT; *Ibid*; p77.

<sup>24</sup> Hannah ARENDT ; *Ibid*, p111

<sup>25</sup> Karl MARX ; *Le manifeste du parti communiste* ; Editions champ libre, 1983, p21

always express the general will through the laws they vote? This interrogation reveals a whole problematic in the political theory of representation. Because, one of the stakes of representative democracy is to know if the elected representatives actually “represent” their voters not only in the political sense but also in the sociological sense, that is, in their diversity, in terms of income, social class or levels of education. One can indeed fear that they constitute a kind of inner closed circle that perpetuates the rationality top down to the detriment of the general will. In this case would the law still be the expression of the general will? John DEWEY in *Le Public et ses problèmes*, is skeptical in this respect when he writes “those who become involved in a government are still human beings. They retain their share of ordinary traits of human nature. They always have private interests to serve, as well as interests that are specific to particular groups such as family, clique or class to which they belong. It is rare for a person to completely immerse himself in his political function; at best most men manage to make their concern for public welfare dominate their other desires”<sup>26</sup>.

Etienne De LA BOETIE, in his *Discours de la servitude volontaire*, goes further, when he describes the elect as tyrants. According to him, they surpass in vices and cruelties the other two types of tyrants, namely those who obtain power in a hereditary way and those who obtain it by force of arms. He adds that tyrants are elected because of their prestige, their greatness or any other quality that has allowed them to seduce the people<sup>27</sup>.

Jean-Jacques ROUSSEAU, in *Du contrat social*, has meanwhile put up in chapter “Parliamentarians” a sharp criticism of the parliamentary system, then in force in Great Britain. He considers that by giving himself representatives, that is to say by delegating the time of a mandate to his legislative power, the people abdicate his sovereignty and renounce his freedom. For if it is possible for the people to want what those who represent it want when it delegates their power to them, there is nothing to ensure them that they will want it all the time from the mandate: “The sovereign can say “I want now what such a man wants, or at least what he says he wants”; but he cannot say, “What this man will want tomorrow, I will want it again”<sup>28</sup>.

The weaknesses of representative democracy open the door to other forms of participation, including participatory democracy. For some decades, the notion of participatory democracy has become popular “in the context of a growing questioning about the limits of representative democracy, the majority, the professionalization of politics and the omniscience of experts .... The citizens, by associating themselves with the elaboration of public decisions, improve the quality of the political debates and evaluate, without complacency, the quality of the public services: they are legitimate to participate more directly in the construction of the general interest”<sup>29</sup>

Participatory democracy is thus defined as a new form of sharing and exercising power, based on enhancing citizen participation in political decision-making. It is not synonymous with direct democracy or true democracy in the etymological and political sense<sup>30</sup>. It is all the

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<sup>26</sup> John DEWEY ; *Le public et ses problèmes* ; Collection folioessais n°533, Gallimard, (Trad.Joelle ZASK) 1927

<sup>27</sup> Etienne de la BOETIE ; *Discours de la servitude volontaire* ; <http://WWW.singulier.eu>

<sup>28</sup> Jean Jacques ROUSSEAU ; *Du contrat social* ; Édition en ligne, [WWW.rousseauonline.ch](http://WWW.rousseauonline.ch), (version du 7 octobre 2012)

<sup>29</sup> [Wikipedia.org/démocratie participative](http://Wikipedia.org/démocratie%20participative)

<sup>30</sup> [Wikipedia.org/démocratie participative](http://Wikipedia.org/démocratie%20participative)

devices and procedures that increase the involvement of citizens in political life and increase their role in decision-making. The decision-making process in this way becomes inclusive. It finds its foundation in the shortcomings of representative democracy:

- Parliament not representative of the diversity of society;
- removal of elected officials from the field and from everyday reality;
- feeling for citizens not to be understood by politicians;
- mistrust of politicians;
- weak counter-powers;
- increase of abstention ...

Participatory democracy is inspired by the concepts that have been put in place since the 1960s in many companies in order to improve the organization of workstations in the context of participative management. It is thus intimately linked to the democratic governance that advocates the replacement of the linear model of management of society, which consists in deciding the policies at the top by a virtuous circle based on interaction, networks and participation at all levels, from the definition of policies until their implementation; it is true today that the effectiveness of public policies is conditioned by their conception, implementation and application in a participatory form<sup>31</sup>. The active participation of citizens in the political process is thus the leitmotif of participative democracy.

In relation to representative democracy and direct democracy, participatory democracy is presented as a mixed system in which the people delegate their power to representatives. The latter are in charge of proposing and passing laws, but still retain the power to take certain questions for themselves. It comes under the bottom-up rationality of active citizenship.

In relation to access to constitutional justice, which is at the heart of our concerns, participatory democracy can be experienced when the possibility of referral to the constitutional judge is open to all. Indeed, when the mechanisms of constitutional justice in a country give free rein to the ordinary citizen to trigger constitutional litigation, an opportunity to participate in public or political life opens. In submitting to the constitutional court the question of the validity or otherwise of an act taken by the legislator, the citizen participates in the public debate, in the political decision-making. This is noticeable when one takes into account the fact that in representative democracies, the law is passed by the parliament, often on the initiative of the executive. The law thus appears as an eminently political act for two reasons. On the one hand because of the deliberation of a politically representative body. On the other hand, because it is the instrument or active expression of a government policy. The representatives of the people who are supposed to express their will through the law are not obliged to do so during their term of office. This is truer in the case of a representative mandate where no sanction can dissuade them. They can thus take legislative acts that are controversial with regard to the mandate received and take a distance from the constitution which is also the expression of the sovereignty of the people and binds the lower the State. When the mechanisms of constitutional justice permit, active citizens, beyond the debates they can engage in the media on the constitutionality of these acts (electronic democracy), can undertake to challenge them by triggering the control of the constitutionality of these acts. This is a participatory mechanism in the political life of the country that is not part of the election, which is the characteristic participation modality of representative democracy.

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<sup>31</sup> Commission des communautés européennes; Livre blanc; 2001

Cameroonian citizens cannot access this modality of participation in political life, as it is true that the mechanisms of referral of constitutional justice put in place by the constituent of January 1996 exclude these from the process of implementation of the constitutional justice. This exclusion is proven even if a law taken in violation of the constitution is in flagrant dissonance with their rights. Seen in this light, constitutional justice in Cameroon is a negation of participatory democracy. It is an elitist, exclusionary rather than inclusive justice that does not make it possible to operationalize the concept of participatory democracy which, far from opposing representative democracy, appears rather as a corrective of it. Cameroon is thus on this issue, lagging behind some other sub-Saharan African countries such as Benin<sup>32</sup>, which today integrate the achievements of citizen participation in the debate on the constitutionality of laws. One understands moreover that the control of the constitutionality of the laws in Cameroon is a *sea snake*. Indeed, it could not be otherwise because, it is the Constitutional Council today or rather what took place yesterday (the Supreme Court)<sup>33</sup>, we see that those who have the faculty of seizure of this jurisdiction are those who make the law.

#### 4. Conclusion

If democratic governance, through access to justice in Cameroon, witness a clear improvement today with the decentralization of the administrative justice, particularly with the creation of the administrative courts at the level of the chief towns of the regions, it remains that it is problematic in view of the obstacles that the constituent organizes with regard to access to constitutional justice. Constitutional justice in Cameroon is thus prohibitive because of its geospatial configuration and its closure with regard to those who have the power or the quality to trigger it. Its prohibitive nature results in the frustration of ordinary citizens of a fundamental right, the right to justice afforded by open access to justice, which is essential in a rule of law. At the same time as it gives rise to the relativization of the rule of law in Cameroon and is an indicator of the hegemony of the executive which equips the legislative power, it handicaps the active citizenship which gives life to the participative democracy. Cameroon, which is firmly committed to reforms aimed at improving governance, would benefit from taking a step towards participatory democracy, allowing ordinary citizens to challenge laws whose constitutionality is suspect in their eyes.

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<sup>32</sup> Article 122 de la loi constitutionnelle béninoise

<sup>33</sup> Under Title XIII of the Constitution of 18 January 1996 on transitional and final provisions, Article 67, paragraph 4 which provides that "the Supreme Court shall exercise the powers of the Constitutional Council until the establishment of the Constitutional Council".

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