To What Extent Is the Constitutional Court Effective in Reviewing the Constitutionality of Laws under the 2020 Constitutional Amendment?

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Abstract:
Judicial review of the constitutionality of laws is an important mechanism for ensuring that all legislation complies with the principles and foundations enshrined in the Constitution. To strengthen this form of review, the 2020 constitutional amendment established a new institution known as the Constitutional Court. This raises the question of whether the latter reflects the constitutional framer's intention to introduce a fundamental and substantive change, or whether it merely constitutes a formal change through a modification of the institution's designation.
This study concludes that the Constitutional Court does not represent a radical transformation in the process of constitutional review, despite the amendments introduced by the constitutional framer, when compared with the Constitutional Council provided for under the 2016 constitutional amendment.
Keywords: Constitutional review; mechanism; Constitutional Court; Constitutional Council; constitutional amendment.

Introduction:

Judicial review of the constitutionality of laws constitutes a fundamental and effective safeguard against legislation that contravenes the provisions and principles enshrined in the Constitution, particularly those relating to the rights and freedoms of individuals and the organization of the three branches of government. In this context, the 2020 constitutional amendment introduced a significant development to the system of constitutional review by replacing the Constitutional Council with the Constitutional Court.
The constitutional framer vested the Constitutional Court with the same mechanisms previously exercised by the Constitutional Council, while introducing certain amendments thereto. These mechanisms consist of referral and the plea of unconstitutionality. The constitutional framer also granted the Constitutional Court several new powers that were not conferred upon the Constitutional Council, such as the interpretation of legislative and regulatory texts and the settlement of disputes arising between the constitutional authorities of the State.
The subject of this study is of considerable importance, particularly since the Constitutional Court is a newly established institution. This prompts an examination of its effectiveness in reviewing the constitutionality of laws in comparison with the Constitutional Council, as well as an assessment of the approach adopted by the constitutional framer through the establishment of this Court.

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From a practical perspective, this study aims to clarify the mechanisms adopted by the Constitutional Court in carrying out its function of reviewing the constitutionality of laws and to highlight the powers it exercises in this regard. From a scientific perspective, the study seeks to examine and analyze the legal texts governing the Constitutional Court in order to identify and emphasize their strengths, reveal their shortcomings, and propose appropriate solutions.

In order to achieve the objectives of this study, the following central research question is posed: Does the establishment of the Constitutional Court constitute a substantive and genuine change in the system of constitutional review of laws, or is it merely a formal change involving the replacement of one institution by another?

This main question gives rise to the following subsidiary questions:

1. What innovations did the 2020 constitutional amendment introduce with respect to the referral mechanism?
2. Did the constitutional framer modify the conditions and procedures governing the plea of unconstitutionality before the Constitutional Court in comparison with those applicable before the Constitutional Council?

To answer these questions, this study adopts both the descriptive and analytical methods. The descriptive method is employed to identify the various powers of the Constitutional Court, while the analytical method is used to examine the legal texts governing those powers in order to highlight their positive aspects, identify their shortcomings, and, at the same time, propose appropriate solutions.

Accordingly, the first section examines the mechanism for referring matters to the Constitutional Court, while the second section addresses the mechanism of the plea of unconstitutionality.

Section One: The Referral Mechanism to the Constitutional Court

First: The Concept of the Referral Mechanism

In order to provide a clear and comprehensive understanding of the concept of referral, this part first examines the definition of the referral mechanism, followed by its characteristics.

A. Definition of the Referral Mechanism

The constitutional framer did not define the referral mechanism, either under the [1]2016 constitutional amendment or the 2020[2] constitutional amendment. The Constitutional Council likewise adopted the same approach, as it did not define the referral mechanism in its decisions or opinions. It was only with the promulgation of Organic Law No. 22-19, which determines the procedures and modalities governing referral and submission before the Constitutional Court, that the concept of referral was defined in Article 2 thereof, by specifying both its scope and the authorities entitled to initiate it.[3]

Accordingly, the referral mechanism may be defined as the procedure through which the Constitutional Court is seized, enabling it to commence the exercise of its review over a specific

[1] Law No. 16-01 of 6 March 2016 containing the Constitutional Amendment, Official Gazette (O.G.), No. 14, issued on 7 March 2016.

[2] Presidential Decree No. 20-442 of 15 Jumada al-Awwal 1442 AH, corresponding to 30 December 2020, concerning the promulgation of the Constitutional Amendment approved by the referendum of 1 November 2020, Official Gazette of the People's Democratic Republic of Algeria, No. 82, issued on 30 December 2020.

[3] Organic Law No. 22-19 of 25 July 2022 determining the procedures and modalities governing notification and referral before the Constitutional Court, Official Gazette, No. 51, issued on 31 July 2022.

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matter.[1] Referral is also defined as the procedure by which a constitutionally authorized authority requests the opinion of the Constitutional Court regarding the constitutionality of a legislative or regulatory text. This is effected by means of a written communication from the legally authorized authority requesting the Constitutional Court to issue its opinion or decision concerning the conformity of the text with the Constitution[2]. Referral has also been defined as a request or communication submitted by the authorities designated by the Constitution and vested with the right to refer matters to the Constitutional Court, through which the Court is seized in order to enable it to exercise its constitutional functions, whether supervisory or non-supervisory.[3]

The researcher is of the opinion that the term "referral" is neither consistent with nor appropriate for the concept of the Constitutional Court,

since referral is associated with the political review of the constitutionality of laws, whereas the Constitutional Court exercises judicial constitutional review. Accordingly, the term "constitutional action" would be more appropriate than "referral." This view is supported by the approach adopted by the Egyptian constitutional framer in the 2014 Constitution.[4]

B. Characteristics of the Referral Mechanism

The referral mechanism is distinguished from other mechanisms of constitutional review by a number of characteristics, which may be summarized as follows:

1. It is a procedure restricted to specific authorities: Although the Algerian constitutional framer has relaxed the restrictions governing the referral procedure[5] by reducing the number of members of the People's National Assembly and the Council of the Nation required to refer a matter to the Constitutional Court,[6] the referral procedure remains confined to these constitutionally designated authorities.[7]

2. It is, as a general rule, a discretionary procedure, but mandatory in certain cases: The constitutional framer did not require the constitutionally authorized authorities to refer matters to the Constitutional Court whenever they identify a lack of conformity with, or the unconstitutionality of, laws. Rather, referral was made discretionary and left to the judgment of

[1] Ben Salem, Djamel. Constitutional Judiciary in the Maghreb States. Ph.D. Dissertation in Public Law, Faculty of Law, University of Algiers 1, 2015, p. 343.

[2] Chermat, Sidi Ali; Lejlat, Fawaz. Formal Requirements for Initiating Constitutional Review of Laws in Algeria. Professor-Researcher Journal for Legal and Political Studies, Vol. 3, No. 2, 2018, p. 391.

[3] Gharbi, Ahsan. The Referral Mechanism for Constitutional Review under the 2020 Algerian Constitutional Amendment. Vol. 4, No. 3, 2021, p. 25.

[4] Official Gazette, Special Issue No. 03(A), issued on 18 January 2014.

[5] Article 193 of the 2020 Constitutional Amendment specifies the authorities empowered to refer matters to the Constitutional Court, namely the President of the Republic, the President of the People's National Assembly, the President of the Council of the Nation, the Prime Minister or the Head of Government, as the case may be, as well as forty (40) members of the People's National Assembly or twenty-five (25) members of the Council of the Nation.

[6] The second paragraph of Article 187 of the 2016 Constitutional Amendment provided that the Constitutional Council could be seized by fifty (50) members of the People's National Assembly or thirty (30) members of the Council of the Nation.

[7] Ben Salem, Farhat; Balkheir, Draji. A Reading of the Transformation of the Algerian Constitutional Framers from the Constitutional Council to the Constitutional Court under the 2020 Constitutional Amendment. International Journal of Legal and Political Research, Vol. 7, No. 1, Algeria, 2023, p. 575.

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those authorities, except in certain cases where referral is mandatory and reserved exclusively to the President of the Republic.

The penultimate and final paragraphs of Article 190 of the 2020 constitutional amendment grant the President of the Republic the exclusive authority to make a mandatory referral concerning the conformity of organic laws and the rules of procedure of each chamber of Parliament with the Constitution, after their adoption by Parliament.

Furthermore, paragraph 2 of Article 142 of the 2020 constitutional amendment added to the above-mentioned matters the ordinances enacted by the President of the Republic during the vacancy of the People's National Assembly or during parliamentary recess. In this case, the review concerns the constitutionality of such ordinances rather than their conformity with the Constitution.

It should be noted, however, that the constitutional framer prescribed a time limit of ten (10) days from the date of referral for the Constitutional Court to decide on the constitutionality of such ordinances. [1]This differs from the aforementioned matters, for which no specific time limit was established for ruling on their conformity with the Constitution.

Consequently, they remain subject to the general time limit of thirty (30) days from the date of referral, which may be reduced by the President of the Republic to ten (10) days in cases of urgency.[2]

3. It is a procedure of a political rather than a judicial nature: This is because the power of referral is limited to specific authorities with a political affiliation. The President of the Republic, the Speaker of the People's National Assembly, the President of the Council of the Nation, the Prime Minister or the Head of Government, the members of the People's National Assembly, and the members of the Council of the Nation all possess political affiliations and partisan backgrounds. Consequently, the referral remains subject to the political orientations of these authorities, rather than serving as an effective mechanism for constitutional review that safeguards the principle of the supremacy of the Constitution.[3] Conversely, the constitutional framers did not confer the power of referral upon the judiciary. Instead, they granted it the possibility of referring the case through the Supreme Court or the Council of State in the context of an incidental plea concerning the unconstitutionality of a legislative or regulatory provision upon which the outcome of the dispute depends. Accordingly, if a judge, while adjudicating a particular case, identifies a legal provision that is unconstitutional, the judge remains obliged to apply it and may not refer the matter to the Constitutional Court to challenge its constitutionality. This stands in contrast to the approach adopted by the Egyptian legislator.[4]

Having examined the definition of the mechanism for referring matters to the Constitutional Court, it is necessary to identify the fields of referral, particularly the instances of mandatory referral and those of optional referral, which will be addressed in the following section.

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[1] See the second paragraph of Article 142 of the 2020 Constitutional Amendment, and Article 6 of Organic Law No. 22-19 determining the procedures and modalities governing notification and referral before the Constitutional Court.

[2] Article 194 of the 2020 Constitutional Amendment.

[3] Saudawi, Seddik. The New Powers of Referral to the Constitutional Council under Article 187 of the 1996 Constitution. Voice of Law Journal, Vol. 6, No. 2, 2019, p. 369.

[4] Article 29 of Law No. 48 of 1979 promulgating the Law on the Supreme Constitutional Court of Egypt, Official Gazette, No. 36, issued on 6 September 1979.

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Secondly: Fields of Referral to the Constitutional Court

To provide a comprehensive overview of all fields and subject matters of referral, I will first address the fields of mandatory referral, followed by the fields of optional referral.

A. Fields of Mandatory Referral: Mandatory referral is a power exclusively vested in the President of the Republic, whereby the President is obliged to refer certain constitutionally specified matters to the Constitutional Court for a determination of their conformity with, or constitutionality under, the Constitution. This was expressly provided for in paragraph (5) of Article 190 of the 2020 Constitutional Amendment.

In this context, the question arises as to whether the President of the Republic may delegate the power of mandatory referral in particular, and the power of referral in general, to the Prime Minister or the Head of Government. By referring to paragraphs (2) and (3) of Article 93 of the 2020 Constitutional Amendment, which specify the powers that may not be delegated by the President of the Republic to the Prime Minister or the Head of Government, it is evident that the power to refer matters to the Constitutional Court is not included among them. Consequently, there is no constitutional impediment preventing the President of the Republic from delegating the power to refer matters to the Constitutional Court to the Prime Minister or the Head of Government. In the event of an impediment preventing the President of the Republic from performing his duties, or in the event of his resignation or death, the Acting Head of State, in the case of an impediment, or the Head of State, in the cases of resignation or death, may exercise the power to refer matters to the Constitutional Court, since this power is not among those that the Acting Head of State or the Head of State is constitutionally prohibited from exercising.[1]

The fields of mandatory referral are as follows:

1. Organic Laws: The penultimate paragraph of Article 193 of the 2020 Constitutional Amendment provides that: "The President of the Republic shall mandatorily refer organic laws to the Constitutional Court for review of their conformity with the Constitution after their adoption by Parliament. The Constitutional Court shall render a decision concerning the text as a whole." It is noteworthy that the review exercised by the Constitutional Court over organic laws is a review of conformity rather than a review of constitutionality.

It should be noted in this context that, under the 2016 Constitutional Amendment, the review exercised over organic laws was one of constitutionality rather than conformity.[2] This is confirmed by the first paragraph of Article 2 of the Rules Governing the Procedures of the Constitutional Council, which provides that: "If the Constitutional Council, while ruling on the constitutionality of organic laws, declares that the organic law submitted to it contains an unconstitutional provision that cannot be severed from the remaining provisions of the law, the law shall not be promulgated."[3]

In fact, the 2016 Constitutional Amendment contained a clear inconsistency between paragraph (2) of Article 186, which provided for constitutional review of organic laws, and the final

[1] See: Article 96 of the 2020 Constitutional Amendment.

[2] See: the second paragraph of Article 186 of the 2016 Constitutional Amendment.

[3] Regulations Governing the Rules of Procedure of the Constitutional Council, Official Gazette, No. 42, issued on 30 June 2019.

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paragraph of Article 141, which provided for conformity review. The 2020 Constitutional Amendment resolved this inconsistency in favor of conformity review.

It is also noteworthy that the constitutional framers required an absolute majority of the members of the Constitutional Court for the adoption of a decision concerning the conformity of organic laws with the Constitution.[1] This differs from the other matters, for which a simple majority of the members present is sufficient.[2] This distinction may be attributed to the particular importance of organic laws in comparison with other matters.

2. The Rules of Procedure of the Two Chambers of Parliament:

The final paragraph of Article 190 of the 2020 Constitutional Amendment provides that the Constitutional Court shall rule on the conformity of the Rules of Procedure of each chamber of Parliament with the Constitution, in accordance with the same procedures applicable to the review of the conformity of organic laws with the Constitution.[3] This means that the President of the Republic is required to mandatorily refer the Rules of Procedure of each chamber of Parliament to the Constitutional Court for conformity review after their adoption. In this regard, it would have been more appropriate for the constitutional framers to confer the power of referral upon the Speaker of the People's National Assembly and the President of the Council of the Nation, thereby ensuring the independence of the legislative branch from the executive branch.[4] It should also be noted that the Constitutional Court adopts its decisions concerning the Rules of Procedure of the two chambers of Parliament by a majority of the members present,[5] despite the fact that the matter concerns conformity review. This differs from the procedure applicable to organic laws, for which decisions are adopted by an absolute majority of the Court's members.

3. Ordinances Enacted by the President of the Republic during the Vacancy of the People's National Assembly or During Parliamentary Recess: This matter is provided for in paragraph (2) of Article 142 of the 2020 Constitutional Amendment. It is noteworthy, however, that the constitutional framers did not specify a time limit within which the President of the Republic must refer to the Constitutional Court the ordinances enacted on urgent matters during the vacancy of the People's National Assembly or during parliamentary recess for review of their constitutionality. This diminishes the mandatory nature of such referral, particularly in the event of a vacancy in the People's National Assembly. It should also be noted that the 2016 Constitutional Amendment did not provide for constitutional review of such ordinances.[6] It should further be noted that the Constitutional Court exercises constitutional review, rather than conformity review, over these ordinances. Accordingly, the ordinances may be promulgated and enter into force until the Constitutional Court issues an opinion declaring them unconstitutional, after which they are removed from the legal order. This, in turn, further reduces the effectiveness of the mandatory referral mechanism with respect to these ordinances.

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[1] See the second paragraph of Article 48 of the Regulations Governing the Rules of Procedure of the Constitutional Court, Official Gazette, No. 04, issued on 22 January 2023.

[2] See: the second paragraph of Article 197 of the 2020 Constitutional Amendment.

[3] See: Article 9 of the Regulations Governing the Rules of Procedure of the Constitutional Court.

[4] Gharbi, Ahsan, op. cit., p. 28.

[5] See: the second paragraph of Article 48 of the Regulations Governing the Rules of Procedure of the Constitutional Court.

[6] See: Article 142 of the 2016 Constitutional Amendment.

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It should also be emphasized that there is ambiguity surrounding the referral mechanism applicable to ordinances enacted by the President of the Republic during a state of exception. Such ordinances are provided for in paragraph (5) of Article 142 of the 2020 Constitutional Amendment, which is set out separately from the other paragraphs concerning ordinances subject to mandatory referral. Moreover, it makes no reference whatsoever to referral. This raises the question of whether such ordinances are subject to referral by virtue of their inclusion in the same constitutional provision governing referral, or whether they are exempt from referral altogether. If they are indeed subject to referral, is such referral mandatory or optional?

B. Fields of Optional Referral:

Optional referral refers to the power granted to the authorities exhaustively specified by the Constitution to refer certain matters to the Constitutional Court. These authorities are the President of the Republic, the Speaker of the People's National Assembly, the President of the Council of the Nation, the Prime Minister or the Head of Government, as the case may be, forty (40) members of the People's National Assembly, and twenty-five (25) members of the Council of the Nation.[1]

The fields of optional referral are as follows:

1. Treaties: Paragraph (2) of Article 190 of the Constitutional Amendment provides that the above-mentioned authorities may refer treaties to the Constitutional Court for review of their constitutionality before their ratification. Once a treaty has been ratified, however, any referral shall be declared procedurally inadmissible. [2]The power to ratify treaties is exclusively vested in the President of the Republic, who is responsible for concluding and ratifying international treaties. As a general rule, parliamentary approval is not required prior to their ratification. Exceptionally, however, certain treaties and agreements require the express approval of each chamber of Parliament before they may be ratified by the President of the Republic.[3]

It should be noted in this context that armistice agreements and peace treaties are not subject to constitutional review by the Constitutional Court and do not fall within the scope of the referral mechanism. Rather, the President of the Republic seeks the opinion of the Constitutional Court with respect to such instruments.[4] This opinion is advisory rather than binding, since Article 198 of the 2020 Constitutional Amendment does not provide for the binding force of the Court's opinions, but only of its decisions.[5]

2. Ordinary Laws: Paragraph (2) of Article 190 of the 2020 Constitutional Amendment provides for the possibility of referring ordinary laws to the Constitutional Court for review of their constitutionality, provided that such referral takes place before their promulgation by the President of the Republic. Accordingly, the constitutional review exercised over ordinary laws is a priori rather than a posteriori review.[6]

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[1] See: Article 193 of the 2020 Constitutional Amendment.

[2] See: Article 153 of the 2020 Constitutional Amendment.

[3] See: the second paragraph of Article 102 of the 2020 Constitutional Amendment.

[4] See: the second paragraph of Article 102 of the 2020 Constitutional Amendment, and Article 17 of the Regulations Governing the Rules of Procedure of the Constitutional Court.

[5] See: the second paragraph of Article 48 of the Regulations Governing the Rules of Procedure of the Constitutional Court.

[6] Gharbi, Ahsan. The Constitutional Court in Algeria and Turkey: A Comparative Analytical Study. Journal of Legal and Economic Studies, Vol. 9, No. 1, Algeria, 2026, p. 362.

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It is submitted that the requirement introduced by the 2020 Constitutional Amendment, namely that referral must occur before the promulgation of ordinary laws, was intended to ensure the stability of such laws and to shield them from constitutional review after promulgation. Nevertheless, it would have been more appropriate for the constitutional framers to leave the possibility of referral open, as was the case under the 2016 Constitutional Amendment, in order to subject the greatest possible number of ordinary laws to constitutional review.

3. Regulations: Paragraph (3) of Article 190 of the 2020 Constitutional Amendment provides that the Constitutional Court may be referred to for a review of the constitutionality of regulations within one month from the date of their publication. It should be noted that the constitutional review exercised over regulations is an optional a posteriori review, which must be initiated within one month from the date of their publication in the Official Gazette. Otherwise, the right to refer the matter to the Constitutional Court for constitutional review is forfeited. It is noteworthy in this regard that the 2016 Constitutional Amendment did not subject the authorities entitled to make a referral to any specific time limit; rather, the period for referral was open-ended.[1]

4. Compatibility of Laws and Regulations with Treaties: Paragraph (4) of Article 190 of the 2020 Constitutional Amendment provides that: "The Constitutional Court shall decide, by way of a decision, on the compatibility of laws and regulations with treaties, under the conditions respectively set out in paragraphs (2) and (3) above." Accordingly, the Constitutional Court may be referred to for the review of the compatibility of ordinary laws with treaties before such laws are promulgated by the President of the Republic, and for the review of the compatibility of regulations issued by the President of the Republic with treaties within one month from the date of their publication in the Official Gazette. It should be noted that the power to refer matters to the Constitutional Court concerning the compatibility of ordinary laws and regulations with treaties was introduced for the first time by the 2020 Constitutional Amendment. It does not extend to ordinances issued by the President of the Republic, organic laws, or the Rules of Procedure of the two chambers of Parliament. In other words, it does not apply to matters falling within the scope of mandatory referral.[2]

5. Disputes That May Arise Between the Constitutional Authorities: This is a new jurisdiction that was not conferred upon the Constitutional Council under the 2016 Constitutional Amendment. It is provided for in paragraph (1) of Article 192 of the 2020 Constitutional Amendment, which allows the Constitutional Court to be referred to in respect of disputes arising between the constitutional authorities. Although the constitutional framers did not clearly specify what is meant by these authorities, they refer to the legislative, executive, and judicial branches, particularly the legislative and executive branches. In this regard, the author considers that it would have been more appropriate for the constitutional framers to empower the Constitutional Court to intervene automatically in resolving such disputes, rather than making its intervention dependent upon an optional referral by the constitutionally authorized authorities. This is because those authorities may refrain from making such a referral, thereby undermining the purpose of conferring this jurisdiction upon the Constitutional

[1] See: the first paragraph of Article 186 of the 2016 Constitutional Amendment.

[2] Gharbi, Ahsan. The Referral Mechanism for Constitutional Review under the 2020 Algerian Constitutional Amendment, p. 31.

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Court and potentially exposing the constitutional institutions to a state of institutional deadlock. It is also noteworthy that the constitutional framers did not specify the legal nature of the solution that the Constitutional Court may adopt in resolving disputes between the constitutional authorities. Is it a decision, and therefore binding upon the constitutional authorities, or is it merely a non-binding opinion intended to guide the resolution of such disputes?

The author considers that this solution constitutes merely a non-binding opinion. Had the constitutional framers intended for it to take the form of a binding decision, they would have expressly stated so, as they did with respect to constitutional review of laws and the plea of unconstitutionality. Moreover, they addressed the settlement of disputes between the constitutional authorities in the same article that deals with the interpretation of constitutional provisions, which is issued in the form of an opinion rather than a decision. This indicates that the constitutional framers intended the solution reached by the Constitutional Court regarding disputes brought before it to constitute nothing more than a non-binding opinion. The author further argues that it would have been more appropriate for the constitutional framers to expressly provide that such a solution should take the form of a decision binding on all constitutional institutions, thereby enhancing the effectiveness of the Constitutional Court in resolving disputes that may arise between constitutional institutions.

6. Interpretation of Constitutional Provisions: The constitutional framers conferred upon the Constitutional Court a new jurisdiction that had not previously been granted to the Constitutional Council, namely, the authority to interpret constitutional provisions upon referral by the constitutionally authorized authorities.[1] Where a dispute arises between constitutional institutions regarding the interpretation of a particular constitutional provision, with each institution interpreting it in a manner that serves its own interests and strengthens its authority vis-à-vis the other branches, recourse to the Constitutional Court becomes necessary in order to provide an authoritative interpretation of that constitutional provision for the purpose of resolving the dispute.[2]

However, the issue that arises in this regard concerns the constitutional value of the interpretation adopted by the Constitutional Court with respect to a particular constitutional provision. The constitutional framers regarded such interpretation as merely an opinion rather than a decision. Consequently, this interpretation is not binding on the constitutional institutions but serves only as persuasive guidance.[3] This is because the final paragraph of Article 198 of the 2020 Constitutional Amendment provides that only the decisions of the Constitutional Court are binding, without extending such binding force to its opinions.[4]

In this context, the author considers that it would have been more appropriate for the constitutional framers to provide for the binding nature of the Constitutional Court's

[1] See: the second paragraph of Article 102 of the 2020 Constitutional Amendment.

[2] Amir, Souad. The Legal Framework of the Constitutional Court in Algeria (A Reading of the Provisions of the 2020 Constitutional Amendment). Journal of Comparative Legal Studies, Vol. 7, No. 1, 2021, p. 1575.

[3] Raïs, Samia. The Constitutional Court and the Judiciary in Algeria. Law, Society and Authority Journal, Vol. 14, No. 1, Algeria, 2025, p. 341.

[4] See: Article 15 of the Regulations Governing the Rules of Procedure of the Constitutional Court.

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interpretation of one or more constitutional provisions by requiring that such interpretation be issued in the form of a binding decision.

Second Axis: The Mechanism of the Plea of Unconstitutionality

First: The Concept of the Mechanism of the Plea of Unconstitutionality

To clarify the concept of the mechanism of the plea of unconstitutionality, it is necessary first to examine its definition, followed by the conditions governing its exercise.

A. Definition of the Mechanism of the Plea of Unconstitutionality:

Under the 2020 Algerian Constitutional Amendment, the mechanism of the plea of unconstitutionality is defined as an incidental plea raised by one of the parties to judicial proceedings before the court hearing the case, alleging that the legislative or regulatory provision upon which the outcome of the dispute depends infringes upon the rights and freedoms guaranteed by the Constitution.[1] If the court considers the plea to be serious, it may refer the case to the Supreme Court or the Council of State and suspend the proceedings until the Constitutional Court rules on the plea following its referral by the Supreme Court or the Council of State, as the case may be.[2] In Egypt, however, paragraph (b) of Article 29 of Law No. 48 of 1979 provides that a plea of unconstitutionality is not brought by way of referral, as is the case in Algeria. Instead, it is initiated through the filing of a constitutional action by the party raising the plea before the Supreme Constitutional Court. Referral to the Constitutional Court on the basis of a plea of unconstitutionality constitutes an a posteriori constitutional review. This is because the constitutionality of a legislative or regulatory provision cannot be challenged before it has been published in the Official Gazette, as publication is the essential condition for such provisions to enter into force and become legally effective. Without publication, these provisions cannot be applied to individuals and, consequently, cannot affect their rights and freedoms.[3] Referral to the Constitutional Court based on a plea of unconstitutionality also constitutes an optional form of constitutional review. The mere fact that one of the parties raises such a plea does not oblige the court before which it is raised to refer the case to the Supreme Court or the Council of State for the purpose of referring the matter to the Constitutional Court. Even if the court does refer the case to the Supreme Court or the Council of State, neither of these bodies is obliged to refer the matter to the Constitutional Court on the basis of the alleged unconstitutionality of the legislative or regulatory provision.[4]

B. Conditions for Raising a Plea of Unconstitutionality:

Pursuant to the first paragraph of Article 195 of the 2020 Constitutional Amendment, the constitutional framers established the following conditions for exercising the mechanism of the plea of unconstitutionality:

1. The Plea of Unconstitutionality Must Be Raised by One of the Parties to the Judicial Proceedings:

[1] Gharbi, Ahsan. The Constitutional Court in Algeria and Turkey: A Comparative Analytical Study. Journal of Legal and Economic Studies, p. 363.

[2] See: the first paragraph of Article 195 of the 2020 Constitutional Amendment.

[3] See: Article 15 of the Regulations Governing the Rules of Procedure of the Constitutional Court.

[4] See: Article 15 of Organic Law No. 22-19 determining the procedures and modalities governing notification and referral before the Constitutional Court.

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The constitutional framers stipulated in the first paragraph of Article 195 of the 2020 Constitutional Amendment that a plea of unconstitutionality must be raised by one of the parties to the judicial dispute, whether the party is a plaintiff or a defendant, an appellant or a respondent, whether an adult or a minor, and whether a natural or a legal person. It is irrelevant whether the parties to the dispute are citizens or foreigners.[1]

Accordingly, persons who are not parties to the judicial proceedings may not raise such a plea. In this regard, a distinction must be made between voluntary intervention and joinder in the proceedings. With respect to voluntary intervention, where the intervention is principal, the intervener may raise the plea of unconstitutionality, since principal intervention involves claims asserted on behalf of the intervener,[2] thereby placing the intervener in the same position as the original parties to the dispute. This differs from ancillary intervention, which does not confer upon the intervener the right to raise a plea of unconstitutionality, as the intervener merely supports the claims of one of the parties to the dispute.[3] As for joinder, it entitles the joined party to raise a plea of unconstitutionality, since such a party occupies a position similar to that of the parties to the proceedings.[4]

It should also be noted that a plea of unconstitutionality may not be raised ex officio by the trial judge, the Public Prosecution, or the State Commissioner. However, the Public Prosecution or the State Commissioner may submit written observations concerning the plea of unconstitutionality upon the request of the Constitutional Court.[5]

The researcher supports the position adopted by the constitutional framers on this issue, on the grounds that it is not in the interest of the trial judge,[6] the Public Prosecution, or the State Commissioner to raise such a plea, as their role is to safeguard the interests of the State by ensuring the proper application of the law.[7]

By comparison with the Egyptian Constitution, the position of the Egyptian constitutional framers differs entirely from that of their Algerian counterparts on this issue. The Egyptian constitutional framework grants judicial bodies the authority to raise the issue of unconstitutionality by referring the case file directly to the Supreme Constitutional Court,[8] pursuant to paragraph (a) of Article 29 of the Law on the Supreme Constitutional Court.

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[1] Mohamed Lamine El Amrani, The Plea of Unconstitutionality in Algerian Law, Scientific Horizons Journal, Vol. 12, No. 2, 2018, p. 600.

[2] See: Article 197 of Law No. 08-09 containing the Algerian Code of Civil and Administrative Procedures, as amended and supplemented, Official Gazette No. 21, issued on 23 April 2008.

[3] See: Article 198 of Law No. 08-09 containing the Code of Civil and Administrative Procedures, as amended and supplemented.

[4] See: Article 199 of Law No. 08-09 containing the Code of Civil and Administrative Procedures, as amended and supplemented.

[5] See: Paragraph 1 of Article 17 of Organic Law No. 22-19 determining the procedures and modalities for notification and referral before the Constitutional Court.

[6] See: Paragraph 2 of Article 17 of Organic Law No. 22-19 determining the procedures and modalities for notification and referral before the Constitutional Court.

[7] Mohamed Amine Oukil, On the Role of the Judiciary in Activating the Mechanism of the Plea of Unconstitutionality in Algeria: A Comparative Study with the French Model, Annals of the University of Algiers 1, No. 32, Part II, June 2018, p. 105.

[8] Hakim Tebina, Judicial Review of the Constitutionality of Laws: The Supreme Constitutional Court as a Model, Algerian Journal of Law and Political Sciences, Vol. 5, No. 2, 2020, p. 167.

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2. Limiting the Plea of Unconstitutionality to Legislative and Regulatory Provisions:

The constitutional framers, in the 2020 Constitutional Amendment, stipulated that a plea of unconstitutionality shall be confined to legislative and regulatory provisions relating to the rights and freedoms of individuals guaranteed by the Constitution. [1]In this regard, it should be noted that the constitutional framers expanded the scope of the plea of unconstitutionality in comparison with the 2016 Constitutional Amendment, which did not include regulatory provisions.[2] In this context, the question arises as to the meaning of legislative and regulatory provisions. Legislative provisions refer to all legal instruments that possess the formal character of legislation. Accordingly, the scope of legislative provisions includes organic laws, ordinary laws, ordinances, and referendum laws, as they all produce legislative provisions.[3] However, the second paragraph of Article 21 of Organic Law No. 22-19, which determines the procedures and modalities governing notification and referral before the Constitutional Court, provides for an exception concerning legislative and regulatory provisions that have previously been declared consistent with the Constitution. This means that organic laws, the rules of procedure of both chambers of Parliament, and ordinances fall outside the scope of the plea of unconstitutionality, as they are subject to prior constitutional review. Consequently, the scope of the plea of unconstitutionality remains limited to ordinary laws relating to the rights and freedoms of individuals, given that referendum laws express the direct will of the people and, therefore, cannot reasonably be the subject of a plea of unconstitutionality.[4]

3. Violation by the Legislative or Regulatory Provision of the Rights and Freedoms of Individuals Guaranteed by the Constitution:

The constitutional framers made it a condition for raising a plea of unconstitutionality against a legislative or regulatory provision that such provision must relate to the rights and freedoms of individuals.[5] Accordingly, all ordinary laws or regulatory texts that do not concern the rights and freedoms of individuals fall outside the scope of the plea of unconstitutionality, such as laws governing the powers of constitutional institutions, the organization of public services, and the judicial system.[6] In this regard, the researcher considers the wording adopted by the constitutional framers to be somewhat inappropriate. The constitutional text requires that the legislative or regulatory provision infringe upon the rights and freedoms of individuals guaranteed by the Constitution, as though there were rights and freedoms of individuals that are not guaranteed by the Constitution.

4. The Outcome of the Dispute Must Depend on the Contested Legislative or Regulatory Provision:

This condition is stipulated in the first paragraph of Article 195 of the 2020 Constitutional Amendment and is reaffirmed in the first paragraph of Article 21 of Organic Law No. 22-19, which determines the procedures and modalities governing notification and referral before the Constitutional Court. It provides that: “the outcome of the dispute must depend on the contested

[1] See: Paragraph 1 of Article 195 of the 2020 Constitutional Amendment.

[2] See: Paragraph 1 of Article 188 of the 2016 Constitutional Amendment.

[3] Marouane Laalaoui; Mouloud Didan, The Regulations Governing the Mechanism of the Plea of Unconstitutionality in Algeria, Vol. 14, No. 30, Algeria, 2022, p. 446.

[4] Mohamed Amine Oukil, op. cit., p. 107.

[5] See: Paragraph 1 of Article 195 of the 2020 Constitutional Amendment.

[6] Mohamed Lamine El Amrani, op. cit., p. 602.

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legislative or regulatory provision, or that provision must constitute the basis of the prosecution." Accordingly, the contested legislative or regulatory provision must be decisive in the judicial dispute, which is what the constitutional framers expressed by the phrase "the outcome of the dispute must depend on it." Therefore, it is not sufficient for the legislative or regulatory provision merely to have an impact on the course of the judicial proceedings; rather, it must be decisive in determining the outcome of the dispute for the plea of unconstitutionality to be admissible.

5. Seriousness of the Plea of Unconstitutionality:

The constitutional framers did not provide for this requirement in the 2020 Constitutional Amendment. Rather, it is set out in the final paragraph of Article 21 of Organic Law No. 22-19, which determines the procedures and modalities governing notification and referral before the Constitutional Court, requiring that "the ground invoked must be of a serious nature."

In this regard, it should be noted that the legislature did not define the requirement of seriousness in relation to a plea of unconstitutionality, which raises two questions: first, concerning the limits and scope of this requirement; and second, concerning the manner in which the seriousness of the plea is to be assessed. In this respect, it may be said that, in order to determine whether the plea is serious, the judge must undertake a preliminary examination of the constitutionality of the legislative or regulatory provision challenged by the plea. If the judge finds that the provision gives rise to a prima facie suspicion of unconstitutionality, the plea shall be considered serious and, consequently, admissible. Conversely, if the judge considers that the provision is clearly devoid of any such suspicion, the requirement of seriousness shall be deemed not to have been satisfied, and the plea shall therefore be declared inadmissible.[1] From the foregoing, it is evident that, in determining whether the requirement of seriousness has been satisfied, the jurisdiction of the trial judge closely approaches that exercised by the Constitutional Court. The difference lies in the fact that the trial judge decides only whether to admit or reject the plea, and consequently whether to refer it, whereas the Constitutional Court decides whether the legislative or regulatory provision challenged by the plea is constitutional or unconstitutional.[2]

Secondly: Procedures for Adjudicating a Plea of Unconstitutionality

Organic Law No. 22-19, which determines the procedures and modalities governing notification and referral before the Constitutional Court, divides the procedures for adjudicating a plea of unconstitutionality into three stages. Accordingly, the same structure will be followed herein by first examining the procedures for considering a plea of unconstitutionality before the lower courts, then addressing the procedures for considering such a plea before the higher judicial bodies, and finally discussing the procedures for adjudicating the plea before the Constitutional Court.

A.Procedures for Considering a Plea of Unconstitutionality before the Lower Courts:

A plea of unconstitutionality may be raised before the courts of the ordinary judicial system as well as before the courts of the administrative judicial system. It may also be raised for the first time on appeal or before the Court of Cassation. In addition, such a plea may be raised during

[1] Mohamed Amine Oukil, op. cit., p. 117.

[2] Marouane Laalaoui; Mouloud Didan, op. cit., p. 447.

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the judicial investigation stage, in which case it shall be examined by the Indictment Chamber of the Judicial Council.[1]

A plea of unconstitutionality may likewise be raised before the Court of First Instance for Serious Crimes and the Appellate Court for Serious Crimes. In the latter case, the Appellate Court for Serious Crimes shall decide on the plea before the opening of the trial proceedings.[2] It should be noted that repealed Organic Law No. 18-16, which determined the conditions and procedures for the application of a plea of unconstitutionality, did not permit such a plea to be raised before the Court of First Instance for Serious Crimes.[3] Under penalty of inadmissibility, the plea of unconstitutionality must be submitted in a separate, written, and reasoned memorandum. Accordingly, the party concerned is required to file a memorandum separate from the principal pleading (the statement of claim).[4] This memorandum must be supported by reasons, specifying the legislative or regulatory provision challenged, as well as the legal grounds and arguments on which the party relies. Such reasoning facilitates the assessment of the seriousness of the plea.[5]Once the plea of unconstitutionality has been submitted, the judicial body before which it has been raised shall immediately decide, by means of a reasoned decision, whether to refer it to the Supreme Court or the Council of State, after obtaining the opinion of the Public Prosecution or the State Commissioner.[6] Where the composition of that judicial body includes non-judicial assessors, the decision on the referral of the plea of unconstitutionality shall be made in their absence.[7]The decision of the judicial body before which the plea has been raised to refer the plea of unconstitutionality constitutes a preliminary filtering and screening process. This is carried out by verifying whether the plea satisfies the conditions required by the 2020 Constitutional Amendment and Organic Law No. 22-19, which determines the procedures and modalities governing notification and referral before the Constitutional Court, as previously discussed. Where the judicial body is satisfied that all the required conditions for a plea of unconstitutionality have been fulfilled, it shall transmit the referral decision, together with the parties' pleadings and memoranda, to the Supreme Court or the Council of State within ten (10) days from the date of its issuance. The parties shall also be notified of the decision.

Under no circumstances may this decision be challenged by the opposing party, the Public Prosecution, or the State Commissioner.[8] If, however, the judicial body finds that the plea of unconstitutionality does not satisfy the required conditions, it shall issue a decision refusing to

[1] See: Article 15 of Organic Law No. 22-19 determining the procedures and modalities for notification and referral before the Constitutional Court.

[2] See: Article 16 of Organic Law No. 22-19 determining the procedures and modalities for notification and referral before the Constitutional Court.

[3] See: Article 3 of Organic Law No. 18-16 of 2 September 2018 determining the conditions and modalities for the application of the plea of unconstitutionality, repealed, Official Gazette No. 54, issued on 5 September 2018.

[4] See: Article 19 of Organic Law No. 22-19 determining the procedures and modalities for notification and referral before the Constitutional Court.

[5] Mohamed Amine Oukil, op. cit., p. 114.

[6] See: Paragraph 1 of Article 20 of Organic Law No. 22-19 determining the procedures and modalities for notification and referral before the Constitutional Court.

[7] See: Paragraph 2 of Article 20 of Organic Law No. 22-19 determining the procedures and modalities for notification and referral before the Constitutional Court.

[8] See: Article 23 of Organic Law No. 22-19 determining the procedures and modalities for notification and referral before the Constitutional Court.

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refer the plea to the Supreme Court or the Council of State and shall continue adjudicating the dispute. This decision shall be notified to the parties by the court registry within a period not exceeding three days from the date of its issuance. In such a case, the parties may challenge the decision only in the context of an appeal against the judgment deciding the dispute, in whole or in part.[1] The person concerned must submit the objection by means of a separate, written, and reasoned memorandum accompanying the appeal against the judgment deciding the dispute, in whole or in part. The memorandum must set out the grounds, reasons, and legal arguments relied upon in challenging the decision refusing to refer the plea of unconstitutionality. Where the plea of unconstitutionality has been referred, the judicial body must stay the proceedings pending receipt of the decision of the Supreme Court, the Council of State, or, where the plea has been referred to it, the Constitutional Court. However, this shall not result in the suspension of the investigation in criminal proceedings.[2]Nevertheless, where the court of first instance decides the principal action without awaiting the decision of the Supreme Court, the Council of State, or, where applicable, the Constitutional Court following the referral of the plea, and that judgment is appealed, the appellate court must stay the appeal proceedings until the plea of unconstitutionality has been decided.[3]The same applies in cassation proceedings. Where an appeal in cassation is lodged after the courts of first instance or appeal have decided the principal action without awaiting the decision of the Supreme Court, the Council of State, or, where applicable, the Constitutional Court following the referral of the plea, the proceedings before the Court of Cassation must be stayed until the plea of unconstitutionality has been adjudicated.[4]It should also be noted that the decision to refer a plea of unconstitutionality to the Supreme Court or the Council of State does not result in the suspension of investigative measures, nor does it prevent the judicial authorities from adopting the necessary interim or precautionary measures.[5]

It should further be noted that judicial bodies at all levels may not stay the proceedings in the principal action pending the determination of the plea of unconstitutionality where the case concerns a person deprived of liberty as a result of those proceedings,

Where the proceedings are intended to put an end to such deprivation of liberty, or where the law requires that the case be decided within a specified time limit or as a matter of urgency.[6]

B. Procedures for Considering a Plea of Unconstitutionality before the Higher Judicial Bodies:

[1] See: Article 24 of Organic Law No. 22-19 determining the procedures and modalities for notification and referral before the Constitutional Court.

[2] See: Paragraph 1 of Article 25 of Organic Law No. 22-19 determining the procedures and modalities for notification and referral before the Constitutional Court.

[3] See: The last paragraph of Article 26 of Organic Law No. 22-19 determining the procedures and modalities for notification and referral before the Constitutional Court.

[4] See: Paragraph 1 of Article 27 of Organic Law No. 22-19 determining the procedures and modalities for notification and referral before the Constitutional Court.

[5] See: Paragraph 2 of Article 25 of Organic Law No. 22-19 determining the procedures and modalities for notification and referral before the Constitutional Court.

[6] See: Paragraphs 1 and 2 of Article 26, and Paragraph 2 of Article 27 of Organic Law No. 22-19 determining the procedures and modalities for notification and referral before the Constitutional Court.

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Upon receipt of the decision referring the plea of unconstitutionality, the First President of the Supreme Court or the President of the Council of State shall seek the opinion of the Prosecutor General or the State Commissioner, who must submit their observations within a period not exceeding five days. The parties to the proceedings must also be given the opportunity to submit written observations.[1]

The Supreme Court or the Council of State must decide whether to refer the plea of unconstitutionality within a period not exceeding two (2) months from the date of receipt of the referral decision, either by referring it to the Constitutional Court or by refusing the referral.[2] If the Supreme Court or the Council of State fails to decide on the plea within this period, the plea shall automatically be referred to the Constitutional Court.[3]

The judicial body that referred the plea of unconstitutionality shall be informed of the decision of the Supreme Court or the Council of State, and the decision shall be notified to the parties within ten (10) days from the date of its issuance.[4]

Where the Supreme Court or the Council of State finds that the plea of unconstitutionality satisfies all the conditions laid down in the 2020 Constitutional Amendment and Organic Law No. 22-19, which determines the procedures and modalities governing notification and referral before the Constitutional Court, the plea shall be referred to the Constitutional Court together with the parties' pleadings and memoranda.[5]

Conversely, where the Supreme Court or the Council of State refuses to refer the plea of unconstitutionality to the Constitutional Court, the latter shall receive a copy of the decision refusing the referral, which must be reasoned. The decision refusing the referral shall also be transmitted to the judicial body before which the plea was raised, and that body shall notify the parties to the proceedings within a period not exceeding five days.[6]

Accordingly, the Supreme Court and the Council of State constitute a second stage in the filtering of pleas of unconstitutionality before their referral to the Constitutional Court.

This follows the initial examination conducted by the courts of first instance and the appellate courts before transmitting the plea to the Supreme Court or the Council of State, with the aim of preventing the Constitutional Court from being burdened with non-serious or vexatious pleas.[7]

It should be noted, finally, that the Supreme Court and the Council of State must stay the proceedings in the principal action until the plea of unconstitutionality has been decided, unless the person concerned has been deprived of liberty as a result of those proceedings, the

[1] See: Article 29 of Organic Law No. 22-19 determining the procedures and modalities for notification and referral before the Constitutional Court.

[2] See: Article 30 of Organic Law No. 22-19 determining the procedures and modalities for notification and referral before the Constitutional Court.

[3] See: Article 36 of Organic Law No. 22-19 determining the procedures and modalities for notification and referral before the Constitutional Court.

[4] See: Article 35 of Organic Law No. 22-19 determining the procedures and modalities for notification and referral before the Constitutional Court.

[5] See: Article 33 of Organic Law No. 22-19 determining the procedures and modalities for notification and referral before the Constitutional Court.

[6] See: Article 37 of Organic Law No. 22-19 determining the procedures and modalities for notification and referral before the Constitutional Court.

[7] Mohamed Amine Oukil, op. cit., p. 113.

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proceedings are intended to put an end to such deprivation of liberty, or the law requires that the case be decided within a specified time limit or as a matter of urgency.[1]

C. Procedures for Adjudicating a Plea of Unconstitutionality before the Constitutional Court:

The first step taken by the Constitutional Court upon receiving a referral of a plea of unconstitutionality is to immediately notify the President of the Republic of the referral. It shall also notify the President of the Council of the Nation, the President of the People's National Assembly, the Prime Minister or the Head of Government, as the case may be, and the parties to the proceedings, in order to enable them to submit their observations on the plea of unconstitutionality before the Court within twenty days from the date of notification.[2]

The Constitutional Court shall then examine the plea of unconstitutionality from a procedural standpoint by verifying whether the conditions required for raising such a plea have been satisfied, particularly the requirement that the outcome of the dispute depends on the challenged provision and the requirement of seriousness. If all the procedural requirements are met, the Court proceeds to examine the plea on its merits by considering the grounds, reasons, and legal arguments relied upon by the party raising the plea.[3]

It should be noted in this regard that, where the Constitutional Court, upon examining the legislative or regulatory provision challenged by the plea, identifies grounds of unconstitutionality other than those invoked by the party concerned, it may raise such grounds of its own motion. This differs from the trial judge, who may not rely on grounds other than those raised by the party submitting the plea. In other words, the trial judge must confine the examination to the grounds invoked by the party, even if other grounds become apparent during the review conducted to verify whether the required conditions have been satisfied.

The Constitutional Court must decide the plea of unconstitutionality within a period not exceeding four (4) months from the date of referral. This period may be extended once, for a maximum of four (4) additional months, by means of a reasoned decision, which must be communicated to the referring judicial body, namely the Supreme Court or the Council of State.

After rendering its decision on the plea of unconstitutionality, the Constitutional Court shall notify the President of the Republic, the President of the Council of the Nation, the President of the People's National Assembly, and the Prime Minister or the Head of Government, as the case may be. The Court shall also notify the Supreme Court or the Council of State, as appropriate, in order to inform the judicial body before which the plea of unconstitutionality was originally raised. The decision shall also be published in the *Official Gazette of the People's Democratic Republic of Algeria.[4]

Conclusion:

This paper demonstrates the significant role of the Constitutional Court in consolidating constitutional justice. It constitutes a valuable achievement and a new impetus for enhancing

[1] See: Article 34 of Organic Law No. 22-19 determining the procedures and modalities for notification and referral before the Constitutional Court.

[2] See: Article 20 of the Rules of Procedure of the Constitutional Court.

[3] See: Paragraph 2 of Article 195 of the 2020 Constitutional Amendment.

[4] * See: Article 43 of Organic Law No. 22-19 determining the procedures and modalities for notification and referral before the Constitutional Court.

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constitutional review through the mechanisms entrusted to it by the constitutional framers, namely the referral mechanism and the plea of unconstitutionality.

Despite this importance, however, the 2020 Constitutional Amendment did not introduce a fundamental change by replacing the Constitutional Council with the Constitutional Court when compared with the 2016 Constitutional Amendment. The Constitutional Court was entrusted with essentially the same mechanisms that had been exercised by the Constitutional Council, with only limited modifications which, in the researcher's view, cannot be regarded as substantial. Accordingly, the changes introduced by the 2020 Constitutional Amendment may be characterized as merely formal and minor rather than fundamental.

This conclusion is supported by the findings reached in this study, which may be summarized as follows:

1. The 2020 Constitutional Amendment resolved the inconsistency that existed in the 2016 Constitutional Amendment concerning the type of constitutional review exercised over organic laws by expressly providing that such review is one of conformity rather than constitutionality.
2. The 2020 Constitutional Amendment requires the absolute majority of the members of the Constitutional Court for decisions concerning the conformity of organic laws with the Constitution, whereas, in all other matters, it requires only the majority of the members present. This requirement did not exist under the 2016 Constitutional Amendment.
3. The 2020 Constitutional Amendment provides that ordinances issued by the President of the Republic in urgent matters during the vacancy of the People's National Assembly or during parliamentary recess are subject to constitutional review. This differs from the 2016 Constitutional Amendment, which exempted such ordinances from constitutional review.
4. The 2020 Constitutional Amendment expanded the scope of the plea of unconstitutionality to include regulatory provisions in addition to legislative provisions, unlike the 2016 Constitutional Amendment, which did not cover regulatory provisions.
5. The 2020 Constitutional Amendment distinguishes between the decisions and opinions of the Constitutional Court in terms of their binding effect and the time limits governing their issuance. It grants binding force to the Court's decisions, but not to its opinions, and imposes specific time limits for issuing decisions while prescribing no such limits for the issuance of opinions. This differs from the 2016 Constitutional Amendment, which did not distinguish between the decisions and opinions of the Constitutional Council.
6. The constitutional framers conferred two new powers upon the Constitutional Court that had not been vested in the Constitutional Council under the 2016 Constitutional Amendment. The first is the authority to interpret constitutional provisions upon referral by the constitutionally authorized bodies. The second is the authority to receive referrals concerning disputes arising between constitutional authorities.

While appreciating the amendments introduced by the 2020 Constitutional Amendment to strengthen constitutional review, several issues remain unresolved and continue to pose significant challenges, including the following:

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1. The 2020 Constitutional Amendment does not clearly define the legal nature of the Constitutional Court. It merely describes it as an independent institution without specifying whether it is a judicial or a political body, thereby adopting the same approach as the 2016 Constitutional Amendment. In this regard, the researcher believes that the Algerian constitutional framers do not regard the Constitutional Court as a judicial body, given the mechanisms through which it may be seized namely referral and the plea of unconstitutionality as well as the prohibition against exercising constitutional review on its own initiative.
2. The 2020 Constitutional Amendment does not grant judicial bodies the power to refer matters directly to the Constitutional Court. Instead, it allows only the Supreme Court or the Council of State to refer a case in the context of an incidental plea challenging the constitutionality of a legislative or regulatory provision. Consequently, if a judge, while deciding a case, finds that a legislative or regulatory provision is unconstitutional, the judge remains obliged to apply that provision and cannot refer the matter directly to the Constitutional Court.
3. The constitutional framers did not confer binding force on the Constitutional Court's interpretation of a constitutional provision. Such an interpretation is regarded merely as an opinion rather than a decision and is therefore not binding upon constitutional institutions, serving only as persuasive guidance. The same applies to the Court's opinion concerning disputes between constitutional authorities.

To enhance the effectiveness of the Constitutional Court in carrying out its constitutional review function and to overcome the challenges and obstacles that hinder its work, the following recommendations are proposed:

1. Clearly define the legal nature of the Constitutional Court by expressly recognizing it as a judicial body, following the approach adopted by the Egyptian constitutional framers, who explicitly designated the Supreme Constitutional Court as an independent judicial authority.
2. Grant judicial bodies the authority to refer matters directly to the Constitutional Court whenever they identify a legislative or regulatory provision that is unconstitutional.
3. Provide that the Constitutional Court's interpretation of one or more constitutional provisions shall be binding by issuing such interpretation in the form of a binding decision. The same should apply to the Court's opinion concerning disputes between constitutional authorities.
4. Grant the Constitutional Court the power to intervene on its own initiative to resolve disputes arising between constitutional authorities, rather than making such intervention dependent upon an optional referral by the constitutionally authorized bodies. Such bodies may refrain from making a referral, thereby defeating the purpose of conferring this power upon the Constitutional Court and exposing the constitutional institutions to institutional deadlock.

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