ABSTRACT

Objectives: This study aims to shed light on the role played by the constitutional judge in protecting the rights and freedoms of individuals, highlighting the aspects of oversight over the constitutionality of laws. It begins by examining comparative constitutional systems, followed by an exploration of the Algerian experience to understand the various aspects of this oversight, particularly after the adoption of the constitutional amendment in 2020, which established the Constitutional Court instead of the Constitutional Council that Algeria had known since 1989.

Methodology: The study adopts a range of scientific research methods, starting with the analytical approach, which involves analyzing constitutional and legal texts governing the work of the Constitutional Court. Additionally, a comparative approach is employed, comparing the mechanisms of constitutional oversight in different countries, as well as comparing the new powers of the constitutional judge in the newly established Constitutional Court according to the 2020 constitutional amendment with the provisions related to the work of the court, as it was previously for the Constitutional Council.

Results: We concluded that oversight over the constitutionality of laws, as a guarantee for public freedoms, varies between political and judicial oversight, and it has been adopted in most comparative constitutional systems, including the Algerian system, which introduced the Constitutional Court as a constitutional institution that protects individual freedoms by ensuring the respect of laws and regulations for the constitution and avoiding any violation of it through issuing decisions regarding their conformity with the constitution. Despite the recent establishment of this constitutional institution, it has proven to be effective and efficient in addressing any legal provision that may violate the constitution and infringe upon the rights and freedoms of individuals.

Conclusion: Constitutional oversight is considered one of the most important guarantees for safeguarding the rights and public freedoms of individuals. Given the supreme position of the constitution, legal provisions should not contradict its broad meaning. Algeria, starting from the issuance of the 2016 constitution, recognized the concept of unconstitutionality, allowing any litigant before ordinary or administrative judicial bodies to claim that a legislative or regulatory judgment applied to the dispute violates their rights and freedoms guaranteed by the constitution. After the constitutional amendment of 2020, the Constitutional Court became an independent institution entrusted with ensuring respect for the constitution with expanded powers. Within the framework of the powers of the constitutional judge, in addition to what has been mentioned, it is worth noting that the Constitutional Court, as a guarantee for rights and freedoms, issues an opinion when the President of the Republic submits a constitutional amendment, provided that it does not affect the rights and freedoms of individuals.

Keywords: Constitutional Oversight, Rights, Public Liberties, Constitutional Court.
O PAPEL DO JUIZ CONSTITUCIONAL NA SALVAGUARDA DOS DIREITOS E LIBERDADES PÚBLICAS

RESUMO

Objetivos: Este estudo visa esclarecer o papel do juiz constitucional na proteção dos direitos e liberdades das pessoas, destacando os aspectos de supervisão sobre a constitucionalidade das leis. Começa por examinar sistemas constitucionais comparativos, seguido por uma exploração da experiência argelina para entender os vários aspectos dessa supervisão, particularmente após a adoção da emenda constitucional em 2020, que estabeleceu o Tribunal Constitucional em vez do Conselho Constitucional que a Argélia conhecia desde 1989.

Metodologia: O estudo adota uma série de métodos de pesquisa científica, a começar pela abordagem analítica, que envolve a análise dos textos constitucionais e jurídicos que regem o trabalho do Tribunal Constitucional. Além disso, é utilizada uma abordagem comparativa, comparando os mecanismos de supervisão constitucional em diferentes países, bem como comparando os novos poderes do juiz constitucional no recém-criado Tribunal Constitucional, de acordo com a alteração constitucional de 2020, com disposições relacionadas com o trabalho do tribunal, tal como era anteriormente para o Conselho Constitucional.

Resultados: Concluiu-se que a supervisão da constitucionalidade das leis, como garantia das liberdades públicas, varia entre a supervisão política e judicial, e foi adotada na maioria dos sistemas constitucionais comparativos, incluindo o sistema argelino, que introduziu o Tribunal Constitucional como uma instituição constitucional que protege as liberdades individuais, garantindo o respeito pelas leis e regulamentos da Constituição e evitando qualquer violação através da emissão de decisões sobre sua conformidade com a Constituição. Apesar da recente criação desta instituição constitucional, esta provou ser eficaz e eficiente no tratamento de quaisquer disposições legais que possam violar a Constituição e infringir os direitos e liberdades dos indivíduos.

Conclusão: A supervisão constitucional é considerada uma das garantias mais importantes para salvaguardar os direitos e liberdades públicos dos indivíduos. Dada a posição suprema da Constituição, as disposições legais não devem contradizer o seu significado amplo. Desde a promulgação da Constituição de 2016, a Argélia reconheceu o conceito de inconstitucionalidade, que permite a qualquer litigante perante as instâncias judiciais ordinárias ou administrativas alegar que uma decisão legislativa ou regulamentar aplicada ao litígio viola os seus direitos e liberdades garantidos pela Constituição. Após a emenda constitucional de 2020, o Tribunal Constitucional tornou-se uma instituição independente encarregada de garantir o respeito pela Constituição com poderes alargados. Além disso, o Tribunal Constitucional, como garantia de direitos e liberdades, emite um parecer quando o Presidente da República apresenta uma alteração constitucional, desde que não afete os direitos e liberdades dos indivíduos.

Palavras-chave: Supervisão Constitucional, Direitos, Liberdades Públicas, Tribunal Constitucional.
EL PAPEL DEL JUEZ CONSTITUCIONAL EN LA SALVAGUARDIA DE LOS DERECHOS Y LIBERTADES PÚBLICAS

RESUMEN

Objetivos: El presente estudio tiene como objetivo arrojar luz sobre el papel que desempeña el juez constitucional en la protección de los derechos y libertades de las personas, destacando los aspectos de la supervisión sobre la constitucionalidad de las leyes. Comienza por examinar sistemas constitucionales comparativos, seguido de una exploración de la experiencia argelina para comprender los diversos aspectos de esta supervisión, particularmente después de la aprobación de la enmienda constitucional en 2020, que estableció el Tribunal Constitucional en lugar del Consejo Constitucional que Argelia conocía desde 1989.

Metodología: El estudio adopta una serie de métodos de investigación científica, comenzando con el enfoque analítico, que implica analizar los textos constitucionales y legales que rigen el trabajo del Tribunal Constitucional. Ademá, se emplea un enfoque comparativo, comparando los mecanismos de supervisión constitucional en diferentes países, así como comparando los nuevos poderes del juez constitucional en la recién establecida Corte Constitucional de acuerdo con la enmienda constitucional de 2020 con las disposiciones relacionadas con el trabajo de la corte, como lo fue anteriormente para el Consejo Constitucional.

Resultados: Se concluyó que la supervisión de la constitucionalidad de las leyes, como garantía de las libertades públicas, varía entre la supervisión política y judicial, y se ha adoptado en la mayoría de los sistemas constitucionales comparativos, incluido el sistema argelino, que introdujo la Corte Constitucional como una institución constitucional que protege las libertades individuales garantizando el respeto de las leyes y reglamentos de la constitución y evitando cualquier violación de la misma mediante la emisión de decisiones sobre su conformidad con la constitución. A pesar de la reciente creación de esta institución constitucional, ha demostrado ser eficaz y eficiente a la hora de abordar cualquier disposición legal que pueda violar la constitución y atentar contra los derechos y libertades de las personas.

Conclusión: La supervisión constitucional se considera una de las garantías más importantes para salvaguardar los derechos y libertades públicas de las personas. Dada la posición suprema de la constitución, las disposiciones legales no deberían contradecir su significado amplio. Argelia, a partir de la promulgación de la Constitución de 2016, reconoció el concepto de inconstitucionalidad, lo que permite a cualquier litigante ante los órganos judiciales ordinarios o administrativos alegar que una sentencia legislativa o reglamentaria aplicada a la controversia viola sus derechos y libertades garantizados por la Constitución. Después de la enmienda constitucional de 2020, la Corte Constitucional se convirtió en una institución independiente encargada de garantizar el respeto de la Constitución con poderes ampliados. En el marco de las facultades del juez constitucional, además de lo mencionado, cabe señalar que el Tribunal Constitucional, como garantía de derechos y libertades, emite un dictamen cuando el Presidente de la República presenta una enmienda constitucional, siempre que no afecte los derechos y libertades de las personas.

Palabras clave: Supervisión Constitucional, Derechos, Libertades Públicas, Corte Constitucional.

1 INTRODUCTION

While freedom is considered the ultimate goal for both individuals and society, it has not been achieved within a specific period or in a particular era. Instead, it has been...
the result of people's struggle throughout history, from ancient times to the present day. Although the topic of rights and liberties may appear as a recent phenomenon, issues related to human rights and freedoms have existed since the emergence of human societies and have evolved alongside them. The determination of public liberties has been the fruit of the long struggle carried by nations and the revolutions ignited against oppressive rulers, reclaiming their freedom and asserting their right to a free and secure life, liberated from fear, humiliation, and loss.

Due to the significance of public freedoms, they have been surrounded by guarantees, with the principle of separation of powers being one of the most prominent, aiming to prevent despotism and safeguard liberties. It also serves to establish the legitimacy of the state, divide labor, and ensure the proper functioning of the state's responsibilities. This principle was established as a means of preserving freedom and preventing despotism, as there is a danger in consolidating all three powers in one hand, regardless of whether that hand belongs to the people or the parliament. By nature, humans tend to abuse power and misuse it excessively. To prevent this, it is necessary to avoid the concentration of powers in one hand and instead have independent authorities that check and balance each other.

Furthermore, the principle of separation of powers leads to the realization of the state's legitimacy, as it serves as an effective means to ensure respect for laws and their proper implementation. It also achieves the advantages of dividing labor, which is considered one of the fundamental principles in the field of administration, thereby enhancing the efficiency and quality of work.

The oversight of the constitutionality of laws is founded on two distinct rationales, contrasting two different historical experiences. The judicial foundation of constitutional oversight is linked to the interpretative work of the American Constitutional Court, exemplified by the precedent of "Marbury v. Madison." Conversely, the theoretical research of jurist Hans Kelsen forms the basis upon which constitutional oversight was established in the European experience.

Since the constitution represents the highest legal framework of a state, it is necessary to protect the principles upon which it is built. It serves as the genuine guarantee for the gateway of legitimacy and the safety valve to achieve the principle of legality. Moreover, it plays a crucial role in safeguarding the democratic system and ensuring the rights and freedoms of individuals.
In light of this, we question to what extent the constitutional judge contributes to the protection and preservation of the rights and freedoms of individuals. To address this issue, the topic will be divided into two parts: one focusing on constitutional oversight and the other on the Algerian constitutional judge and their role in safeguarding the rights and freedoms of individuals, considering the constitutional amendment of 2020.

1. **Oversight of the Constitutionality of Laws**

Constitutional rules remain mere theoretical principles unless they are ensured protection, respect, and elevation. The guarantee of respecting constitutions or overseeing the constitutionality of laws is one of the most important constitutional topics that have received special attention from constitutional jurists due to its close relationship with the rule of law. If the constitution supersedes all public authorities in the state, its elevation becomes an empty phrase without substance if state bodies can violate it without facing any consequences.

2 FORMS OF OVERSIGHT OF CONSTITUTIONALITY

2.1 **THE OVERSIGHT OF THE CONSTITUTIONALITY OF LAWS TAKES TWO FORMS IN DIFFERENT SYSTEMS**

First, the method of political oversight:

Some constitutions entrust the oversight of the constitutionality of laws to a political body to ensure the conformity of laws with the constitution. Political oversight is a preventive control, meaning it prevents the enactment of laws that violate constitutional provisions (prior restraint). It operates during the period between the drafting of the law and its issuance. However, one of the main criticisms of this approach is that it may deprive individuals of the right to challenge the unconstitutionality of laws before the oversight body, as it is limited to specific entities only.

Second, the method of judicial oversight:

This refers to the judiciary's verification of the conformity of laws with constitutional provisions. It can be divided into two approaches based on the impact resulting from the oversight of laws that violate the constitution: the annulment oversight (through original jurisdiction) and the abstention oversight (through incidental jurisdiction).
3 ANNULMENT OVERSIGHT

This method refers to challenging a law before the competent court and requesting its nullification\textsuperscript{iii}. It is a subsequent oversight of the enactment of the legal text. Through this method, an affected party can directly challenge the law before a specialized judicial body through an original lawsuit. They seek the annulment of the law due to its unconstitutionality. The plaintiff can file this lawsuit as an independent original claim, separate from any dispute. Initiating this lawsuit requires the plaintiff to have a genuine interest in nullifying the law, and it is not necessary for the law in question to have directly infringed upon the rights or interests of the plaintiff\textsuperscript{x}. It is sufficient for the law to potentially affect a right or interest\textsuperscript{x}.

The judgment issued by the court nullifying the law, after verifying its unconstitutionality, has absolute validity and applies to everyone. This leads to the final resolution of the dispute regarding the constitutionality of this law once and for all.

4 ABSTENTION OVERSIGHT

If the oversight is through the incidental jurisdiction by raising the issue of unconstitutionality, it is considered a defensive method. In this case, an individual who is affected by a specific law and doubts its constitutionality does not immediately file a lawsuit requesting its annulment. Instead, they wait until the law is applied to them in a specific lawsuit, and then they raise the issue of its non-application due to its unconstitutionality. Therefore, this method assumes that there is an ongoing lawsuit before the judiciary, whether it is a civil or administrative case, in which a specific law is intended to be applied. The concerned party raises the issue of its unconstitutionality and requests that it not be applied to the pending dispute.

1. Oversight of the Constitutionality of Laws in the Algerian Constitutional System

The idea of oversight of the constitutionality of laws in Algeria emerged directly with the issuance of the first constitution of the Algerian state. The drafters of the 1963 Constitution adopted the idea by explicitly establishing a body called the Constitutional Council. Its task was to rule on the constitutionality of laws and legislative orders at the request of the President of the Republic or the President of the National People's
Assembly. Article 64 stipulated that "the Constitutional Council rules on the constitutionality of laws and legislative orders upon the request of the President of the Republic or the National People's Assembly." However, this council did not come into practical existence and remained ink on paper due to the conflicts and disputes that arose at that time over who would assume leadership of the country, the party or the people. Within the context of this intervention in the functions and the party's dominance over political life, the establishment of the Constitutional Council was postponed, and this postponement was solidified by the coup that took place on June 19, 1965, where the provisions of the constitution were suspended and later abolished according to the declaration of June 19 and the decree of July 10, 1965.

After the adoption of the 1976 Constitution, its drafters deliberately avoided explicitly including the principle of oversight of the constitutionality of laws in any form, whether political or judicial.

Following the events of October 1988, the idea of oversight of the constitutionality of laws resurfaced with seriousness and was embodied in the 1989 Constitution. It established a Constitutional Council under the influence of the French system, entrusted with the task of overseeing the constitutionality of laws, regulations, and monitoring legislative and presidential elections. This remained the case in the 1996 Constitution and its amendment in 2016, albeit with differences in the composition of the council and some of its powers.

Second Item: The Algerian Constitutional Judge and their Role in Protecting Individuals' Rights and Freedoms in Light of the 2020 Constitutional Amendment

The Constitutional Court is considered the institution entrusted with ensuring respect for the constitution. It enjoys independence and was established by virtue of the 2020 constitutional amendment. For years, Algeria had known constitutional oversight exercised by the Constitutional Council, which was effectively provided for starting from the 1989 Constitution until the 2016 constitutional amendment. The Constitutional Court is an independent body tasked with safeguarding the constitution. However, it is not considered a supreme judicial authority and does not have any judicial jurisdiction in the sense of the jurisdiction enjoyed by the Supreme Court or the Council of State, as they are the two main bodies responsible for the judicial affairs of the ordinary and administrative judiciary systems.
**First Item: Examination of the Composition of the Constitutional Court and its Membership Requirements**

In contrast to the Constitutional Council, in which the three authorities shared equal representation with four members from each authority (including the President and Vice-President appointed by the President of the Republic, two elected by the National People's Assembly, and two elected by the Council of the Nation), the Constitutional Court has a different composition. It is worth noting that the members of the Constitutional Council served their duties for a period of eight years, with half of the members being renewed every four years. This composition ensured equal representation of the three authorities: four appointed by the President of the Republic (the executive authority), four elected by the parliament's two chambers, and four elected, two by the Supreme Court and two by the Council of State (the judicial authority).

While the composition of the Constitutional Council under the 1996 Constitution was as follows: nine members, three of whom were appointed by the President of the Republic, two elected by the National People's Assembly, two elected by the Council of the Nation, one member elected by the Supreme Court, and one member elected by the Council of State\textsuperscript{xv}.

It is noteworthy that the composition of the Constitutional Council under the 1996 Constitution (before its amendment in 2016) represented the three branches of government, but it tilted the balance in favor of the parliament in terms of the number of its representatives in the Constitutional Council compared to the representatives of the President of the Republic. The President was represented by three members, while the parliament had four members. As for the judiciary, it was represented by two members. However, the composition was dominated by political representation, considering that the judiciary, as mentioned earlier, was only represented by two members out of a total of nine members. Even for the remaining members, there was no legal requirement for expertise in the field of law, and they often had close ties to appointing authorities\textsuperscript{xvi}.

In contrast, the composition of the Constitutional Court, according to the recent constitutional amendment\textsuperscript{xvii}, is characterized by the absence of members elected from the parliament, as was the case previously. Consequently, political representation is explicitly excluded from the Constitutional Court, as indicated by the complete absence of any political nature in both the qualifications of its members and the requirement of non-partisanship\textsuperscript{xviii}, which will be explained later. Referring back to the composition, the
Constitutional Court consists of twelve members, four of whom are appointed, including the President\textsuperscript{xix}, by the President of the Republic. Two members are elected by the judiciary, where the Supreme Court elects one member from among its members, and the same applies to the Council of State. The new element is the enrichment of the composition of the Court with competent and experienced members in the field of constitutional law, who are the six members elected through general voting\textsuperscript{xx}.

The elected or appointed members are subject to a set of conditions, including:

1. **Age requirement**: A member of the Constitutional Court must have reached the age of fifty on the day of their election or appointment. This is in contrast to the members of the Constitutional Council, where the minimum age requirement was forty for membership\textsuperscript{xxi}.

2. **Experience and competence in the field of law**: A member of the Constitutional Court must possess experience in the law field of no less than twenty years, with a focus on constitutional law. This condition is logical and necessary for individuals entrusted with ensuring respect for the constitution through the exercise of constitutional oversight, upholding constitutional principles, and safeguarding public freedoms in the state. Additionally, the six members elected from university professors must hold the rank of professor. Furthermore, they should have studied constitutional law for at least five years, made scholarly contributions in this field, and be actively engaged in higher education institutions at the time of candidacy\textsuperscript{xxii}.

3. **Enjoyment of civil and political rights**: Members of the Constitutional Court must enjoy civil and political rights and should not be subject to any sentence depriving them of their freedom.

4. **Non-partisanship**: As previously mentioned, the constitutional founder's intention to exclude any form of political affiliation for members of the Constitutional Court is evident, ensuring neutrality and independence. Presidential Decree No. 21-304, which specifies the conditions and procedures for the election of constitutional law professors as members of the Constitutional Court, further emphasizes this requirement. It stipulates that the professor should not be affiliated with any political party for at least the three years preceding the election\textsuperscript{xxiii}. On the other hand, once the members of the Constitutional Court are elected or appointed, they must cease any other memberships, positions,
assignments, tasks, activities, or professions. This explicit guarantee ensures their neutrality and independence, along with their enjoyment of immunity.

However, it should be noted that the President of the Constitutional Court, unlike the members of the Constitutional Court, must meet the same requirements as the President of the Republic, except for the age requirement, as stated in Article 188/1 of the Constitution.

The term of office for members of the Constitutional Court is six years, which is shorter compared to the previous term of office for members of the Constitutional Council, which was eight years with half of the members being renewed every four years.

As for the members of the Constitutional Court, excluding the President who serves a six-year term, the members assume their duties for a single term of six years with a renewal of half the number of members every three years. How is this renewal process carried out?

Referring to the internal regulations of the Constitutional Court, the renewal of members' terms takes place every three years within the 90 days preceding the expiration of their current term. The semi-annual renewal process includes two members appointed by the President of the Republic, excluding the President of the Constitutional Court, one member elected from the two members elected by the Supreme Court and the Council of State, and three members elected from the six members elected by constitutional law professors. The semi-annual renewal is also conducted through a public drawing session chaired by the President of the Constitutional Court and attended by the members.

The second Item: the oversight exercised by the Constitutional Court and its role in protecting the rights and freedoms of individuals. As previously stated, the Constitutional Court is entrusted with ensuring respect for the constitution, and in doing so, it carries out a range of powers. What are the new developments in this regard according to the constitutional amendment of 2020?

Within its constitutional powers, the Constitutional Court exercises three types of oversight over the constitutionality of laws: conformity review, constitutional review, and normative unconstitutionality challenge. However, the Court's actions are not automatic and are subject to a notification mechanism.

Firstly, conformity review occurs in two cases:
1. Conformity of organic laws with the constitution: This review becomes mandatory after the approval of these laws by the parliament and before their publication in the official gazette.

2. Conformity of the internal regulations of both chambers of parliament (the internal regulations of the National People's Assembly and the internal regulations of the Council of the Nation): This review takes place after the approval of each chamber's internal regulations.

Conformity review of organic laws and the internal regulations is part of mandatory oversight. The President of the Republic must notify the Constitutional Court of the necessity to review the conformity of organic laws with the constitution, following their approval by the parliament. The Constitutional Court then issues a decision regarding the entire text.

The Constitutional Court adjudicates the conformity of the internal regulations of both chambers of parliament with the constitution, in accordance with the procedures mentioned in the preceding paragraph. Furthermore, referring to the organic law that specifies the procedures and methods of notification and referral before the Constitutional Court, in the field of oversight of the conformity of organic laws and the internal regulations of both chambers of parliament with the constitution, the President of the Republic notifies the Constitutional Court through a letter accompanied by the text of the relevant organic law. Similarly, when it concerns the conformity of the internal regulations, the notification is accompanied by the text of the subject matter. The notification letter is recorded, along with its date of receipt, in the Constitutional Court's registry of notifications.

Constitutional oversight of executive orders is mandatory. The constitutional amendment of 2020 explicitly stipulates, through Article 142/2, the obligation for the President of the Republic to notify the Constitutional Court regarding the constitutionality of the orders issued by the President either in cases of the National People's Assembly being vacant or during parliamentary recess, specifically in urgent matters. The article sets a ten-day deadline for the Court to render a decision, as confirmed by Article 6 of Organic Law 22-19, which specifies the procedures and methods of notification and referral before the Constitutional Court, as well as Article 9 of the regulations that define the working rules of the Constitutional Court.
**Secondly, Optional Oversight:** Regarding the constitutionality of treaties, laws, and regulations, the Constitutional Court can be notified by constitutionally authorized entities, including the President of the Republic, the President of the Council of the Nation, the President of the National People's Assembly, the Prime Minister, or 40 deputies from the National People's Assembly, or 25 members of the Council of the Nation.

Regarding treaties, the Constitutional Court can be notified about their constitutionality before their ratification. As for laws, the Constitutional Court can be notified about their constitutionality before their issuance.

Similarly, regulations issued by the President of the Republic can be notified to the Constitutional Court regarding their constitutionality within one month from the date of their publication.

Furthermore, according to the recent constitutional amendment, the Constitutional Court, established under the latest constitution, rules on the compatibility of laws and regulations with treaties under the same conditions mentioned earlier. This ruling is made through notification by the authorized notifying entities mentioned earlier, accompanied by a reasoned notification letter and the text of the subject matterxxxii.

In addition to the above, the Constitutional Court can be notified in two other casesxxxii:

1. In the event of a dispute between constitutional authorities, the Constitutional Court can be notified by the constitutionally authorized entities regarding the disputes that may arise between the constitutional authorities. The Constitutional Court renders a decision within a maximum period of thirty days from the date of notification, based on a resolutionxxxiii.

2. Interpreting a constitutional provision or multiple provisions through notification to the Constitutional Court by the notifying entities. In such cases, the Constitutional Court expresses its opinionxxxiv, unlike the other aforementioned cases where the Constitutional Court issues a decision.

**Thirdly: Referral of Unconstitutionality:**

When one of the parties in a trial before a judicial body claims that the legislative or regulatory provision upon which the outcome of the dispute depends violates their rights and freedoms guaranteed by the constitution, it is possible to notify the
Constitutional Court of the claim of unconstitutionality based on a referral from the Supreme Court or the Council of State.

Referring the case of unconstitutionality has conditions, procedures, and requirements that must be followed. Not every claim of unconstitutionality is accepted, as the judicial authority examining the case must immediately decide on the claim, after consulting the public prosecution or the state's governor, regarding whether the case of unconstitutionality should be sent to the Supreme Court or the Council of State, depending on the circumstances.

Moreover, the claim of unconstitutionality must satisfy a set of conditions before it can be sent to the Supreme Court or the Council of State, including:

- It must be based on the legislative or regulatory provision that is objected to, and it forms the basis of the dispute's outcome or subsequent proceedings.
- The legislative or regulatory provision objected to should not have previously been declared as constitutional by the Constitutional Council or the Constitutional Court, except in cases of changed circumstances.
- The claim must be serious in nature.

Afterwards, the decision to refer the claim of unconstitutionality to the Supreme Court or the Council of State is made, accompanied by the submissions and memoranda of the parties involved, within ten days of its issuance. This decision is not subject to appeal.

1. Concerning the procedures before the Supreme Court and the Council of State:

Upon receiving the decision to refer the claim of unconstitutionality, the Chief Justice of the Supreme Court or the Council of State seeks the opinion of the Public Prosecutor or the State's Governor. The motion is submitted within a maximum period of five days, allowing the parties to submit their written observations.

The decision to refer the claim of unconstitutionality to the Constitutional Court is made within a period of two months from the date of receiving the decision of unconstitutionality. Furthermore, the judicial authority that sent the claim of unconstitutionality is notified of the decision of the Supreme Court or the Council of State, which is responsible for notifying the parties within a period of ten days from the date of its issuance.
It should be noted that there is a case where the claim of unconstitutionality is automatically referred to the Constitutional Court if the Supreme Court or the Council of State does not decide within the legal timeframe. In the case of the Supreme Court or the Council of State rejecting the referral of the claim of unconstitutionality to the Constitutional Court, a copy of the rejection decision is received, providing the reasons for refusal. The rejection decision is also sent to the judicial authority before which the claim was raised, and this authority is responsible for notifying the parties to the case within a period not exceeding five days.

2. Referral of Unconstitutionality before the Constitutional Court:

Regardless of whether it is a regular or automatic referral decision, the Constitutional Court informs the President of the Republic immediately upon receiving the decision to refer the claim of unconstitutionalityxxxvi. It also informs the President of the National Assembly, the President of the People's National Council, and the Prime Minister or the Head of Government.

1. The Constitutional Court decides on the claim of unconstitutionality by issuing a decision within four months based on a causative decision from the courtxxxvii. This decision is communicated to the President of the Republic, the President of the National Assembly, the President of the People's National Council, and the Prime Minister or the Head of Government. The decision is also communicated to the Supreme Court or the Council of State, depending on the case, to inform the judicial authority before which the claim of unconstitutionality was raisedxxxviii.

5 CONSEQUENCES OF CONSTITUTIONAL COURT DECISIONS

It is worth noting that decisions of the Constitutional Court are made by the majority of its present members, and in case of a tie, the vote of the Chief Justice tilts the balance, except for organic laws that are decided by an absolute majority of the members.

According to the Constitution, specifically Article 198 in its final paragraph, the decisions of the Constitutional Court are final and binding on all public, administrative, and judicial authorities. Judges are also bound to apply the decisions of the Constitutional Court in exercising their functions. However, as mentioned earlier, the only case in which the Constitutional Court expresses an opinion is when it is notified about the interpretation of a judgment or several constitutional provisions.
Therefore, based on the decisions of the Constitutional Court, the following consequences arise in each case:

- Regarding treaties, agreements, or conventions, if the Constitutional Court decides their unconstitutionality, they are not ratified.
- Regarding laws, if the Constitutional Court decides their unconstitutionality or determines their non-compliance with an international treaty, they are not issued.
- Orders that the Constitutional Court determines as unconstitutional lose their effect from the day the decision of the Constitutional Court is issued.
- Regulations that the Constitutional Court determines as unconstitutional or determines their non-compliance with an international treaty lose their effect from the day the decision of the Constitutional Court is issued.
- Concerning the claim of unconstitutionality, if the Constitutional Court decides that a legislative or regulatory provision is unconstitutional, it loses its effect from the day determined by the decision of the Constitutional Court.

6 CONCLUSION

constitutional oversight is considered one of the most important guarantees for safeguarding individuals' rights and public freedoms. Due to the supreme status of the constitution, legal texts, in their broad sense, should not contradict it. Since the issuance of the 2016 Constitution, Algeria has recognized the claim of unconstitutionality as a procedure that allows any interested party before ordinary or administrative judicial entities to claim that the legislative or regulatory judgment applied to the dispute, which determines its outcome, violates their rights and freedoms guaranteed by the constitution. After the constitutional amendment of 2020, the Constitutional Court became an independent institution entrusted with ensuring respect for the constitution with expanded powers.

Regarding the powers of the constitutional judge, in addition to what has been explained, it should be noted that as a guarantee for rights and freedoms, if the President of the Republic submits a constitutional amendment to the Constitutional Court, it issues an opinion on it, provided that it does not infringe upon human rights and the rights and freedoms of citizens.
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2. Ibrahim Mohamed Ali - "Al-Musliha fi al-Da'wa al-Dusturiya" (Interest in Constitutional Litigation), published by Dar Al-Jami'ah, Beirut, Lebanon.


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3. Abdelhak Belfaqih, Constitutional Judiciary, Paths in Thought, Politics, and Economics - Issue 37, Year 12, p. 17.
14. www.cour-constitutionnel.dz
15. Article 164 of the 1996 Constitution.
17. Presidential Decree No. 21-455 dated November 16, 2021, regarding the publication of the nominal composition of the Constitutional Court, Official Gazette No. 88 of the year 2021. Also, Presidential Decree...
21-455 regarding the publication of the nominal composition of the Constitutional Court (correction), Official Gazette No. 7 of the year 2022. Additionally, Presidential Decree 21-435 dated February 1, 2024, amending Presidential Decree 21-455, Official Gazette No. 8 of the year 2024.

xviii Article 187, paragraph 4.

xix Presidential Decree No. 21-435 dated November 16, 2021, appointing the President of the Constitutional Court, Official Gazette No. 88 of the year 2021.

xx Article 186 of the Constitutional Amendment for the year 2020.

xxi Article 184 of the Constitutional Amendment for the year 2016.

xxii Article 9 of Presidential Decree No. 21-304 dated August 4, 2021, specifying the conditions and procedures for the election of constitutional law professors as members of the Constitutional Court, Official Gazette No. 60 of the year 2021.

xxiii The final paragraph of Article 9.

xxiv The Internal Regulations of the Constitutional Court, Official Gazette No. 75 of the year 2022.

xxv Articles 10 to 17 of the same Internal Regulations.

xxvi The provision of “submission for unconstitutionality” was first introduced in the Algerian constitutional system under the Constitutional Amendment of 2016, according to Article 188, which states: “The Constitutional Council may be notified of a submission for unconstitutionality based on a referral from the Supreme Court or the Council of State, when one of the parties in the trial before a judicial body claims that the legislative act upon which the dispute depends violates the rights and freedoms guaranteed by the Constitution.”

Subsequently, Organic Law No. 18-16 was issued on September 2, 2018, which specifies the conditions and procedures for the application of submission for unconstitutionality. However, it was later repealed by Article 44 of Organic Law 22-19 dated July 25, 2022, which defines the procedures and methods of notification and referral before the Constitutional Court, Official Gazette No. 51 of the year 2022.

xxvii Article 190, paragraphs 5 and 6.

xxviii Organic Law No. 22-19 dated July 25, 2022, specifies the procedures and methods of notification and referral before the Constitutional Court, Official Gazette No. 51 of the year 2022.

xxix Article 9 and Article 10 of the same Organic Law.

xxx Article 9 of the specific regulations for the operation of the Constitutional Court, Official Gazette No. 4 of the year 2023.

xxxi Article 3 of Organic Law 22-19, mentioned previously.

xxsii Article 12 of the Constitutional Amendment for the year 2020.


xxvu Article 192/2.

xxvy Article 21.

xxvi Article 19 of the regulations specifying the rules of operation of the aforementioned Constitutional Court.

xxvii Article 195 of the Constitutional Amendment for the year 2020.

xxviii Article 43 of the aforementioned Organic Law 22-19.