

The PQC adoption in France and Algeria : different motives same limits

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Abstract:

The 2016 constitutional amendment in Algeria adopted the primary question of constitutionality mechanism after being affected by the French constitution of 2008, which, after years of rejecting the posterior constitutional review , retracted its position for several considerations, as it established a new system mediating both the American and the European model of judicial constitutional review , the french new mechanism has some characteristics that made of it a unique oversight .

This system, despite its importance knew many limits that affected its effectiveness in the field of individuals' protection of their rights and freedoms guaranteed by the constitution .

Keywords: Rights and freedoms , individuals , judicial review , constitutional court , constitutional council .

Introduction

After the adoption of the prior constitutional as a single review in France proved many deficiencies , the need arose to amend the French constitution in a way that establishes the adoption of the constitutional

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review posterior to the entry into force of the legal text, but the French constitutional founder went much further when he established a unique constitutional oversight system that differs from both American and European model for judicial review of the constitutionality of laws called: "**The primary question of constitutionality**" often referred to under the acronym **PQC** .

Influenced by the French constitutional founder, eight years later, the Algerian constitutional founder of 2016 established the mechanism of primary question of constitutionality even though the motives of each one differs from his French homologue .

This unique French mechanism of posterior constitutional review has many characteristics that made it at the same time mediating between the American and European classic models of judicial review of constitutionality , but at the same time it departs from them in other elements in a way that made it in line with the nature of the French political system .

This unique French system, despite it was considered a real revolution in the field of constitutional review , but it proved a number of limits, some of which are legal , and some of them are theoretical caused by the cautious adoption of posterior oversight .

This paper seeks to provide an examination of constitutional review as established in the present constitution of both France and Algeria , it attempts to provide an overview and analysis of its background , the aim of this paper is therefore to examine the following issues :

- The circumstances for adopting posterior constitutional review in France and Algeria ?
- The characteristics of the French primary question of constitutionality system compared to both the American and European models of judicial review ?
- The legal and theoretical limits that prevented the effectiveness of this unique system of posterior constitutional review ?

Section 1- The PQC adoption circumstances

The type of constitutional system is consistent with the type of constitutional review adopted, therefore, France has always preferred to adopt the political model of constitutional review by a political body, and in a single form that is the prior control of the entry into force of the legal text, however in 2008 and for several considerations, the French constitutional founder adopted another form of constitutional oversight that follows the entry into force of the legal text and by a referral by individuals, influenced by it the Algerian Constitutional amendment of 2016 adopted this same form of constitutional review, but for completely different considerations and with a different vision and conception.

The 2016 constitutional amendment in Algeria came with a set of reforms, among them the reform of the constitutional review system through an attempt to consolidate the composition of the Constitutional Council while strengthening guarantees of its independence and the independence of its members and expanding the right to refer to the Constitutional Council to include individuals in addition to Constitutional institutions, which led to the adoption of this new type of constitutional review.

In fact, the 2016 constitutional amendment reflected the desire of the constitutional founder to strengthen the judicial character of the Constitutional Council, as it is a body charged with ensuring respect for the constitution after it was overshadowed for a long time by the political character for several considerations, therefore, the constitutional founder of 2016 chose to highlight and strengthen the judicial aspect of the Constitutional Council and adopted the mechanism of question of constitutionality available to all, and perhaps this is what explains the strengthening of the composition of the Constitutional Council with a greater number of judges in 2016, so that the judicial authority became represented by four judges instead of only two: two elected from the Supreme Court (court of cassation) the head of the ordinary judicial system and two from the State Council the head of administrative judicial system (currently the constitutional court contains two judges only after the amendment of the constitution in 2020).

What is certain is that the Algerian constitutional founder of 2016 was affected by his French founder of the year of 2008, as the constitutional amendment in France, according to Law 724/2008 and on the initiative of the French President Sarkozy at the time, established a new type of constitutional review , and what was considered a revolution in the field of censoring the constitutionality of laws ,when the new article 61-1 provided that :

“ If, during proceedings in progress before a court of law, it is claimed that a legislative provision infringes the rights and freedoms guaranteed by the Constitution, the matter may be referred by the *Conseil d'Etat*

or by the
Cour de Cassation

to the Constitutional Council which must render its decision within a determined period. An institutional law shall determine the conditions for the application of the present article ”

Parliament enacted the institutional law 2009/1523 to implement article 61-1 in November 2009, and the Constitutional Council held that the act conformed to the Constitution in early December , the institutional law to implement article 61-1 was promulgated on December 10, 2009, and entered into force on March 1, 2010¹ .

The inclusion of this procedure was considered an institutional revolution in the French system , but it should be noted that this constitutional amendment , was preceded by two previous attempts: the first in 1989 and the second in 1993 when then President Francois Mitterrand presented on the initiative of the government, a constitutional amendment project that would affect the requirements 61, 62, and 63 of the French Constitution of 1958, allowing the individual litigant to raise a question of constitutionality before the

¹ Martin A. Rogoff «Fifty years of constitutional evolution in France: The 2008 amendments and beyond », *Jus Politicum*, n° 6 p 21 available at [\[http://juspoliticum.com/article/Fifty-years-of-constitutional-evolution-in-France-The-2008-amendments-and-beyond-373.html\]](http://juspoliticum.com/article/Fifty-years-of-constitutional-evolution-in-France-The-2008-amendments-and-beyond-373.html)

constitutional council , at the same time, the government submitted to the National Assembly an institutional Law that included an amendment to the provisions contained in the November 7, 1958 decree regarding the internal rules of the constitutional council.¹

The constitutional amendment initiative was reinstated again on March 10, 1993, but both projects failed, because the project to expand the right to refer to the Constitutional Council to include citizens had those who strongly oppose it at the time, and they are the opinion holders in favor of prior censorship, which they describe it as a quick censorship that occurs within specific deadlines of one month, (in the event of urgency, the deadline is reduced to eight days) and that this type of oversight ensures adequate protection for legal rapports where the dispute over the constitutionality of the law is decided upon before the entry into force of the law, and once it is examined , this means that it will not be the subject of an another examination before the Constitutional Council, and the opinion opposing this initiative went to the view that granting individuals the right to raise the question of constitutionality of laws that came into application has several defects, as the constitutional dispute will not be closed in a limited and short time and may extend for several months, and this leads to legal instability .

The addition of article 61-1 to the Constitution in 2008 is revolutionary in two aspects: first, it allows an individual litigant to raise a question of constitutionality before the Constitutional Council indirectly and second, it allows the Constitutional Council to rule on the constitutionality of a law already entered in force and to invalidate it , article 62-2 prescribes the legal effect of a declaration of unconstitutionality :

« A provision declared unconstitutional on the basis of article 61-1 shall be repealed as of the publication of the said decision of the Constitutional Council or as of a subsequent date determined by said decision. The Constitutional Council shall

¹ Favoreau Louis et autres , Droit constitutionnel , ed Dalloz , 18 ème édition , paris , p 354 .

determine the conditions and the limits according to which the effects produced by the provision»

The institutional law N° 2009/1523 dated 10/12/2009 related to the implementation of the article 61-1 , provides that a litigant in the ordinary court system or in the administrative court may request the court of law to refer a question of the constitutionality of a law to the Constitutional Council , such referral can be made only by the supreme court of each order : the Council of State for the administrative judicial system or the Court of Cassation for the ordinary judicial system ¹ .

The institutional law related to implement article 61/1 contains certain conditions that must be satisfied for a referral by the Court of Cassation or the Council of State: as summarized by the French Council of State in one of its first referrals : “the Constitutional Council may be seized of the priority question of constitutionality on the triple condition that the contested provision is applicable in the litigation or to the procedure, that it has not already been declared to be conform to the Constitution by the Constitutional Council, unless there is a change of circumstances, and that it is not devoid of a serious character”¹, the French constitutional Council rendered its first QPC decision on May 28, 2010 , in that decision it held that certain provisions of a few finance laws dealing with military retirement pensions did not conform to the Constitution because they contravened the principle of equality contained in article 6 of the Declaration of 1789 , article 23-10 of the institutional law related to the QPC provides that “ the parties are invited to submit written arguments, and then to participate in oral arguments before the Constitutional Council and that the hearing shall be open to the public...”², allowing formal presentations by attorneys for the parties and requiring that these sessions be open to the public are innovations

¹ Martin A. Rogoff «Fifty years of constitutional evolution in France: The 2008 amendments and beyond », *Jus Politicum*, n° 6 p 23 available at <http://juspoliticum.com/article/Fifty-years-of-constitutional-evolution-in-France-The-2008-amendments-and-beyond-373.html>

in the Council's procedure intended to increase the access and participation of individuals and to enhance transparency ¹ .

The fact that in less than two years the Council has ruled on more concrete review cases than in 25 years of abstract review gives us a clear idea that constitutional review in France currently changes a lot.

It is worth noting that the "priority question of constitutionality" , was found in France in order to solve a dilemma long known in the French system, caused by the absence of posterior oversight over the constitutionality of laws, as the matter was confined to France before the year 2008 was based on one type of censorship, which is the prior censorship and with only referral from one of the officials specified in the constitution , however, it is strange that the matter here in Algeria is completely different, as the Algerian regime distinguished itself from the French regime and until 2016 by adopting two types of prior and posterior constitutional oversight , including prior Compulsory censorship , as it was stated in Article 165 of the then 1996 Constitution, the first paragraph of which (the same as the first paragraph of Article 155 of the 1989 Constitution) :

« The Constitutional Council, in addition to the powers explicitly delegated to it by other provisions of the constitution, rules on the constitutionality of treaties, laws and regulations, either by opinion before they enter into force , or by decision in the opposite case »

Meaning that the Algerian constitutional founder went against the French founder from the beginning when he adopted from the beginning the constitutional review of both the prior and the posterior types, while the French constitutional founder opted from the beginning for the adoption of one single type of constitutional oversight, which is only the prior one , so it was expected that the French founder would back down from his position by taking by the second type of posterior constitutional review as a form of remedy for the defects of prior constitutional oversight which leads us to say that certainly the motives for adopting the system of " The priority question of constitutionality " are different in Algeria than in France .

¹ Martin A. Rogoff op-cit , p 23 .

Section2-The PQC characteristics

The French constitutional founder opted to adopt a distinct form of posterior constitutional oversight that mediates both the classic American and European models of constitutional judicial review, so that it approaches each of them at certain points and at the same time moves away from each of them at other points in a way that made it a unique kind of posterior control .

A). A unique constitutional review :

What distinguishes this type of constitutional review under Article 188 of the 2016 is that it is a unique censorship , as it is a distinct review that mediates both the European and American models of judicial review affected by the French constitutional founder of 2008 who adopted a unique model of judicial constitutional review whereby the latter approaches the American model in terms of opening the right to raise the constitutional lawsuit for all persons affected by a legal provision that is supposed to be unconstitutional, but at the same time it moves away from the American model in that the constitutional lawsuit under it aims to abolish the law in which it is supposed to be unconstitutional, that is, it is an offensive suit aimed at the legal provision contrary to the constitution, while the matter under the American model is limited to merely excluding the application of this legal provision and abstaining from its application on the litigant in this specified dispute .

At the same time, the constitutional suit according to the French model approaches the European model of the constitutional suit (Germany and Spain), in that its character is central, that is, the jurisdiction of one court, which is the Constitutional Court (Constitutional Council in France) in examining the extent of the constitutionality of the legal provision subject of the constitutional suit , it approaches the European model in terms of its goal, which is to completely abolish the legislative provision instead of merely abstaining from its application, as is the case in the American model. Therefore, it is a unique model of constitutional review that mediates both the classic American and European models, whereby it takes

from each model what is in line with the nature of the French constitutional system and what is in line with the nature of the constitutional oversight prevailing by any political control by the Constitutional Council, which is the same direction that the constitutional founder Algerian of the year of 2016 took .

B). A remedial review :

After the idea prevailed in France that prior entering in force of the legal text censorship is better than the posterior one because it is preventive and because prior constitutional review achieves the legal security for people instead of applying legislation for long years while it is threatened by abolishment at any moment , and after the idea that posterior constitutional censorship is an assault on the French principle of the supremacy of legislation as an expression of the popular will has long prevailed , both the French jurisprudence legislator , have returned and believed that posterior censorship by means of the priority question of constitutionality raised by litigants and with a referral from the judicial bodies is the only remedy for the defects of prior constitutional oversight.

The prior constitutional review, despite its effectiveness and speed , does not substitute for posterior constitutional review as it faces the negative consequences or infringement of the law's application of rights and freedoms that may not be known or clear when preparing the law and before its implementation , beside some legislations are not presented to prior constitutional oversight because their presentation is not compulsory, as is the case with institutional laws , or new constitutional principles (such as the human right to a healthy environment) may be introduced that were not in place when the prior constitutional control was completed on some legislations , or the Constitutional Council may change its interpretation , then it is necessary to examine the constitutionality of some texts in light of the new interpretation of the Constitutional Council ¹, that's why the

¹ Favoreau louis , op-cit , p 354 .

posterior constitutional review came in France in 2008 as a form of remedial to the deficiencies of the prior review .

C). An objective Specific review :

As Article 188 of the 2016 algerian constitution (currently Article 195 of the 2020 Constitution) was clear in this regard :

« If, during proceedings in progress before a court of law, it is claimed that a legislative or a regulatory provision infringes the rights and freedoms guaranteed by the Constitution, the matter may be referred »

The constitutional suit in this case is objectively defined, as it is not permissible for one of the parties in an ordinary or administrative dispute to raise the question of constitutionality except the possibility that the contested provision applicable in the litigation violates one of the rights or freedoms guaranteed by the constitution, one of the parties may not adhere to any defect other than the unconstitutionality defect , as he cannot, for example, adhere to one of the formal defects that may affect the legal provision , one of the formal defects excluded is that the defect related for example, to the Parliament's transgression of the field specified for it in both articles 139 and 140 of the 2020 the constitution, or as if the matter related to a law that had to come out in the form of institutional law, but it did not respect the appropriate forms and procedures .

It is clear that the French founder and later the Algerian founder did not want to release the right of the individual to adhere to any constitutional rule in order to claim that the text to be applied to it , violates the rights and freedoms guaranteed by the constitution , including: the constitutional rules related to the distribution of competencies between the state powers and those related to the approval of laws .

There is no doubt about the importance of the excluded constitutional rules , especially those related to the distribution of powers between the powers , as they represent the essence of the constitution , that's why this unique system has been subjected to severe criticism by many politicians and jurists, especially since these excluded rules have an undoubted link with rights and freedoms .

D). The concrete nature of the constitutional dispute:

Given that the constitutional judge's intervention to examine the constitutionality of the legal provision does not take place unless it is necessary in order to resolve the existing dispute between the litigants , meaning that the constitutional lawsuit is only carried out on the occasion of a prior ongoing judicial dispute, on the other hand, this legal provision must harm the party who argued that it is unconstitutional , in contrast to the constitutional lawsuit according to the European model , in which there is no requirement for the existence of an ongoing conflict and that assumed that there is any potential harm , because it can be moved directly before the Constitutional Court by anyone, whether it is an individual or an official, which inevitably denies its concrete nature ¹ .

Noting that the constitutional article begins with: “The Supreme Court” instead of “the Council of State,” while Article 61 of the French Constitution amended in 2008 took care of arranging each head of the judicial systems when it started with the Council of State instead of the Court of Cassation (the supreme court in Algeria noting that the term Supreme Courts is supposed to include both the Court of Cassation and the Council of State) which is the most correct, since the administrative dispute is the one in which it is most likely to prejudice the rights and freedoms in order to consider the primacy of the public interest represented by the public party in the administrative dispute .

E). The central character of the constitutional suit :

In contrast to the decentralized character of the constitutional suit according to the American model, where all courts are competent to examine the extent of the constitutionality of the text and then decide its constitutionality or not, so that the judge becomes himself a constitutional judge ², the constitutional suit according to the French model and similar to the European model is characterized by the

¹ Benabbou Fatiha ,Introduction au droit constitutionnel , OPU , 2015, Alger , p 93 .

² Chagnollaud Dominique , Droit constitutionnel contemporain , Dalloz , 8^{ème} edition , 2015 , Paris, p 76

central character, as the one body that has the right to rule on the constitutionality of the text contested before it , is the Constitutional Council in France , the constitutional court in Algeria , Germany , Spain , and Egypt

F). The constitutional suit is a legal not a subjective suit :

Therefore, it is not a personal lawsuit, as the Constitutional Court (Constitutional Council in France) does not decide on the question of constitutionality according to the logic of the ordinary judiciary, as it does not prosecute any special situation, but rather decides on the relation of the legal provision contested with the constitutional text, which makes the constitutional suit a legal suit not personal linked to a changing situation , and thus it is characterized by the existence of a distance between the lawsuit subject and the question of the constitutionality of the laws .

Therefore, the posterior constitutional review according to the French model is considered a legal suit where the intervention of the Constitutional Council is limited to abstract observation of the text and to examine the extent to which the legal requirements conform to the constitution without resolving the dispute between the parties because it is a separate suit from the rest of the components of the original lawsuit the moment it is raised until the time it is ruled by the Constitutional Council (the constitutional court in Algeria) .

Section: The PQC limits

Dispite that the primary question of constitutionality in France was considered at the time a revolution in the matter of constitutional oversight , and yet it did not escape the criticism due to limitations due to legal and theoretical restrictions that characterized this French mechanism from the beginning .

A). The rational character of the constitutional suit :

Or what is known by the filtering system for unconstitutionality pleadings, by screening them in order to distinguish serious defenses

from others, as the French and the Algerian constitutional founder imposed on the judges to refer the question of the constitutionality to the Supreme Courts (the Court of Cassation or the State Council), in this case, the discretionary power to refer the pleading or not to the Constitutional Council, and in order to avoid the accumulation of petitions of the question of the constitutionality before the Constitutional Council, unlike the European model which allows the individual the right to refer directly before the Constitutional Court, as is the case in Italy, Germany, Belgium and Spain, although experience has shown that these countries do not suffer from this accumulation that was feared by the French founder, and thus the filtering system adopted by the unique French model, has become a double-edged sword, on one hand it is a mean of preventing abuse of this procedural right by the litigants maliciously in order to prolong the conflict, but on the other hand it transformed the judge into a passive constitutional judge that prevents individuals from reaching their real constitutional judge.

B). The constitutional suit concerns only legislative and regulatory provisions:

As the Algerian constitutional founder, influenced by the French one, restricted the scope of the constitutional suit to legislative or regulatory provisions only, so it does not extend to the rest of the other legal provisions of varying source and legal value, we mention, for example, international treaties that are concluded by the President of the Republic in accordance with the provisions of the constitution, while he opened the right to referral to the Constitutional court to each of the officials stipulated in the constitution before each of the ordinary laws, regulations and international treaties. It is strange that international treaties concluded by the president of the republic in accordance with the provisions of the constitution were excluded from constitutional review after referral (except for international treaties mentioned in the article 102 of the 2020 constitution truce and peace treaties that are compulsorily subject to a prior oversight by the Constitutional court after referral from the president of the republic).

B). The defects of the unconstitutionality extend only to the defect of the violation of constitutional rights and freedoms :

The Algerian constitutional founder was affected by the French founder when he limited the unconstitutionality of legal provisions to one defect, which is infringing the rights and freedoms guaranteed by the constitution , while he completely ignored the external procedures stipulated in the constitution , as the parliament's deviation from the field specified for it by the constitution, despite that the oversight of the defect of lack of jurisdiction in all its forms by the constitutional judge is necessary and important to face the concentration of power or the abuse of one authority on another .

The defect of form and procedures which has been completely overlooked by the external unconstitutional aspects, or legal text violating the procedural conditions required by the constitution, whether it is related to its initiation, approval by the two chambers of the parliament , although the constitutional jurisprudence differed in determining the scope of the rules of form and procedures that make the text in violation of the constitution , which can be divided into two main views ¹ :

- The first opinion: goes to classify the procedural constitutional rules into substantive and other non-substantive , for the first type its violation results in the unconstitutionality of the law.
- As for the second opinion: it goes that all the procedures and formalities mentioned in the constitution are considered essential and must be followed without distinction between them, as they all have one rank and equal importance, and their violation will result in unconstitutionality .

D). The constitutional suit does not affect the legal provisions that have already been examined by the Constitutional court :

As stated in Article 20 of the institutional law N° 22/19 in its second paragraph

¹ عصام سعيد عبد أحمد ، الرقابة على دستورية القوانين ، الطبعة الأولى ، المؤسسة الحديثة للكتاب ، لبنان ، 2013 ، ص 568 .

« that it has not already been declared to conform to the Constitution by the reasoning or the disposition of a decision of the Constitutional Court, unless there is a change of circumstances »

In the sense that the article excluded the legal provision that had previously been declared conform to the constitution by the Constitutional Court either by prior and compulsory referral by the President of the Republic if the matter was related to an institutional law, or with facultative referral from one of the officials if the matter is related to an ordinary law or by referral from individual litigants , since the decisions made by the constitutional court are final and binding for all other courts and other governmental authorities

However, the same article came back and stated that :

« ...unless there is a change of circumstances.... »

Despite the elasticity of this expression, as the changing circumstances in this case may be understood as legal circumstances including the constitutional conditions because it may envisage the development of new constitutional principles that were not in place when examining the constitutionality of the legal provision contested by the constitutional suit, and it may also be envisaged that the Constitutional Council (Constitutional court in Algeria) would have changed its interpretation of the constitutional rule in question, then it is necessary to re-examine the constitutionality of this legislative provision in light of the new interpretation of the Constitutional Council.

Certainly, this condition was mentioned in the necessary conditions for the question of the constitutionality before the judge of the court law, and once again the judge turns into a constitutional judge who has the authority to interpret and assess the extent of "changing circumstances , or the emergence of a new fundamental principle of the laws of the Republic, or the recognition of a new constitutional goal, or just a new interpretation of an existing constitutional text by the constitutional judge .

E). The constitutional suit is not of public order :

Given that it is not possible for an ordinary or administrative order judge's , regardless of the degree of litigation, to raise the question of constitutionality on his own, that is, automatically in the event that it is not pleaded by one of the litigants , and this is the same direction

taken by the Algerian legislator as it was explicitly stated in Article 17 of the institutional law N° 19/22 specifying the terms and conditions to implement the question of constitutionality .

F). The question of constitutionality does not extend to acts of sovereignty (political acts)

Acts of sovereignty, government acts, or political acts are the only exception to the principle of legality, and these actions are among the most dangerous characteristic of the administration because they allow it to issue administrative decisions that it is not asked about before any judicial or legislative body and whose unconstitutionality may not be raised .

Therefore, many initiatives emerged that did not enter into force calling for the amendment of the constitution with the aim of granting the Constitutional Council alone the control of actions that are described as acts of sovereignty and that they have to do with rights and freedoms.

G). The intervention of the constitutional judge is a restricted constitutional review:

The principle is that the legislator has wide discretionary power regarding the suitability of legislation or the so-called motives , meaning that oversight over its convenience and motives does not extend to the Constitutional review, but rather is one of the releases of the legislator's exercise of his power in the legislative field, the court does not exercise over the laws except technical oversight of an abstract legal nature, meaning that the court deals only with technical aspects of constitutional oversight without those related to the necessity of legislation or its appropriateness , and it may not address its motives as well.

However, another trend supported by some jurists goes to say that the constitutional judiciary review can be extended to the suitability of a legislation, who claim that judicial review extends to the suitability of legislation , the economic and social facts or conditions based on clear evidence expressed by J. Rivero, which proceeds from the initial starting point of each activity related to the establishment of a legal rule, as it therefore implies in some of its elements certain factual

issues sufficient for the judge to take them into account when making judgments related to the extent of conformity of this rule with the provisions of the Constitution ¹ .

In addition, the French Constitutional Council and the Supreme Constitutional Court in Egypt started a new direction that is to control the legislative assessment of facts through the criterion of overestimation in the context of criminal penalties and their proportionality with the crimes committed, but this trend was only applied in the narrowest limits within the framework of the same sanctions, which argues that the constitutional judiciary can extend its oversight over the proportionality between the legislative instrument and the facts that prompted its determination within a specific framework represented by punitive laws , in order to give effective protection to personal freedoms by using the criterion of overestimation or the criterion of apparent error, and on the condition that this oversight is carried out using objective grounds that exclude the constitutional judge from using his ideas and personal values in this review ² .

Conclusion:

Finally, we conclude that:

- The primary question of constitutionality in France came as a remedy for the deficiencies of adopting one single system of constitutional review , which is the prior entering into force legal text system , after this type proved the need for individuals to protect their rights and freedoms guaranteed by the constitution , but it is noticeable that the considerations for adopting this system in France differs from it in Algeria on the grounds that the Algerian regime knew from the beginning the prior and posterior constitutional oversight systems, and yet it is still considered to be a revolution in the field of constitutional review and an important gain for citizens as a mechanism to protect their constitutional rights and freedoms .

¹ عصام سعيد عبد أحمد ، الرقابة على دستورية القوانين ، الطبعة الأولى ، المؤسسة الحديثة للكتاب ، لبنان 2013 ، ص 627 .

² المرجع نفسه، ص 647 .

- The French constitutional founder was able to create a unique system for posterior review of the constitutionality of legal texts , so that he selected from both the American and European models what goes in line with the nature of the French constitutional system and with the reality of the existence of political constitutional oversight .
- That this mechanism despite being a revolution in the field of constitutional review and in the field of protection of rights and freedoms by individuals themselves by creating a link, albeit indirectly, with their constitutional judge , but it is noticeable that constitutional and legal restrictions along with a number of other theoretical restrictions made its effectiveness relatively limited, all this is due to the cautious adoption of this unique mechanism .

And perhaps the coming days will liberate both the French and Algerian constitutional founder to make them reform the mechanism of the primary question of constitutionality in a way that frees it from the constitutional, legal and even theoretical restrictions imposed on it, after they become convinced by the essentiality and importance of this type of oversight in preserving the supremacy of the law by protecting the individuals constitutional rights and freedoms .

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