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Plea of Unconstitutionality of the Regulation in light of The Interpretative Opinion of the Constitutional Court

الدفع بعدم دستورية التنظيم في ضوء الرأي التفسيري للمحكمة الدستورية

سعيد أوصيف

Said OUCIF

أستاذ محاضر قسم أ ، قانون عام ،كلية الحقوق والعلوم السياسية ، جامعة أمحمد بوقرة بومرداس (الجزائر)

Lecturer (Class A),Option: Public Law, Faculty of Law and Political Science, University of Boumerdes (Algeria)

E-mail : s.oucif@univ-boumerdes.dz

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ملخص:

أدرجت آلية الدفع بعدم الدستورية لأول مرة من قبل المؤسس الدستوري الجزائري بموجب المادة 188 من التعديل الدستوري 2016 ، غير أن نطاق تطبيق هذه الآلية كان في بدايته مقتصرا على الأحكام التشريعية ، كما لم يكن من الممكن إثارتها إلا في إطار نزاع قضائي قائم يدعي فيه أحد الأطراف أن الحكم التشريعي ينتهك حقا أو حرية يكفلها الدستور.

غير أن المادة 195 من التعديل الدستوري 2020 أبقت على هذه الآلية مع توسيع نطاق تطبيقها ، حيث أضيفت إمكانية الدفع بعدم دستورية الأحكام التنظيمية ، وفي هذا الإطار التساؤل المطروح في هذه الدراسة حول نوع التنظيم الخاضع لألية الدفع بعدم الدستورية هل هو التنظيم المستقل أو التنظيم التنفيذي ويسعى هذا البحث إلى الإجابة عن هذا التساؤل على ضوء الرأي التفسيري للمحكمة الدستورية.

كلمات مفتاحية:

الحقوق والحريات، المحكمة الدستورية،التنظيم،الدفع بعدم الدستورية.

Abstract:

The mechanism of the plea of unconstitutionality has been introduced for the first time by the Algerian constituent Legislator in accordance with Article 188of the 2016 constitutional amendment. it could also only be raised within the framework of an existing legal dispute in which one party claims that the legislative provision violates a right or freedom guaranteed by the constitution.

However, Article 195 of the 2020 constitutional amendment retained this mechanism while expanding its scope of application, as it added the possibility of challenging the constitutionality of regulatory provisions.

In this context, the question raised in this study is about the type of regulation subject to the plea of unconstitutionality of regulations, whether it is the independent regulation or the executive regulation.

This research seeks to answer this question in light of the interpretative opinion of the Constitutional Court.

Keywords:
Rights and Liberties; Constitutional Court; Regulation; Plea of Unconstitutionality.

Introduction:

The mechanism of the plea of unconstitutionality is a legal tool that allows litigant citizens to exercise subsequent oversight of the constitutionality of laws and regulations after their entry into force. Nevertheless, this review is conducted indirectly through a referral by the Supreme Court or the Council of State. Therefore, the plea of unconstitutionality is one of the constitutional control instruments intended to annull norms and administrative acts that contravene the Constitution, ensuring constitutional supremacy. This principle establishes that all legal norms, regardless of origin.

In addition to this, the plea of unconstitutionality has been introduced for the first time in Algeria through the article 188 of the 2016constitutional amendment.
However, this amendment was only related to the legislative provision on which the outcome of the conflict depends and which violates one of the citizen's rights and liberties guaranteed by the constitution.
Furthermore, the constituent Legislator maintained this mechanism in Article 195 of the 2020 constitutional amendment, and he has also expanded it to include the plea of unconstitutionality of the regulatory provision in addition to the legislative one.

Therefore, we raise the following question: How the expansion of the mechanism of plea of unconstitutionality to a regulation contributes to the protection of rights and liberties?

1. Expansion of the Mechanism of Plea of Unconstitutionality to the Regulatory Provision:

Under the 2016 constitutional amendment, for the first time in legal history of Algeria, the constituent Legislator introduced the mechanism of plea of

unconstitutionality by virtue of Article 188. This mechanism was intended to enhance the protection of constitutionally guaranteed rights and liberties, as it allowed for a well-founded challenge regarding the constitutionality of a legislative provision whose validity is crucial in resolving the judicial dispute, especially where that particular provision allegedly infringed constitutional rights and liberties.

Then, in 2020[(1)] the constitutional amendment established an even broader scope of protection of rights and freedoms by extending the plea of unconstitutionality to public power regulatory provisions. This evolution was codified in Article 195, thus expanding the type of legal acts that can be constitutionally reviewed under this rationale.

1.1.Plea of Unconstitutionality of the Regulation strengthens the Protection of Rights and Liberties:

In terms of the 2016 constitutional amendment, the plea of unconstitutionality was limited to legislative provision and did not extend to regulation. As a result, the mechanism of the plea of unconstitutionality remained limited to legislative provision, and individuals were not able to challenge the constitutionality of regulatory provisions, even in cases where these provisions infringed upon the rights and freedoms guaranteed by Constitution.

The regulatory decrees issued by the President of the Republic, the Prime Minister, or the Head of Government, as the case may be, constitute a type of administrative regulatory decision that includes general, abstract, and binding rules. These decrees directly affect rights and freedoms and are therefore subject to oversight[(2)].

Nevertheless, the lack of constitutional review on regulatory provisions left a gap that was not filled by administrative judicial review or constitutional judicial review. Accordingly, the balancing system of constitutional oversight was left lacking. So as to fill this gap, the constituent Legislator reacted once more through the 2020 constitutional amendment and also included regulation provisions in first paragraph of Article 195 among headings under which a plea of unconstitutionality could be made.

Consequently, the plea of unconstitutionality regarding regulatory acts constitutes a reinforcement of the role of the Constitutional Court in protecting the rights and freedoms guaranteed by the Constitution.

1.1.1.Methods of Reviewing the Constitutionality of Regulatory Acts under the 2020 Constitutional Amendment:

The constitutionality of the regulation under the 2020 constitutional amendment can be monitored by the Constitutional Court by way of notification from the authorized bodies or by way of the mechanism of Plea of Unconstitutionality. The Constitutional Court also decides on the compatibility of laws and regulation with treaties in accordance with Article 190 of the Constitution.

a- Notification from the authorized bodies specified in Article 193 of the Constitution: According to this article, the Constitutional Court may be notified by the President of the Republic, 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. It may also be notified by forty (40) deputies or twenty-five (25) members of the Council of the Nation. Thus, when the Constitutional Court is notified to consider the constitutionality of the regulation, this notification must be within one month of the date of publication of the regulation, and it shall decide on its constitutionality by a decision in accordance with Article 190 of the Constitution.

b- The plea of unconstitutionality according to Article 195 of the Constitution: The Constitutional Court may be notified of a plea of unconstitutionality based on a referral from the Supreme Court or the Council of State when a party to a trial before a judicial body claims that the legislative or regulatory provision upon which the outcome of the dispute depends violates his rights and freedoms guaranteed by the Constitutional.

When the Constitutional Court is notified based on the above paragraph, its decision shall be issued within four (4) months following the date of notification. This period may be extended once for a maximum of four (4) months based on a reasoned decision from the Court, which shall be communicated to the judicial body that made the notification.

1.1.2. Plea of the Regulation's Unconstitutionality A New Face of Subsequent Constitutional Review:

In virtue of the mechanism of plea of the regulation's unconstitutionality, individuals can now, under the 2020 constitutional amendment, protect their rights and liberties if they were violated by the regulation that entered into force and on which the conflict

outcome depends, based on a referral from the Supreme Court or the Council of the Nation.

Some regulatory texts may escape from the constitutional review for two reasons, which we mention as follows:

a-The political entities authorized to exercise the right of notification, namely, 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 the Head of the Government, according to the case, or 40 deputies or 25 members of the Council of the Nation. shall not use the right of notification.

b- If the aforementioned political notification body wishes to notify the Constitutional Court regarding a regulatory ruling, it is bound by a period of one month from the date of publication of the regulation, as stated in the third paragraph of Article 190 of the Constitution. After the expiry of this month from the date of publication, the regulations acquire immunity with respect to the notification body. Consequently, the matter can be rectified and these regulations can be subjected to constitutional oversight through the mechanism of the plea of unconstitutionality granted to individuals under the required legal conditions in this regard.

1.2. Conditions of Plea of Unconstitutionality of the Regulatory Provision:

The plea of unconstitutionality is practiced by meeting the conditions stated in the organic law N° 22-19, which determines the procedures and methods of notification and referral followed before the constitutional court[(3)].

1.2.1. Formal Conditions of Plea of Unconstitutionality of the Regulatory Provision:

The legislator stipulated in the article 06 of the previously mentioned organic law N° 22-19 that the plea of unconstitutionality must be presented in a written, separate and reasoned note.

a-Presenting A Written, Separate and Reasoned Note: Which means presenting the plea of the unconstitutionality of a regulatory provision in the form of a written petition, not orally, and separate, which means that the lawsuit of plea of a regulatory provision unconstitutionality is presented while considering the judicial conflict before one of the judicial entities.

Furthermore, the petition must be separate from the original lawsuit, where it is not allowed to present the plea of unconstitutionality with the original request[(4)].

Additionally, since the petition requires the plaintiff to demonstrate and establish that a particular regulatory rule is illegal, it must be appropriate even in its logic and reasoning.

b- Raising the argument of unconstitutionality of the regulatory provision before the competent judicial authorities belonging to the ordinary or administrative judiciary.

c- The plea of unconstitutionality of the regulatory provision is raised by one of the parties to the dispute, as the judge cannot raise it on his own initiative since it does not relate to public order.

1.2.2. Objective Terms of Plea of Unconstitutionality of the Regulatory Provision:

These conditions are summarized in Article 8 of Organic Law N° 22-19 as follows:

a-The plea of unconstitutionality must be related to the application of a regulatory provision in a dispute before court, either an ordinary or an administrative court, according to the article 15 of the organic law 22-19 which outlines the procedures and the methods of notification and referral followed before the constitutional court.

b- The regulatory provision must violate constitutionality guaranteed rights and liberties of individuals.

c- The regulatory provision that is the subject of the plea must not have a presumption of constitutionality, meaning that it is not permissible to plea the unconstitutionality of a regulatory provision that has already been reviewed and decided upon by the Constitutional Court[(5)], except in cases of changing circumstances.

d-That the plea of unconstitutionality of the regulatory provision must be serious and not intended to prolong the dispute[(6)], which means that the judge before whom the dispute is brought must make sure of the plea's seriousness, as he has the entire discretionary power to assess the plea seriousness discretion in order to suspend the ruling in the original lawsuit before him and refer it to the Supreme Court or the Council of the state or the constitutional court.

2. Plea of Unconstitutionality of the Regulatory Provision case of autonomous regulation :

First, we must clarify the constitutional boundaries between the law field and the regulation field.

2.1. Constitutional Boundaries between the Fields of Law and Regulation:

The Algerian constitutional constituent has determined the field of both law and regulation as follows:

2.1.1. The Field of Law:

The term of law or legislation is used to refer the legal rules issued by the competent legislative authority, which is the legislative authority. Therefore, enacting legislation is the original prerogative of the parliament.

However, and with the constitutional development, the legislative role of the Parliament has declined, and legislation is no longer exclusive to the Parliament, but there are now other competitor entities in legislation. This change has restricted the Parliament's specialty to determined fields where it legislates, while the administration specialty in issuing regulations is a general one[(7)].

Under the Algerian constitutional framework, legislative power is normally assigned to Parliament in designated areas stipulated by the Constitution. According to Articles 114 and 115 of the 2020 constitutional amendment, Parliament is bicameral, with the People's National Assembly and Council of Nation, each of the two chambers of Parliament has sovereignty in drafting and voting on legislation.

Additionally, in compliance with the first paragraph of Article 144 and the first paragraph of Article 145, each draft law or legislative proposal will be reviewed in turn by the People's National Assembly and the Council of Nation until it is finally adopted.

Article 139 of the Constitution specifies for Parliament, in addition to the areas allocated to it by the Constitution, the areas in which it legislates by ordinary laws. On the other hand, Article 140 specifies the areas in which Parliament legislates by organic laws, and outside areas is left to regulation.

2.1.2. The Field of regulation:

Regulation refers to subsidiary or secondary legislation issued by the executive power. Article 91, paragraph 7, stipulates that the President of the Republic holds

regulatory power, and Article 141 of the Constitution states that the President exercises regulatory power in matters not specifically addressed by law. The application of laws falls within the regulatory domain, which is the responsibility of the Prime Minister or Head of Government, as the case may be.

Furthermore, Article 112, paragraph3 of the Constitution grants the Prime Minister or the Head of Government, as the case may be, the authority to implement laws and regulation.

Consequently, according to Article 141 of the Constitution, regulatory provision are those issued by the President of the Republic and by the Prime Minister or the Head of Government, as the case may be, by means of regulatory decrees. The latter are administrative decisions issued by the executive authority in accordance with the Constitution and contain general, abstract, and binding rules, which constitute subsidiary and exceptional legislation alongside the law**(8).**

Some legal scholars have defined them as general and abstract rules do not apply to individuals based on their characteristics, but rather apply to all persons who meet the conditions stipulated in the rule and to the facts that meet the conditions and description contained therein**(9).**

Generally, regulatory decrees are of the competence of the executive authority and are issued through regulatory tools called Decrees. And are shared between the President of the Republic and the Prime Minister or Head of Government, as the case may be. We find that the President of the Republic exercises them through presidential decrees, and the Prime Minister or Head of Government exercises them through executive decrees.

This authority will, therefore, be exercised by the President of the Republic through presidential decrees and by the Prime Minister or Head of Government through executive decrees.

a-Types of Regulation: There are two types of regulation: an autonomous regulation and an executive one.

-The autonomous Regulation: The constituent granted the President of the Republic exclusive authority tor autonomous regulation, pursuant to Article 141,Paragraph1, and Article 91 Paragraph 6. The President exercises this regulatory power in matters not specifically addressed by law. This power empowers him to issue general, abstract, and binding legal texts outside the scope defined by law, through

autonomous regulations taking the form of presidential decrees, as stipulated in Article 91, Paragraph 7[(10)].

Therefore, presidential decrees issued by the President of the Republic are independent of the work of Parliament, as they derive their authority from the Constitution and not from the law.

Consequently, some legal scholars have attempted to define presidential decrees as a set of administrative decisions taken and issued by the head of state in the course of exercising their administrative function as defined by the provisions of the Constitution or by constitutional custom. Examples include decisions issued by the head of state regarding the appointment of senior civilian and military officials and decisions granting titles and ranks[(11)].

Some consider presidential decrees to be subsidiary legislation issued by the president independently and in matter not covered by law, in order to distinguish them from actions and decisions issued by administrative authorities [(12)].

The president of the Republic, therefore, has broad powers, the most important of which is exercising regulatory authority in order to maintain public order in the state by temporarily restricting the rights and freedoms of individuals, so that he takes charge of organizing administrative control in both normal and exceptional circumstances. The President of the Republic also exercises regulatory authority in order to establish and manage public facilities, especially administrative and sovereign ones [(13)].

In addition to regulatory presidential decrees, there are also individual presidential decrees that concern appointments to functions and missions provided for in the Constitution, including civil and military positions within the State. According to Article 92, the Prime Minister or the Head of Government, as appropriate, may propose candidates for additional seats in the Council of Ministers. Additionally, Individual presidential decrees embody an important aspect of the president's influence over the administrative structure in general [(14)].

The President of the Republic can also issue executive decrees, meaning he intervenes in the executive domain allocated to the Prime Minister or Head of Government, as the case may be, and the reverse is not true.

Therefore, ultimately, presidential decrees issued by the President of the Republic may be regulatory, individual, or executive [(15)].

-Executive Regulation: Unlike autonomous regulation, executive regulation, or derived regulation, is the prerogative of the Prime Minister or Head of Government, as the case may be, through the issuance of executive decrees. An executive decree is issued either to implement laws passed by Parliament or to implement an autonomous

regulation issued by the President of the Republic, pursuant to paragraph 2 of Article 141 of the Constitution and paragraph 3 of Article 112 thereof.

b- **Characteristics of Regulatory Authority:** Regulatory authority is characterized by a set of features, which we list below:

- It includes general, abstract, and binding rules: meaning that it produces a legal effect by establishing general legal positions, amending existing legal positions, or abolishing them. Thus, regulatory decrees have a direct effect on those addressed by them and are binding on them, just like laws, because they possess the same characteristics of legislation, such as generality, abstraction, and binding force[(16)].

-A Regulatory Authority with a Constitutional Basis: Considering that the regulatory authority derives its force and basis from the constitution, the source of the independent regulatory authority is then the regulatory field authorizing the President of the Republic by virtue of the article 141 of the constitution. It is then an original specialty, without the right of delegating it for others, and its practice does not require the necessity of getting a delegation or an authorization from others[(17)].

-An Exceptional Legislation with Unlimited Field: Regulatory decrees are considered as an exceptional sectional legislation adopted in fields not intended for legal purposes, which means that the President of the Republic has the right to legislate alongside the Parliament by means of Presidential decrees in order to organize matters outside the field determining Parliament. Besides, regulatory decrees are considered as legislative works in terms of the subject, because they create general and abstract rules such as laws.

-A Regulatory Authority Subject of Constitutional and Judicial Review: Which means that regulatory authority is subject to two types of control. The first one is a constitutional review through the constitutional court, and the second one is a judicial review by the administrative judiciary. These censorship mechanisms were set in order to impose the law sovereignty on the rulers and the ruled ones.

With this in mind the following question arises: does the plea of unconstitutionality apply to regulatory provision issued by the President of the Republic, or to those issued by the Prime Minister or the Head of Government, as the case may be, or to both?.

This matter was the subject of interpretative opinion issued by the Constitutional Court under reference No. 01/O.C.C/C.R/24, dated on Rajab 4, 1445 (January 16,2024) concerning the interpretation of expression in paragraph (1) of Article195 and in Article141 of the Constitution.[(18)].

2.2. Regulation between Constitutional Review and Judicial Review:

One of the new powers granted to the Constitutional Court, according to paragraph two of Article 192 of the 2020 Constitutional Amendment, is the

interpretation of one or more constitutional provisions and the issuance of an opinion on them. In this context, the Constitutional Court issued Interpretive Opinion No. 01/R.M.D/T.D/24, dated January 16, 2024, concerning the meaning of the term "regulatory provision," to which the plea of unconstitutionality was extended in the 2020 Constitutional Amendment, after having been limited to legislative provisions only.

2.2.1.Notification procedures regarding the interpretation of Articles 141 and 195 of the Constitution:

According to paragraph 2 of Article 192 of the Constitution, the Constitutional Court may interpret one or more constitutional provisions and provide an advisory opinion on issues brought before it by the authorities specified in Article 193.

Therefore, the President of the Republic, the Speaker of the Council of the Nation, the Speaker of the People's National Assembly, the Prime Minister, or the Head of Government, as the case may be, may notify the Constitutional Court regarding the interpretation of one or more constitutional provisions. Similarly, forty (40) members of the Council of the Nation or twenty-five (25) members of the Council of the Nation may also notify the Constitutional Court regarding the interpretation of one or more constitutional provisions.

a-Court Procedures for notifying the Constitutional Court

Based on Article 192 of the Constitution, the Constitutional Court was notified by forty-six (46) deputies of the People's National Assembly by way of a letter dated January 3, 2024, submitted by Deputy "Masoud Zarqawi," the delegate of the notifiers, and registered with the Registry of the Constitutional Court on January 3, 2024, under number 024/01, attached by a list of names, titles, signatures, and copies of the deputy's card of the notifiers, and a copy of the Constitution regarding the interpretation of the phrase "regulatory provision" contained in Articles 195 and 141 of the Constitution.

The first paragraph of Article 195 of the Constitution states: (The Constitutional Court may be notified of a plea of unconstitutionality based on a referral from the Supreme Court or the Council of State when one of the parties in a trial before a judicial body claims that the legislative or regulatory provision on which the outcome of the dispute depends violates his rights and freedoms guaranteed by the Constitution.)

Article 141 of the Constitution states: "The President of the Republic exercises regulatory power in matters not allocated to the law, and the application of laws falls

within the regulatory domain which belongs to the Prime Minister or the Head of Government, as the case may be."

b-Subject of the Notification: The notification letter stated that while the phrase "legislative provision" does not raise any issue regarding its purpose and meaning, the phrase "regulatory provision" raises a question regarding the meaning of "regulation" as explained and specified in Article 141 of the Constitution.

On the other hand, the authors of the notification emphasize that granting the constituent legislator, under the 2020 Constitution, the ability of one of the parties to the trial to challenge the constitutionality of a regulatory provision that violates his rights and freedoms guaranteed by the Constitution, in addition to a legislative provision, is considered an important and significant achievement added by the 2020 constitutional amendment.

The article 141 of the Constitution clearly states that regulatory provisions are those issued by the President of the Republic and the Prime Minister or Head of Government, as applicable.

However, some executive decrees, according to the notifiers, refer to regulations and decisions, such as Executive Decree No. 22-208 of June 5, 2022, which establishes the system of studies and training for obtaining higher education degrees. This raises questions about the legal nature of these decisions and whether they can be considered regulatory provisions.

Since the regulatory provision raises several questions, and in order to determine its precise meaning for the judge and the litigant, the parties to the notification request the Constitutional Court to interpret the constitutional provision contained in the Articles 141 and 195, Paragraph 1 of the Constitution.

2.2.2. The Interpretive Opinion of the Constitutional Court:

The Constitutional Court, observing the distinction in terminology used by the constitutional framers in Article 190 (paragraph 3) and Article 195 (paragraph 1), discovered that in Article 190 "regulations" were employed while "regulatory provision" was used in Article 195. Both terms refer to the general and abstract legal rules issued by executive power and constitutionally controlled by the Constitutional Court, although their precise content was not specified.

The Constitutional Court found, through the text of Articles 190, Paragraph 3 and 195, Paragraph 1 of the Constitution, that the constituent legislator used the term "regulations" in Article 190, Paragraph 3 and the term "regulatory provision" in Article 195, Paragraph 1, and both of them represent general and abstract legal rules

issued by the executive authority and subject to the oversight of the Constitutional Court, but without specifying their type, which raises the question of whether what is meant refer to regulations, and autonomous or executive regulatory provisions, or both?.

The Court explained that regulatory provisions may take two different forms. The first are autonomous regulations, which are in the exclusive competence of the President of the Republic in matters not reserved for legislation and take the form of presidential decrees. The second are executive regulations that fall under the purview of the Prime Minister (or Head of Government as may be) adopted to implement laws and autonomous regulations. These regulations are promulgated in the form of executive decrees.

Since the executive regulation exercised by the Prime Minister or the Head of Government, as the case may be, aims to implement the laws and autonomous regulations, it is subordinate to them and derives its existence from them. On the other hand, the legislation in force at the level of the judicial system and also at the level of administrative disputes is a recognition of the judicial bodies affiliated with the administrative judicial system of the legal authority to decide on annulment claims and to interpret the legitimacy of administrative decisions issued by the central administrative authorities and national public bodies, as well as professional organizations. Consequently, the citizen's rights and freedoms established in the constitution are guaranteed by safeguards that have been embodied on the ground by many legislations.

a-Only Autonomous Regulation are subject to the Plea of Unconstitutionality Review: The Constitutional Court explained that the expressions "regulations" in Article 190 (third paragraph) and "regulatory provision" in Article 195 (first paragraph) of the Constitution refer to Autonomous regulation texts issued by President of the Republic within the framework of his exercise of regulatory power in matters not allocated to the law in accordance with Article 141 (first paragraph)of the Constitution.

These alone are subject to constitutional review and the plea of unconstitutionality, in addition to the review of legality exercised by the administrative judiciary in other cases, while the executive regulatory provisions that are the prerogative of the Prime Minister or the Head of Government, as the case may be, are subject to the review of the administrative judiciary.

b- The Executive Regulatory Provisions being subject to the Administrative Judiciary Review: The regulation's dual nature makes it sometimes subject to constitutional review, being considered as a legislative act according to the material criterion. It is also considered at other times as an administrative act issued by a higher administrative authority according to the organic criterion. This makes regulation subject to the administrative judiciary review through examining the legality of decisions issued by central administrative authorities[(19)].

Therefore, judicial Review is the most important and the most efficient type of control due to its connection with the individuals' interests and rights, in view of the judiciary's independence and legal guarantees[(20)]. Furthermore, judiciary is considered as the citizen's refuge for challenging illegitimate administrative decisions, following necessary legal procedures in this regard.

Subsequently, the judicial review of executive decrees, as being administrative decisions issued by central authorities, fall under the jurisdiction of the administrative judiciary, whereas the citizen can resort to administrative judiciary in order to force the administration to respect the principle of legitimacy and law sovereignty[(21)].

Besides, the legitimacy principle represents the general rule of the State in its different relationships with individuals. In conformity with this principle, the State cannot make a decision that is against the law, and if that happened, judiciary must declare the annulation of this decision to preserve the rule of Law[(22)].

According to Article 900 bis, paragraph 3 of the Code of Civil and Administrative Procedure[(23)], the Administrative Court of Appeal of Algiers has jurisdiction to decide, as a first instance, on cases of annulment, interpretation and assessment of the legality of administrative decisions issued by the central administrative authorities. According to Article 902 of the Code of Civil and Administrative Procedure, decisions issued by the Administrative Court of Appeal of Algiers are subject to appeal before the Council of State.

Conclusion:

In conclusion, we can say that regulation consists of administrative decisions issued by the executive authority and includes general, abstract, and binding rules. It is considered an exceptional subsidiary legislation alongside the legislative domain allocated to Parliament. Regulation is of two types: autonomous regulation, which is the prerogative of the President of the Republic through presidential decrees in fields not allocated to the law, and executive or derivative regulation, which is the

prerogative of the Prime Minister or the Head of Government, as the case may be, through executive decrees in order to implement the law issued by Parliament and the autonomous regulation issued by the President of the Republic.

In addition to that, we concluded in the end that the Constitutional Court is constitutionally in charge, through the plea of unconstitutionality mechanism, of both the legislative and regulatory provisions' constitutional review in virtue of the article 195 of the 2020 constitutional amendment.

Regulatory provision may infringe upon the rights and freedoms guaranteed by the Constitution, which justifies subjecting them to the oversight of the Constitutional Court. Therefore, extending the mechanism of the plea of unconstitutionality to include executive regulations enhances the protection of rights and freedoms.

And that, according to the interpretative opinion N° 01/O.C.C/C.R/24, submitted by the Constitutional Court on the occasion of its notification in order to interpret the meaning of the regulatory provision, to which the plea of unconstitutionality mechanism was extended, that the autonomous regulation issued by the President of the Republic is the only one that is subject to constitutional review, while the executive regulation issued by the Prime Minister or the Head of the Government, according to the case, is subject to the administrative judiciary review through the examination of its legitimacy.

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