

The Judicial Nature of the Constitutional Court according to the 2020 Amendment, a Guarantee or a restriction on Public Rights and Liberties.

الطابع القضائي للمحكمة الدستورية وفقا للتعديل الدستوري 2020، ضمانات أم
قيد على الحقوق والحريات.

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Received: 23/06 /2025

Accepted: 12/11 /2025

Published: December /2025

الملخص:

عدل المؤسس الدستوري من اختصاصات المحكمة الدستورية في إطار التعديل الدستوري لعام 2020 ، وهو ما حدد الأطر العامة والأهداف المتوخاة من خلال القانون العضوي رقم 22/19، الذي يحدد إجراءات الإخطار والإحالة إلى المحكمة. وقد أضاف هذا التعديل نظاماً للرقابة الدستورية من خلال هيئة قضائية مستقلة مسؤولة عن مراجعة دستورية القوانين وضمان حسن سير المؤسسات والسلطات العامة، بحيث تتولى المحكمة المنشأة حديثاً صلاحيات موسعة تتجاوز صلاحيات المجلس الدستوري السابق، لا سيما في حل النزاعات المؤسسية وتفسير الأحكام الدستورية، بالإضافة إلى مهام استشارية خاصة، بما في ذلك إصدار الآراء في الحالات التي لا يمكن فيها إجراء الانتخابات الرئاسية أو التشريعية ضمن الإطار القانوني المحدد، وتقديم المشورة بشأن القرارات الرئاسية أثناء حالات الطوارئ خاصة في مجال حماية الحقوق والحريات، فهل كل هذا ضمانات أم قيد على الحقوق والحريات العامة ، هذا ما سنجيب عليه من خلال هذه الدراسة.

الكلمات المفتاحية: القضاء الدستوري، الرقابة على دستورية القوانين، القوانين العضوية، الدفع بعدم الدستورية، الحقوق والحريات.

Abstract:

The Constitutional Court's powers were amended by the Constitutional Founder following the 2020 constitutional amendment. This defined the general framework and objectives pursued through Organic Law No. 19-22, which sets out the procedures for notification and referral to the court. This amendment introduced a system of constitutional

oversight through an independent judicial body responsible for reviewing the constitutionality of laws and ensuring the proper functioning of public institutions and authorities. The newly established court assumes expanded powers beyond those of the former Constitutional Council, particularly in resolving institutional disputes and interpreting constitutional provisions. It also has special advisory functions, including issuing opinions in cases where presidential or legislative elections cannot be held within the specified legal framework, and providing advice on presidential decisions during states of emergency, particularly in the area of protecting rights and liberties. This study examines whether all of this constitutes a guarantee or a restriction on public rights and liberties.

Key words: constitutional judiciary, oversight of the constitutionality of laws, organic laws, plea of unconstitutionality, rights and liberties.

Introduction:

Caring for human beings and preserving their dignity has been the core concern of states since their inception. They work to protect and preserve rights and liberties. Therefore, we find that all positive laws in states seek to protect these rights and develop their practice, calling for their preservation and protection. Similar to domestic positive laws, we also find numerous international covenants and declarations calling for the protection of human beings and their rights. If social justice is the goal of every state, and the law is the means to establish it, then truth is the goal and objective of justice. It can only be attained by seeking it through the efforts of men entrusted with the task of upholding rights, giving everyone their due, and achieving justice among people.

Human beings are the focus of all legal, political and social systems. All these systems exist for their sake, to protect their property, guarantee their liberties and ensure their development. It is established in the heavenly books that God Almighty honors humans based on their humanity, that is, simply because they are human, regardless of their gender, color, origin, nationality or any other consideration.

Human rights are inherent to every individual by virtue of their humanity and are recognized as universal, inalienable, and indivisible. These rights accompany individuals regardless of their location or status. This study explores the national constitutional framework for the protection of human rights, focusing on domestic mechanisms and the role of constitutional oversight in safeguarding these rights.

The Importance of the Subject :

The relevance of this inquiry lies in the intersection of constitutional justice and human rights, an area of critical importance due to its direct impact on individuals' lives and futures. Significant advancements have been made in international human rights law, particularly through foundational instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights. A comprehensive analysis of human rights must therefore include an assessment of how national legal systems implement and interact with this body of international norms.

Research Problem:

In this study, we relied on an analytical, descriptive, and historical approach. This raises the question or problem surrounding this topic: How did the Algerian constitutional founder organize the role of the Constitutional Court in protecting rights and liberties, and what guarantees did he provide in this regard? Did the constitutional oversight contributed to protecting fundamental human rights and liberties?

To address these research questions, the following structure was adopted:

Chapter I- Protecting and Developing Rights and Liberties. New juridical methods.

Section 1: Ensuring The Protection Mechanisms of Rights and Liberties.

Section 2: Protecting Human Rights and Liberties: The Role of the Constitutional Judiciary.

Chapter II-Types of Constitutional Oversight types in the 2020 Constitutional Amendment.

Section 1: The Oversight of conformity of rules.

Section 2: Oversight of the Constitutionality of Treaties, Laws, and Regulations

1- Protecting and Developing Rights and Liberties. New juridical methods.

The criterion for measuring a state's progress and advancement is the existence of an independent and impartial judiciary that guarantees rights and liberties. This is what national and international legislators strive for, through their focus on the judiciary and the development of its working mechanisms, particularly those that grant individuals judicial protection for their rights and liberties. This is because the judiciary consolidates justice within the state, acting as a mirror that represents the state's progress. It is also the standard that demonstrates the extent to which the institutions respects human rights¹. This is achieved by subjecting the state to the law. It is required to ensure that every person is entitled to their due rights, to establish justice and resolve various disputes that arise within its apparatuses, in its capacity as protectors of rights and liberties. Given its effective role, we find that legislators have allocated a set of legal rules to ensure its proper functioning.

In accordance with the principle of legality, all individuals and authorities within the state must adhere to the rule of law. This principle requires that all actions of state institutions and citizens must align with constitutional and legal norms, according to their hierarchical structure. The enforcement of this principle necessitates the existence of a supervisory body, known as the Constitutional Court, which ensures compliance. The Algerian Constitutional Amendment of 2020, as outlined in Articles 185 to 198,² established the Constitutional Court as an independent judicial institution, tasked with safeguarding respect for the Constitution and overseeing the functioning of state institutions and public authorities. Prior to this amendment, the institution was referred to as the Constitutional Council, as stipulated by the 1996 Constitution. The role of the Constitutional Court in constitutional oversight is crucial in maintaining the integrity of the legal hierarchy, ensuring that lower legal norms conform to constitutional principles. This function encompasses both formal and substantive aspects, particularly in relation to the protection of rights and liberties.

1.1- Ensuring The Protection Mechanisms of Rights and Liberties.

In order to preserve, promote, and protect human rights, various national, regional, and international legislations have sought to adopt solid principles, take specific measures, and establish various bodies, the sole purpose of which is to achieve human rights at the political and legal levels. Accordingly, I will attempt to address some of the guarantees or mechanisms established by international and national legislators to protect human rights from infringement.

1.1.1- Definition of Human Rights, and liberties:

Human rights have been defined in various legal doctrines. Some define them in terms of their origin and source, while others define them in terms of their dimensions and objectives. It can be said that human rights are those principles and demands inherent in human dignity, which must be respected and protected by the authorities, so that people can live a dignified life in which they can exercise their rights and liberties without fear.³

They are also expressed as rights inherent to all human beings, regardless of their nationality, place of residence, gender, language, religion, national or ethnic origin, or any other status, without prejudice or discrimination. This entitles every individual in the world to enjoy their individual rights without any infringement, ensuring a life of dignity and equality. All these rights are interconnected, interdependent, and indivisible.

In French public law, Public liberties are defined as the legal guarantees that protect individuals from administrative abuse. They are considered negative rights, meaning they represent the sphere of individual autonomy that the state must respect, unless public order justifies imposing restrictions upon them. This is because there are specific, exhaustively defined circumstances in the Constitution where the necessity of public order is deemed sufficient, allowing the legislature to restrict the exercise of these liberties for a limited period until the end of that exceptional situation. According to Marcel Waline, public freedoms are "the powers of action recognized by the State to individuals, with the aim of allowing them to freely pursue their personal ends, subject only to the requirements of public order."⁴

Human rights are universally recognized as the fundamental rights inherent to every individual, without discrimination based on race, nationality, gender, language, or religion. These rights ensure that every person is entitled to live a life of dignity and equality, free from prejudice. Human rights encompass various dimensions, the foremost of which include liberties such as freedom of belief, freedom of opinion and expression, protection from slavery and torture, the right to life, the right to work and education, and the right to protection. Additionally, human rights include the preservation of an individual's social status, ensuring access to benefits and opportunities. It is important to note that these rights are universally granted to all individuals, regardless of their location, and are to be upheld by the relevant authorities or bodies responsible for their implementation..⁵

1.1.1.1- National Mechanisms for the Protection and Promotion of Liberties.

These are all mechanisms enacted by the national legislature to monitor human rights issues, ensure their protection and implementation on the ground, and defend them from any

violation or infringement. This is not to mention the digital environment, which has become a new outlet for the enjoyment of all liberties.

- **Procedural Mechanisms.**

These national procedural mechanisms can be limited to the various activities and actions undertaken by official institutions, facilities, and bodies that the constitution or Administrative law has granted exclusive powers, means, and official status for public activity within the limits of their specialization and subject-matter, organizational, spatial, and temporal jurisdiction⁶.

- **Institutional Mechanisms for the Protection of Human Rights.**

Refer to the powers and competences entrusted by the 2020 constitutional amendment to the specialized constitutional councils, bodies, and institutions established or authorized by the State to perform monitoring and oversight functions in the field of individual liberties within the country, whether these entities are elected or appointed through executive decrees.

Building upon the powers granted to members of Parliament, and in accordance with Organic Law No. 22-19, which introduced the notification mechanism, the concept of direct notification may be defined as:

A request or communication submitted by the political bodies and authorities of the State legally empowered to do so — a principle explicitly affirmed in paragraph 3 of Article 2 of Organic Law No. 22-19 on the Constitutional Court. This law enshrines the protection of fundamental rights and liberties, including those related to freedom of belief, freedom of expression, human dignity, and personal integrity⁷, thereby enabling the competent authorities to exercise their constitutional oversight powers over a specific legal text or in the context of a dispute between the notifying authority and another public authority.

The importance of this constitutional mechanism emerges on two essential levels:

- At the first level, its significance lies in the recent establishment of the Constitutional Court in Algeria, which replaced the former Constitutional Council following the 2020 constitutional amendment. This institutional transformation represents a fundamental development in the State's constitutional structure. Moreover, the promulgation of Organic Law No. 22-19, which governs the procedures for referral to the Constitutional Court, further enhances the relevance of this subject, particularly in connection with a core democratic principle — the rule of law and the protection of individual freedoms.
- At the second level, its importance derives from the central role of the Constitutional Court itself, as a key institution entrusted with preserving constitutional order and ensuring the principle of separation of powers. In this regard, the Court stands as a cornerstone of the democratic system, embodying the judiciary's responsibility in exercising constitutional oversight.

What distinguishes the 2020 constitutional amendment is that it can rightfully be described as the “Constitution of Rights and Liberties” par excellence, since, for the first time, it enshrines in more than eighty constitutional provisions the recognition and constitutionalization of fundamental rights and liberties, whether individual or collective

1.2- Protecting Human Rights and Liberties : The Role of the Constitutional Judiciary.

Historically, the judiciary’s role in the protection of human rights was primarily confined to addressing violations of individual rights and public liberties committed by administrative authorities. However, it lacked the competence to assess the constitutionality of legislative acts, as the prevailing legal doctrine emphasized the supremacy of statutory law and regarded Parliament as the ultimate sovereign authority within the state. This limitation reflected a legal order in which the rule of law was largely equated with parliamentary sovereignty rather than with the supremacy of the constitution..⁸

1.2.1- The Judicial Protection of Human Rights and Liberties in Algeria.

It is beyond doubt that the administrative judiciary assumes a pivotal, effective, and direct role in the protection of individual freedoms and fundamental rights, both at the national level and within comparative legal frameworks. As Algeria forms an integral component of the international legal order, it has undertaken to adapt its judicial institutions and legal frameworks so as to align them with universal standards governing human rights and fundamental freedoms.

Algeria is by no means an exception in this respect; its judicial apparatus has undergone a progressive transformation, reflecting an increasing incorporation of human rights principles into domestic legal procedures and judicial reasoning. The following section seeks to outline succinctly the role of the judiciary in the entrenchment of human rights, together with the legal safeguards that ensure their effective protection within the national constitutional framework.⁹

We can define this guarantees in different judicial procedures ¹⁰:

a- The Right to Access Administrative Justice.

he right to bring an administrative action constitutes a cornerstone of the judicial protection of public liberties. Any individual adversely affected by an administrative decision may challenge it before the administrative judge through an *action for annulment* (recours pour excès de pouvoir) on grounds of illegality, an *action for damages* (recours en indemnité) in cases of harm, or a *full jurisdiction action* (recours de plein contentieux) allowing the judge to restore the balance between public interest and individual rights.

b- Independence of the Administrative Judiciary.

The independence of the administrative judge from the executive branch guarantees impartiality and objectivity in adjudicating disputes involving the administration. This independence constitutes a fundamental condition for the realization of administrative justice and the protection of individual freedoms from political or hierarchical influence.

c- Judicial Review of Administrative Legality.

Administrative courts exercise judicial review over the legality of administrative acts by examining both their formal and substantive elements — ensuring that decisions are issued by a competent authority, comply with procedural and substantive legal requirements, and are free from defects such as misuse of power or violation of the law.

d- Emergency Judicial Review (Référé-liberté).

The *référé-liberté* procedure empowers the administrative judge to intervene urgently to suspend the execution of any administrative act that gravely infringes upon a fundamental freedom, provided that the condition of urgency is met. This mechanism highlights the preventive and responsive capacity of administrative justice in protecting fundamental rights against immediate or irreparable harm.

e- Reasoned Judgments and the Right of Defense.

The obligation of the administrative judge to provide detailed reasoning for judicial decisions, along with guaranteeing litigants the right to present arguments and evidence, reinforces transparency, fairness, and the principles of due process within administrative litigation.

f- Appeal and Judicial Review of Decisions.

The possibility of appealing administrative judgments before higher courts — such as appellate administrative courts or the Council of State — serves as an additional safeguard ensuring the proper application of the law and the consistent protection of public liberties against potential judicial errors.

1.2.1.1-Liberties Safeguards in Accordance with Constitutional Principles

The Constitution, through its provisions relating to the judiciary, establishes the fundamental principles governing the judiciary. It unequivocally affirms the independence of judges in issuing rulings in accordance with relevant legal texts and stipulates that judicial functions must be performed in strict compliance with the law. Furthermore, the Constitution enshrines the principle of equality before the law, ensuring equal access to justice for all individuals without discrimination. This constitutes a fundamental guarantee for individuals to protect their rights and liberties against administrative encroachment in certain cases, which require administrative authorization to exercise these rights. This guarantee is particularly important when the administration uses public order as a pretext to restrict these liberties.¹¹

Therefore, the issue of protecting human rights is not merely a declaration of general principles, but rather a practical measure through which administrative judges fulfill their mandated role in protecting human rights and liberties. These general principles are not limited to these principles; they require precise and clear texts, which must be enacted in the form of laws, upon which judges can rely in the performance of their duties.

1.2.1.2-Other Legal Guarantees:

There is many guarantees in different type of rules.

- **Guarantees in Civil Rules:**

These are guarantees related to compensation for damages resulting from a harmful act, such as:

The recognition of various fundamental rights includes the right to personal identity, the right to nationality, and the guarantees of contractual rights and obligations. Additionally, it encompasses liability for personal actions, the right of access to the judiciary, as well as procedural rights such as notification, litigation, and hearings. Furthermore, it entails multiple methods of proof, the use of expert testimony, the ability to challenge forgery, and the enforcement of judicial decisions.¹²

- **Judicial Guarantees in Administrative Rules:**

The legislator has established a set of legal provisions that the administration is bound by when undertaking a specific action. These provisions are of considerable importance, as they define the authority of the administration and prevent it from abusing this authority. They also measure the administration's compliance with legality. Furthermore, given the nature of the dispute and its parties, the legislator has established a set of procedures unique to it. For example The Décision of Constitutional Court, in its Decision No. 30/Q.M.D/D.A.D/22, dated 26th October 2022, concerning the constitutional challenge to Articles 815, 826, 904, 905, and 906 of Law No. 08-09 of 25th February 2008, relating to the Code of Civil and Administrative Procedure, as amended and supplemented, ruled on the constitutionality of the mandatory legal representation by an attorney before the Council of State.¹³

This ruling was justified by the specific nature of administrative litigation, which necessitates a distinct role for the legal profession in raising legal aspects directly related to the subject matter of the dispute. It also acknowledged the foundational and creative function of the administrative judge, who, in certain cases, acts as the originator of the legal rule governing the dispute

1.2.2-Constitutional Review and its Relationship to Human Rights

Constitutional judiciary enjoys a strong and close relationship with issues of human rights and individual and fundamental liberties. This is because it is one of the strong foundations protecting human rights issues from violations and infringements. Without a truly effective constitutional judiciary, individuals and even states cannot enjoy full protection in the effective application of -human rights, and they continue to be subject to violations. Therefore, it is imperative to clarify the importance of constitutional review and its role in protecting human rights.¹⁴

1.2.3-The Concept of Oversight of the Constitutionality of Laws.

The recognition and enforcement of the principle of constitutional supremacy inherently require the establishment of constitutional norms. These norms serve as the foundation for ensuring that laws align with the principles enshrined in the constitution, thereby safeguarding the integrity of the legal system. that prevail over all other legal rules. This hierarchical superiority of the Constitution is a natural and unavoidable consequence of its status as the supreme legal authority within the state. However, this matter is almost viewed as a jurisprudential axiom requiring mechanisms and guarantees to implement it on the ground. This issue has long been raised by many jurists and legislators alike and has been a major

concern for years.

It is therefore a means of ensuring respect for the hierarchy of legal rules in society. This means ensuring that the lower legal rules are consistent with the constitutional rules that are at the top of this hierarchy, and that laws do not violate the provisions and rules of the constitution, which must be achieved in all aspects, both formally and substantively.¹⁵

From a formal perspective, legislative authorities must adhere to the conditions and procedures stipulated in the constitution, such that legislation may only be enacted by the authority legally authorized to do so, namely the legislative authority represented by Parliament. In the other Perspective we found a substantive perspective, when legislation must be in strict accordance with the provisions of the constitution, both in letter and spirit, meaning that it must never violate them; otherwise, the text will be deemed unconstitutional.

For example, this decision of the Constitutional Court Based on a parliamentary notification from forty (40) deputies submitted by the representative of the notified parties, President of the Parliamentary Group of the Liberals in the National People's Assembly, in accordance with the provisions of Article 193 (paragraph 2) and Article 116 (paragraph 5) of the Constitution, by correspondence bearing number 979 dated November 28, 2023, registered with the Registry of the Constitutional Court on November 30, 2023 under number 07/23 and addressed to the President of the Constitutional Court for the purpose of monitoring the constitutionality of some provisions of Law No. 08-04 dated January 23, 2008, which includes the guiding law for national education.¹⁶

Some scholars have defined constitutional oversight through its distinct forms. Political oversight refers to the control exercised by an official body established by the Constitution, which holds the authority to examine the conformity of laws prior to their promulgation. In contrast, judicial oversight is carried out by the courts, which assess whether ordinary laws align with the provisions of the Constitution, both in form and substance. This type of review often arises within the context of judicial disputes. As such, the oversight of constitutionality serves as a fundamental mechanism for ensuring compliance with constitutional norms, upholding the supremacy of the Constitution, and reinforcing both the letter and the spirit of constitutional principles.¹⁷

2- Types of Constitutional Oversight in the 2020 Constitutional Amendment

Constitutional review plays a crucial role in upholding the principle of the hierarchical binding of legal texts, thereby ensuring legitimacy within contemporary political systems. There is broad consensus that constitutional review is a cornerstone of the rule of law, distinguishing modern constitutional systems from past eras and practices. The form and scope of constitutional review vary according to the specific needs of each legal and political system. The 2020 constitutional amendment in Algeria introduces significant changes in this regard, reshaping the mechanisms for oversight and aligning them with the principles of constitutional supremacy. In the American system, constitutional review is adopted through the judiciary because it is the optimal way to achieve the balance between the constitutional powers required by this system.¹⁸

Meanwhile, in some European countries, the trend is toward ensuring the separation of public powers within the state, whether legislative, executive, or judicial, while defining the basic tasks undertaken by each branch separately. This is the case in France, which has adopted constitutional councils, and in Germany, which has adopted the Federal Constitutional Court.

2.1- The Oversight of conformity of rules.

The Algerian Constitution of 2020 granted the Constitutional Court oversight powers over various legislative acts at various levels, including draft constitutional amendments, treaties, organic and ordinary laws, as well as orders and regulations issued by the President of the State.¹⁹ This oversight aims to maintain the unity of the legal system and protect the different rights and liberties, ensuring that these liberties are not infringed upon except to the extent necessary to regulate them. This oversight is mandatory or optional, prior to or subsequent to the promulgation of the law.

The Oversight of conformity of rules that means the law is closely aligned with the constitution. In this case, the relationship of subordination between the constitutional and legislative rules is closer than in the case where harmonization between these two rules is required. Oversight here goes beyond oversight of the conformity of the law, meaning that it does not contain any contradiction with the text of the constitution.

2.1.1- The Constitutional Court's Role in Oversight of Organic Laws and Parliamentary Internal Regulations

The Constitutional Court is tasked with ensuring that organic laws align with the Constitution and overseeing the conformity of the internal regulations of both parliamentary chambers with constitutional principles. This process begins after the President of the Republic has notified the Court, as specified in Articles 190, paragraphs 5 and 6 of the 2020 Constitutional Amendment. Should the President of the Republic be unable to fulfill their duties, the Court must be notified. Additionally, the final paragraph of Article 140 of the 2020 Constitutional Amendment stipulates that organic laws must undergo constitutional review by the Court before they can be published in the Official Gazette.

In terms of Oversight of Organic Laws, The Constitutional Court plays a critical role in reviewing the conformity of organic laws with the Constitution prior to their enactment. This review is initiated following a notification from the President, as outlined in Article 190 of the Constitution. Additionally, the ratification of an organic law requires the approval of an absolute majority in both the House of Representatives and the National Assembly

2.1.2- The Constitutional Court's Review of Unconstitutional Provisions and Parliamentary Internal Regulations

In cases where the Constitutional Court identifies an unconstitutional provision within a law that cannot be separated from the remainder of the law, the entire law shall not be

promulgated. However, if the unconstitutional provision is separable, the President of the Republic may either promulgate the law excluding the unconstitutional provision or request that Parliament reconsider the law with the unconstitutional provision removed. Once the provision has been amended, it must be resubmitted to the Constitutional Court for review to ensure its compliance with the Constitution.

As specified in Article 135, Paragraph 3 of the 2020 Constitutional Amendment, both the National People's Assembly and the Upper House the *Sénate* are responsible for drafting and adopting their internal regulations. These regulations must, however, undergo a conformity review to ensure they align with constitutional principles. In accordance with Article 190 of the 2020 Constitution, the Constitutional Court is tasked with reviewing the internal regulations of both parliamentary chambers to prevent Parliament from granting itself powers that exceed constitutional boundaries.

This review process serves several essential purposes: it protects the independence of the two chambers, ensures their political and legislative liberties, and prevents the inclusion of provisions that may conflict with the Constitution. Such provisions could undermine the powers of other state institutions and disrupt the constitutional balance of authority.

Notably, the Organic Law on the Council of State and the Organic Law on the Court of Jurisdictional Conflicts. Such observations aim to enhance legislative coherence with the Constitution and to reinforce the principle of constitutional supremacy within the Algerian legal order. This grants the members of Parliament in Algeria the full opportunity to exercise their right to oversee legislation, as representatives of the people who elected them.²⁰

- **The Plea of Unconstitutionality: What Does It Mean?**

It serves as a means by which parties to a lawsuit, in cases pending before a judicial body, can resort to the Constitutional Council, albeit indirectly, to challenge the unconstitutionality of a legislative text applied to the lawsuit on the grounds that it violates or infringes upon one of the fundamental rights and liberties guaranteed to them by the Constitution.²¹

- **Decision-Making in the Constitutional Court**

The Constitutional Court renders its decisions based on a majority of the members present at the session. In the event of a tie, the President of the Court casts the deciding vote. However, decisions related to the review of the constitutionality of organic laws are subject to a different procedure. These decisions require an absolute majority, defined as a majority of 50% plus one of the total number of Constitutional Court members, as specified in Article 197 of the 2020 Constitutional Amendment. In such instances, the President of the Court does not hold the casting vote²².

If the Constitutional Court decides that a specific order or regulation is unconstitutional, that order or decision loses its effect from the date of its decision. As for treaties and laws,

they are not issued at all. The Constitutional Court's decisions are final, not subject to appeal in any way, and are binding on all public, judicial, and administrative authorities within the state, pursuant to Article 198 of the 2020 Constitutional Amendment.

2.2- Oversight of the Constitutionality of Treaties, Laws, and Regulations

The **Constitutional Court** is entrusted with the responsibility of reviewing and adjudicating the constitutionality of treaties, laws, orders, and regulations, as outlined in **Article 190** of the **2020 Constitutional Amendment**.

2.2.1- Oversight of the Constitutionality of International Treaties.

The process of ensuring the constitutionality of international treaties raises several important legal questions, particularly those concerning rights and liberties. In the Algerian legal system, international treaties ratified by the **President of the Republic** are placed at a higher hierarchical level than domestic laws. Nevertheless, they remain, in principle, subject to the jurisdiction of the **Constitutional Court**. The **Algerian Constitution** grants the **President of the Republic** the authority to conclude and ratify international treaties, a fundamental principle for the proper conduct of international relations and the execution of state obligations.

An international treaty is defined as an agreement between states, concluded in writing and governed by international law, which can take the form of a single document or multiple related documents, regardless of its designation. According to **Article 190** of the **2020 Constitutional Amendment**, the **Constitutional Court** may be notified of the constitutionality of a treaty **before** its ratification. This process ensures that international treaties align with the principles of the Constitution and do not infringe upon constitutional rights or obligations.²³

According to Article 190, Paragraph 1 of the 2020 Constitutional Amendment, treaties are considered within the scope of constitutional review. Due to the optional nature of notification, as stipulated in Paragraph 2 of the same article, treaties are subject to discretionary review prior to ratification, as the Constitutional Court uses the phrase "**the Constitutional Court may be notified of the constitutionality of treaties before their ratification.**"²⁴

2.2.2- Constitutional Review of Ordinary Laws.

It appears that the constitutional review of laws represents the traditional jurisdiction of the Constitutional Council, which was based on monitoring the work of Parliament by examining the conformity of these texts with the basic standard. Accordingly, if the Constitutional Court is notified of a law by the authorized parties, as specified in Article 193 of the 2020 Constitutional Amendment, the number of opposition members required for notification was reduced to 40 members of parliament from the first chamber (the National

People's Assembly) or 25 members from the second chamber (the Council of the Nation), while the remaining bodies of prior notification were retained. Thus, ordinary laws are subject to prior discretionary constitutional review before their promulgation, and are subject to subsequent discretionary review when the conditions for a plea of unconstitutionality are met.²⁵

2.2.3- Constitutional Review of Orders and Regulations

The Constitutional Court plays a pivotal role in overseeing the constitutionality of orders and regulations issued by the President of the Republic. The Constitutional Founder has granted the President of the Republic the authority to exercise regulatory power, which allows the President to establish general and abstract rules to govern matters not explicitly covered by law. This regulatory power is considered an inherent jurisdiction of the executive branch, enabling the President to issue decrees in areas typically within the legislative domain of Parliament.²⁶

For the first time, presidential decrees have been subjected to mandatory oversight by the Constitutional Court, making them a crucial tool for the President to intervene in the legislative process. While presidential decrees are an important constitutional instrument, they had previously been subject to discretionary oversight. This shift represents a significant change in how presidential decrees are viewed within the Algerian legal system, subjecting them to more rigorous scrutiny.²⁷

Additionally, Article 142 of the 2020 Constitutional Amendment stipulates that the President of the Republic may legislate by decree on urgent matters when the National People's Assembly is vacant or during a parliamentary recess. However, before such a decree can take effect, the President must first seek the opinion of the Council of State and notify the Constitutional Court of its constitutionality. The Constitutional Court is required to make a decision on the constitutionality of the decree within 10 to 15 days. This new procedural requirement enhances the oversight of the President's regulatory powers and ensures that such decrees remain within constitutional limits.

3- Conclusion

The Constitutional Court of Algeria guarantees the protection of public liberties through a set of constitutional mechanisms and supervisory functions grounded in the principle of the supremacy of the Constitution over all other legal norms. These safeguards can be summarized as follows:

- The Constitutional Court conducts a preventive review of draft laws before their promulgation to ensure their conformity with constitutional provisions, particularly those related to fundamental rights and public liberties as enshrined in Chapter IV of the 2020 Algerian Constitution. This mechanism prevents the enactment of legislative texts that could restrict public liberties or undermine equality and human dignity.

- This represents one of the most significant constitutional developments in Algeria. It allows any litigant to raise a constitutional challenge before the Constitutional Court—through ordinary or administrative courts—if they believe that a legislative provision infringes upon their constitutionally guaranteed rights or freedoms. This mechanism empowers individuals to participate directly in the protection of their rights and transforms the Constitution into a living instrument for safeguarding liberties.
- The Constitutional Court has the authority to interpret constitutional provisions, thereby clarifying the scope and content of rights and freedoms to ensure their proper application by the legislative and executive branches. Through this interpretive power, the Court reinforces the balance between the requirements of public order and the protection of individual freedoms.
- When the Court determines that a legislative or regulatory provision conflicts with the Constitution or unjustifiably restricts public liberty, it declares such provision unconstitutional or null, thereby removing it from the legal system.
- By monitoring the actions of both the legislative and executive authorities, the Constitutional Court ensures that each branch remains within its constitutional limits, preventing abuses of power and securing the protection of public liberties.

Recommendations.

- The Constitutional Court replaced the Constitutional Council, positioning it as the highest judicial body for constitutional matters. While maintaining certain aspects of the Constitutional Council's structure, the amendment introduced notable changes, including guarantees for the independence of the Constitutional Court and its members from other public authorities, ensuring its impartiality in constitutional review.
- The method of selecting Constitutional Court members from the four regions of Algeria, particularly the inclusion of constitutional law professors, is a commendable step toward ensuring geographical and professional representation. In the past, constitutional review bodies faced challenges regarding spontaneous actions and addressing violations, especially those related to political rights and liberties. However, with the ability to raise the argument of unconstitutionality, constitutional judges could have broader powers to oversee the constitutionality of legislative texts, particularly ordinary laws concerning political rights, which remain subject to optional oversight. This change empowers constitutional judges to play a more active and significant role in protecting political rights and liberties.
- For the first time in Algerian law, the Constitutional Court has been granted the authority to review the conformity of laws and regulations with international treaties, enhancing the oversight of Algeria's commitments to international law.
- One area that remains limited is the notification mechanism for submitting cases to the Constitutional Court. While this mechanism allows for notification by the President of the Republic, the President of the National People's Assembly, the President of the Council of the Nation, the Prime Minister, the Head of Government, and members of Parliament, the list of entities that can submit notifications remains largely unchanged from the previous system under the Constitutional Council.

The Judicial Nature of the Constitutional Court in the 2020 Amendment, a Guarantee of Rights and Freedoms

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- Despite the apparent trend toward judicial oversight by the Constitutional Court, political oversight remains influential, as seen in the failure to explicitly recognize members of the Constitutional Court as judges. Additionally, the notification process still serves as a form of political, rather than purely judicial, oversight, limiting the Court's autonomy in some respects

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