The Approach of the Algerian Constitutional Court in Interpreting the Constitution

مسلك المحكمة الدستورية الجزائرية في تفسير الدستور

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الملخص:

يعد اختصاص تفسير الدستور من أهم الاختصاصات التي يضطلع بها القضاء الدستوري وهو اختصاص يبقي الدستور حيا، لمساهمته في مرونة القواعد الدستورية، وقدرتها على مواكبة ما استجد من تطورات وإشكالات في التطبيق.

وقد منح المؤسس الدستوري بموجب التعديل الدستوري لسنة 2020 للمحكمة الدستورية الجزائرية بناء على نصوص صريحة منه اختصاص تفسير أحكام الدستور، لتباشر المحكمة صلاحياتها التفسيرية المستقلة وتصدر عددا من الآراء الهامة ابتداء من سنة 2023 وقد كان لها الدور الكبير في تجلية الغموض وإزالته وتكملة النقص الذي اعترى عددا من النصوص والأحكام الدستورية، متبعة في ذلك مسلكا متميزا ستسعى هذه الدراسة إلى توضيحه.

الكلمات المفتاحية: المحكمة الدستورية؛ تفسير الدستور؛ الآراء التفسيرية؛ الدستور الجزائري.

Abstract:

The jurisdiction to interpret the constitution is one of the major fields conducted by the constitutional judiciary, which serve to keep the constitution alive for its contribution to adapt the constitution principles and its ability to keep pace with the new developments and challenges in implementation.

The constitutional amendment of 2020 has granted the constitutional court the power to interpret the provisions of the constitution, where it has effectively exercised its independent interpretative powers through delivering a number of the significant opinions, which played the major role to clarify the ambiguity and complete the shortage that affected several constitutional provisions following a distinct approach that this study will seek to clarify.

KEY WORDS: constitutional court; constitutional interpretation; interpretative opinions ; Algerian constitution.

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Introduction:

When a constitutional legal rule is applied, it transitions from the stage of abstraction and generality that characterizes it during its drafting, enactment, and publication to another stage when it is practically applied to specific cases—a stage of subjectivity. This stage undoubtedly requires uncovering the true meaning intended by the legislators of the legal rule. This meaning can only be achieved by understanding the text through interpretation.

The drafting of legal rules can face three difficulties: ambiguity, deficiency, and contradiction. For this reason, interpreting the law requires, first, a correct reading, and then an investigation into whether the text faces any of the aforementioned difficulties

Constitutional interpretation differs from other forms of interpretation in terms of the specific methods employed by the constitutional judge. The judge does not rely solely on conventional criteria for interpreting legal rules but also takes into account various political, social, and economic considerations within the framework of the supreme interest of the community. Therefore, the judge must draw upon diverse ideas and techniques that impart the necessary flexibility to constitutional rules, ensuring that the constitution does not become rigid and inflexible.

The constitutional document, being a general, foundational framework that outlines the fundamental principles of the State and its relationship with individuals, serves as a source of inspiration for other legal texts. This is reflected in the drafting techniques of its provisions, characterized by conciseness, a high degree of generality, and abstraction. This very nature makes the constitution a subject for continuous creation and renewal through constitutional interpretation, aimed at keeping the constitution alive, flexible, and open to new developments.

In Algeria, and in the absence of an explicit constitutional text that grants a specific body the authority to interpret the constitution, the Constitutional Council exercised an interpretive jurisdiction derivatively from its primary jurisdiction of reviewing the constitutionality of laws, as well as an independent interpretive jurisdiction. However, the 2020 constitutional amendment explicitly granted the Constitutional Court the power to interpret the constitution independently. Although the Court is newly established, it has already issued numerous interpretive opinions. This makes the central problem of this study focus on deducing the technical methods the Court has relied upon in interpreting the constitution and the extent of its contribution to the flexibility of constitutional legal rules.

To address this central question, an inductive analytical approach was adopted, and this study was divided into two parts. The first part was dedicated to the Constitutional Court's jurisdiction of interpretation, while the second part was dedicated to the frameworks governing the Court's exercise of its interpretive jurisdiction.

1- The Constitutional Court's Jurisdiction over Interpretation

Since its first constitutional document in 1963, Algeria has adopted the centralized method of constitutional review of laws, whereby the constitutional framer granted a

constitutional council the authority to carry out this task .

Although there has been variation in the existence or absence of review and in the organizational and functional framework of the body responsible for review among Algeria's successive constitutions, what characterized constitutional review of laws in Algeria is that it was exercised, from the period of independence until before 2020, by a constitutional council. The constitutional amendment of 2020 then introduced a constitutional institution previously unknown to the legal system: the Constitutional Court.

The Constitutional interpretation allows for understanding the true meaning of the provisions contained in the constitutional document, in order to derive constitutional rules applicable to emerging disputes and new situations. The constitutional judge, through their constructive role, extends the reach of constitutional texts and rules.

This role was expressed by a former Chief Justice of the U.S. Supreme Court when he stated, "Yes, we—the Court—operate under the Constitution, but the Constitution is what we say it is." Similarly[1], the Algerian Constitutional Court articulated this concept in its very first ruling, Opinion No. 01/23 concerning the interpretation of Article 127 of the Constitution[2]. It stated that although the constitutional framer granted it the exclusive jurisdiction to interpret the Constitution, its interpretation must not result in creating a new provision. Rather, its interpretation is considered an opinion that merges with the text being interpreted, thereby becoming an extension of it, with the meaning assigned by the Court .

1.1- The Basis of the Constitutional Court's Jurisdiction to Interpret the Constitution

The constitutional framer explicitly granted the Constitutional Court, in addition to its traditional jurisdiction of constitutional review of laws, the authority to interpret the provisions of the Constitution. However, the former Constitutional Council had previously exercised this power even in the absence of an explicit constitutional provision granting it this right.

A. The Constitutional Council's Exercise of Interpretive Jurisdiction in the Absence of an Explicit Constitutional Text Granting It

The authority to interpret the Constitution is a newly established jurisdiction of the Constitutional Court, as the former Constitutional Council did not previously possess this authority under explicit constitutional provisions. Nevertheless, it practically exercised this power, either through incidental interpretation when examining the conformity of laws or by directly undertaking the interpretation of the Constitution within the framework of independent constitutional interpretation:

A.1 The Constitutional Council's Exercise of Incidental Interpretation Authority

The Constitutional Council is a central institution responsible for reviewing the constitutionality of laws as its core function, in addition to other jurisdictions explicitly granted to it by constitutional provisions. However, the authority to interpret the Constitution was not among these jurisdictions.

Nevertheless, in the course of exercising its oversight jurisdiction, the Council addressed, on several occasions, matters that fall within the realm of constitutional interpretation. This was done by clarifying certain provisions or deducing a number of constitutional principles.

For example, the Council undertook to reveal certain implicit principles that were not explicitly stated in the Constitution. For instance, the 1989 Constitution did not contain an explicit provision enshrining the principle of separation of powers. Nevertheless, the Constitutional Council deduced this principle in its Decision No. 2 of 1989 concerning the Organic Law on the Deputy[3].

After implicitly expressing the principle of the separation of powers as a principle derived from the Constitution while reviewing the constitutionality of Article 13 of the Organic Law on the Deputy, the Council explicitly relied on the principle of the separation of powers, thereby revealing this principle. Even though the Constitution lacked an explicit reference to it, the Council's decision stated: "…Considering that the principle of the separation of powers requires each branch to exercise its competencies within the domain assigned to it by the Constitution"…

In this case, as in others, the Council practiced interpretation through deduction incidentally to its primary jurisdiction, which is the review of the constitutionality of laws. This is because the Constitution contains a number of principles underlying its texts, and it fell upon the Constitutional Council to uncover and deduce them. This occurred despite the potential consequence of expanding the constitutional bloc to include principles not explicitly contained in the constitutional document but which derive their existence from the Council's interpretation[4].

The Constitutional Council explicitly affirmed its incidental interpretive jurisdiction in its Opinion No. 03, issued on August 2, 2018, concerning the review of the constitutionality of the organic law defining the conditions and procedures for raising unconstitutionality objections. It relied on the text of Article 182 of the Constitution to confirm that it is an independent body tasked with ensuring respect for the Constitution—a duty falling exclusively within its jurisdiction. Consequently, it alone is responsible for guaranteeing adherence to the Constitution in accordance with the procedures determined by the Constitution itself, through its interpretive authority derived from this jurisdiction.

A.2 The Constitutional Council's Exercise of Independent Interpretive Jurisdiction

The Council previously exercised direct interpretive jurisdiction on the occasion of the issue raised concerning the first partial renewal of members of the Council of the Nation appointed under the 1996 Constitution, specifically whether it included the President of the Council of the Nation or not. The Council received a notification from the President of the Council of the Nation regarding this matter, but it rejected this notification. Subsequently, the notification was submitted by the President of the Republic, and it was accepted on the basis that the President of the Republic is the guardian of the Constitution. The Council then issued

an interpretive memorandum concerning this issue[5].

Among the contents of this memorandum was the following: "…Since the matter submitted to the Council, in accordance with Article 163/01 of the Constitution, by the President of the Republic concerns the interpretation of the constitutional provisions relating to the partial renewal of the appointed members of the Council of the Nation, the Council, without addressing the elected members, considers that the number of appointed members subject to renewal shall be half of their legally determined number…. This interpretation is consistent with the provisions of the Constitution in both spirit and text…."

B. The Constitutional Court's Exercise of Interpretive Jurisdiction Based on Explicit Constitutional Texts

The constitutional amendment of 2020[6] granted the Constitutional Court the original jurisdiction to interpret the provisions of the Constitution under specific conditions and controls. It exercises this jurisdiction based on the text of Article 192/02, which authorized notifying bodies to refer to the Court regarding the interpretation of one or several provisions of the Constitution, upon which the Court issues an opinion.

The Court's jurisdiction to interpret the Constitution is not a branch or subsidiary of its primary jurisdiction, which is the review of the constitutionality of laws. This differs from the case of certain other constitutional courts, such as the Egyptian Supreme Constitutional Court, which does not address the interpretation of constitutional texts—unlike its interpretation of legislation—except when hearing a case fundamentally related to examining the constitutionality of a specific legal text[7].

Thus, the interpretive jurisdiction of the Algerian Constitutional Court is an original and independent jurisdiction, separate from any other. It is exercised based on explicit constitutional texts. The Court stated in its Opinion No. 02/24 that the provisions of Articles 192 and 193 of the Constitution grant the Court the *exclusive jurisdiction* to interpret the provisions of the Constitution[8].

The explicit establishment of the Court's independent interpretative jurisdiction reinforces the legitimacy of the Constitutional Court's opinions and guarantees the principle of the supremacy of the Constitution. It also strengthens the Court's independence and serves as a genuine safeguard for the rights and freedoms of individuals.[9]

It is noteworthy that while the Constitutional Court's jurisdiction of interpretation aims to clarify the constitutional framer's intent in enacting a constitutional rule, it goes beyond that to address gaps which may affect various legal texts. This was expressed by the Court in its Opinion No. 02/25 concerning the interpretation of the provisions of Articles 121 and 122 of the Constitution[10], stating that the Court's role is confined to interpreting the intent of the constitutional framer, and that this constitutional issue pertains to a lacuna unforeseen by the legislator, which must be remedied through interpretation in accordance with Article 192/02.

1.2- The Authority of the Constitutional Court's Interpretive Opinions

The constitutional framer's move to establish a Constitutional Court, replacing the Constitutional Council, stemmed from a recognition of the crucial role that constitutional courts play in safeguarding rights and freedoms, ensuring respect for the Constitution, and the inadequacy of constitutional councils in fulfilling this role due to shortcomings in their operational mechanisms.

Given several aspects such as the diversity and richness of its composition—both in terms of legal specialization and experience—as well as the mechanisms for appointing its members, the variety of its jurisdictions, and the effectiveness of its operational mechanisms, the Constitutional Court is rightly considered the most capable independent body for ensuring respect for the Constitution and protecting rights and freedoms.

The role of the Court as an institution that ensures the entrenchment of the principles of the rule of law and guarantees respect for the principle of the supremacy of the Constitution will only become clearly manifest by endowing the acts issued by it with sufficient authority to bind third parties, whether they are institutions or individuals.

The Court issues two types of legal acts that produce legal effects: decisions and opinions. Unlike the constitutional amendment of 2016[11], which, in its Article 191, equated the authority of the Constitutional Council's decisions and opinions, the constitutional amendment of 2020, under the explicit provision of Article 198/5, conferred absolute authority solely on the decisions of the Constitutional Court, excluding its opinions.

Based on the explicit text of the Constitution, it can be argued that these opinions issued by the Court do not possess the same legal value as its decisions; that is, they are not binding. This is because Article 198/05 attributes finality and binding authority solely to the decisions of the Constitutional Court, excluding its opinions.

However, given the importance of constitutional interpretation as a means to ensure unity and consistency among various constitutional provisions, and considering that the Constitutional Court is the sole constitutional body vested with the authority of constitutional interpretation—thereby serving as the definitive reference for interpreting the Constitution's provisions—it can be asserted and confirmed that the opinions of the Constitutional Court should possess the same legal value as its decisions. They should also carry absolute authority and be binding upon all parties.

Therefore, the constitutional framer should have been more precise in drafting the legal texts governing the Constitutional Court and should have endowed its interpretive opinions with absolute authority to preempt any controversy. This would also constitute a recognition of the importance of the Constitutional Court's interpretive role. Perhaps the activity of the Constitutional Court, despite its recent establishment and its undertaking of interpreting numerous constitutional provisions, serves as the clearest evidence of this need.

The Constitutional Court addressed this authority in its Opinion No. 02 of 2025, stating

that the Court's role in interpreting ambiguous constitutional provisions is limited to clarifying the intent of the constitutional framer. The constitutional issue raised in the referral—concerning the first partial renewal of members of the Council of the Nation elected from the ten new states—revealed a lacuna unforeseen by the legislator. This necessitates the Court's intervention to address it based on Article 192/02 of the Constitution, which grants the Court the power to issue its opinion with **"the authority of the interpreted matter."**

Furthermore, in its Opinion No. 03/25 dated June 19, 2025[12]—its most recent opinion to date—the Court relied on Opinion No. 02/25 concerning the interpretation of the provisions of Articles 121 and 122 of the Constitution. In that opinion, it had established the authoritative nature of its interpretive opinions, considering it one of the foundational sources upon which it based its reasoning, akin to the constitutional, legislative, and regulatory texts that govern the Constitutional Court and regulate its procedures.

In the same opinion—Opinion No. 03/25—it affirmed that interpretation is a mental and logical process aimed at clarifying the wording of the constitutional text and reconciling its various elements to understand it and deduce its meaning, along with **"the authority and formality that the interpretation enjoys as a result of its publication in the Official Gazette".**

2- Mechanisms Governing the Constitutional Court's Exercise of Interpretive Jurisdiction

The Constitutional Court, as the body responsible for ensuring respect for the Constitution, exercises its interpretive jurisdiction in accordance with specific mechanisms and procedural rules.

2.1- Conditions for the Constitutional Court's Interpretive Jurisdiction

The Court exercises its independent jurisdiction to interpret the provisions of the Constitution under specific conditions that can be derived from an analysis of various legal texts, including provisions of the Constitution, Organic Law No. 22-19, which outlines the procedures and methods for notifications and referrals to the Constitutional Court[13], as well as the regulations governing the Court's operational rules[14]:

A- Conditions Related to the Mechanism of the Court's Exercise of its Interpretive Jurisdiction

Although the constitutional framer established the Constitutional Court as a body responsible for reviewing the constitutionality of laws, it did not confer upon it a judicial character, despite the presence of several elements indicative of such a character. The framer included it under Title Four of the Constitution under the heading "Oversight Institutions," considering it an independent institution tasked with protecting the Constitution.

Thus, the Algerian constitutional framer has diverged from several comparative constitutions, such as the Egyptian Constitution, which in its Article 191 considers the Egyptian Supreme Constitutional Court an "independent judicial body," and the Jordanian

Constitution, which in its Article 58 considers the Jordanian Constitutional Court an "independent judicial authority..."

Although the constitutional framer established the Constitutional Court, it maintained the same operational mechanisms as the Constitutional Council, namely the referral system. The Court does not have the power to automatically address the constitutionality of laws unless it receives a referral from the authorized bodies.

The Court's jurisdiction to interpret the provisions of the Constitution does not deviate from this rule, as the Court only undertakes such interpretation based on a referral submitted to it.

Two fundamental observations can be made regarding the referral to the Constitutional Court as a mechanism for exercising its interpretive jurisdiction:

-First Observation: Referring a matter to the Court for interpretive jurisdiction is a discretionary referral that depends on the will of the referring authority or authorities, as the beginning of the second paragraph of Article 192 of the Constitution uses the phrase "may."...

-Second Observation: Article 192, in its second paragraph, refers the matter of the bodies authorized to refer issues to the Court to Article 193. These bodies are: the President of the Republic, the President of the People's National Assembly, the President of the Council of the Nation, the Prime Minister or the Head of Government (as applicable), 25 members of the Council of the Nation, and 40 deputies of the People's National Assembly.

Referring to Article 193 of the Constitution instead of Article 195 confirms that the Court cannot, under any circumstances, be notified within the framework of its interpretive jurisdiction based on a referral from the Supreme Court or the Council of State. The justification for this is that a referral notification is based on a plea of unconstitutionality, and such a plea can only be raised concerning a doubt about the constitutionality of a legislative or regulatory provision, not for the interpretation of a constitutional provision.

A review of the Court's opinions published on its official website reveals that the Court first addresses the issue of the notifying body to verify that the notification was issued by an authorized entity, thereby deciding whether to accept or reject the notification on formal grounds. Only then does it address the substantive matter of the notification.

Furthermore, it has been observed that all the notifications submitted to the Constitutional Court regarding the interpretation of constitutional provisions, which have resulted in a total of 07 opinions issued to date, originated exclusively from the legislative branch. Specifically, one notification was submitted by the President of the People's National Assembly (Opinion No. 01/23), one by the President of the Council of the Nation (Opinion No. 03/24), one by 25 members of the Council of the Nation (Opinion No. 02/25), and four notifications were submitted by members of the People's National Assembly (Opinions: 01/24, 02/24, 01/25, 03/25).[15]

B. Conditions Related to the Nature of the Legal Text Subject to Interpretation

Although the Constitutional Court exercises its review over the conformity or constitutionality of specific categories of legal texts—namely treaties, organic and ordinary legislation, decrees, regulations, and the internal rules of the two parliamentary chambers—its interpretive jurisdiction is limited to a single category of legal texts: the provisions of the Constitution.

The constitutional framer stipulated that the legal text subject to the Court's interpretation must be of a constitutional nature. By implication, this prohibits the Court from independently addressing the interpretation of other legal texts, whether they are legislative or regulatory in nature.

Thus, the constitutional framer has diverged from its Egyptian counterpart, as the latter restricted the independent interpretive jurisdiction of the Supreme Constitutional Court to legislative texts only. As for interpreting the provisions of the Constitution, it exercises this function incidentally to its review of the constitutionality of laws.

The Algerian Constitutional Court affirmed this condition in the reasoning of its Decision No. 01/24 regarding the interpretation of a phrase contained in Article 195/1 and Article 141 of the Constitution. It held that its interpretive approach operates within the bounds of the Constitution's provisions, particularly Article 192/02. Consequently, its interpretive jurisdiction is confined to interpreting the provisions of the Constitution and does not extend to interpreting legislative and regulatory texts, a jurisdiction granted to other constitutional institutions.

The constitutional framer employed the phrase "one or several constitutional provisions" rather than "texts or rules of the Constitution" to signify that the Court's interpretive jurisdiction focuses on the stipulations of the constitutional texts contained within its principles and articles, which may be subject to ambiguity or deficiency. This is the same terminology used when specifying the conditions for raising an unconstitutionality objection, where the phrase "a legislative or regulatory provision" was used instead of "a legislative or regulatory text".

C. Conditions Related to Interpretive Opinions

In exercising its jurisdictions, the Constitutional Court issues decisions and also renders opinions. The constitutional framer has deemed its decisions to be final and binding upon all. This principle applies to the opinions of the Constitutional Court as well, even in the absence of an explicit text specifically addressing them.

When exercising its interpretive jurisdiction, the Constitutional Court issues opinions that hold the same authority as its decisions. Article 13 of Organic Law No. 22-19 and Article 15 of the Regulations Defining the Rules of Procedure of the Constitutional Court stipulate that the Court must issue its opinion within a period of 30 days from the date of notification. This period may be reduced to 10 days at the request of the President of the Republic in case

of an emergency. Neither the constitutional framer nor the legislator has specified the nature of such an emergency, which could be related to a situation of urgency or the paralysis of constitutional institutions pending the interpretation of the relevant constitutional provision[16].

The Court issues its interpretive opinions by a majority of its attending members. The Regulations Defining the Rules of Procedure of the Court stipulate that for its deliberations to be valid, at least 9 members (out of 12) must be present. If the votes are tied, the President's vote shall be decisive.

D. Regarding the Requirement of Existing Application Disputes or Issues

The legal texts governing the Court's operations do not require that the constitutional provisions subject to interpretation have raised application issues or disputes. This contrasts with the Egyptian legislator, which explicitly stipulates that the legislation requiring interpretation must have given rise to disagreements in application and be of sufficient importance to necessitate a unified interpretation. Similarly, the German Constitution links the competence of the Federal Constitutional Court to rule on the interpretation of the Constitution to the occurrence of disputes concerning the scope of the rights and duties of federal official bodies, or other specific parties granted special rights under the Constitution.[17]

However, the absence of an explicit provision in the Constitution requiring the Constitutional Court to adhere to this condition does not prevent it from considering this factor when exercising its jurisdiction. This was expressed in the reasoning of its Opinion No. 02/25 concerning the interpretation of Articles 121 and 122, stating that the Court's role in interpreting ambiguous provisions is limited to clarifying and elucidating the intent of the constitutional framer, "particularly when application issues arise".

The Court also explicitly adhered to this condition to define the scope of its jurisdiction in its most recent opinion to date—Opinion No. 03/25. It affirmed that it assumes interpretive jurisdiction when there is a deficiency, ambiguity, or contradiction between constitutional texts, or when the text admits more than one possible meaning, and when the concerned texts have given rise to disagreements in application among state institutions. Such disagreements represent a form of application issues, necessitating the unification of constitutional interpretation.

The approach taken by the Court in Opinion No. 03/25 is notable for being more specific and emphatic regarding the importance of this condition compared to its approach in Opinion No. 02/25. In the latter, it used the phrase "particularly when application issues arise," which implies that its jurisdiction to interpret is established once the general conditions are met but is further reinforced when there is an actual issue in application.

In its Opinion No. 03/25, the Court enumerated the situations affecting a constitutional text that render it subject to its interpretation, using the conjunction "or." This indicates that the presence of *any one* of these conditions—deficiency, ambiguity, contradiction, or the existence of multiple possible meanings—primarily establishes its jurisdiction. However, when addressing the requirement for the existence of an application dispute, it used the

conjunction "and," confirming that this condition is *necessary* for its jurisdiction to be established, provided it is coupled with one of the aforementioned issues affecting the constitutional provision.

2.2- The Constitutional Court's approaches in Interpreting the Constitution

Given that interpreting constitutional provisions aims to ascertain the content of the constitutional rule and the true intent of the constitutional framer behind enacting that rule, the mechanisms and methodologies for interpreting law in general, and the Constitution in particular, have varied and diverged across different approaches.

In this context, the opinions of the Constitutional Court regarding the interpretation of certain constitutional provisions will be examined to deduce the methodologies it has adopted when exercising its interpretive jurisdiction.

In its Opinion No. 01 of 2024 concerning the interpretation of certain phrases contained in Article 195/01 and Article 141 of the Constitution[18], the Constitutional Court explicitly stated that, in its pursuit of the objectives of constitutional interpretation—namely, determining the precise meanings of constitutional provisions and removing any ambiguity that may obscure them to ensure their correct application—it relies on various interpretive methodologies. These include examining the meanings of the words, considering the intent of the constitutional framer when drafting the Constitution, and analyzing the context in which it was formulated or is being interpreted.

Furthermore, an analysis of the opinions issued by the Constitutional Court—to date, with the latest being Opinion No. 03 of 2025—helps identify the methodologies the Court has actually employed in interpreting the constitutional provisions referred to it. These methodologies are threefold:

A. Relying on the Meanings and Significations of the Wording of the Constitutional Text

Relying on the meanings and significations of the phrases in constitutional texts is one of the oldest theories and methodologies adopted by constitutional jurisprudence. This theory is known as the "textual theory," which emerged from the school of glossing on texts or the school of sanctifying legislative texts.

The school of glossing on texts emerged in the early 19th century through French jurisprudence following the enactment of the French Civil Code in 1804 and other legislative texts. This school advocates for strict adherence to the texts, considering legislation the sole official source of law, and thus, no deviation from its provisions is permitted[19].

In terms of constitutional jurisprudence, given that the school of glossing on texts is one of the oldest theories concerning legal interpretation in general, American judiciary—as the cradle of judicial review of the constitutionality of laws—was influenced by French legal doctrine. This theory was the first adopted by the American judiciary to elucidate the meanings of constitutional texts, making the significations of the words in constitutional

provisions the primary foundation upon which the constitutional judge relies before resorting to any other method or approach to ascertain the true intent of the constitutional framer[20].

The Constitutional Court relied on the terms and wording of the text in its interpretive process in Opinion No. 01/23 issued in 2023, concerning the interpretation of Article 127, which outlines the provisions related to the accountability of a deputy before their peers. In the reasoning of this opinion, the Court considered that a request to interpret a constitutional provision carries particular importance—even if it does not arise within the context of a legal dispute or litigation—because it aims to remove ambiguity that may affect one or several constitutional provisions. This is done to uncover their true meaning and content through their "verbal structures, without the slightest deviation from them and within their limits".

Similarly, the Constitutional Court affirmed its reliance on this approach in its Opinion No. 01 of 2025 regarding the interpretation of the text of Article 158 of the Constitution[21]. Although it rejected the notification submitted by 45 deputies of the People's National Assembly on the grounds that the text in question was clear, it nonetheless presented arguments in its opinion indicating that it relied on the meanings and phrasing of the text of Article 158 of the Constitution to reach this conclusion.

The court, in justifying its rejection of the submitted notification, stated that the provisions for which interpretation was requested, pertaining to one of the mechanisms of parliamentary control—specifically, questions—are "clear in meaning and are not shrouded in any ambiguity." It further declared that the matters regulated by Article 158 are internal procedural matters concerning the relationship between the National People's Assembly and the government, and are unrelated to the interpretation of the constitutional provision contained in Article 158. This is because the latter article is clear in all its paragraphs, without any contradiction or issue.

he court justified its refusal to process the notification and its decision not to interpret Article 158 of the Constitution based on the clarity of the text. It stated that excessive interpretation of provisions that are clear in meaning constitutes an indirect amendment of the constitutional provisions through procedures that violate those specified in the Constitution. Furthermore, it could lead to the creation of a new constitution resulting from constitutional interpretation, which would run parallel to the written constitution drafted by the constituent power.

The court also relied on this criterion in its Opinion No. 03/25, emphasizing that its engagement in interpretation must be based on adhering to the intent of the constitutional framer, which is deduced from the meaning of the wording.

B. Relying on the intent and purpose of the constitutional framers and the context in which the text was drafted (interpretation de but)

Referring to the time of the drafting of constitutional rules in order to ascertain the intent of the constitutional framer and their purpose in enacting these rules, as well as understanding the context in which these rules were formulated, is one of the foundations of formal theories

of interpretation, particularly the textual commentary school.

Interpretation according to this theory is considered the true method of legal reasoning because it helps clarify the meaning intended by the author of the text, whether a legislator or a constitutional framer. Thus, the role of the interpreter in this case becomes to uncover the meaning of the text without creating or innovating new rules[22].

In the field of constitutional interpretation, this approach is based on the necessity of not disregarding or neglecting the will of the constitutional framer. It has been adopted by American jurisprudence and judiciary under the name of the "Original Intent" theory. This school of thought holds that the interpretation of constitutional texts must be based on the intent and purpose of the Founding Fathers, the drafters of the U.S. Constitution. This intent can be ascertained by examining the preparatory works that accompanied the adoption of the Constitution and its subsequent amendments, as well as the writings, speeches, and articles produced by those who participated in the preparation and drafting of the Constitution during that period[23].

The Constitutional Court relied on this approach for the first time in its Opinion No. 01 of 2023, which became a reference it used in its subsequent opinions. It emphasized that the interpretation of constitutional provisions must not deviate from the purposes and objectives for which these provisions were enacted, and that they should not be read in isolation from their context. The Court affirmed that constitutional provisions and their requirements are formulated to achieve a specific purpose intended by the constitutional framer.

Similarly, the Court followed this same approach in its Opinion No. 02 of 2024, affirming that its interpretation of constitutional provisions must remain within the context of the purposes and objectives for which the relevant constitutional provision was enacted. It also stressed that these provisions should not be read in a manner that deviates from their true meaning or isolates them from their context.

The court justified this by stating that failing to adhere to these methodologies and controls would open the door to divergent interpretations. This, in turn, could cause the constitutional rule to deviate from its intended meaning and the purpose for which it was formulated in this specific manner.

The court's position was even clearer in its reliance on the intent of the constitutional framer in its Opinion No. 03/24, concerning the interpretation of provisions related to the renewal of electoral terms in the National People's Assembly[24]. It emphasized that this approach is its primary methodology for interpreting the provisions of the Constitution. In interpreting the text of the last paragraph of Article 122 of the Constitution, the court relied on the spirit of the Constitution and referred to the context in which this article was drafted—namely, the popular movement, which had among its foremost demands the entrenchment of peaceful transfer of power and the ethicalization of political life as a whole.

The Court also relied on this approach in its Opinion No. 02/25, reaffirming its adherence to it in line with the methodology it had adopted in previous opinions. It

emphasized that the Court's role is confined to clarifying and elucidating the "intent of the constitutional framer." Similarly, in its Opinion No. 03/25 concerning the interpretation of Article 116 of the Constitution, the Court affirmed that its interpretation must take into account the circumstances under which the constitutional texts were drafted and the consequences of their application, "without removing them from their context." Rather, they must be addressed within the historical framework in which they originated.

C. Not Interpreting a Constitutional Provision in Isolation from Other Constitutional Requirements

The approach of the Constitutional Court is generally characterized by logical reasoning and the adoption of solutions that align not only with the provisions of the Constitution and established constitutional jurisprudence but also with the demands of legal thought in general, and constitutional logic in particular.

Accordingly, the Court adopted an important methodology: the interpretation of one or several constitutional provisions must not be conducted in isolation. Instead, such interpretation should take into account other related provisions and requirements within the Constitution that are relevant to the provision under review.

The Court justified its adoption of this approach in its Opinion No. 01/23, concerning the interpretation of Article 127, which subsequently became a reference basis relied upon in several later opinions. It reasoned that the Constitution, as the supreme law, constitutes a single, indivisible system. This necessitates interlinking its provisions to resolve any ambiguity or vagueness surrounding the text under interpretation, clarify its content, and elucidate its meaning to ensure uniform application.

The Court also applied this methodology in its Opinion No. 01/24 and Opinion No. 02/24, asserting that its interpretive approach requires that no constitutional provision be interpreted in isolation from other constitutional provisions and requirements related to the provision in question.

In its Opinion No. 01/24, the Court noted that the notification submitted to it—by 46 deputies from the first chamber of Parliament—while aimed at interpreting the meaning of the phrase "regulatory act" mentioned in Article 195 of the Constitution, also extended to the phrase "regulations" found in Article 190/3 of the Constitution, due to the interconnectedness of constitutional provisions.

The Court found that the constitutional framer's objective in establishing the concept of constitutional review of laws was to embody the principle of constitutional supremacy and uphold legal security, as both are manifestations of a state governed by the rule of law.

Given that the purpose of regulations issued by the Prime Minister or the Head of Government, as the case may be, is to implement legislative texts and independent regulations issued by the President of the Republic, these regulations are subordinate to and derive their

existence from those texts. Consequently, judicial review of such regulations is the legal means that safeguards individuals' rights in relation to them.

Ultimately, the Court expressed its opinion that the phrases "regulations" and "regulatory act" mentioned in Articles 190/3 and 195/1 of the Constitution refer to "independent regulations" issued by the President of the Republic in their own capacity, outside the areas reserved for legislation. These are the only ones subject to traditional constitutional review via the exception of unconstitutionality.

The Court notably applied this approach in its Opinion No. 02/25, concerning the first partial renewal of members of the Council of the Nation elected from the ten new provinces. The applicants, 25 members of the Council of the Nation, had requested an interpretation of the provisions of Articles 121 and 122 of the Constitution, arguing that imposing a partial renewal on half of the elected members deprived them of a full six-year term, while the other half enjoyed a full term.

In the reasoning of this opinion, the Court emphasized that its interpretation of the provisions subject to the notification could not be conducted in isolation from other provisions related to the subject. It affirmed that the constitutional framer—through several provisions of the Constitution—sought to maintain the continuity and proper functioning of the Council of the Nation by leveraging the experience of remaining members after renewal, through the concept of partial renewal of the Council's composition.

Due to the supremacy and elevated status of the Constitution, it forms a single, indivisible system. This requires interlinking the provisions contained within it to clarify any ambiguity regarding the text, elucidate its content, and explain its meaning, in order to ascertain its intent and ensure uniform application.

The Court held that the partial renewal of members, whether appointed or elected, should occur every three years, allowing members to successively complete a full six-year term. However, the renewal concerning the ten new provinces is an exceptional situation. This necessitates that half of the members benefit from a full term, while the other half is renewed at the first partial renewal occurring after the initial three years of their term, as was the case during the first partial renewal of the Council of the Nation in 1996.

Conclusion:

Constitutional interpretation is one of the most important competencies of the Constitutional Court. Although this competence is as recent as the Court itself, the Court has managed to issue interpretive opinions that have helped clarify ambiguities in numerous constitutional provisions and has established rulings on matters overlooked by both constitutional and legislative texts. These opinions have been characterized by high quality, evident in their sound legal formulation and logical reasoning.

This study has led to several key findings, including:

-The Constitutional Court, through its issued opinions, has successfully clarified several

ambiguous constitutional provisions, such as defining the meaning of a "regulatory act" that can be subject to a plea of unconstitutionality.

-The Court was able to remedy gaps in certain legislative provisions, as seen in the case of the rules governing the first partial renewal of members elected from the ten new provinces.

-Through its opinions, the Court has contributed to imparting the necessary flexibility to constitutional rules by clarifying their ambiguous aspects and supplementing their deficiencies.

-The Court employed multiple interpretation methodologies. It relied on the literal meaning of constitutional texts, utilized teleological interpretation (focusing on purpose and intent), and adopted an approach based on treating constitutional provisions as a single, indivisible whole.

-The Court's opinions are distinguished by their exemplary legal drafting, which has effectively conveyed the constitutional framer's intent in establishing the rules and clarified their obscure elements.

Based on the findings of this study, a set of recommendations can be proposed:

-Amend Article 198 of the Constitution to explicitly grant absolute legal authority (res judicata) to the interpretive opinions of the Constitutional Court.

-Introduce a requirement for the existence of genuine difficulties in implementing constitutional texts as a condition for the Court to undertake interpretation, ensuring harmony between the constitutional texts and the Court's opinions.

-Expand the interpretive jurisdiction of the Court to include, in addition to constitutional provisions, legislative texts. This would aim to achieve uniformity in understanding the content of various legal texts, particularly given the authoritative weight of the Court's opinions.

Citations:

1- Magdy Medhat El-Nahry, "Interpretation of Constitutional Texts in Constitutional Jurisprudence, A Comparative Study," New Dawn Library, Mansoura, Egypt, 2003, p. 7.
2 - Opinion No. 01/23 dated 07-08-2023, concerning the interpretation of Article 127 of the Constitution.
3 - Constitutional Council Decision dated August 30, 1989, Official Gazette of the People's Democratic Republic of Algeria, Issue No. 37, published on September 4, 1989.
4 - Jaalab Kamal , "The Role of the Algerian Constitutional Council in Interpreting the Constitution," Journal of Law and Human Sciences, Volume 11, Issue 3, 2018, p. 45.
5 - Interpretive Memorandum on the Provisions of the Constitution Relating to the First Partial Renewal of Appointed Members of the Council of the Nation (1996 Constitution), published on the Constitutional Court website (Constitutional Council Archive): https://cour-constitutionnelle.dz/
6 - Constitutional Amendment of 2020, issued by Presidential Decree No. 20-442 dated 30-12-2020, concerning the promulgation of the constitutional amendment, approved in the referendum of November 1, 2020, published in the Official Gazette of the People's Democratic Republic of Algeria, J.R.G.J.G. No. 82, issued on 30-12-2020.
7 - Article 26 of the Law of the Egyptian Supreme Constitutional Court No. 48 of 1979, as amended and supplemented.
8 - Opinion No. 02/24 dated 10-07-2024, concerning the interpretation of the provision contained in Article 187/01, Paragraph 02 of the Constitution.
9 - Hafida Hocine, "The Role of the Constitutional Court in Interpreting Constitutional Norms under the 2020 Constitutional Amendment," Journal of Law and Local Development, Volume 4, Issue 2, 2022, p. 72.
10 - Opinion No. 02/25 dated 05-02-2025, concerning the interpretation of the provisions of Articles 121 and 122 of the Constitution.
11 - Constitutional Amendment of 2016, issued by Law No. 16-01 dated 06-03-2016, Official Gazette of the People's Democratic Republic of Algeria, Issue No. 14, published on 07-03-2016.
12 - Opinion No. 03/25 dated 19-06-2025, concerning the interpretation of the provisions of Article 116 of the Constitution.
13 - Organic Law No. 22-19 dated 25-07-2022, specifying the procedures and modalities for notifications and referrals before the Constitutional Court, Official Gazette of the People's Democratic Republic of Algeria, Issue No. 51, published on 31-07-2022.
14 - The Regulations Defining the Rules of Procedure of the Constitutional Court, Official Gazette of the People's Democratic Republic of Algeria, Issue No. 4, published on 22-01-2023.
15 - See the Constitutional Court's opinions published on the Court's official website: cour-constitutionnelle.dz
16 - It is worth noting that the Constitutional Court, even in the absence of a request from the President of the Republic, may address an interpretation urgently if it deems the situation requires expediency. For example, it issued its Opinion No. 02/25 concerning the issue of the partial renewal of members of the Council of the Nation elected from the ten new states within 10 days (the notification was on January 27, and the opinion was issued on February 5). In contrast, it issued its Opinion No. 01/25 regarding the interpretation of Article 158 of the Constitution, which concerns parliamentary questions, within 29 days (the notification was on January 2, and the opinion was issued on January 30).

17 - Article 93(1) of the German Constitution of 1949, as amended.
18 - Opinion No. 01/24 dated 16-01-2024, concerning the interpretation of a phrase contained in Article 195/1 and Article 141 of the Constitution.
19 - Ramadan Mohammed Abou El-Saoud, Mohammed Hussein Mansour, Introduction to Law, Al-Halabi Legal Publications, Beirut, Lebanon, 2003, p. 237.
20 - Ahmed Galal Bassiouni, "The Dialectic of the U.S. Constitution's Continuity: Is it Legal Brilliance, Political Genius, or a Historical Outcome?", Journal of Human and Literary Studies, Issue 27, 2022, p. 1043.
21 - Opinion No. 01/25 dated 30-01-2025, concerning the interpretation of the provisions of Article 158 of the Constitution.
22 - Djemaa Kamal, Op. cit, p. 40.
23 - Ahmed Galal Bassiouni, Op. cit, p. 1045.
24 - Opinion No. 03/24 dated 24-11-2024, concerning the interpretation of the provision contained in the last paragraph of Article 122 of the Constitution.