

The Constitutional Court: Between Conformity Control and Constitutional Control in Amending the Constitution (2020).

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ABSTRACT:

The 2020 amendment to the Algerian Constitution enshrined the review of the constitutionality of laws and changed the body responsible for this function to the Constitutional Court. The Constitutional Court was granted several powers, including the monitoring of the constitutionality of laws ranging from optional to mandatory constitutional oversight. The latter includes mandatory compliance oversight, which the constitutional founder required the President of the Republic to notify.

key words: Constitutional Court; compliance oversight; constitutional oversight; notification; organic laws; presidential decrees.

Introduction:

The establishment of the rule of law requires a set of principles, the most important of which is the supremacy of the constitution. This is because the constitution occupies the apex of the legal system in the state. It is a symbol of credibility and respect for legitimacy at national and international levels, as well as being an indicator of the state's political maturity.

The constitution occupies this position because its rules are established by the original constituent authority, the sovereign people. Additionally, it regulates the state's political power and enshrines individuals' rights and freedoms. Therefore, guarantees must be in place to protect this principle, such as the review of the constitutionality of laws, to prevent abuses and violations of its rules, particularly by the legislative authority.

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Constitutional review of laws therefore involves monitoring the compatibility of lower legal rules with higher legal rules, leading to penalties being imposed on unconstitutional legal texts by repealing them if they are in force, or preventing their issuance if they are not yet enforceable.

The founder of the Algerian constitution adopted the principle of constitutional review of laws in the first constitution of the republic after independence, but reversed this in the 1976 constitution. Nevertheless, the democratic transition process that Algeria underwent from 1988 onwards, culminating in the adoption of the 1989 Constitution, paved the way for constitutional review to return to its rightful place within constitutional provisions and be entrusted to a Constitutional Council. The 1996 Constitution maintained this system, but the 2016 constitutional amendment is considered the most important turning point in the history of constitutional review in Algeria. This amendment affected the composition of the Constitutional Council, increasing the number of its members to enable it to carry out its growing and increasingly complex tasks.

The amendment also extended the term of membership and specified the conditions for membership of the Council, bringing in scientific expertise and specialists to boost its effectiveness. The scope of notification was also expanded to include several parties, particularly the addition stipulated in Article 188. This granted the Constitutional Council *ex post facto* oversight of the constitutionality of laws relating to fundamental rights and freedoms through direct referral to the judiciary, revitalising and bringing out of stagnation the Council.

The 2020 amendment preserved this gain within the framework of the Constitutional Court and the inevitable amendments that accompanied it. This is because the constitutional founder changed the nature of oversight of the constitutionality of laws. We therefore ask the following question: how did the 2020 constitutional review affect the oversight jurisdiction of the Constitutional Court?

We will attempt to answer this question in two main sections.

TOPIC 1: Confirmation of the 2020 amendment to conformity control.

TOPIC 2: Expansion of constitutional oversight under the 2020 amendment.

THE FIRST TOPIC: Confirmation of the 2020 Amendment to the Jurisdiction of the Constitutional Court

The Constitutional Council exercises mandatory conformity oversight over organic laws and the internal regulations of both Houses of Parliament before they are enacted. The constitutional amendment confirmed this, with the body responsible for this oversight being named

the Constitutional Court in accordance with Article 190, paragraphs 5 and 6 of the constitutional amendment.

Conformity review ensures strict compliance with the constitutional provisions in terms of both form and substance. In other words, the law must be in strict conformity with the Constitution. This mandatory prior review is considered the most rigorous and comprehensive form of review because it is formally exercised through the review of laws in terms of their preparation and approval, in accordance with the requirements of the Constitution. From a substantive point of view, we review the entire text.

The first requirement: Mandatory review by the Constitutional Court of organic laws

Professor François Lochair defines organic laws, as stipulated in Articles 48 and 61 of the French Constitution of 1958, as laws that must meet a set of conditions. The first of these is that they must be recognised as such by the Constitution. In other words, they are organic laws that govern specific areas, often relating to the organisation of state institutions. Special procedures must also be followed in their preparation and adoption, and they can only be voted on and adopted in accordance with these procedures. The Constitutional Council must also declare them constitutional¹.

The term 'organic laws' refers to parliamentary laws concerning constitutional systems or bodies. This concept was imported from France and adopted in the 1996 Constitution. This new set of laws is also referred to as 'organic laws' and is set out in Article 123 and other articles of the Constitution. These laws are mentioned exclusively in the Constitution, as is the case with the 2020 Amendment, which is provided for in Article 140.

Conformity means that the Constitutional Court pays closer attention to these laws and makes careful comparisons with the Constitution. These laws must not contradict the spirit or letter of the Constitution in any of their provisions, and must aim to respect the precise wording of its terms. This requires comprehensive control of its provisions, considering both procedural and substantive aspects to ensure that it does not fall outside the scope of the Constitution.

These laws complement the provisions of the Constitution and are issued by Parliament, which determines the conditions for their implementation. This is because the Constitution cannot cover all matters relating to the form of the state and the organisation of public authorities. Therefore, it delegates the adjudication of certain powers and rights, such as election law, to organic laws. These laws are distinguished from ordinary laws because they are subject to more rigorous procedures, require a special majority for ratification and are subject to compulsory prior scrutiny by the Constitutional Court.

According to the formal standard, organic laws are distinguished by their subject matter. They are considered to be the highest form of ordinary law in the legal hierarchy, and the lowest rank of the constitution. When monitoring the conformity of a notified internal regulation with an organic law, the Algerian Constitutional Council

¹ Ben Arabiya Ruqaya, Oversight of Organic Laws in the Algerian Constitutional System (Conformity Oversight or Constitutional Oversight), Voice of Law Magazine, Volume 8, Special Issue, 2022, p. 54.

incorporated the organic rule into the constitutional reference bloc. The Council declared that some of its provisions were not in conformity with the Constitution or the provisions of an organic law.

It is unconstitutional to subordinate organic laws to conformity control in order to prevent any authority from encroaching on the competence of others, and to ensure the exercise of political rights and freedoms, as well as the independence of the judiciary. Similarly, enacting an organic law that is not provided for in the Constitution is unconstitutional, as it limits Parliament's power to the extent that it cannot exceed the permissible framework set out in the Constitution. Promulgating texts or provisions contrary to the letter and spirit of the Constitution requires them to be subject to conformity control¹.

Thus, in accordance with Article 123 of the 1996 Constitution, the Algerian constitutional institution required the organic law to undergo control to ensure its conformity with the Constitution, as is the case with the 1958 French Constitution. According to Article 140 of the 2020 Amendment, the organic law must be reviewed by the Constitutional Court before it is promulgated.

If the court declares that the submitted law contains an unconstitutional provision that cannot be separated from the rest of the law, the text shall be returned to the relevant body. However, if the submitted law contains a provision that is not in conformity with the Constitution but can be separated from the rest of the law, the President of the Republic may promulgate the law excluding any rulings or provisions contrary to the Constitution, as set out in Article 7 of the Statute².

It should be noted that conformity control covers the entire text, including the form and subject matter, rather than a specific provision. The Algerian Constitutional Council notes that it only declares non-conformity with a particular law or laws, and not with the organic law or the Constitution.³

In its opinion of 06/03/1997, the Constitutional Council stressed its control over the conformity of the provisions with the spirit of the Constitution, stating: 'Considering that every law, especially its organic provisions, must not exceed constitutional limits so as not to contradict the spirit of the Constitution itself'⁴.

It should also be noted that the Algerian constitutional founder has restricted the notification authorities in this case. The President of the Republic is obliged to notify the Constitutional Court before publishing organic laws in the Official Journal, so that the Court can monitor the laws and ensure their conformity with the Constitution. This seems logical to us, because the President of the Republic is the guardian of the Constitution and will not allow its provisions to be violated, especially by laws that are subordinate to it and derive from it.

Second Requirement: Monitoring the conformity of the rules of procedure of each of the two Houses of Parliament with the Constitution.

¹ Sharbal Abdelkader, Decisions and Opinions of the Constitutional Council in Interpreting the Provisions of the Algerian Constitution, Dar Houma, Algiers, p. 37.

² The specific rules governing the work of the Constitutional Court, issued on 22 January 2023, Official Journal No. 4.

³ Opinion No. dated 16 November 2001 concerning the Basic Law on the Judiciary of the Constitution, Official Journal No. 76 issued on 24 November 2002.

⁴ Nafisa Bakhi, Abbas Ammar, The Constitutional Limits of the Algerian Constitutional Council's Oversight, Parliamentary Thought Magazine, Issue 22, March 2009, p. 51.

These rules are considered an instrument for organising Parliament's work and its relationships with other authorities, particularly the executive. They guarantee Parliament's independence and protect it from external influences by other authorities or institutions. They also define and limit the powers of each authority. Therefore, Parliament's regulations are subject to constitutional and mandatory control.

According to constitutional jurisprudence, the internal rules of Parliament are defined as the sum of the measures and decisions within the remit of the Councils. These measures and decisions are of an internal nature and relate to the Councils' own functioning and the systems within them.¹

Some countries implement this system through legislation. For example, the Belgian Constitution's Article 67 provides for the issuance and amendment of House of Representatives regulations by law, as does the 2014 Egyptian Constitution's Article 117. The Chamber of Deputies establishes its own internal regulations to govern its operations, exercise its powers and maintain order. However, the Chamber of Deputies issued a law contrary to the 1989 opinion of the Algerian Constitutional Council, which rejected the designation of the People's National Assembly's rules of procedure as a law and considered them to be internal regulations instead.

Although some constitutions permit parliamentary independence in establishing its own rules of procedure, these must still be approved by the executive authority. The Constitution of the United Arab Emirates is an example of this, as set out in Article 55. However, most countries allow parliament to draft its own rules of procedure. Examples include France (Article 61 of the 1958 Constitution) and Algeria (successive constitutions).

The 2020 amendment to the Constitution states that the People's National Assembly and the Council of the Nation must prepare and ratify their own internal rules and the rules of procedure for Parliament's two chambers, in order to reflect the will of their respective members.

The Constitutional Council concluded that, given the consistency of the constitutional rules, it has the authority to oversee any amendments. The constitutional founder is responsible for this mandatory control and establishes that the body responsible for notifying the Constitutional Court or the Constitutional Council is the President of the two chambers rather than the President of the Republic. The rules of procedure do not require issuance procedures, as they take effect once approved by the relevant chamber and found to be in conformity with the Constitution by the Constitutional Court.

Unlike the French constitutional founder, who correctly established that the presidents of the two chambers of parliament should notify the constitutional council of the conformity of the two chambers' rules of procedure with the constitution, the constitution is deficient in failing to require the president of the republic to notify the constitutional court of the conformity of the internal order, given that it is the institution responsible for ensuring respect for the constitution. The Constitution is the fundamental law of the state, establishing the rules on which the government is based and enshrining rights and freedoms.

As provided for in the last paragraph of Article 190 of the 2020 Amendment, the rules of procedure of both Houses of Parliament are subject to the control of the

¹ Zadawi, Murad, Rationalising the organisational independence of parliament through oversight of the internal regulations of both chambers, *Journal of Legal and Social Sciences*, Issue 11, 2018, p. 398.

Constitutional Court. This control is compulsory and must be carried out before these regulations come into force. This is because Parliament determines its own rules of procedure independently, and conformity control is necessary to avoid introducing provisions that would affect the constitutional distribution of powers — that is to say, encroaching on the powers of other authorities, particularly the executive branch.

The previous control of parliamentary internal rules was the subject of a dispute between the People's National Assembly and the Constitutional Council when the Assembly ratified its rules of procedure on 22 July 1989, but did not submit them for review until 17 days later. The Assembly intended to adopt a law containing the internal rules, but the Constitutional Council rejected this in a decision issued on 28 August 1989. In Opinion No. 10, issued on 13 May 2000 while monitoring the conformity of the People's National Assembly's rules of procedure to the Constitution, the Council confirmed this and rejected the text on formal grounds, ruling that censorship was precedent.

Both formal and substantive control over these regulations is required. The law and the internal rules must be distinguished, since the latter relate to the establishment of the two chambers, the responsibilities of deputies and members of the National Assembly, and other issues. Each chamber is competent to draw up its own rules independently of the government. However, the law may take the form of a proposal or draft law submitted by the government, as stipulated by the Constitutional Council in its decision of 28 August 1989. The Council also formally monitors the procedures for ratifying these regulations.

In substance, it monitors compliance with the internal rules of the Constitution, which is more rigorous and precise than constitutional control. It uses constitutional interpretation to judge the constitutionality of the rules of procedure of both Houses of Parliament. Sometimes it resorts to a narrow interpretation, as in the Council's Opinion No. 03, issued on 23 July 1997, regarding the control of the National People's Assembly's internal order. At other times, it adopts a broader interpretation of the Constitution's provisions.

An examination of the work of the Algerian Constitutional Council reveals that, since its first decision, the Council has demonstrated its commitment not only to complying with the provisions of the Constitution, but also to allowing for extensive freedom of interpretation. This is evident in its case law, which shows that rather than interpreting the Constitution strictly, the Council has extended it to include texts with constitutional value, such as the preamble to the Constitution and organic laws. This has enabled the Council to expand and extend the constitutional bloc.¹

THE SECOND TOPIC :Extension of the 2020 Amendment to constitutional oversight

The control of the constitutionality of laws is the inherent competence of the Constitutional Council and, currently, the Constitutional Court. The Council's intervention can be either mandatory

¹ Ben Abdi Hisham, Oversight of the constitutionality of laws. Master's thesis on State and Institutions, Faculty of Law and Political Science, University of Algiers, 2015, p. 80.

or permissible, and is considered to be flexible control. This means that the provisions of legislation must not conflict with the Constitution.

Unlike conformity control, which focuses on the entirety of a text and is compulsory and pre-emptive, this control can include part or all of the legislation outlined in the notification letter.

The first requirement: constitutional review of treaties.

International treaties are the primary source of public international law, and all agreements, charters and conventions fall within their framework. This is as set out in the Vienna Convention on the Law of Treaties, concluded on 23 February 1969.

The 2020 amendment clarifies the matter of treaty control. Article 190 stipulates that the Constitutional Court may be notified of the constitutionality of treaties before ratification. It also excludes subsequent monitoring of treaties due to the problems this poses for the state's compliance with its international obligations, as well as the criticism received under previous constitutions. In our view, the constitutional founder was right to do so.

If the Constitutional Court rules that the treaty is unconstitutional, it will not be ratified. This would not contradict any international obligations towards subjects of international law. It should be noted that the introduction of other parties in the 2020 amendment, as well as what is provided for in Article 102 of the Treaty of Armistice and Peace, is not subject to constitutional control. However, according to paragraph 2 of Article 102, 'The President of the Republic shall seek the opinion of the Constitutional Court without notifying it in order to control its constitutionality', and evidence of this can be found in Chapter III, 'Organisation and Separation of Powers', rather than Chapter I, 'Censorship'.

This is an advisory opinion from the Constitutional Court, which is not binding on the President of the Republic. The President signs treaties of armistice and peace agreements, which require the approval of both chambers of Parliament. These political or sovereign agreements are mentioned exclusively in Article 102 of the 2020 Constitutional Amendment.¹

According to Article 154 of the 2020 Constitutional Amendment, a treaty ratified by the President of the Republic under the conditions set out in the Constitution shall prevail over the law. Therefore, while treaties are inferior to the Constitution, they are still subject to constitutional control. Monitoring the constitutionality of treaties is of equal importance to monitoring the constitutionality of domestic laws, whether they contain provisions contrary to the Constitution or are directly applicable in the national legislative system as soon as they are ratified.²

There are no practical forms of constitutional review of international treaties prior to their ratification. The only procedure available is for the Constitutional Court to declare the treaties unconstitutional, which prevents their ratification.³

¹ Saleh Reda, The Role of the Constitutional Court in Overseeing the Constitutionality of International Treaties in Algeria in Accordance with the Constitutional Amendment of 30 September 2020, Scientific Research Notebooks, Volume 10, Issue 2, 2022, p485.

² Bosmaha Nasr al-Din, Oversight of the Constitutionality of Treaties: The Rome Convention as a Model, Journal of the Constitutional Council, Issue 03, 2014, p. 32. □

³ DJZMAM Aziz, op, cit p 124.

With regard to the control of international treaties, Article 193 of the 2020 Amendment stipulates that notification must be provided to all relevant passport control authorities.

Therefore, the Constitutional Court's ability to intervene in treaty monitoring depends on and is limited by the notification given to these bodies. If these bodies fail to act, the court cannot interfere in treaty monitoring, even if the treaties contradict constitutional provisions. This is unacceptable, particularly in light of the principles of Algerian society. Therefore, the constitutional founder had to resort to automatically activating the self-notification mechanism or obliging notification, as with organic laws, which are legal standards inferior to international treaties. The 2020 Amendment introduced monitoring of laws and regulations for treaty compliance.

Second requirement: Constitutional review of legislative and regulatory texts

The constitutional founder explicitly subjected laws, regulations and treaties to constitutional review in the form of a review of the constitutionality of legislative texts (Section I) and a review of the constitutionality of regulatory texts (Section II).

Section I: Constitutional review of legislative texts

The Constitutional Council traditionally has jurisdiction over this review because, when political review first emerged in France, its purpose was to monitor parliamentary proceedings by examining the constitutionality of laws¹. Subsequently, the legislative sphere became a shared domain between Parliament and the President of the Republic, a development that was justified by jurisprudence in the name of streamlining Parliament. Consequently, the entire legal system became subject to constitutional review.

The constitutional founder subjected ordinary laws to optional prior review on two grounds: firstly, that they are not related to the institutional structure of the state; and secondly, that they can be reviewed on the basis of unconstitutionality, as granted to citizens, in the event that they contain an unconstitutional provision that infringes a constitutionally enshrined right and are not subject to constitutional review².

However, notification under these laws is not absolutely non-mandatory, as one of the bodies responsible for notification may deem it necessary for the Constitutional Court to intervene and review the laws' constitutionality³.

If the court is notified of an unconstitutional ruling and it is not linked to other provisions in the legal text, the court has the right to revoke it. However, if revoking it affects the structure of the entire text, the legislator must review all provisions declared unconstitutional by the Constitutional Court.

Consequently, ordinary laws are subject to ex post facto review. If they are immune from constitutional review once published in the Official Journal, this review is preventive unless there is a post-constitutional challenge⁴. In this case, it is ex post facto and allows citizens access to constitutional justice.

TOPIC II: Constitutional review of regulatory texts

¹Rabhi Ahsan, The Principle of Graduation of Legal Standards in the Algerian Legal System, Doctoral Thesis in Law, Faculty of Law, University of Algiers, 2005/2006, p. 170.

² Samia Samri, The Role of the Constitutional Court in the Survival of the Legal System in the Algerian Experience, Journal of the Constitutional Court, Issue No. 5, December 2024, p. 19

³ Sharbal Abdelkader, The Status of the Constitutional Council in the National Institutional System, op. cit., p. 92.

⁴ Rabbi Ahsan, Oversight of the Constitutionality of Laws under the 2020 Constitutional Amendment, Journal of Law and Political Science, Vol. 13, No. 4, 2020, p. 43.

Article 125 of the 1996 Constitution defines the President of the Republic's regulatory powers, which he exercises through presidential decrees. These are secondary legislation that is not subject to the same legal constraints. Instead, the President legislates outside the scope of law as defined in the Constitution.

We also find that the regulatory powers granted to the Prime Minister or Minister-President under the 2020 constitutional amendment are limited to the implementation of ordinary and secondary legislation. However, independent regulations issued by the President of the Republic are subject to constitutional review, as they establish legal rules. The regulatory sphere assigned to the Prime Minister is subject to legality control by the Council of State.

Constitutional oversight is exercised when the regulatory sphere extends beyond the legal scope stipulated in the Constitution. Until December 2002¹, it should be noted that the Constitutional Council did not notify constitutional oversight of regulatory provisions due to the narrow scope of notification in the three bodies mentioned in the Constitution.

However, the 2016 amendment expanded the scope of notification to several bodies and allowed independent regulations to be subject to constitutional review. The 2020 amendment to Article 190 had the same effect by subjecting them to subsequent review. This brought about a qualitative shift in the field of constitutional oversight of regulations by restricting recourse to one month from their issuance. This optional ex post facto oversight aims to preserve the constitution and protect against deviation from its provisions as the supreme and fundamental law of the state, as well as protecting rights and freedoms.

This restriction accelerates constitutional oversight of regulations. If the legislative authority — especially the political opposition — wishes to subject these regulations to such oversight, it must respect the deadlines. The article is explicit in this respect and aims to preserve acquired rights through this restriction.

It is also logical to introduce ex post facto oversight of independent organisations so that the notifying authorities are aware of them. This is because the President of the Republic establishes these organisations and cannot subject them to prior constitutional oversight. These organisations can also be monitored by challenging their constitutionality once they fall within the scope of challenges granted to citizens.

¹ Rabbi Ahsan, Oversight of the Constitutionality of Laws under the 2020 Constitutional Amendment, *Journal of Law and Political Science*, Vol. 13, No. 4, 2020, p. 43.
Rachida Al-Aam, op. cit., p. 162.

In contemporary political systems where the executive branch dominates, constitutional oversight of independent regulations is of paramount importance. One aspect of this dominance is the lack of definition of the scope of regulation. In this regard, it is evident that the Constitutional Court should play a role in protecting the legislative domain belonging to Parliament.

If the Constitutional Court rules that regulations are unconstitutional, they lose their effect immediately and without retroactive effect from the date of the decision¹.

Third requirement: Mandatory oversight of the constitutionality of legislative orders

In the 2020 amendment, Algeria's constitutional framers followed the global trend of granting the President of the Republic the power to enact legislation through legislative orders, which he exercises in two circumstances: normal and exceptional.

Section I: Reviewing the constitutionality of orders under normal circumstances

Paragraph 2 of Article 142 of the 2020 Amendment states that the President of the Republic must notify the Constitutional Court of orders for constitutional review, and that the Constitutional Court must rule on them within ten days.

From our interpretation of Article 142, we conclude that oversight of the constitutionality of orders constitutes constitutional oversight rather than compliance oversight. Conversely, the sixth paragraph of Article 190 of the 2020 amendment specifies the laws on which conformity control is exercised exclusively, stating: 'The President of the Republic shall notify the Constitutional Court of the conformity of organic laws with the Constitution after they have been approved by Parliament, and the Constitutional Court shall rule on the text as a whole.'

Consequently, this article is limited to organic laws only and does not refer to legislative orders.

The final paragraph of the article states that the internal regulations of both parliamentary chambers are subject to conformity review, thereby excluding legislative orders from such review and rendering them subject to constitutional review instead.

Furthermore, Law No. 22-19², which specifies the procedures and methods of notification and referral to the Constitutional Court, stipulates

¹ Zahra Belhousine, Abdelmajid Lakhdari, The Scope of the Constitutional Court's Jurisdiction in Exercising Conformity Review and Constitutional Review in Light of the 2020 Constitutional Amendment, *Numers Academic Journal*, Volume IV, Issue I, p. 20.

² Organic Law No. 22-19 of 25 July 2022 defines the procedures and methods for notification and referral to the Constitutional Court, J.R. No. 51 of 31 July 2022.

in Articles 9 and 10 that the organic laws and internal regulations of both chambers of parliament are subject to conformity control. As for orders, Article 6 of this law defines the term 'constitutionality of orders'.

Furthermore, this oversight is mandatory rather than optional. Article 142 clearly states that the President of the Republic must submit these orders to the Constitutional Court for review. Under previous constitutions, such orders were subject to optional oversight as ordinary laws after being approved by Parliament in its first session.

As French jurisprudence has differed on the legal nature of legislative orders, three theories have emerged: the theory of legislative delegation; the theory of the expansion of regulatory powers; and the Bonard theory. The latter is the prevailing theory in French jurisprudence, considering that decrees undergo two stages during which their nature and legal force differ. In contrast, Algerian jurisprudence holds that the legislator has not clarified its position on decrees issued by the President of the Republic, meaning that the prevailing opinion in French jurisprudence is applicable in Algeria.

Therefore, before being submitted to Parliament, orders are considered administrative decisions that are subject to judicial review. According to the formal criterion that takes into account the source of the decision — the President of the Republic, acting in his capacity as an administrative authority — orders differ from other administrative decisions in that their legislative scope is limited to areas reserved for Parliament, as specified in the Constitution. Nevertheless, this does not prevent them from retaining their administrative nature and being subject to legality review¹.

Once they have been submitted to Parliament and approved, however, they become laws subject to constitutional review.

However, the 2020 amendment raised significant questions regarding constitutional oversight of orders. Namely, should such oversight be *ex post facto* or *ex ante*? This is because Article 142 is vague and unclear, and Article 6 of Organic Law No. 22-19 does not specify the type of oversight to be exercised over such orders. Determining the legal nature of the orders is therefore of the utmost importance. In this context, we are faced with various interpretations and possibilities, given the ambiguity of the constitutional text.

Oversight can be exercised prior to publication in the official gazette, meaning that the Constitutional Court reviews orders before they

¹ Boumediene Ahmed, The Legal Nature of Legislative Orders and Supreme Judicial Review, Algerian Journal of Legal, Economic and Political Sciences, Issue 04, December 2023, p. 79.

are published. Reducing the period for reviewing the constitutionality of orders to ten days can be considered evidence of prior review because, under normal circumstances, the constitutional body grants the Constitutional Court one month to rule on the constitutionality of a law from the date of notification.

The reason for reducing the period is that the President of the Republic is awaiting the Court's decision on the constitutionality of the orders before publishing them in the Official Gazette and implementing them. This is because urgency is one of the conditions for orders¹.

This hypothesis is also consistent with the intention of the constitutional founders to grant the President of the Republic the power to legislate by decree on organic laws, given that the latter are subject to prior constitutional review. However, the problem in this case is that organic laws are subject to conformity review, rather than constitutional review. Nevertheless, the President of the Republic issued Election Law 21-01 by decree.

On 5 March 2021, the President of the Republic notified the Constitutional Council in a letter of his intention to review the constitutionality of the decree containing this law. The review was conducted in terms of both form and substance, and the decree was issued on 10 March 2021, within two days rather than the prescribed ten days. This indicates the speed with which the review was conducted. However, this period is insufficient for reviewing an extensive law such as the electoral law. Furthermore, this review is a conformity review, in which the Constitutional Council literally reviews the law's conformity with the Constitution. In its opinion, the Council recommended replacing certain phrases, such as replacing “voters are summoned” with “the electoral body summons”².

Consequently, there is a contradiction between the constitutional texts and how they are applied. Furthermore, it seems that Article 198, paragraph 3, of the 2020 amendment grants the Constitutional Court the power to review the constitutionality of orders before they are issued. This article stipulates that orders shall lose their effect from the date on which they are deemed unconstitutional, i.e. the date of the Constitutional Court's decision.

This text implies that orders are subject to constitutional review after the event, given that legislative texts can only take effect legally once they have been published in the official gazette. Therefore, we can assume

¹ Ahmed Ben Ziane, Subjecting Legislative Orders to Constitutional Court Review under the 2020 Algerian Constitutional Amendment, *Journal of Research in Law and Political Science*, Vol. 07, No. 2, 2021, p. 206.

² Ahmed Ben Ziane, *op cit*, p. 206.

that the Constitutional Court may rule that presidential orders which have already taken effect are unconstitutional, making them subject to subsequent rather than prior oversight.

However, this hypothesis has been ruled out in practice. This is because all decrees are submitted by the President of the Republic to the Constitutional Court for review¹. Furthermore, the text loses its effect once the decrees come into force. This involves publication in the Official Journal and communication to those concerned. The text then loses its effect if the Constitutional Court decides that it is unconstitutional.

Section II: Oversight of the constitutionality of orders in exceptional circumstances

The state may encounter extraordinary circumstances that impede the normal functioning of the executive and legislative authorities. In anticipation of such circumstances, the constitutional founder set out the approach to be taken by the President of the Republic when dealing with them.

The President is granted the power to issue decrees as the protector of the Constitution whenever one of the exceptional circumstances stipulated in Article 98 of the constitutional amendment arises. This power is limited to a maximum period of six months, and the President's determination of these cases is subject to certain conditions. These conditions include mandatory consultation with the President of the Council of the Nation, the President of the People's National Assembly, and the President of the Constitutional Court. A new feature introduced by the 2020 amendment is that these actions are subject to constitutional review. This requires the President of the Republic to submit his decisions to the Constitutional Court for review after the expiry of the period.

The President of the Republic may issue ordinary or organic legislative decrees, which are not subject to the parliamentary oversight that applies to decrees issued under normal circumstances, even when Parliament is in session².

Furthermore, the final paragraph of Article 98 refers to decisions rather than legislative orders. From this term, we can infer that orders have been excluded from constitutional oversight. This is evidenced by Article 142 of the same amendment, where the first paragraph stipulates orders in normal and exceptional circumstances and the final paragraph stipulates that they must be issued by the Council of Ministers only, and are excluded from constitutional oversight.

However, the issue remains open because the article is unclear, and the constitutional founder did not rule on the matter. Nevertheless, we maintain our position that these orders should be exempt from oversight, particularly given that Article 98 states that the Constitutional Court should provide an opinion rather than a decision, unlike Article 190, which states that the Constitutional Court should make a decision on constitutional oversight.

¹ Kheir Eddine Majid, Khaloufi Khadouja, Constitutional Court Oversight of the Powers of the President of the Republic under the 2020 Constitutional Amendment, *Algerian and Comparative Public Law Journal*, Volume 8, Issue 02, December 2022, p. 540.

² Boudouia Mohamed, Mihouna Souad, The extent of the influence of the legal status of the President of the Republic on the effectiveness of constitutional oversight in light of the 2020 constitutional amendment, *Journal of Law and Political Science*, Volume 14, Issue 02, 2021, p. 386.

Therefore, it is understood that the Constitutional Court's opinion on decisions taken by the President of the Republic in exceptional circumstances is non-binding and has no bearing on constitutional oversight of orders. These opinions are merely indicative.

Conclusion :

The fundamental power of the Constitutional Court is to oversee the constitutionality of laws, a power that has evolved through successive Algerian constitutions. The most significant milestone was the 2020 amendment, which introduced a new form of oversight in the form of a court rather than a constitutional council, alongside other amendments.

Results: We have drawn the following conclusions:

- The Constitutional Court plays a role in reviewing the conformity and constitutionality of laws.
- The 2020 amendment has maintained the scope of mandatory review of the constitutionality of organic laws and internal regulations, i.e. conformity review.
- The 2020 amendment introduced prior oversight of international treaties only, which is optional.
- It also introduced mandatory oversight of the constitutionality of presidential orders.
- It also limited the review of the constitutionality of regulations to a period of one month from their publication date.

However, it maintained constitutional review of laws and regulations.

- Constitutional review is flexible, as the provisions of the law must not conflict with the constitution.

If the Constitutional Court rules that a regulation is unconstitutional, it loses its effect immediately and without retroactive effect from the date of the Court's decision.

Proposals

However, this amendment remains insufficient with regard to the powers of the Constitutional Court to review the conformity and constitution of laws. We therefore propose the following recommendations:

- Extend the bodies subject to mandatory review to include those stipulated in the Constitution.
- Explicitly stipulate that constitutional review of treaties is prior and mandatory for all treaties, not just one category.

Subject executive regulations to constitutional review, not just independent regulations.

Expand the notification process for reviewing the constitutionality of orders.

- Remove ambiguity in the constitutional oversight of orders by making it ex post facto, given that orders are already subject to parliamentary oversight.

Grant the Constitutional Court the ability to review the constitutionality of treaties without being subject to optional notification.

Subject armistice and peace treaties to constitutional review rather than the Constitutional Court's advisory opinion.

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