

The Procedural Framework for the Plea of Unconstitutionality Before the Constitutional Court: A Study in Light of Organic Law No. 22-19

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ABSTRACT:

This study examines the mechanisms for activating ex-post constitutional review in Algeria, focusing on the 'Plea of Unconstitutionality' as a fundamental right guaranteed to litigants under the 2020 Constitutional Amendment and Organic Law No. 22-19. The paper aims to elucidate the formal and substantive conditions mandated by the legislator for the admissibility of such pleas, while analyzing the 'filtering role' exercised by the Supreme Court and the Council of State in streamlining constitutional referrals. Furthermore, the study addresses the procedural specificities before the Constitutional Court and the guarantees of a fair trial, ultimately characterizing the legal nature of procedural time-limits and their impact on the stability of legal positions.

Keywords: Plea of Unconstitutionality; Constitutional Court; Organic Law No. 22-19; Condition of Seriousness; Supreme Court; Supremacy of the Constitution

Introduction:

The principle of 'Constitutional Supremacy' is legally untenable unless coupled with a procedural mechanism that ensures its transition from a 'moral value' into a 'binding force' applicable to all. As the State's supreme legal reference, the Constitution remains vulnerable to infringement should subordinate legislation be permitted to encroach upon its provisions without oversight. Consequently, the Algerian constitutional system has undergone a qualitative leap and a radical shift in its oversight philosophy, transitioning from preventative (ex-ante) political review to the institutionalization of subsequent (ex-post) judicial review. This paradigm shift was manifested through the mechanism of the 'Plea of Unconstitutionality' and the

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establishment of the 'Constitutional Court' under the 2020 Constitutional Amendment, followed by the enactment of Organic Law No. 22-19".

This constitutional development has transcended being a mere 'incidental procedural plea' within judicial litigation; it has evolved into a substantive oversight instrument whose supreme objective is to 'purify' the legislative body of any irregularities inherent in laws and regulations that may collide with the constitutional bedrock."

"The central problematic of this research lies in examining the delicate balance that the Algerian legislator sought to strike; a balance that reconciles the guarantee of the 'right of access' to constitutional justice as an inherent right of the litigant, with the necessity of subjecting this right to rigorous procedural constraints. Such safeguards are intended to prevent any deviation from its noble constitutional objectives and to ensure it is not exploited as a vehicle for vexatious litigation or as a means to obstruct the continuity of judicial public service."

THE FIRST TOPIC : "The General Framework and Requirements for the Plea of Unconstitutionality Before Judicial Bodies"

The mechanism of the 'Plea of Unconstitutionality' cannot be fully understood in isolation from its conceptual framework and the criteria governing its admissibility. It is not an absolute right of the litigant, but rather a procedural prerogative contingent upon the requirement of seriousness and its direct relevance to the merits of the dispute. In this section, we shall analyze these regulatory constraints by reviewing the formal and substantive conditions mandated by the legislator, illustrating how this plea has evolved from a mere legal allegation into an in rem oversight mechanism dedicated to safeguarding constitutional supremacy.

"First Requirement: "The Conceptual Essence and Legal Characterization of the Plea of Unconstitutionality"

It is noteworthy that the mechanism of the 'Plea of Unconstitutionality' originated within the U.S. constitutional tradition, which pioneered the establishment of judicial review over the constitutionality of legislation. This mechanism subsequently migrated to the European legal sphere, particularly in the aftermath of World War I, before gradually expanding to encompass most Western jurisdictions by the late 20th century—notably France, Spain, Germany, and Belgium.

The adoption of this plea was not limited to Western states; it extended to various Arab and African nations, including Kuwait, Côte d'Ivoire, and Senegal, notwithstanding the divergence in its procedural modalities and conditions of exercise across different legal systems. In certain jurisdictions, the plea is submitted directly to the Constitutional Council, as practiced in France; whereas in others, it

must be raised before ordinary or administrative courts prior to its referral to the competent constitutional body. Furthermore, some systems adopt the direct recourse model to the Constitutional Court, as established in the United States and Germany.

Despite these divergent procedural paradigms, various constitutional experiences converge on the pivotal importance of the Plea of Unconstitutionality as an effective instrument for consolidating the Rule of Law, enhancing the protection of fundamental rights and freedoms, and ensuring the purification of the legal order from legislative provisions that contravene constitutional mandates."¹

"I. The Evolution of the Plea of Unconstitutionality within the Algerian Constitutional System"

"In Algeria, the 2016 Constitutional Amendment represented a progressive milestone in constitutionalizing the right to the 'Plea of Unconstitutionality'. Under Article 188, citizens were granted the standing to invoke this procedure in the context of a dispute brought before a competent judicial body. This innovation marked a pivotal shift in the mechanisms for protecting fundamental rights and freedoms by enabling individuals to participate in the judicial review of legislation, thereby re-establishing the Constitution as the supreme law of the land and consolidating the Rule of Law.

In this regard, while the constitutional amendment expanded the scope of authorities empowered to refer matters to the Constitutional Council, this expansion was distinct from the individual plea, which remained intrinsically linked to the litigant and the pending litigation. The constitutional legislator ensured that this right is exercised within a strict judicial channel, whereby the plea must be filtered and referred to the Constitutional Council via either the Supreme Court or the Council of State, depending on the jurisdictional nature of the dispute."

The 2020 Constitution deepened this reformist trajectory by reconfiguring the constitutional review system upon novel foundations, notably the creation of the Constitutional Court and the vestment of exclusive jurisdiction in it to adjudicate the 'Plea of Unconstitutionality', in accordance with Article 195 of the Constitution. This evolution signifies a paradigmatic shift in the nature of constitutional oversight; it has moved beyond a body of a political nature and has been entrusted to a specialized judicial tribunal. This transition is designed to consolidate the autonomy of constitutional review and provide it with enhanced efficacy and impartiality."

"To operationalize these constitutional mandates, Organic Law No. 22-19 of July 25, 2022, was promulgated to establish a rigorous procedural framework governing

¹ "Public Session on the Discussion of the Draft Organic Law Determining the Conditions and Modalities for the Implementation of the Plea of Unconstitutionality, held on Monday, June 18, 2018; Official Gazette of Parliamentary Debates, People's National Assembly, 2nd Legislative Year, No. 77, dated July 3, 2018, p. 4."

the modalities of seizure, transmission, and adjudication of the 'Plea of Unconstitutionality' before the Constitutional Court. This Law delineates the requirements and formal procedures for invoking the plea, identifies the jurisdictional bodies competent for its preliminary review, and prescribes the statutory deadlines for its resolution, while simultaneously enshrining the guarantees of the rights of defense. Such a regulatory framework reflects the legislator's endeavor to strike a deliberate equilibrium between the efficacy of constitutional oversight on one hand, and the imperatives of legal certainty and the proper administration of justice on the other."

"II. The Scope of Invocation and the Jurisdictional Competence"

"Pursuant to the provisions of Article 195 of the Constitution, Organic Law No. 22-19 enshrined the right of any litigant to raise a 'Plea of Unconstitutionality' before various judicial bodies, whether within the ordinary or administrative judiciary, and at all stages of litigation, including the appellate level and the appeal in cassation¹

"This expansion in the functional scope of the plea reflects the constitutional legislator's intent to empower litigants to safeguard their constitutional rights and freedoms at any stage where the resolution of the dispute hinges upon the application of a legislative or regulatory provision tainted by unconstitutionality. The legislator did not confine this mechanism to civil or administrative disputes; rather, the standing to invoke the plea was extended to the criminal realm, including cases brought before Criminal Courts (of both first instance and embryonic appeal), while observing the procedural particularities inherent in the public prosecution and the nature of the penal system. This underscores a legislative recognition of the pivotal importance of constitutional review in criminal matters, given its direct impact on individual liberties, primarily personal liberty and the presumption of innocence."

"In contrast to this expansion, the legislator sought to regulate this mechanism through a fundamental safeguard: prohibiting the judge—whether a trial judge, a member of the Public Prosecution, or a State Commissioner—from invoking the 'Plea of Unconstitutionality' ex officio (*sua sponte*). This prohibition confirms that the plea is not a supervisory tool at the judge's disposal; rather, it is a strictly procedural right vested in the litigant, to be exercised at their discretion within the context of pending litigation."

"This approach aims to consecrate the subjective and rights-based nature of the plea, preventing it from devolving into a general supervisory tool or a mechanism

¹ Article 15 of Organic Law No. 22-19, dated July 25, 2022, which determines the procedures and modalities for seizure and referral before the Constitutional Court."

utilized outside the scope of litigation. This ensures the preservation of the principle of judicial impartiality and maintains an equilibrium between the adjudicatory function in disputes and the oversight of the constitutionality of laws. Through this framework, the legislator has established a delicate balance between expanding access to constitutional justice and regulating the invocation of the 'Plea of Unconstitutionality' within the bounds of the parties' intent and the seriousness of the dispute. Ultimately, this serves the stability of the legal order, reinforces the supremacy of the Constitution, and safeguards fundamental rights and freedoms."

Requirement II: Conditions and Modalities for Exercising the Plea of Unconstitutionality

"The Plea of Unconstitutionality constitutes a pivotal constitutional mechanism aimed at ensuring the conformity of laws and regulations with constitutional texts, thereby upholding the supremacy of the Constitution over any legislative or regulatory considerations. However, the exercise of this right is not absolute; it is subject to a set of formal, substantive, and procedural conditions that ensure the efficacy of constitutional review while maintaining the orderly administration of justice. In this context, these provisions may be analyzed through several integrated axes.

First: Formal Requirements for Exercising the Plea of Unconstitutionality

This subsection addresses the formal requirements for invoking the plea, as they represent the legal framework that guarantees the validity and integrity of the proceedings."

"1. Invoking the Plea within a Dispute Pending before an Ordinary or Administrative Judicial Body:

The 'Plea of Unconstitutionality' must be raised during the adjudication of a dispute brought before a judicial body subject to either the ordinary or administrative judicial system. Pursuant to the provisions of Organic Law No. 05-11 of July 17, 2005, relating to Judicial Organization, the ordinary system encompasses the Supreme Court, Judicial Councils (Courts of Appeal), Tribunals, and specialized judicial bodies, including Criminal Courts and Military Courts. Conversely, the administrative system is limited to the Council of State and Administrative Tribunals. From this perspective, invoking the plea is precluded before the Tribunal of Conflicts, arbitral tribunals, dispute resolution committees, or disciplinary boards. Furthermore, the plea is inadmissible before the Constitutional Court when the latter is adjudicating appeals related to parliamentary or presidential elections, or the

integrity of referendum proceedings¹ This ensures a balance between judicial oversight and the stability of the electoral process in accordance with legal mandates."

"2. Invocation of the Plea by a Party to the Dispute, Subject to Legal Standing and Interest:

On the other hand, the requirements of legal standing (capacity) and legal interest must be satisfied by the parties to the litigation, as these conditions are intrinsically linked to the procedural nature of judicial disputes in civil and administrative matters. Litigation is a dynamic phenomenon, capable of expansion in terms of both parties and subject matter; it may include original parties (plaintiff and defendant) or expand to include intervening parties through joinder or intervention. In criminal proceedings, the scope is relatively more defined, typically restricted to the accused, the victim, the Public Prosecution, and the civilly liable party² However, the aforementioned Organic Law governing the procedures of seizure and referral before the Constitutional Court explicitly excludes the representative of the Public Prosecution and the State Commissioner from the right to invoke the 'Plea of Unconstitutionality'—similarly to the judge, who may not raise it *ex officio* ³Notwithstanding the multiplicity of parties or the diversity of claims, the Plea of Unconstitutionality remains a distinct procedural act, independent in form and unique in substance, primarily aimed at upholding the supremacy of the Constitution and safeguarding fundamental rights and freedoms across all types of judicial disputes."

"II. Procedural and Substantive Conditions for Exercising the Plea of Unconstitutionality:

The validity of invoking a 'Plea of Unconstitutionality' is not contingent solely upon the satisfaction of the aforementioned formal requirements; it further necessitates the fulfillment of a set of procedural and substantive conditions. These conditions serve as the authentic guarantee for the seriousness and efficacy of the plea in safeguarding constitutional rights and freedoms. By instituting such requirements, the legislator does not intend to constrain the litigant's rights or restrict access to constitutional justice; rather, the objective is to regulate this precise mechanism to prevent its misuse or its deployment outside its intended constitutional and functional framework. Chief among these conditions are the following:"

1 El-Hadi Louail, "The Plea of Unconstitutionality and its Role in Protecting Rights and Liberties", article published on the Supreme Court's website at: <https://coursupreme.dz>

2 Bilal Noura, The Right of Individuals to Invoke the Unconstitutionality of Laws, PhD Thesis, Faculty of Law, University of Batna, 2022, p. 139.

3 . [2] El-Hadi Louail, The Plea of Unconstitutionality and its Role in Protecting Rights and Liberties, op. cit.

"1. A Separate, Written, and Reasoned Motion Under Penalty of Inadmissibility:

The requirement to submit a 'Plea of Unconstitutionality' via a written motion is a fundamental and intrinsic condition for procedural validity. Writing serves as the formal framework through which claims are documented and legal and constitutional grounds are systematically presented, thereby enabling the competent judicial body to fully comprehend the substance and scope of the plea.

In this context, the legislator mandated that the plea be submitted in a separate, written, and reasoned motion, under penalty of inadmissibility¹ This reflects the seriousness and methodical nature required for such a plea. This principle is explicitly enshrined in the Code of Civil and Administrative Procedure; Article 9 stipulates that judicial proceedings are fundamentally written, while Article 8 mandates that all judicial acts and procedures be drafted in Arabic, under penalty of inadmissibility.² Consequently, adherence to the written formulation of the motion is an indispensable legal prerequisite to ensure the plea's validity and its efficacy in safeguarding constitutional rights, as well as an embodiment of the general principles governing litigation within the national legal system."

"2. Separation of the Motion for the Plea of Unconstitutionality from Other Claims or Defenses:

This procedural requirement is reinforced by the mandate to separate the motion for the 'Plea of Unconstitutionality' from all other claims or defenses³ This reflects the unique legal nature of this mechanism; it does not merely involve the application of a legal provision to the facts of a case, but rather constitutes a challenge to the constitutionality of the legislative or regulatory provision itself and its conformity with constitutional provisions.

Furthermore, the requirement for a reasoned motion embodies the essence of constitutional review. It obligates the litigant to clearly and specifically articulate the grounds of unconstitutionality, thereby allowing for an initial assessment of the plea's seriousness. This prevents the submission of superficial or frivolous defenses that might obstruct the orderly administration of justice."

1 [Article 19 of Organic Law No. 22-19, op. cit.

2 See Articles 8 and 9 of Law No. 08-09 dated February 25, 2008, containing the Code of Civil and Administrative Procedure, as amended and supplemented.

3 Opinion No. 03/R.K.A/M.D/18, dated August 2, 2018, concerning the review of the conformity of the Organic Law—determining the conditions and modalities for implementing the Plea of Unconstitutionality—with the Constitution, Official Gazette No. 54, dated September 5, 2018.

"3. The Outcome of the Dispute Must be Contingent upon the Legislative or Regulatory Provision Challenged for Unconstitutionality, or the Provision Must Constitute the Basis of the Prosecution:

This condition reflects the collateral nature of the 'Plea of Unconstitutionality' as a form of ex-post review raised within a pending dispute, rather than an independent action or an abstract review of legal texts. Consequently, this requirement ensures a direct causal link between the challenged provision and the rights or freedoms allegedly violated, preventing the plea from being raised theoretically or in isolation from judicial reality.

The phrase 'the outcome of the dispute depends on it' implies that the judge is obligated to resolve an actual, existing dispute by seeking a legal solution, without extending the court's jurisdiction to hypothetical or potential disputes. Thus, the plea is only admissible in the context of genuine litigation where the final judgment is directly contingent upon the application of the challenged provision¹ This does not contradict the objective and in rem nature of constitutional review via the plea; although initiated by an individual dispute, the review essentially focuses on examining the conformity of the legislative or regulatory provision with the Constitution, independent of the parties. This maintains the equilibrium between protecting constitutional rights and ensuring the proper administration of constitutional justice."

4. The Provision Subject to the Plea Must Not Have Been Previously Declared Constitutional by the Competent Review Body:

In organizing the mechanism of the 'Plea of Unconstitutionality', the Algerian legislator stipulates that the legislative or regulatory provision subject to the plea must not have been previously declared in conformity with the Constitution by the competent constitutional authority (The Constitutional Council or the Constitutional Court), unless a change of circumstances has occurred since that declaration was issued. This requirement is a clear embodiment of the principle of Res Judicata (the binding force) of the Constitutional Court's decisions, as an independent constitutional authority vested with the final power to adjudicate the constitutionality of legislative and regulatory texts. This ensures the stability of legal rules and reinforces confidence in the constitutional system.

This condition implies that once a ruling declares a specific legislative provision constitutional, it acquires a presumption of constitutionality. This concept is referred to in French jurisprudence as 'L'innocence constitutionnelle' (Constitutional

¹ Ibrahim Muhammad Hassanein, "Judicial Review of the Constitutionality of Laws", Dar Al-Nahda Al-Arabiya, Cairo, 2000, p. 150.

Innocence), meaning the provision is presumed to comply with constitutional mandates unless proven otherwise. Consequently, as a general rule, the declared provision is excluded from subsequent constitutional review, and the 'Priority Question of Constitutionality' may not be re-raised regarding it. However, this presumption is not absolute or static; it remains rebuttable if a substantial change occurs in the factual or legal circumstances upon which the previous ruling was based. If such a change disturbs the provision's balance with constitutional norms or creates a new conflict, litigants may re-invoke the constitutional challenge. In such instances, the trial judge—provided all other legal requirements are met—may refer the question to the competent judicial body (the Supreme Court or the Council of State), depending on the nature of the dispute and the subject-matter jurisdiction¹.

Therefore, this condition should not be viewed as a restriction on the litigant's right, but rather as an organizational mechanism aimed at rationalizing the use of this supervisory tool and ensuring its harmony with the status of constitutional jurisdiction in upholding the supremacy of the Constitution and protecting fundamental rights within a State of Law."

"5. The Requirement of 'Seriousness' in the Ground Raised:

The requirement of seriousness is among the most pivotal substantive conditions. The judge before whom the plea is raised plays a central role in assessing its seriousness prior to referral to the Supreme Court or the Council of State. This role is not confined to a mere formal examination; it extends to evaluating whether there is a genuine suspicion of unconstitutionality, predicated on debatable legal and constitutional arguments. This condition aims to filter out frivolous or unfounded pleas, ensuring that constitutional review is directed toward serious issues with a tangible impact on the protection of rights and liberties, thereby rationalizing the work of superior courts and the Constitutional Court. The legislative wisdom behind mandating 'seriousness' within the 'Priority Question of Constitutionality' framework can be summarized in the following fundamental considerations:

- **Curbing the Abuse of Constitutional Litigation:** The requirement of seriousness prevents litigants from invoking the 'Priority Question' as a mere formal tactic to gain time or stall the adjudication of the original dispute without a genuine constitutional basis. This is achieved through a preliminary review that enables the exclusion of bad-faith or meritless pleas.
- **Avoiding the Overburdening of Superior Courts and Constitutional Oversight Bodies:** Since raising the priority question generally results in a stay

¹ Mohamed Abdel Latif, "The Constitutional Council in France: The Constitutional Amendment of July 23, 2008", *Journal of Law, Kuwait University*, No. 3, September 2010, p. 68.

of proceedings in the substantive case, unregulated referrals would lead to a backlog of cases before the Constitutional Court. This would impede its ability to provide swift and effective rulings and negatively impact the proper administration of justice.

- Preserving the Constitutional and Functional Status of the Constitutional Court: Referring constitutional questions directly without prior vetting would drain the essence of constitutional review. It would place these high-level bodies in a state of perpetual session to address secondary or trivial matters, contradicting their nature as supreme entities entrusted with upholding constitutional supremacy¹.

"The Second Topic : The Procedural Framework for Exercising the Plea of Unconstitutionality and its Legal Effects:

Once the 'Plea of Unconstitutionality' satisfies its substantive and formal requirements, it transitions from a mere 'claim' into a formal 'procedural stage.' This marks the commencement of the operational phase, wherein roles are distributed between the filtering bodies (the Supreme Court and the Council of State) and the final adjudicating authority (the Constitutional Court).

This chapter elucidates the filtering role exercised by the Supreme Court and the Council of State, alongside the regulations governing automatic referral. Furthermore, it provides an analytical study of the procedural course of litigation before the Constitutional Court."

"First Requirement: The Role of the Supreme Court and the Council of State in Filtering Pleas Prior to Referral to the Constitutional Court:

The intervention of the Supreme Court and the Council of State in the trajectory of the 'Plea of Unconstitutionality' constitutes a pivotal link within the procedural structure of this mechanism, as they act as preliminary examination and filtering bodies before the plea reaches the Constitutional Court. This organization reflects the legislator's intent to establish a delicate balance between enabling litigants to access constitutional justice and the necessity of regulating such access according to objective criteria that prevent a lapse into abusive or arbitrary use of the plea. Consequently, studying the provisions applied before these two judicial bodies necessitates an examination of the various stages of procedural processing—from the moment the referral decision is received from the trial court to the final stage of either referring the plea to the Constitutional Court or rejecting it, along with the legal effects resulting from each case."

¹ Bilal Noura, *The Right of Individuals to Invoke the Unconstitutionality of Laws*, op. cit., p. 253.

I. Receipt of the Transmittal Decision and Consultation with the Public Prosecution or the State Commissioner:

The process of the 'Plea of Unconstitutionality' unfolds across two fundamental stages. In the first stage, the plea is examined by the trial court (court of merits), where the judge verifies the formal and substantive prerequisites and assesses the plea's impact on the proceedings. Subsequently, in the second stage, the plea is transmitted to the Supreme Court or the Council of State, as applicable. These two bodies are exclusively authorized to refer the plea to the Constitutional Court. This process is characterized by a functional duality; the trial judge confirms the existence of the constitutional issue and its fulfillment of requirements, while the superior judge adjudicates its merits and its potential effect on the final judgment, in accordance with legal and constitutional principles¹

Upon receipt of the transmittal decision by the First President of the Supreme Court or the President of the Council of State, a pivotal preparatory phase commences. This phase involves engaging the Public Prosecution (at the Supreme Court) or the State Commissioner (at the Council of State) to evaluate the plea. Their opinions are sought immediately, reflecting the participatory nature of this procedure and emphasizing their role in providing legal opinions on the fulfillment of statutory conditions.

The procedural framework mandates that the Attorney General at the Supreme Court or the State Commissioner at the Council of State submit their motions within a relatively short period, not exceeding five (5) days² This aligns with the nature of the plea as an expedited mechanism, given its direct link to the outcome of the original dispute. Simultaneously, the parties are permitted to submit written observations, embodying the principle of adversarial proceedings and respecting the rights of the defense, thereby allowing each party to present their perspective on the seriousness and significance of the plea."

"II. The Authority of the Supreme Court and the Council of State to Refer the Plea to the Constitutional Court:

The Supreme Court and the Council of State exercise discretionary authority regarding the referral of the 'Plea of Unconstitutionality' to the Constitutional Court. They are mandated to adjudicate upon this matter within a statutory deadline of two (2) months, commencing from the date of receipt of the transmittal decision. The

¹ Hakim Tebina, "The Mechanism of the Plea of Unconstitutionality of Regulations in Light of Organic Law No. 22-19 Determining the Procedures and Modalities of Notification and Referral before the Constitutional Court," *Journal of Legal and Political Thought*, Vol. 7, No. 1, 2023, p 105.

² Article 29, paragraph 2 of Organic Law No. 22-19, previously cited.

referral decision must then be notified to the parties within a maximum of ten (10) days from its issuance ¹This timeframe serves as a dual guarantee: it protects litigants from unjustified procedural delays while maintaining the orderly conduct of judicial proceedings.

Referral is strictly contingent upon verifying the fulfillment of legal requirements concerning the nature of the challenged provision, its relevance to the outcome of the dispute, and the absence of a prior declaration of constitutionality—except in cases involving a change of circumstances—in addition to the presence of the seriousness element. This role reveals a substantive filtering function, positioning the Supreme Court and the Council of State as a 'Constitutional Filter' that prevents meritless pleas from reaching the Constitutional Court. Furthermore, if the plea is raised directly before the Supreme Court or the Council of State, the legislator grants them priority of review regarding the referral, while adhering to the same deadlines and procedures. This ensures the uniformity of the procedural system regardless of the judicial level at which the plea is initiated."

"III. The Judicial Panel Competent to Adjudicate the Referral:

The procedural framework stipulates that the decision regarding referral or rejection must be issued by a relatively expanded judicial panel. This panel is presided over by the Head of the respective judicial body (the First President of the Supreme Court or the President of the Council of State) or their deputy, when necessary. It further includes the President of the competent chamber and three (3) counselors². This selection reflects the legislator's intent to instill a higher degree of seriousness and solemnity into the decision, as it is a ruling with indirect constitutional impact rather than a mere formal measure. Furthermore, the collegial nature of the panel—characterized by the plurality of judges—facilitates an exchange of legal opinions and an integration of perspectives. This enhances the quality of the resulting decision, whether it pertains to the referral of the plea or its rejection."

"IV. Effects of the Referral on the Adjudication of the Original Dispute:

The referral of the 'Plea of Unconstitutionality' to the Constitutional Court mandates that the Supreme Court or the Council of State issue a stay of proceedings regarding the merits of the case until a final ruling on the plea is rendered. This is based on the principle that the outcome of constitutional review may directly impact the legal basis of the dispute.

¹ Article 19 of Organic Law No. 22-19, previously cited.

² Article 32 of Organic Law No. 22-19, previously cited

However, this stay is not absolute. The legislator has established specific exceptions, notably in cases where the individual concerned is deprived of liberty or when the legal action aims to terminate such deprivation. Additionally, exceptions apply to cases where the law mandates adjudication within a statutory deadline or on an expedited (urgent) basis. These exceptions reflect the legislator's commitment to balancing the requirements of constitutional review with the necessity of protecting personal liberty and ensuring the prompt administration of justice."

"V. Notification of Decisions and the Framework for Automatic Referral:

Following the issuance of a decision by the Supreme Court or the Council of State, the trial court that transmitted the plea is notified, which in turn notifies the parties within a statutory deadline. This notification is an integral part of procedural guarantees, enabling parties to ascertain the outcome of the plea and take necessary legal actions. Should the Supreme Court or the Council of State fail to adjudicate within the prescribed legal period, the legislator has mandated a significant consequence: the automatic referral (*Referral ex officio*) of the plea to the Constitutional Court. This referral is subject to the same provisions as an ordinary referral, demonstrating a clear legislative intent to prevent the obstruction of the constitutional challenge due to procedural inertia.

Conversely, if a referral is rejected, the Constitutional Court is notified with a copy of the reasoned decision. The rejection is also communicated to the court where the plea was raised, which must notify the parties within a period not exceeding five (5) days, allowing them to resume the original proceedings under standard rules. The rationale behind such rejection often lies in the futility of the challenge resulting from the replacement or repeal of the contested legal provisions. When the legislator intervenes to repeal the provision in question, the 'Plea of Unconstitutionality' loses its logical justification and its essential requirement of 'seriousness.' Consequently, examining the constitutionality of a repealed text becomes moot, as its legal effect has diminished or transformed due to subsequent amendment.¹

"Requirement II: Procedural Provisions Applied Before the Constitutional Court Regarding the 'Plea of Unconstitutionality':

The transition of the 'Plea of Unconstitutionality' to the review stage by the Constitutional Court represents the pinnacle of this mechanism's procedural trajectory. At this juncture, the matter shifts from the scope of ordinary or administrative litigation into the realm of pure constitutional review. In this phase, the issue no longer pertains solely to the private interests of the litigants; rather, it

¹ Philippe, E., Commentary on Decision No. 2010-16 QPC dated July 23, 2010, *Les Cahiers du Conseil Constitutionnel*, No. 30, available at: www.conseil-constitutionnel.fr, p. 2.

becomes inextricably linked to upholding constitutional supremacy and ensuring respect for the rights and liberties guaranteed therein. This explains the meticulous precision with which the legislator has surrounded the provisions governing the procedural conduct before the Constitutional Court.

These essential provisions can be elucidated through an analysis of the rules governing notification and referral, the right to participate in constitutional litigation, the guarantees of public hearings and adversarial proceedings, the effects of the termination of the original lawsuit, and finally, the adjudication process and the notification of the final decision."

"I. Notification of Constitutional Authorities and their Involvement in Constitutional Litigation:

The legal framework demonstrates a clear commitment to integrating the primary constitutional authorities into the process of reviewing the 'Plea of Unconstitutionality.' Upon receipt of the referral decision from the Supreme Court or the Council of State, the Constitutional Court is mandated to notify the President of the Republic without delay, in his capacity as the guardian of the Constitution and the guarantor of the regular functioning of institutions. This notification is not limited to the Presidency; it extends to the President of the Council of the Nation, the President of the People's National Assembly, and the Prime Minister (or the Head of Government, as applicable).

This notification is of fundamental importance as it enables these authorities—each within their respective jurisdictions—to examine the subject of the plea and exercise their right to submit observations based on the attached petitions and briefs

¹This approach reflects an advanced conception of constitutional litigation as a participatory forum that is not confined to the original litigants but opens up to constitutional actors concerned with the outcome of the challenged provision, given its implications for legislative policy and the balance of powers."

"II. Public Hearings and Rights of the Defense before the Constitutional Court:

Article 40 of Organic Law No. 22-19 reaffirms the principle of public hearings before the Constitutional Court as a fundamental guarantee of a fair trial and judicial transparency. Publicity is not merely a formal requirement; it serves as a mechanism

¹ Wahiba Zoubiri, "The Additions Introduced by the Constitutional Court to the Procedure of the Plea of Unconstitutionality of Laws," *Academic Journal of Legal and Political Research*, Vol. 7, No. 2, 2023, p. 330.

for social oversight over constitutional adjudication, thereby fostering the confidence of both litigants and the general public in the Court's rulings.

Nevertheless, the legislator recognized exceptional circumstances that may necessitate closed proceedings (*In Camera*), leaving the specific criteria for such instances to be determined by the Internal Regulations governing the Court's operations. This approach ensures a balance between transparency requirements and the imperatives of public order or the protection of supreme constitutional interests.

In the same vein, Article 41 of the aforementioned law guarantees the right of the Government's representative and the parties—through their legal counsel—to present oral arguments before the Constitutional Court. This right is a natural extension of the adversarial principle and the rights of the defense, allowing parties to elaborate on their legal pleas and clarify their written briefs, which assists the Court in fully comprehending all dimensions of the constitutional dispute."

"III. The Independence of the Constitutional Plea from the Outcome of the Original Lawsuit:

One of the most significant characteristics of the 'Plea of Unconstitutionality' before the Constitutional Court is its relative autonomy from the lawsuit in which it was initially raised. The legislator has explicitly stipulated that the extinguishment of the original action, for any reason whatsoever, shall not affect the adjudication of the plea once it has been referred to the Constitutional Court.

This provision reflects a profound understanding of the nature of constitutional review as objective (*in rem*) review, aimed at safeguarding the constitutional order itself rather than merely resolving a private dispute. Even if the original dispute is resolved or terminated, the challenged provision may still exert a potential impact on other legal positions. This justifies the Court's continued examination of the plea until a final decision is rendered."

"IV. Adjudication Deadlines and the Procedural Constraints of the Constitutional Court:

Article 43 of Organic Law No. 22-19 establishes the temporal and procedural framework governing the Constitutional Court's adjudication of the 'Plea of Unconstitutionality.' It directly refers to Article 195 (Paragraph 2) of the Constitution, which constitutes one of the most critical procedural constraints on the Court's operations. This framework mandates a specific adjudication deadline while providing an exceptional extension mechanism to balance the requirements of judicial economy with the necessity of rigorous constitutional oversight.

Once the Constitutional Court is officially notified of the plea in accordance with the prescribed legal procedures, it is bound to issue its decision within a maximum period of four (4) months from the date of official notification¹

This prescribed timeframe signifies that the legislator did not grant the Court absolute discretion regarding the duration of proceedings. Instead, it was constrained by an explicit deadline to uphold the principle of legal certainty and prevent judicial disputes from remaining in a state of indefinite suspension. Recognizing the complexity of certain constitutional issues and the delicate legal dilemmas they may entail, the legislator permitted a one-time extension of this deadline for an equivalent period—an additional four (4) months. It is noteworthy that this extension is neither automatic nor presumed; rather, it is contingent upon the issuance of a reasoned decision by the Constitutional Court. This requirement serves as a fundamental guarantee against any arbitrary exercise of this exceptional power, ensuring that the extension is justified by the substantive requirements of the constitutional review process."

The requirement for a reasoned decision regarding the extension embodies the general judicial principle of the statement of reasons (Motivation). This principle subjects the Court's operations to scholarly and doctrinal scrutiny, thereby enhancing confidence in its performance as an independent constitutional body. Furthermore, limiting the extension to a single occurrence underscores the legislator's intent to maintain the relatively urgent nature of the 'Plea of Unconstitutionality' proceedings. Moreover, the law mandates that the extension decision be notified to the referring judicial body—the Supreme Court or the Council of State. This reflects the principle of institutional coordination between the ordinary or administrative judiciary and the constitutional judiciary. Such notification aims to inform the referring court of the status of the constitutional proceedings, enabling it to manage the original lawsuit with full awareness of the prevailing legal situation, particularly when the adjudication of the merits is contingent upon the Constitutional Court's ruling."

It can be inferred from the foregoing that the timeframes granted to the Constitutional Court for adjudicating referrals are of a purely regulatory nature. This is evidenced by the absence of any procedural or substantive sanctions in the event of their expiration. Consequently, these periods fall outside the scope of mandatory (peremptory) deadlines, the breach of which would typically result in the nullity of proceedings or the forfeiture of rights. Rather, they function as procedural guidelines

¹ Article 195, Paragraph 2 of the 2020 Constitution, which stipulates: "When the Constitutional Court is notified on the basis of the above paragraph, its decision shall be issued within four months following the date of notification. This deadline may be extended once for a maximum period of four months, based on a reasoned decision by the Court, which shall be notified to the referring judicial body

intended to urge the Constitutional Court to expedite its rulings and ensure the prompt administration of constitutional justice¹

Conclusion:

In light of the foregoing, it can be concluded that the institutionalization of the 'Plea of Unconstitutionality' in Algeria signifies a maturation of legal thought and a concrete consolidation of the Rule of Law. This study has demonstrated that the Algerian legislator, through Organic Law No. 22-19, has adopted a 'Dual-Filtering' procedural model. This model grants the ordinary and administrative judiciaries broad discretionary power to screen pleas based on the 'Standard of Seriousness' (Critère de sérieux).

Notwithstanding the positive impact of these guarantees, there is an urgent need to deepen the legal awareness among litigants and practitioners regarding the technical drafting requirements of constitutional briefs to ensure this right is not forfeited due to formal defects. Finally, we recommend a reconsideration of the 'regulatory nature' of the adjudication deadlines before the Constitutional Court. Linking these timeframes to more mandatory guarantees would better serve the principle of legal certainty and ensure the expeditious resolution of cases involving fundamental rights and individual liberties."

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