

The specificity of the appeal of unconstitutionality before the Algerian judicial authorities

خصوصية الدفع بعدم الدستورية أمام الجهات القضائية الجزائرية

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Abstract :

One of the most important pillars on which the state of law is based is the protection of the Constitution from texts that affect the rights and freedoms it guarantees, even after its entry into force, as the Constitutional Founder introduced the mechanism to defend unconstitutionality in accordance with the 2016 amendment and confirmed it in the 2020 amendment, thus expanding the scope and scope of the intervention of subject judges at the level Ordinary and administrative judicial bodies include both legislative and regulatory provisions tainted by the defect of unconstitutionality, Lower and higher judges intervene to filter the Exceptions and ensure that the formal and substantive conditions are met to refer them to the Constitutional Court to ensure the protection of the principles of legality and the supremacy of the Constitution supremacy of the Constitution.

Keywords: The Appeal; Filter; Legitimacy; The Supremacy of the Constitution.

ملخص:

من أهم الركائز التي تقوم عليها دولة القانون هو عدم تحصين النصوص المخالفة للدستور والماسة بالحقوق والحريات التي يكفلها حتى بعد دخولها حيّز التنفيذ، حيث استحدثت المؤسسة الدستورية آلية الدفع بعدم الدستورية بموجب تعديل 2016 وأكدته في تعديل 2020 موسعا بذلك من مجال ونطاق تدخل قضاة الموضوع على مستوى الهيئات القضائية العادية والادارية لتشمل كل من الأحكام التشريعية والتنظيمية المشوبة بعيب عدم الدستورية، فيتدخل قضاة الدرجات الدنيا والعليا بالقيام بتصفية الدفوع والتأكد من توفر الشروط الشكلية والضوابط الموضوعية لاتخاذ قرار احالتها على المحكمة الدستورية من عدمه لضمان حماية مبدأي الشرعية وسمو الدستور.

الكلمات المفتاحية: الدفع؛ التصفية؛ الشرعية، سمو الدستور.

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Introduction:

Appeal of unconstitutionality is considered one of the most important competencies introduced by the Algerian constitutional founder in Article 188 of the 2016 Amendment, which was initially focused on legislative provisions, to also include regulatory provisions according to Article 195 of the 2020 Amendment in conjunction with the creation of the Constitutional Court instead of the Constitutional Council, where it is considered an oversight. Ensuring the protection of basic rights and freedoms is one of the most important goals set for the Constitutional Court, and this will only be achieved by following specific procedures in the Constitution and Organic Law 22-19 that specifies the procedures and methods of notification and referral followed before the Constitutional Court.

Considering the appeal of unconstitutionality as a defensive measure at first, then turning into an offensive measure against the standards subject to oversight, will allow the primary, appellate, and higher judicial bodies in the ordinary and administrative judicial hierarchies to carry out a real filter to ensure its seriousness and the necessity of referring it to the Constitutional Court to extend its subsequent oversight over the flawed legislative and regulatory provisions. Unconstitutionality, as it would impose respect for the principle of legality, and place rights and freedoms away from political manipulation and narrow disputes.

Based on the above, there is a need to address the procedures followed before the judicial authorities before which the appeal is raised, and the importance of the study is determined by the angle that will be addressed by raising the following problematic:

How do the procedures followed to address the appeal of unconstitutionality contribute to achieving a real filtering before the Algerian judicial authorities on the one hand, and controlling the referral process to the Constitutional Court to ensure that the basic rights and freedoms guaranteed by the Constitution are not infringed on the other hand?.

We followed the descriptive analytical approach in extrapolating and interrogating the provisions of the Constitution and Articles of Organic Law 22-19 to trace the procedures through which the defense of unconstitutionality passes, and the effects it has on the Algerian legal system, while relying in various places on the comparative approach to enrich the study with comparative constitutional experiences and the differences in dealing with them, all of that. Translated into two main axes:

First : The concept of the appeal of unconstitutionality and the parties authorized to undertake it.

Second : Steps to appeal of unconstitutionality before the Algerian judicial authorities.

Section I: The concept of appeal of unconstitutionality and the parties authorized to undertake it.

In this section, we will address the concepts related to the appeal of unconstitutionality as a subsequent mechanism for constitutional oversight of the standards specified in accordance with the provisions of the Constitution (A). We will then go back to enumerating the circle of parties who can raise the appeal of unconstitutionality before the various judicial authorities (B).

A/ The concept of the appeal of unconstitutionality.

Defenses are viewed in different ways, and the concepts by which they are known may be narrowed or expanded according to the objectives and uses to which they are employed. Therefore, judicial defenses include many types, such as formal defenses, defenses of inadmissibility, and substantive defenses, and they differ from the appeal of unconstitutionality, whether in terms of use, content, purpose, or legal effects. Arranged by each one of them.

The defense in its narrow sense is a legal means and procedure used by the parties to the lawsuit, especially by the defendant to respond to the plaintiff's requests during the course of the

lawsuit, this defense differs from the appeal of unconstitutionality, which is considered a mechanism available to all parties to the lawsuit without importance to their position, and they are not similar in its content. As for the use of The legislator used the term “appeal of unconstitutionality” in order to call the whole part, especially since presenting the appeal of unconstitutionality is not considered in itself to end or decide the dispute, as long as this presentation takes a position similar to the defense that the opponent raises and hopes for an answer to it.¹

The Algerian constitutional founder established for the first time the mechanism of appeal to unconstitutionality with this name, which is the subject of jurisprudential controversy, as we will explain since the constitutional amendment of 2016 under Article 188 thereof, to be replaced by Article 195 of the 2020 constitutional amendment, which allowed one of the parties to the lawsuit to submit a claim that the legislative provision is unconstitutional. Or the regulatory on which the outcome of the dispute depends or constitutes the basis for follow-up, and it is before the trial judge who examines the extent of respect and availability of the formal conditions and substantive controls for submitting the appeal to unconstitutionality, and the provisions of the Constitution are violated, whether in terms of procedural or substantive provisions regulating the basic rights and freedoms that it guarantees, the appeal to unconstitutionality is also raised at any stage of the case in the matter, with the appeal of the criminal courts of first instance and appeal, in which the composition is decided before the discussion opens and without the presence of assistants who do not have the capacity of a judge, so it is raised whether before the courts of first instance, the courts of appeal, or the cassation appeal bodies before The Supreme Court or the Council of State for the first time, and it may be done on the occasion of opposition in a ruling in absentia or based on a lawsuit seeking reconsideration or the objection of a third party outside the dispute.² It is a subsequent oversight of the issuance of legislative and regulatory texts in the Official Gazette of the People’s Democratic Republic of Algeria.

The Algerian constitutional founder’s use of the term “appeal” is taken from the American experience, in which the subject judge is competent to decide on the constitutionality of the law that will be applied to the case before him. If it is found to be unconstitutional, he excludes it without canceling it and issues his ruling on this basis. As for the technique of appeal applied in Algeria, it is taken from the priority issue. Constitutionalism (Q.P.C), which was adopted by the French constitutional founder in the 2008 amendment and added a paragraph to Article 61 confirming the right of the citizen to exercise it before the French judicial authorities at their various levels, which entered into force after the issuance of Organic Law 1523-2009 relating to the application of the issue of constitutional priority.³

If we look at the effects of the appeal, which is considered a defense lawsuit separate from the original lawsuit filed pursuant to a written, separate, and reasoned petition, it is a subsidiary defense that is initially dependent on the subject of the dispute, but is soon separated from it and becomes independent with the abstract lawsuit that aims to seek to examine the constitutionality of the legislative or regulatory text on which it depends. The outcome of the dispute or constitutes the basis for follow-up, so it becomes a major case before the Constitutional Court, whose jurisdiction is to decide on the constitutionality of these provisions referred to it by the Council of State or the Supreme Court, since the trial judge does not have the jurisdiction to examine the constitutionality or raise the argument automatically, but rather assesses the seriousness of the argument presented regarding the text and refers it to the concerned authorities for a second filter, which are the same procedures, effects and goals that the initial constitutional issue seeks to achieve, it does not decide on the extent of the constitutionality of the text and excludes it as well. In the American experience, it was called so because the appeal was submitted in accordance with the provisions of the organic law, which has priority over deciding the case, and the judge must immediately stop all other lawsuit procedures and resolve this appeal by accepting or rejecting it. The judge first considers the conformity of the law with the French Constitution before considering its conformity. Law of international treaties and European Union laws.⁴

Therefore, the characteristics of the primary constitutional issue can be summarized in the following points:

- It is a separate lawsuit from the original lawsuit.
- A subsidiary lawsuit at its beginning that turns into a main lawsuit before the Constitutional Court.
- A substantive lawsuit, not a personal one.
- It is not related to public order.⁵

So the concept of the sub-appeal differs from the original lawsuit of unconstitutionality. the latter includes a direct attack on the law and aims to abolish it, while the sub-appeal of unconstitutionality is not considered a direct attack on the law tainted by unconstitutionality. Rather, the person waits for the legislative or regulatory ruling to be applied to him so that he can file a lawsuit. The appeal to the unconstitutionality is based on a separate petition from the original dispute to the trial judge who examines the availability of the formal and substantive conditions to refer it to the higher judicial authorities, which then refers it to the Constitutional Court to decide on its conformity with the provisions of the Constitution and the constitutional bloc covered by constitutional protection.

The mechanism of appeal to unconstitutionality allows people to resort before the competent judge to protect the rights and freedoms guaranteed by the Constitution, thus giving individuals the opportunity to defend the Constitution.⁶

B/ Parties pleading unconstitutionality.

The countries of the world differed in terms of the methods they adopt to apply the appeal to unconstitutionality in terms of issuance and source. There are countries that adopt a method of referral from the trial court to the Constitutional Court to ensure its seriousness (such as Spain and Germany), and countries that adopt the method of the trial court issuing a decision that gives the agitator a deadline to submit the request before the court. The Constitutional Court (such as Egypt and Bahrain), and other countries adopt the third method of referring the appeal by the Court of Cassation to the Constitutional Court (such as Jordan) or to the Constitutional Council (such as France), and the parties entrusted with carrying out the appeal also differed, as well as the direct or double filter system followed. And its consequences.

Article 195 of the 2020 Constitutional Amendment stipulates that: "...when a party claims in a trial before a judicial body...", which is an imprecise phrase in terms of the specific term for entities, parties and persons who are entitled to make the appeal of unconstitutionality on the occasion of the dispute or proceeding. Before the judiciary, and therefore it is likely that the circle will be expanded to include all parties involved in the lawsuit, which is what subsequent organic texts stated in their rulings on this issue.

On the legislative level, Article 2 of Organic Law 18-16, which was repealed by Organic Law 22-19, stipulates that the appeal to unconstitutionality may be raised in every trial before judicial bodies subject to the regular judicial system and judicial bodies subject to the administrative judicial system, by one of the parties to the case who He claims that the legislative provision on which the outcome of the dispute depends violates the rights and freedoms guaranteed by the Constitution, to continue in Article Four that the appeal of unconstitutionality cannot be raised automatically by the judge, and thus the organic legislator blocked the way for the judge examining the dispute to raise the appeal of unconstitutionality to the text that will be applied. On the merits of the case, while the Public Prosecution and the State Governor were given the authority to present an opinion on the appeal and refer the file to the Supreme Court or the State Council.⁷

The parties, within the meaning of Article 02 of Organic Law 18-16, are closely linked to the persons who are related to the lawsuit and can exercise this right regardless of their position: plaintiff or defendant, appellant or appellee, appellant or appellant, victim or accused... as well as the intervenor. Or involved in a dispute, provided that the personal interest of the person concerned in the current lawsuit or dispute is based.

Moreover, there is no need to make a distinction between an adult or a minor or a foreign citizen or subject, as it can be a natural or legal person with its legal representative, and therefore no person outside the dispute can raise the appeal of unconstitutionality.

Some also go to give the right to the Public Prosecution in cases in which it is a party to the public lawsuit, when one of these parties becomes aware of the suspicion of the unconstitutionality of the law being applied. This consideration, even if it stems from the personal interest of everyone interested in presenting the argument to stop and prevent the application of the law to the dispute. However, it ultimately aims to achieve an objective and general interest based on strengthening the process of subsequent oversight of the constitutionality of laws,⁸ including ensuring the protection of the basic rights and freedoms guaranteed by the Constitution from violation.

It should be noted that Organic Law 22-19⁹ put an end to interpretations regarding the issue of the parties who can submit the appeal to unconstitutionality on the occasion of a lawsuit, as it allocated three articles stipulating which parties have the right to pay, through Articles 15 and 22, while the judiciary was excluded from This right is to guarantee their neutrality and to implement the principle of separation of powers through Article 17.

Article 15, paragraph 01, stipulates that the appeal to unconstitutionality can be raised by one of the parties to the lawsuit, before the judicial authorities affiliated with the regular judicial system or the judicial authorities affiliated with the administrative judicial system. Here, the legislator did not specify whether the matter relates to the original parties to the lawsuit only, or as well as the entrants and interveners. In judicial litigation, Article 22 comes to remove the confusion and expand the scope of the practice of appeal to unconstitutionality by stipulating that every interested person can intervene in the procedure of appeal to unconstitutionality, before the concerned judicial authorities, by submitting a separate, reasoned written memorandum in accordance with the provisions of Articles 19 and 21 of Organic Law 22-19, before issuing The judicial authority considers its decision to send the appeal unconstitutional, and if its request is accepted, the intervening party is subject to the same procedures to which the parties are subject.

Although the article opened wide scope for those involved in the case to exercise the unconstitutional appeal, the phrase “every person with an interest may intervene in the appeal procedure...” remains inaccurate, as the interest here may not be present in the original case, but it is present in the appeal. By unconstitutionality, does the legislator mean by it a direct or potential interest in the dispute or in the appeal by unconstitutionality or both together? Knowing that the appeal is subject to the same procedures followed in the Law of Civil and Administrative Procedures or Criminal Procedures, However, the legislator did not definitively clarify which of the two cases he meant. If the article was interpreted on the basis that he intended the appeal to unconstitutionality, then the legislator would have taken giant steps towards enshrining the rights of citizenship in subsequent oversight of the constitutionality of laws, as it is an objective, abstract case that disputes the constitutionality of the legislative or regulatory provision. It aims to protect the principle of the supremacy of the Constitution and respect the principle of gradualism in texts to ensure that constitutionally guaranteed rights and freedoms are not infringed.

As for Article 17 of Organic Law 22-19, it eliminated doubt with certainty and addressed the issue in view of the jurisprudential controversy that prevailed after the issuance of Organic Law 18-16. It affirmed the impossibility of raising an unconstitutional appeal from members of the judiciary representing the judiciary, despite their competence and experience that can be benefited from. To detect provisions tainted by the defect of unconstitutionality and avoid violation of basic rights and freedoms, as Article 17, paragraph 01, stated that it is not possible to raise the appeal to unconstitutionality, automatically, by the ruling judge, the judge of the Public Prosecution, or the State Governor, and the possibility of submitting written comments was maintained by The Public Prosecution or the State Governorate if requested by the Constitutional Court.¹⁰

The same approach was taken by the French organic legislator in Law 1523-2009, mentioned above, in Article 23, which prohibited the judge from presenting the issue of constitutional priority (Q.P.C) by force of law or raising it automatically. Thus, the judge’s

intervention to raise the issue of the unconstitutional appeal makes him violate the principle of neutrality imposed on him.¹¹

Section II : Appeal procedures for unconstitutionality before the Algerian judicial authorities.

In this section, we will study the formal conditions that must be met and followed to accept the appeal of unconstitutionality (A). We will then go back to addressing the substantive controls of the procedure (B). Let us move to the double filtering system used to control the process of seriously studying the appeals of unconstitutionality in order to refer them to the Constitutional Court (C).

A/ Formal conditions for accepting the appeal to unconstitutionality.

The Algerian organic legislator restricted all parties to the lawsuit, and every interested person, to submit an appeal to the unconstitutionality, and surrounded it with a set of formal conditions stipulated in Articles 06 and 07 of the repealed Organic Law 18-16, and Articles 19 and 20 of the Organic Law 22-19, where it came Article 19 of it obligates the person who makes the appeal to unconstitutionality to submit a written, separate, and reasoned memorandum, while Article 20 includes the procedures for considering the appeal before the judicial authority, urging it to give priority to it, This is what is understood from the phrase “The judicial authority before which the objection is raised shall decide immediately, and in accordance with a reasoned decision, to send the appeal of unconstitutionality to the Supreme Court or the Council of State, as the case may be, after consulting the opinion of the Public Prosecution or the Governor of the State,” which is an opinion that we believe is not binding on the judge of the matter. To whom the organic legislator has allocated the power to refer the appeal as unconstitutional if the formal and substantive conditions for submitting it are met.

In addition, if the judicial formation examining the appeal includes non-judge assistants, it will adjudicate without their presence,¹² due to the necessity of providing standards of competence, level, legal experience, and judicial specialization to detect violations that affect the provisions of the Constitution in the field of rights and freedoms, in order to carry out a real filter and exclude the presented appeals. Such as malicious attempts aimed at wasting time and delaying the claimant's accrual of his rights.

The requirement of a written petition separate from the original request and its justification are essential conditions even for judicial bodies before which oral procedures are applied.¹³ The French Constitutional Council, in justifying the appeal formula, considered that the jurisdiction of the Constitutional Council extends only to examining the constitutionality of the text included in the memorandum on the appeal not to Accordingly, the memorandum must be referred to him alone, without the documents of the original dispute.¹⁴

Unlike the Tunisian and Moroccan legislators, the Algerian legislator did not explicitly require that the petition for appeal to unconstitutionality be signed by a lawyer, but stipulated that it be separate and not “independent” because it is considered an attribute associated with the bodies and authorities for which the Constitution has approved the status of independence,¹⁵ meaning that it is not permissible to submit the appeal to unconstitutionality with The original request may not be submitted with another request or another plea that differs from it in nature and content. As for representation by a lawyer, and by virtue of his professional experience, which would reduce the useless and non-serious appeals, because they were not established in the first place, and do not affect the constitutional provisions related to rights and freedoms, it is a procedure We hope that the organic legislator will remedy this in his subsequent amendments to the organic law.

As for the reasoning, it is intended to show the unconstitutionality of the legislative or regulatory provision that is the subject of the appeal, and the reasoning must be sufficient and comprehensive so that the court can monitor the seriousness of the appeal, by stipulating the areas of breach and violation of the rights and freedoms guaranteed by the Constitution, and the text that

violates the Constitution must be determined precisely, by referring to the offending articles and clauses. For the provisions regulating the issue of rights and freedoms in the Constitution, a procedure that would facilitate the examination of appeals to unconstitutionality and enable the court to issue its decision in short periods.

Regarding the role of the judiciary in protecting rights and freedoms, despite the recognition of the Constitution, Organic Law 22-19 excluded judiciary members from the practice of arguing unconstitutionality, even if they were parties to the case. The reason may be due to ensuring the impartiality of the judge and enshrining the principle of separation of powers, despite Giving him the discretion to adjust the seriousness of the appeal and the extent to which it infringes on constitutional rights and freedoms.

The same principle was adopted by the French legislator, who recognized the procedure for persons without the possibility of raising it by the judge in Law 1523-2009 regulating the conditions for the application of Article 61/01 of the French Constitution, which prohibited the judge in the text of Article 23 from presenting the issue of constitutional priority by force of law, or raising it automatically, considering that The judge's intervention to raise the issue of the unconstitutional appeal makes him violate the neutrality imposed on him.

While the Egyptian legislator recognized the right of courts or bodies with judicial jurisdiction to refer them to the Supreme Constitutional Court on their own without the need for payment by the parties to decide on the unconstitutionality of a legislative text or regulation, as Article 29 of Law No. 48 of 1979 stipulated issuing the court law. The Supreme Constitutional Constitution stipulates that: "If a court or body with judicial jurisdiction finds, during consideration of a case, that a provision in a law or regulation necessary to decide the dispute is unconstitutional, the case shall be suspended and the papers referred to the court without a fee,"¹⁶ meaning that the judge can exercise the appeal to the unconstitutionality of On its own initiative and considering it part of the public order aimed at enshrining the principle of the supremacy of the Constitution and protecting its provisions from infringement and violation, but this is always pursuant to a lawsuit filed before it.

B/ Objective controls for submitting the appeal to unconstitutionality.

The Algerian constitutional founder imposed a set of conditions and controls on the judge examining the appeal to unconstitutionality until it is accepted and referred to the Supreme Court or the Council of State. These controls were included in Article 188 of the 2016 Constitutional Amendment and were confirmed in detail by Article 08 of the repealed Organic Law 18-16, and it took effect. The constitutional foundation is in the same direction after the 2020 amendment, Article 195, paragraph 1 thereof, includes cases where the Constitutional Court is notified by referral by appeal of unconstitutionality: "The Constitutional Court may be notified by appeal of unconstitutionality based on a referral from the Supreme Court or the Council of State, when one of the parties to the trial before a judicial body claims that the legislative ruling Or the organizational matter on which the outcome of the dispute depends violates his rights and freedoms guaranteed by the Constitution...", and Article 196 of the 2020 Constitutional Amendment referred to Organic Law 22-19 specifying the methods of implementing the referral,¹⁷ and Article 21 of it touched on the controls and conditions that must be met to refer the appeal as unconstitutional, It stipulates: "The appeal to unconstitutionality shall be sent to the Supreme Court or the Council of State, as the case may be, if the following conditions are met:

- That the outcome of the dispute depends on the legislative or regulatory provision being objected to, or that it constitutes the basis for follow-up.
- The objectionable legislative or regulatory provision must not have previously been declared compliant with the Constitution by the Constitutional Council or the Constitutional Court, except in the event of a change in circumstances.
- The excited face should be characterized by seriousness.

Many controls can be discerned from the article, which we mention as follows:

1-The condition of the existence of an original dispute: meaning that the appeal to unconstitutionality is not the subject of an original lawsuit, but rather is raised on the occasion of a lawsuit filed before the judicial authorities, and it may be on the occasion of a criminal prosecution, through which the unconstitutionality of the legislative or regulatory provision on which the outcome of the dispute depends, is defended. This text shall be the basis for the dispute or follow-up.

The text subject to the appeal is required to affect the rights and freedoms guaranteed by the Constitution, meaning that the appeal cannot be raised by unconstitutionality if the legislative or regulatory ruling does not affect the rights and freedoms, and from this it can be concluded that the importance of the Constitutional Court exercising this mechanism in the field of protecting rights and freedoms, as it was established specifically for this purpose, if it fails A legislative or regulatory ruling from the constitutionality oversight filter for any reason, the situation can be remedied by the litigants or any interested person on the occasion of pursuing their disputes before the judicial authorities, as they can raise the issue of the unconstitutionality of the text on which the outcome of the dispute depends, and thus the mechanism of appeal to unconstitutionality becomes a tool. Effective in purging the national legislative system of provisions that affect the rights and freedoms of individuals.¹⁸

2- The constitutionality of the legislative or regulatory provision has previously been decided:

This condition is logical to avoid useless and malicious claims presented by stakeholders to achieve narrow interests at the expense of the work of the Constitutional Court, as this provision acquires immunity that makes it not subject to oversight through the appeal of unconstitutionality again. Unless circumstances change, which is the case of amending the constitution, which may lead to the addition of new provisions that make legislative and regulatory standards necessary to be amended or abolished to become compatible with the constitution, since the decisions of the Constitutional Court are final and binding on all authorities and bodies.

In the event that circumstances change, the appeal may be raised by the unconstitutionality of the legislative or regulatory provision on which the outcome of the dispute depends or constitutes the basis for follow-up, despite the declaration of its constitutionality by the constitutional supervisory body, which is what happened in France, for example, and this appears in the argument presented by “Marie Le Pen.” It is related to texts that the Constitutional Council had previously approved as conforming to the constitution, but the change in the circumstances surrounding them that affected the political life and institutional organization of the state made them once again the subject of a claim of unconstitutionality. From this standpoint, the issue was considered to have a new nature and was considered by the French Constitutional Council.¹⁹

3- The seriousness of the defense of unconstitutionality: This condition would exclude malicious defenses aimed at prolonging the dispute and disrupting the rights of the litigants and every person with an interest. Seriousness is an objective issue assessed by the judge before whom the original case was raised, where the judge is satisfied with declaring that there is doubt about the constitutionality of the contested ruling. It may actually be declared unconstitutional, which makes the argument raised serious.

The judge bases his assessment of the seriousness of the unconstitutionality appeal on the extent to which the text infringes on the constitutional provisions regulating the basic rights and freedoms guaranteed by the Constitution. The Algerian organic legislator did not specify the controls that the judge relies on to assess the seriousness and left them open to exercising his authority in this area.

Seriousness is a condition that makes an ordinary judge a constitutional judge, who does not decide on the issue of constitutionality, but rather assesses the extent to which the legislative or regulatory provisions that are the subject of the appeal affect and violate the rights and freedoms guaranteed in the Constitution. The role of the judge here is to find a serious justification for stopping the adjudication of the case and referring the petition for the appeal to unconstitutionality

to the Supreme Court. Or the Council of State, which in turn, after conducting a second filter on the subject of the appeal and ensuring that all conditions and regulations are respected as the case may be, shall refer it to the Constitutional Court.

The trial judge's examination of the appeal submitted by the opponents regarding its unconstitutionality is an acknowledgment by the constitutional founder of the role of the judicial authorities in contributing to discovering the defect that mars the legal text and renders it unconstitutional.²⁰ However, this contribution does not amount to deciding the constitutionality of the law under supervision, and the Constitutional Court remains the right. Exclusive and inherent jurisdiction to decide on the constitutionality of legislative and regulatory provisions.

C/ Filter procedures for appeal of unconstitutionality before judicial authorities.

The appeal goes through several stages for the filter, the first of which is made before the primary judicial authorities as a general principle. If it becomes clear to them that the claim is serious, they refer it to the higher judicial authorities to carry out double filtering before referring it to the Constitutional Court.

1-Procedures followed before the lower judicial authorities: After fulfilling all the formal conditions and substantive controls for accepting the appeal of unconstitutionality before the judicial authorities examining the subject of the dispute or the follow-up, the concerned judge issues his decision ruling that there is a suspicion or defect of unconstitutionality in the legislative or regulatory provision that decides the outcome of the dispute. Or follow-up. The decision to send the unconstitutional plea, which is not subject to appeal, shall be directed, along with the petitions and memorandums of the parties, to the Supreme Court or the Council of State within the ten days following its issuance, and shall be notified to the concerned parties.²¹

In the opposite case, when the judge is not fully convinced of the availability of objective or formal controls, the decision to refuse to send the appeal as unconstitutional is notified by the competent police secretariat within a maximum period of three days from the date of its issuance, and the judicial authority continues to decide on the dispute, as it cannot be. The rejection decision is subject to objection, except before the parties of opposition, appeal, or cassation, by submitting a separate, reasoned written petition,²² in accordance with the provisions of the Civil and Administrative Procedures Law or the Criminal Procedures Law related to the procedures for conducting disputes.

When the appeal is referred from the lower judicial authorities, which are considered the first authorities to filter appeals to unconstitutionality, to the Supreme Court or the Council of State, the judicial authority sending the plea postpones deciding the case until it reaches a decision by the Supreme Court, the Council of State, or the Constitutional Court. However, if the judicial authority decides The first instance did not wait for the decision of the aforementioned authorities and its ruling was appealed. The appellate authorities postpone adjudication of the case. However, if the appeal is presented before the appellate authorities and the judge does not wait for the decision of the Supreme Court, the Council of State, or the Constitutional Court upon referral, the decision on the cassation appeal will be postponed until the appeal is decided. It is unconstitutional, and the public lawsuit will be resumed at the request of the Public Prosecution.²³

However, the general rule is governed by appeals, as postponing the adjudication of the case does not entail halting the progress of the judicial investigation, and authorizes the judicial authority to take all necessary precautionary and temporary measures for that. Likewise, judicial authorities of all levels do not postpone adjudication of the case in the following cases:²⁴

- When a person is deprived of liberty because of the lawsuit or when the latter aims to put an end to the deprivation of liberty, unless the person concerned objects to that.
- When the law stipulates that a decision must be made within a specific period, or as a matter of urgency.

2- Procedures followed before the Supreme Court or the State Council: A distinction must be made here regarding the issue of raising the appeal of unconstitutionality for the first time before the Supreme Court or the State Council, which must postpone adjudication of the case until the appeal is decided on as a matter of priority, taking into account the previously mentioned appeals. In this case it is that the appeal to the unconstitutionality of only one filter system passes before the highest judicial authorities.

When the appeal arrives at the higher judicial authorities, their heads shall consult, as the case may be, the opinion of the Attorney General at the Supreme Court or the Governor of the State at the State Council, who shall submit their petition within a maximum period of 5 days, while enabling the parties to submit their written observations. The higher judicial authorities have a period of two full months from the date of their receipt of the decision to send the appeal of unconstitutionality from the lower judicial authorities to issue their decision, which is the same deadline if the appeal was presented before them for the first time.²⁵

The higher judicial authorities issue their decision in a group headed by the president of each judicial authority, or the vice president if he is unable to attend, and it consists of the president of the relevant chamber and three consultants appointed by the president of each judicial authority. The reasoned decision is referred to the Supreme Court or the Council of State, attached to the memorandums and petitions of the parties, after verifying the validity of the decision. Providing the formal and substantive conditions for an appeal to be unconstitutional, all of this serves to rationalize judicial work in the field of appeal, by carrying out a second filter before referring it to the Constitutional Court.

The higher judicial authorities shall inform the judicial authority that sent the appeal of its unconstitutionality of its decision, which it shall communicate to the parties within a period of ten (10) days from the date of its issuance. The Supreme Court or the Council of State, as the case may be, also sends its decision to refuse to refer the appeal to the judicial authority before which it was raised for notification. The parties to the case must take the appropriate legal measures within a maximum period of five days.

It is important to note that the failure of the higher judicial authorities to decide on the subject of the appeal within the period granted to them, which is estimated at two months from the date of receiving the decision to send the appeal as unconstitutional from the judicial authority raised before it, makes the appeal immune from rejection, and it is referred directly to the Constitutional Court, and the automatic referral is followed. The same procedures are followed in a normal referral.

It is worth noting that the Constitutional Court received a copy of the reasoned decision issued by the higher judicial authorities, rejecting the referral of the appeal as unconstitutional as a result of it not meeting the conditions specified in Organic Law 22-19. However, what is more important is the outcome of the rejection decision if it becomes clear to the Constitutional Court after examining it that it overlooked a fundamental issue. The text is tainted by the defect of unconstitutionality. In this case, the organic legislator was silent about the procedures that the Constitutional Court could follow to declare its jurisdiction to consider the appeal that one of the higher judicial authorities refused to refer to it. This is a legislative vacuum that must be remedied in the future to enable the Constitutional Court to perform its inherent powers in an absolute manner.

Conclusion:

Restricting the appeal to unconstitutionality with formal and substantive conditions for its acceptance at the level of the judicial authorities affiliated with the regular and administrative judicial systems, as they are qualitative filters and primary selection, and a second filter at the level of the Supreme Court or the Council of State, will give the right to the judicial authority to exercise the power of notification based on the request of the parties to the case, but it does not move automatically, until it is on par with the other two authorities in this matter, with the hope of devoting in the future the practice of notification through judicial channels by virtue of experience,

expertise and training in the field of law to these bodies specified in the Constitution and Organic Law 22-19.

Expanding the areas of appeal to unconstitutionality to include regulatory texts after they enter into force would consolidate the principle of the sovereignty and supremacy of the Constitution, respect the principle of legality and the gradualness of texts to guarantee the basic rights and freedoms guaranteed in the Constitution, and control the work of public authorities and institutions on the occasion of their implementation of legislative or regulatory texts. All of this is included in The framework of the state's efforts, through the constitutional institution, to establish the foundations and pillars upon which the state of law is based, and this will be done in stages starting from the judicial authorities at all levels without prejudice to the principle of separation of powers, as we saw above, in order to filter the defenses and reduce pressure on the supervisory institution, to reach the Constitutional Court. Which decides on the constitutionality or unconstitutionality of the payment, specifying the date on which its decision will enter into force.

Results :

- Giving broad discretion to the ruling judges in accepting or rejecting appeals to unconstitutionality submitted by the parties to the case and every person with an interest in linking the procedures to the seriousness of the appeal, which is a relative matter that depends on the specialization of the judge examining the case in question in constitutional matters, and everything included in the concept of rights and freedoms that It is guaranteed by the Constitution to ensure real protection of the basic standard on the one hand, and to purify the Algerian legal system of legislative and regulatory texts that contradict the Constitution.
- The official judicial channels through which the unconstitutional appeal passes can be classified among the most complex procedures and controls, which leads to the loss of citizens' rights and freedoms in the event that the higher judicial authorities refuse to refer the unconstitutional appeal to the Constitutional Court due to its lack of complete conviction that the provisions subject of the appeal affect the rights and freedoms guaranteed constitutionally.

Recommendations:

In light of the above, the following suggestions can be made:

- Enabling judicial officers to exercise appeal and refer memorandums supporting the presence of a violation of basic rights and freedoms on the occasion of the dispute or follow-up presented to them, by virtue of the training, legal specialization and professional experience that qualifies them to contribute to consecrating the principles of the supremacy of the Constitution and its sovereignty over all standards.
- The necessity of automatically convening the jurisdiction of the Constitutional Court to consider appeals to unconstitutionality that one of the higher judicial authorities refused to refer to it and was satisfied with notifying them only, if it deems that the argument based on the legislative or regulatory provision on which the outcome of the dispute is pending is tainted by the defect of unconstitutionality, to ensure subsequent protection of the rights and freedoms guaranteed by the Constitution.
- Establishing a special department in the Constitutional Court charged with studying requests for appeals to unconstitutionality by accepting or rejecting them, because discretionary authority rests with the constitutional judge and not the ordinary judge, without going through the double filter system.
- Granting the authority to raise the unconstitutionality of texts to other judicial bodies of a special nature, as well as to specialists.
- Simplifying the procedures and conditions included in Organic Law 22/19 regarding the appeal to unconstitutionality, as they are considered somewhat complex conditions that create a feeling of reluctance for the interested party to protect his constitutionally guaranteed right.
- Setting the deadlines for referring the appeal is unconstitutional, which was left to the discretion of the ordinary judge. The use of the term "immediately" is characterized by ambiguity, and is not binding on moving the procedure because it is not precisely defined.

- Mention the parties to the dispute, the persons with an interest, and the subject of the dispute mentioned in Organic Law 22-19 accurately and clearly so that they can submit a petition for appeal to unconstitutionality, and not only those concerned with the subject of the original lawsuit, and why not expand it to all persons who have an interest in not continuing to implement the legislative or regulatory provision. The appeal is at all levels of litigation.

Citations :

¹ Shawqi Yaish Tammam, Provisions for presenting an exception to the unconstitutionality of laws in the Algerian Constitutional Amendment 2020 between the requirements of constitutional rooting and the manifestations of legal framing (a comparative study), Journal of Judicial Jurisprudence, Volume 13, Issue 01, Mohamed Kheidar University, Biskra, Algeria, March 2021. p. 32

² Jamal Ben Salem, The Unconstitutional Exception Case between Rooting, Establishment, and Practice (The Algerian Model), First Edition, House of Ideas, Algeria, 2020. p. 130

³ Organic Law 1523-2009 relating to the application of article 61/01 of the French constitution of 1958 revised on 07/23/2008.

⁴ Muhammad Atrekin, The Unconstitutional Exception Case in the French Experience, Al-Najah New Press, Casablanca, Morocco, 2013. p. 32

⁵ Dali Said, The Priority Constitutional Question and the French Constitutional Council, Algerian Journal of Law and Political Sciences, Volume 06, Issue 02, 2021. pp. 439-442

⁶ Garsas Marwa, Boukouba Khaled, the mechanism of exception to the unconstitutionality of laws in light of the latest developments, a comparative study between Algeria and Morocco, Journal of Legal Studies and Research, Volume 7, Issue 2, 2022. p. 104

⁷ Refer to Article 07, Paragraph 01 of Organic Law 18-16 of September 2, 2018 specifying the conditions and modalities for applying the exception to unconstitutionality, Official Gazette No. 54 issued on September 5, 2018. p. 10

⁸ Shawqi Yaish Tammam, previous reference. p. 12

⁹ Organic Law No. 22-19 dated July 25, 2022 determining the procedures and methods of notification and referral to be followed before the Constitutional Court, Official Gazette No. 51 issued on July 31, 2022. p. 07

¹⁰ Article 17, paragraph 02, op.cit.

¹¹ Rouab Jamal, The exception to the unconstitutionality of laws, a reading of the text of Article 188 of the Algerian Constitution, Journal of Legal Studies, Saida University, December 2017. p36

¹² Article 20, paragraph 02 of Organic Law 22-19.

¹³ View: The Constitutional Priority Question, Comment on this Q.P.C?, available on the site: <https://www.conseil-constitutionnel.fr/> on 01/29/2022.

¹⁴ constitutional council, decision n° 595-2009 of 03/12/2009

¹⁵ Constitutional Council Resolution No. 03 dated August 2, 2018 regarding monitoring the conformity of the organic law specifying the conditions and modalities for applying the exception to unconstitutionality, Official Gazette No. 54 issued on September 5, 2018.

¹⁶ Murad Zawaid, Abdelkader Adou, Conditions for exercising the unconstitutional exception before judicial authorities - a comparative analytical study between Algerian, French and Egyptian law, Al Maaref Magazine, Volume 16, Issue 02, December 2021. p. 317

¹⁷ Article 196 stipulates: "An organic law shall determine the procedures and methods of notification and referral to be followed before the Constitutional Court."

¹⁸ Kais cherif, the role of the Constitutional Court in establishing the state of right and law, an intervention delivered at the international forum tagged: "The Constitutional Court and its role in building a new Algeria", organized by the Constitutional Council in partnership with the United Nations Development Programme, El Eurasian Hotel, Algeria, April 6 and 7, 2021. pp. 11-12

¹⁹ Mohamed Ben Aarab, Manal Ben Chennaf, the mechanism of exception to the unconstitutionality of laws in comparative systems, Journal of Judicial Jurisprudence, University of Setif, March 2018. p. 15

²⁰ Hamid Ibrahim Al-Hamawi, Oversight of the Constitutionality of Laws in the United Arab Emirates, a comparative study, National Center for Legal Publications, first edition, Cairo, 2011. p174

²¹ Article 23 of Organic Law No. 22-19.

²² According to the content of Article 24.

²³ Refer to Articles 25 to 27.

²⁴ According to Articles 26 and 27, paragraph 02.

²⁵ Refer to Articles 30 and 31.