

Interpretation of Constitutional Provisions and the New Developments in Algeria's Constitutional Amendment of 2020

تفسير أحكام الوثيقة الدستورية ومستجدات التعديل الدستوري الجزائري لسنة 2020

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Abstract:

The constitution is characterized by its supremacy over all laws and legislation, as it represents the highest source of authority for all powers in the state. The constitutional document contains general and abstract rules formulated in a comprehensive and flexible manner that takes into account various circumstances in order to respond to social, political, cultural, and economic transformations in a rapidly evolving and changing world. Therefore, constitutions often include provisions that may appear ambiguous or open to interpretation, which require clarification and explanation to remove uncertainty. Consequently, the task of interpreting these texts has been entrusted to constitutional judiciary bodies in general, and to the Constitutional Court in particular, in order to ensure clarity of meaning and accuracy in application. This research paper therefore examines the concept of constitutional interpretation, its types and causes, and then addresses how the Algerian constitutional framework has enshrined the interpretation of constitutional provisions under the 2020 constitutional amendment.

Keywords: Constitutional Interpretation, Constitutional Court, Constitutional Judiciary, 2020 Amendment.

ملخص:

يتسم الدستور بصفة السمو على كل القوانين والتشريعات، باعتباره المصدر الأعلى لكافة السلطات في الدولة، إذ تتضمن الوثيقة الدستورية قواعد عامة ومجردة، حررت بصياغة شاملة ومرنة تراعي مختلف الظروف للاستجابة للتحويلات الاجتماعية والسياسية والثقافية والاقتصادية في عالم متطور ومتغير، لذلك أصبحت الدساتير تحتوي على أحكام تبدو غامضة أو مفتوحة للتأويل، تتطلب التفسير والتوضيح واجلاء الغموض عنها، فأصبح يناط بالقضاء الدستوري عامة والمحكمة الدستورية خاصة وظيفة تفسير النصوص بما يضمن وضوح المعاني ودقة التطبيق، لذلك سنتناول في هذه الورقة البحثية مفهوم التفسير وأنواعه وأسبابه ثم معالجة التكريس الدستوري الجزائري لتفسير النصوص الدستورية في ظل تعديل 2020.

الكلمات المفتاحية: تفسير الدستور، المحكمة الدستورية، القضاء الدستوري، تعديل 2020.

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Introduction:

Constitutional justice constitutes one of the fundamental pillars for ensuring the supremacy of the constitution and consolidating the principle of the rule of law. It represents the institutional mechanism that guarantees respect for constitutional texts and the protection of public rights and freedoms. Modern constitutional experiences have produced a diversity of institutional models of constitutional courts and councils, whether in terms of their methods of formation, their competencies, or their relationship with other constitutional authorities. This diversity raises both scientific and practical issues worthy of research and analysis. Constitutional courts and councils occupy a central position in the constitutional structure of modern states, as they represent the highest guarantee for protecting the supremacy of the constitution, safeguarding rights and freedoms, and achieving the principle of the rule of law. Their role is not limited merely to resolving constitutional disputes; it also extends to strengthening the balance between authorities, consolidating constitutional legitimacy, and ensuring respect for constitutional rules and institutions.

Constitutions that adopt the system of reviewing the constitutionality of laws and regulations differ regarding the designation of the constitutional authority responsible for interpreting the constitution. In some systems, this authority may be called the Supreme Court, the Supreme Constitutional Court, or the Federal Supreme Court, as is the case in the Republic of Iraq. Other constitutions assign the task of interpreting the constitution to all courts within the state, as in the Constitution of South Africa. In such cases, interpretative decisions have relative authority and are binding only on the parties involved, without extending to others. The same applies when the constitution remains silent regarding assigning this task to the courts.

It can be argued that entrusting constitutional judiciary bodies with the task of interpreting the provisions and texts of the constitution, according to constitutional rules, reflects the level of progress reached by the constitutional legislator. This approach aims to prevent divergent interpretations and conflicting jurisprudence in order to achieve the public interest pursued by the constitutional legislator, especially since interpretative decisions issued by the constitutional court possess absolute authority and are binding on all.

The process of interpreting constitutional texts is a highly sensitive and important task entrusted to constitutional bodies (courts or councils), whether they exercise subsequent judicial review or prior review of the constitutionality of legislation. In the first case, the constitutional body exercises its review to interpret the constitutional text applied in relation to primary and secondary legislative provisions challenged before the courts. In the second case, it interprets constitutional provisions to clarify their meanings, concepts, and limits in response to requests from any of the legislative, executive, or judicial authorities of the state.

In both situations, interpretation is not merely a theoretical exercise; rather, it responds to practical necessities dictated by several considerations, foremost among them challenges to the constitutionality of legislative provisions, guiding both primary and regulatory legislators to observe the rules and constraints contained in constitutional texts when exercising their legislative powers, or resolving disputes arising from judicial decisions during the application of constitutional provisions to cases before the courts. Judicial practice has commonly referred to this as the “direct interest requirement,” through which the constitutional body is authorized to undertake the interpretation of constitutional provisions.

This raises several questions: What is meant by constitutional interpretation? What are its rules and provisions? And what is its status within the Algerian Constitution?

Whatever the purpose of interpretation, as previously explained, the interpretation of the constitution requires, within the scope permitted by this analytical research, addressing two main axes.

Section I. Constitutional Interpretation – Concepts and Implications

In this section, we attempt to clarify the definition, importance, and particular nature of constitutional interpretation. We then address the reference rules governing the interpretation of the constitution, followed by an explanation of the reasons for constitutional interpretation, its conditions and methods, and finally the principles and limits that regulate the interpretation of constitutions.

A) Constitutional Interpretation - Its Importance and Specificity

1. The Concept of Constitutional Interpretation:

Interpretation of the Constitution means examining and delving into the content of the constitutional rule and attempting to identify the meaning behind it, considering it as a source of law. Given that constitutional rules enjoy supreme status within the legal hierarchy of the state, and considering that they contain fundamental rules determining the system and form of government, organizing the three branches of power and defining the relationship between them, and, most importantly, establishing the rights and freedoms of individuals and guaranteeing their protection, their implementation requires precision and correctness in order to eliminate any ambiguity that may surround them. This also involves determining their scope, not merely by relying on the apparent and direct meaning of the words of the constitutional text. Some scholars define constitutional interpretation as “the legal qualification of an exceptional situation in order to establish a solution to a specific dispute”¹

Definitions of interpretation vary depending on the intended objective of the interpretation. Some define it as “an intellectual and mental activity in which the interpreter uses the rules of language and logic to determine the interest that the legal text seeks to protect, in order to ascertain whether the wording corresponds to the interest represented by the case presented before the constitutional judge or not.” Accordingly, the purpose of interpretation is to remove ambiguity and resolve disagreements regarding the constitutional rule on the one hand, and to fill gaps through legal reasoning by applying intellectual analysis within the framework of the text in order to address practical realities on the other hand. Some legal scholars argue that the concept of interpretation must be viewed from a specific legal perspective, as the interpreter should not limit themselves to a purely literal interpretation of the text. Doing so would make the interpreter merely a translator of the text rather than a true interpreter².

2. The Purpose of Constitutional Interpretation

The importance of constitutional interpretation is reflected in several objectives it seeks to achieve, which can be summarized as follows:

- Ensuring the effective and accurate implementation of constitutional provisions: Many, indeed most, constitutions require interpretation in order to be fully implemented and protected from any

distortion. Interpretation helps ensure that their provisions are applied accurately and prevents violations or the neglect of certain constitutional rules.

- **Constitutional interpretation as a guarantee for the constitution:** Interpreting constitutional provisions in a manner consistent with the spirit of the constitution and the objectives of its rules serves as a safeguard for the constitution itself. It protects its principles and provisions by preventing public authorities from exceeding or violating their constitutional powers under the pretext of ambiguity.

- **Constitutional interpretation gives life to the constitution:** Conversely, the absence of interpretation may render the constitution a body without a spirit, especially when constitutional rules fail to reflect new developments, interests, and circumstances within society that could not have been anticipated when the constitution was drafted, thereby creating a gap between the two.

- **Unifying the understanding of the constitutional text under interpretation:** Determining the interpretation of constitutional provisions helps unify the meaning of the text concerned by limiting the diversity or contradiction of interpretations by legal scholars and the judiciary.

- **Achieving stability of constitutional rules:** Defining the issue of constitutional interpretation and specifying the competent authority responsible for interpreting constitutional provisions gives interpretation a binding character for all authorities.

- **Developing and updating the constitutional system:** Interpreting constitutional provisions contributes to the development of the constitutional system by addressing various shortcomings related to constitutional texts, whether these relate to deficiencies, gaps, omissions, or other defects in the constitution, whether formal, such as legal drafting, or substantive in nature.

- **Limiting arbitrary interpretation:** This ensures that constitutional texts are interpreted in a manner consistent with the constitutional document and under the authority of a central body responsible for interpretation.

- **Constitutional interpretation as an essential necessity for protecting the constitution both formally and substantively:** Protecting the text of the constitution is considered a formal task, whereas protecting the spirit and objective of the constitutional text is a substantive task. In this regard, some scholars argue that when a conflict arises between the text and its spirit, priority and supremacy should be given to the objective and spirit of the constitutional provision. This constitutes a fundamental element in the process of interpretation, ultimately decided by the judge in general and by the constitutional judge in particular.

3. The Specificity of Constitutional Interpretation

Constitutional interpretation has distinctive characteristics that differentiate it from the interpretation of other legal texts, particularly because it concerns provisions regulating public authorities and the relationships among state institutions as well as between the state and citizens. Such provisions often possess relative rigidity and sometimes even absolute rigidity, which requires an interpretative methodology capable of continuously adapting to the normative content of the constitutional text³.

Moreover, since the constitution is the supreme law, the effects of its interpretation extend to other laws, as they derive their authority from it. In other words, its interpretation does not apply solely to the constitution itself, unlike ordinary laws whose interpretation is generally limited to the specific law concerned due to their particular nature. Therefore, the constitution should not be

interpreted in the same manner as ordinary legislation, which necessitates adherence to specific interpretative principles and guidelines.

B) Reasons, Conditions, and Methods of Constitutional Interpretation

1. Reasons for Constitutional Interpretation:

Scholars agree that the reasons for interpretation arise from defects in the legislative drafting of the provision that needs to be interpreted, whether constitutional or statutory. Legislative drafting involves embedding values, concepts, and theoretical ideas into the text, which requires a high level of precision in style, content, and meaning to ensure proper understanding and application in practice. Accurate drafting therefore significantly facilitates comprehension and implementation.

However, there are additional reasons that may necessitate interpretation even when drafting is precise. These include the need for the text to adapt to evolving social, economic, and political developments, as well as to serve the public interest, which requires interpretation to achieve harmony and consistency between the text and these changing circumstances.

According to scholarly consensus, drafting defects typically manifest as ambiguity, conflict, or incompleteness. There are objections regarding interpreting a deficient text on the basis that interpretation should apply to an existing text. If the text is absent or incomplete, the interpreter cannot determine the true intent of its drafters, since that intent effectively does not exist. Claiming otherwise could result in creating a new constitutional text, contrary to the will of the constitutional legislator.

In any case, the situations requiring interpretation of legal provisions are similar to those for constitutional provisions: ambiguity, conflict, and incompleteness. These are the main reasons for constitutional interpretation, as summarized below⁴.

- Ambiguity of the Constitutional Text:

This refers to the lack of clarity in the meaning of a text and the difficulty in understanding the intention of its drafters. Ambiguity can be relative or absolute, depending on the qualifications of the interpreter, including their scholarly, intellectual, linguistic, and practical expertise. Ambiguity is generally related to drafting, whether through vague, flexible, or ambiguous terms and concepts that may have multiple meanings difficult to determine in application.

The ambiguity of a text can pertain to its overall content or to specific words or phrases within it. For example, in the Iraqi Constitution, the constitutional legislator stipulated that restrictions or limitations on rights and freedoms must be imposed only by law and that such restrictions must not affect the essence of the right or freedom. When interpreting these limitations, the interpreter faces difficulty in defining the “essence” of the right or freedom, as the constitution does not express it in precise and clear terms. Therefore, the interpreter’s task is to achieve a balance between lawful restrictions and the preservation of the core of rights and freedoms. A law would be unconstitutional if it infringes upon the essence of these rights and freedoms, which the interpreter must deduce from the true intent of the constitutional legislator, ensuring the protection of these rights without violating their core.

- Conflict between Constitutional Provisions:

This refers to a situation where two constitutional provisions are in conflict, whether in wording or in meaning, whether originating from older or newer texts, between two provisions, a provision and the preamble, or between its chapters and sections. Such conflicts complicate the understanding of the constitutional legislator's intent and may lead to differences in interpretation. For instance, the Iraqi Constitution guarantees both the right to development and creativity and the right to a healthy environment. When a law regulates industrial activity causing pollution, the interpreter must clarify the constitutional legislator's true intent. Scientific development is constitutionally protected, as is the right to live in a healthy environment. Therefore, a declaration of unconstitutionality will inevitably favor one provision over the other unless the conflict is resolved through careful interpretation.

- Deficiency of Constitutional Texts:

This occurs when a text lacks a provision, phrase, or wording necessary for addressing a given situation, preventing it from fully encompassing the reality presented and revealing the explicit will of the constitutional legislator. This requires the interpreter to identify the implicit intent of the legislator to reach a ruling, often through general, flexible, or broad wording. Deficiency may appear either as a missing ruling or as a missing phrase or expression that the text should have included.

2. Conditions for Requests for Interpretation

Several conditions must be met for a constitutional interpretation request:

- Existence of a genuine need for interpretation:

The text must carry more than one possible meaning or implication. If the meaning of the text is clear and explicit, interpretation should not be invoked to impose meanings that deviate from its core sense. There must also be a disagreement among competent authorities regarding the application or significance of the text, and the text in question must be sufficiently important to require interpretation in order to ensure uniform application⁵.

- Respecting the limits of the court's interpretative authority:

The court must not exceed the linguistic meaning of the constitutional text it is interpreting. It also must not override the intention of the body that enacted the text; the court must investigate the intent of the enacting authority and ensure it is not disregarded or bypassed.

- Respecting the binding effect of prior interpretative decisions:

The court must respect previous interpretative rulings issued by the constitutional court or other competent authorities to avoid contradictions or conflicts between interpretations.

It is worth noting that some scholars have approached this authority cautiously, arguing that granting constitutional courts the power of interpretation could potentially violate the separation of powers. Some believe that this authority should remain with the legislative body, which traditionally holds primary power under flexible constitutions, both in terms of appropriateness and assessing the need for interpretation. However, many constitutional systems have not hesitated to grant constitutional councils and courts this power, based on the principle that constitutions and legislation

are separate from the legislative authority or the body that enacted them, and that courts have their own independent entity to adjudicate according to the constitution. This distinction highlights the difference between legislative interpretation and constitutional interpretation. Legislative interpretation may be difficult, especially when it requires consulting the body that enacted the constitution in cases of a public referendum or a specially elected assembly that has since dissolved, making constitutional interpretation the more practical path to achieve the goals of interpretation.

3. Methods of Constitutional Interpretation

Scholars and constitutional courts differ on the methods of interpreting the constitution, as follows:

- Traditional methods:

Some rely on traditional methods, which are based on the verbal or literal interpretation of texts in rigid constitutions. This approach seeks the meaning intended by the constitutional legislator at the time of drafting. Adaptation of the constitution to current realities is generally achieved through constitutional amendments, not interpretation. In flexible constitutions, interpretation relies on additional methods that complement literal interpretation, including:

-Moral interpretation

-Historical interpretation

Interpretation according to the overall structure of the constitution

All these aim to achieve a progressive, realistic, and balanced interpretation.

- Methods used for ordinary law:

Some rely on interpretation methods traditionally used for ordinary laws. In most cases, constitutional provisions do not require unique interpretative methods different from those applied to ordinary law. Moreover, some constitutional texts are clear and unambiguous, and do not raise issues in application, thus requiring no interpretation⁶.

C) Reference Rules in Constitutional Interpretation

The interpretation of constitutional texts is associated with certain reference rules, which can be traced to three main sources:

1. The Preamble of the Constitution:

The preamble plays a significant role as a constitutional text and is considered an integral part of the constitution. It serves as an entry point into the constitution's content and as a guide to understanding its philosophy and some of its aspects. The preamble often contains clear meanings that reveal the legal rules underpinning the text. In some Arab constitutions, the preamble, sometimes called the "introduction", reflects its close connection to the constitution and its integration into its provisions. It emphasizes, for example, the value of the nation alongside the rights, work, and dignity of the individual.

For example, the 2014 Egyptian Constitution, in Article 227, states that the constitution, with its preamble and all its provisions, forms a coherent and indivisible whole, with provisions that

complement each other and interconnect organically. Applying this provision, the Egyptian Supreme Constitutional Court ruled in case No. 34 of 13 (June 20, 1994) that:

Although the suspension of the 1971 Constitution⁷ under the constitutional declaration of February 13, 2011, was general and did not only apply to provisions concerning the system of government, suspending provisions related to rights, freedoms, public duties, and the rule of law would undermine the entire legal framework of the state. Provisions related to individual rights and freedoms cannot be suspended, because if any part of the constitutional document is absent, it integrates necessarily with the rest in an organic and coherent unity. Therefore, the court continuously exercises constitutional review over all primary and secondary legislation regulating rights, freedoms, and public duties.

2. Previous Constitutions and Preparatory Work:

Previous constitutions serve as tools to reaffirm certain constitutional principles. For example, they may emphasize the protection of private property, by reviewing the texts in earlier constitutions. The interpreting authority may also examine the historical development of a principle to expand its interpretation, thereby providing greater guarantees to individuals and showing that a new constitution may introduce different provisions. Previous constitutions can serve as a historical reference for interpreting the current constitution and its provisions.

Every law has a purpose intended by its legislator. Constitutional law, being the supreme legislation of the state, has specific objectives through which the constitutional legislator defines the prevailing idea in the state. Therefore, understanding the purpose and rationale of the law helps the interpreter determine the true meaning of a constitutional text when it is ambiguous or unclear.

Preparatory work also plays a key role in interpretation. This includes discussions held by legislative councils on the draft constitution, debates, research, seminars, and opinions provided by constitutional law scholars. All these sources help the interpreter uncover the true meaning of ambiguous constitutional texts.

For example, successive Egyptian constitutions, starting with the 1923 Constitution, have consistently used previous constitutions as a reference source for interpretation. For instance, the historical development of the principle of trade union freedom was traced by examining previous constitutions and comparing them with the 1971 Constitution, showing the evolution from a mere right to form unions to establishing the principle of union democracy⁸.

3. International Treaties, Conventions, and Comparative Law

It is evident from the case law of the Egyptian Supreme Constitutional Court that it has established a standard for its constitutional review of legislative provisions relating to rights and freedoms. This standard reflects the level of respect for legal norms and citizens' rights upheld by democratic states. The Court bases its review on the principle of protecting citizens' rights, freedoms, and inviolabilities, which must receive the highest level of attention. These rights have evolved within the broad and developing framework of human rights, increasingly influenced by international standards, transcending regional borders, and shaped by the rulings of international judicial bodies concerned with such rights.

In some cases, the authority responsible for interpreting the constitution may also refer to foreign constitutions to support a broad interpretation of certain constitutional principles. For example, some foreign constitutions, like the U.S. Constitution, prohibit withdrawing funds from the public treasury except as authorized by law (Article I, Section 9, Clause 7). Similar provisions are found in the Indian Constitution (Article 114, Clause 3) and the Italian Constitution (Article 81, Clause 2), which prohibit imposing new taxes or allocating new expenditures after the approval of the budget. Comparable principles are also present in the 1971 Egyptian Constitution. The 2014 Egyptian Constitution continued this approach: Article 93 provides that the state must comply with international agreements, conventions, and treaties on human rights ratified by Egypt, which gain the force of law upon publication under prescribed procedures.

D) Principles and Limits of Constitutional Interpretation

1. Principles Governing Constitutional Interpretation

The principles guiding constitutional interpretation depend on several factors, including⁹:

- **Nature of the political system:** In presidential systems, the separation of powers is sharper than in parliamentary or mixed systems, which affects the approach to interpretation.
- **Nature of the constitution or constitutional document:** Is it a flexible constitution adopted by the legislature with mechanisms similar to ordinary law, or a rigid/fundamental constitution, such as those granted by monarchs or adopted by specially elected assemblies or via referendum? In the first case, when dealing with a flexible constitution, the parliament itself is often best suited to interpret it, as it knows the legislator's intent.
- **Nature of the judicial system:** In a unified judicial system, the supreme or federal court generally holds the authority to interpret constitutions and fundamental laws. In a pluralistic judicial system, constitutional courts typically have this authority.
- **Nature and type of constitutional review:** Is the review judicial or political? The type of review affects the competence of the reviewing body and the need for constitutional interpretation.
- **Preventive or subsequent review:** For instance, the French Constitutional Council conducts preventive review of basic laws, thus providing its constitutional opinion in advance. Subsequent review bodies, however, provide their input after the law has been applied, which affects the scope and nature of interpretation.

It is also important to limit the authority to interpret the constitution with strict conditions to prevent overreach, which could undermine the separation of powers by effectively amending or excessively reinterpreting the text.

2. Determinants of Constitutional Interpretation

- **Language and its meanings:** Understanding the Arabic language and its nuances to determine the meaning of the text.
- **Content of the constitutional package:** Considering the text as a whole and related provisions.
- **General constitutional principles** established by international conventions and treaties.

- **Proportionality:** Ensuring that the scope of interpretative decisions corresponds to the need for interpretation, especially regarding public freedoms and human rights.
- **Precedent:** Respecting previous interpretative decisions of the court to avoid contradictions or conflicts.

It is crucial to maintain consistency between past decisions and their interpretations. In cases of inconsistency or ambiguity, one must refer back to the legislator's intent to restore coherence between the decisions and their meanings.

Section II: Doctrinal Position on Constitutional Interpretation and the 2020 Algerian Constitutional Amendment

This section addresses the doctrinal view on judicial interpretation of the constitution, followed by the position of the constitutional legislator under the 2020 amendment, which provides a detailed organizational framework for constitutional interpretation. This includes defining the authority responsible for interpreting constitutional provisions, as well as the manner and scope of its powers.

A) Doctrinal Position on Judicial Constitutional Interpretation

Scholars are divided regarding granting the judiciary the authority to interpret constitutional provisions.

Opponents argue that judicial interpretation of the constitution reflects the personal views of the judges, rather than the intent of the constitutional legislator. This could allow judges' interpretations to replace the will of the constitutional legislator, leading to what is sometimes called "judicial government".

This concern is rooted in experiences like the U.S. model of judicial review, where courts, particularly the U.S. Supreme Court, have exercised broad powers to determine constitutional values independently. Opponents also note that constitutional interpretation is not limited to cases where the text contains drafting defects (ambiguity, conflict, or incompleteness) but can also arise when courts exercise review of the constitutionality of laws and regulations in practice.

Some opponents advocate for the creation of a constitutional court under the constitution but without granting it explicit authority to interpret constitutional provisions, as in the case of Egypt's Supreme Constitutional Court. There, the constitution explicitly grants the court authority to interpret laws, but not the constitution itself. According to this view, the supremacy of the constitution requires that interpretation be conducted by the authority that enacted and amended it, exclusively.

Supporters argue that constitutional interpretation is inherently judicial. The constitutional judge reconciles the text with evolving reality. Whenever reviewing the constitutionality of a law, the judge must interpret both the law and the relevant constitutional provisions to assess their compatibility and make a proper ruling. Based on this perspective, the constitutional court has the authority to interpret constitutional provisions even if this authority is not explicitly stated in the constitution, particularly when adjudicating challenges to the constitutionality of laws. Explicit constitutional provisions granting interpretative authority primarily serve to obligate the court to

perform this function, but lack of explicit text does not remove the court's inherent jurisdiction in constitutional review¹⁰.

B) Constitutional Codification of Interpretation in the 2020 Amendment

The 2020 constitutional amendment formally established a clear framework for constitutional interpretation for the first time. According to Article 192, the constitutional court may be notified by certain authorities (listed in Article 193) regarding disputes that arise between constitutional bodies. The same article provides that these authorities may request the court's interpretation of one or more constitutional provisions, and the court will express its opinion accordingly.

This framework settles the longstanding debate about the legal basis for interpretation and clarifies the original body responsible for this function, previously considered to be the constituent authority.

According to Article 192, the constitutional court's authority to interpret is conditional upon notification; it does not act automatically. Notification is a constitutional procedure initiated by an authorized entity requesting the court's opinion on the interpretation of a constitutional provision. This involves submitting a formal request to the President of the Constitutional Court, detailing the subject of interpretation to resolve disputes regarding constitutionality.

Article 193 specifies the authorities entitled to submit such notifications:

- The President of the Republic, as guardian of the constitution
- The President of the National Assembly
- The President of the People's National Assembly
- The Prime Minister or President of the Government, as applicable
- 40 members or 25 members of the National Assembly

C) Justifications and Motivations for Granting the Constitutional Court the Power of Interpretation¹¹

There are several justifications relied upon by the Algerian constitutional legislator for entrusting the constitutional court with the task of interpreting constitutional provisions. However, the court cannot be notified based on hypothetical or theoretical assumptions. The constitutional provision or provisions subject to notification must generate a real disagreement in practice, with multiple conflicting viewpoints that can only be resolved by constitutional adjudication.

1. Ensuring the Uniform Application of Constitutional Provisions

The authority of the constitutional court to interpret ensures that the meaning and scope of a constitutional rule are properly defined, not merely the apparent or literal meaning derived from the text. The court uncovers the true intent and purpose of the rule, guaranteeing uniformity and stability in the application of the constitution.

By granting this exclusive power to the constitutional court, the drafters aimed to reduce disagreements regarding the application of provisions under notification. This exclusivity ensures that the constitutional court serves as the ultimate reference for interpretation.

The court may also adapt its interpretation to national conditions and standards, especially when international references are involved. For example, the German Constitutional Court has interpreted the German Constitution in ways that limit the influence of EU law within the national legal system regarding human rights standards.

2. The High Legal Expertise and Independence of the Constitutional Court

Why is the constitutional court best suited for interpretation? Because it is composed of highly specialized and independent legal experts, equipped with the knowledge and experience required to interpret constitutional provisions effectively.

In countries practicing judicial review, higher courts often assume this role due to their experience, authority, and binding decisions, which serve as a reference for lower courts. The constitutional court's composition and independence allow it to exercise interpretive authority professionally and objectively, producing high-quality interpretative opinions and resolving disputes arising from interpretation in practice.

3. Resolving Disputes between State Authorities

Granting the constitutional court interpretive powers has both legal and political effects, primarily resolving conflicts between legislative and executive authorities regarding the interpretation of one or more constitutional provisions.

Such disputes require the expertise of a constitutional judge, who can apply constitutional rules flexibly to diverse events and practical circumstances. This ensures harmony between the constitution and reality, considering intellectual, political, economic, and social developments. The constitutional judge also safeguards the supremacy and respect of the constitution, preventing the legislature from exceeding its constitutional powers and restraining executive overreach.

4. Consequences of Constitutional Interpretation

Once notified by an authorized entity, the constitutional court, as the competent body, expresses its opinion on the interpretation of constitutional provisions, as provided in Article 192, Paragraph 2.

Regarding the binding nature of the court's interpretive opinions: unlike the former Constitutional Council, the court now issues decisions even in cases of preventive review (before laws are enacted or published)¹, including organic laws, as well as after laws are in force, provided all formal requirements (issuance and publication) are met, as with ordinary laws.

This approach resolves previous debates about the binding nature of constitutional interpretations. The Algerian legislator followed the French model, using the term "decision" instead of "opinion," even for preventive review. Although Article 198, last paragraph, clarifies the final and binding nature of the court's decisions, it can be concluded that the same binding authority extends to interpretative opinions, which have absolute authority over all state bodies as the constitutionally designated interpreter of constitutional provisions.

Conclusion:

The authority of constitutional courts and councils to interpret constitutions, constitutional documents, and fundamental laws is a complex issue for several reasons. Many constitutions and laws governing constitutional courts and councils grant this authority to these bodies, as is the case with the Algerian Constitutional Court, the Palestinian High Constitutional Court, the Egyptian Constitutional Court, and the Jordanian Constitutional Court, among others.

However, some Arab countries have taken a different approach by reserving the power of constitutional interpretation for the parliament or other non-judicial bodies, such as Lebanon. A third approach has granted this authority to other judicial bodies, like supreme or federal courts, as in the case of the Iraqi Federal Supreme Court. Additionally, some Arab countries have given this power to political or executive councils, as seen in Saudi Arabia and Oman.

Thus, it is clear that the authority to interpret constitutions and fundamental laws remains a matter of debate among Arab experiences.

When constitutional courts interpret constitutional provisions, they do not rely on a single method, as the approach depends on the nature of the constitution, the specific text being interpreted, the practical issues it raises, and the higher constitutional interest that the court seeks to protect. Various interpretive methods are simply tools to achieve the goal of clarifying the meaning, scope, and content of the constitutional text. The constitutional interpreter should focus on the purpose of interpretation, rather than the specific method used, while respecting the binding constitutional value of each interpretive outcome.

Interpretive methods vary depending on the text:

- Internal methods, which rely on the text itself, such as the wording of the constitutional text, its semantic effects (specific and general), literal meaning, conceptual meaning, the logic and purpose of the text, and its communicative intent. This also includes supportive methods, such as interpretation through the preamble, the general structure of the constitution, or general constitutional principles.
- External methods, which may be primary, such as preparatory works of the constitution and historical sources, or supportive, such as appeals to the concept of justice, international law, or foreign law.
- In all cases, the constitutional interpreter must view the constitution and its provisions as a unified whole, understanding that the constitution is a living entity, capable of growth, adaptation, and alignment with social, economic, and political realities. This ensures balance and harmony between the constitutional text and the evolving needs of society, fulfilling the higher constitutional purpose for which both the constitution and the constitutional court exist.

An important point is the need to detail the provisions regarding interpretation within the rules governing the work of the constitutional court. Additionally, it is proposed to allow the court the possibility of exercising interpretation proactively, even without prior notification, whenever it deems it necessary, within defined limits and safeguards.

It is necessary, when interpreting constitutional texts, to rely on the established constitutional principles, referred to as the “constitutional block,” as they constitute the rules and references that must guide the interpretation process.

Emphasis that the process of interpreting constitutional texts necessarily differs from the rules used to interpret other legislation; constitutional texts are constitutional principles, not ordinary legal rules, and therefore, these principles are complementary and do not conflict or contradict one another.

Attention should be given to preparing specialized studies that clarify the rules, standards, and scientific methodologies for interpreting constitutional texts, in order to prevent any confusion between the methods and tools for constitutional interpretation and those used for other legislative texts.

It is essential that the interpretation of the constitution be an original jurisdiction of constitutional courts, to prevent executive or legislative authorities from interpreting it, thereby ensuring the unification of judicial approaches to constitutional interpretation.

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