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NEW IN CONSTITUTIONAL OVERSIGHT THROUGH EXCEPTION OF UNCONSTITUTIONALITY

Ali Talbi^{1*}, Nadia Nehal Bouayad Agha²

¹ University of Abou Bekr Belkaid – Tlemcen, ali.talbi@univ-tlemcen.dz
Mediterranean Laboratory for Legal Studies,

[ORCID: 0009-0004-4681-2394](#)

² University of Abou Bekr Belkaid – Tlemcen, bouayadterki@yahoo.com
Mediterranean Laboratory for Legal Studies,

[ORCID : 0009-0007-2964-5346](#)

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*** Corresponding author**

Abstract:

The plea of unconstitutionality is considered one of the strongest mechanisms in the field of constitutional oversight for the protection of rights and freedoms. Recently, the legislator has endowed it with a set of formal, substantive, and procedural regulations, which we aim to present in this research as a practical guide for interested parties. This is particularly relevant due to the recent amendments and the significance and strength of the plea, as it may lead to the annulment or amendment of certain laws. We conclude the study by assessing this mechanism and providing a set of recommendations to improve its performance.

Keywords: plea of unconstitutionality; rights and freedoms; constitutional court; screening; referral

الملخص:

يعتبر الدفع بعدم الدستورية، من أقوى الآليات في مجال الرقابة الدستورية لحماية الحقوق والحريات، إذ خصه المشرع مؤخرا بجملة من الضوابط، الشكلية والموضوعية، من جهة، والإجرائية من جهة أخرى، والتي تسعى لإيرادها في هذا البحث كدليل تطبيقي للمهتمين، وهذا نظرا لحدثة التعديلات ولأهمية الدفع وقوته، كونه قد يفضي إلى إلغاء أو تعديل قانون معين.

لنخلص في ختام الدراسة إلى تقدير هذه الآلية، مع تقديم مجموعة من التوصيات لتحسين أدائها.

الكلمات المفتاحية: الدفع بعدم الدستورية؛ الحقوق والحريات؛ المحكمة الدستورية؛ التصفية؛ الإحالة

Introduction:

The Constitution acts as a robust safeguard for the protection of rights and freedoms, while also serving as a beacon from which legislators derive the core principles and foundational rules for various laws, which should align with constitutional mandates. However, situations may arise where one party in a legal dispute believes that the application of a certain provision by the judiciary violates their constitutionally guaranteed rights and freedoms. In such cases, they may find themselves without recourse if the legal system does not permit post-judgment constitutional review.

From this perspective, constitutional legal thought has advocated for mechanisms to protect these rights and freedoms by excluding provisions that conflict with constitutional standards. This ensures strong protection of individual rights and is a true reflection of the rule of law. Like many other countries, the Algerian legislature introduced a system of constitutional oversight via objection, established through the 2016 constitutional amendment, with the plea of unconstitutionality being a key mechanism.

Due to its importance, the legislature enacted Organic Law 18/16 on September 2, 2018, to define its conditions and regulate its application. However, certain deficiencies in this law led the constitutional framers to address them in the 2020 constitutional amendment. This resulted in the enactment of Organic Law 22/19 on July 25, 2022, which defines the referral and notification process before the Constitutional Court.

It is clear that the Algerian legislature places significant emphasis on the plea of unconstitutionality, organizing both its substantive and procedural dimensions due to its potential to invalidate the application of specific legal provisions. This elevates the importance of the subject, particularly concerning the binding nature of rulings on such pleas and their subsequent effects.

Following the 2020 constitutional amendment, significant legal developments have taken place, including the establishment of the Constitutional Court, the repeal of Law No. 18/16 on the plea of unconstitutionality and its replacement with Organic Law No. 22/19, as well as the enactment of the Organic Law regulating the internal procedures of the Constitutional Court, published in Official Gazette No. 75 on November 13, 2022.

- What are the new conditions that must be met for a plea of unconstitutionality to be considered valid? This research paper aims to explore this question by examining and analysing the new legal texts from 2022, which were issued following the 2020 constitutional amendment. Our goal is to identify the updated conditions and procedures related to the plea. To enhance clarity, we will provide brief explanations and structure the discussion into two main sections:
- The first topic will cover the formal and substantive conditions necessary for the acceptance of a plea of unconstitutionality.

The second topic will focus on the procedural steps that must be followed before the relevant judicial bodies in relation to the plea of unconstitutionality

THE FIRST TOPIC: CONDITIONS FOR INVOKING THE UNCONSTITUTIONALITY OBJECTION

- Following a period where constitutional review in Algeria was confined to political oversight ¹, the 2020 constitutional amendment elevated this review to a judicial level with the establishment of the Constitutional Court and the creation of mechanisms for its activation. One of the key tools in this regard is the plea of unconstitutionality ², as outlined in Article 195 of the amendment.
- This plea can be defined as a legal mechanism that enables individuals, rather than judges, to contest a legal provision that may violate their rights and freedoms during a legal proceeding. This highlights its unique nature, both formally and substantively³. The constitutional framers placed great importance on this tool, as Article 196 tasked an organic law with defining the conditions and procedures for its use⁴.
- Below is a summary of the substantive and procedural conditions that must be satisfied for the plea of unconstitutionality to be valid:

First requirement: Conditions Related to the Subject Matter of the Objection

1. The Objection Must Be Related to an Ongoing Legal Dispute:

Article 195 of the 2020 Constitutional Amendment, along with Article 21 of Organic Law 19-22, dated July 25, 2022, which establishes the procedures and methods for referral to the Constitutional Court, stipulates that a legal case

must be in progress before the courts to raise a plea of unconstitutionality. If one of the parties involved believes that the application of a particular legal provision would negatively impact their interests, they may challenge its constitutionality. This challenge can be made on the grounds that the provision, either in its form or content, conflicts with the Constitution⁵.

2. This requirement clarifies the legal nature of the plea of unconstitutionality. It is not an independent claim that any qualified individual can initiate, nor is it a request unrelated to an existing case. To be valid, the plea must be made within the context of an ongoing legal case, and it must be presented as a separate request within that case. Thus, it is a specialized type of objection, functioning as a subsidiary plea within the framework of the original case, rather than as an independent claim.

3. The Exclusive Right of Litigants to Raise the Objection

According to Article 17 of Organic Law 22-19, which regulates the plea of unconstitutionality⁶, judges at any level cannot raise the objection on their own initiative. It must be initiated by the parties involved in the dispute. This provision clarifies the implications of Article 195 of the 2020 Constitutional Amendment⁷, which suggests that only the parties in the legal case have the right to raise the objection. Therefore, the right to challenge the constitutionality of a law is restricted to the litigants themselves, excluding both judicial and prosecutorial judges.

It is notable that the Algerian legislator has limited the judge's role by explicitly prohibiting them from raising the objection independently, a restriction similar to the approach previously adopted by the French legislator⁸. Additionally, the public prosecutor's office is also barred from initiating the objection, despite its significant role in the case. Article 17 of the Organic Law clearly establishes this prohibition, stating in its first paragraph that prosecutorial judges or the state commissioner cannot comment on the objection unless requested by the Constitutional Court⁹.

The likely reason behind this restriction is to uphold the doctrine of division of powers¹⁰, ensuring that the judiciary's involvement in such objections does not encroach upon the legislative authority's functions.

4. The Contested Provision Must Determine the Outcome of the Dispute

This substantive condition was established by the legislator through Article 195 of the 2020 Constitutional Amendment, which states that if one party in a case claims that a legislative or regulatory provision, which could be decisive in the case, violates constitutionally guaranteed rights or freedoms, then the objection of unconstitutionality must be relevant to the outcome of the dispute. This ensures that objections are only raised when they have a significant impact on the case's result, preventing objections that do not materially affect the case.

Article 188 of the 2016 ¹¹ Constitution provides clarity on why the amendment in Article 195 of the 2020 revision was necessary. The previous text only referred to legislative provisions, not regulatory ones. This led to confusion about whether legislative provisions included regulations, prompting the Constitutional Council to clarify that a legislative provision must be passed by Parliament and issued by the President of the Republic, thereby excluding regulatory provisions from objections of unconstitutionality¹².

This explains the addition in Article 195 of the 2020 amendment, which expanded constitutional review to include both legislative and regulatory provisions, whereas it had previously only covered legislative provisions. This broader scope was supported by Article 198 of the latest constitutional amendment, which also indicates that the Constitutional Court's decisions invalidating unconstitutional texts whether legislative or regulatory—render those texts void from the date the Court deems appropriate.

Thus, the constitutional amendment has enhanced the effectiveness of the objection of unconstitutionality, strengthening judicial protection of constitutional principles and safeguarding rights and freedoms.

5. The Provision in Question Must Not Have Previously Undergone Constitutional Review

Article 21, paragraph 3 of Organic Law 19-22, which governs objections of unconstitutionality, establishes a substantive condition stipulating that a contested provision cannot be subject to constitutional review if it has already undergone such scrutiny, unless new circumstances arise. Constitutional Court rulings are deemed definitive and enforceable, precluding any reconsideration of previously adjudicated matters, irrespective of changes in the parties involved. This principle is further affirmed Pursuant to Article 198 of the 2020 Constitutional Amendment, which affirms the definitive and binding nature of Constitutional Court decisions on all authorities and entities.¹³

Despite the definitive and binding nature of Constitutional Court rulings, the constitution-maker has introduced an exception to this principle: a change in circumstances. An objection of unconstitutionality may be raised against a legislative or regulatory provision that has previously undergone constitutional review if the new objection arises under entirely different circumstances from those considered in the initial review¹⁴. This exception is explicitly affirmed in the third paragraph of Article 21 of Organic Law 22-19, enacted pursuant to Article 196 of the 2020 Constitutional Amendment¹⁵. The provision stipulates that a contested legislative or regulatory provision must not have undergone prior constitutional review by the competent authority, except when there has been a change in circumstances. This exception serves as an additional safeguard for litigants, granting them a renewed opportunity to protect their rights and freedoms.

6. The Contested Provision Must Constitute a Violation of Constitutionally Guaranteed Rights and Freedoms

Article 195 sets forth another substantive requirement for the admissibility of a plea of unconstitutionality. The objection must specifically challenge a legislative or regulatory provision that violates constitutionally guaranteed rights and freedoms, rather than merely highlighting an inconsistency between the contested provision and the Constitution.

There must be a genuine violation of rights and freedoms protected by the Constitution, including those in its preamble, which is considered an integral part of the Constitution. Furthermore, disputes may arise when rights and freedoms protected by ratified international agreements are in conflict with a legal provision. If a party argues that a provision infringes upon rights guaranteed by such agreements, this issue remains unresolved unless future legislative action addresses it.

7. Seriousness of the Objection

In addition to the previously mentioned substantive conditions, the seriousness of the objection is required. The term "serious" is derived from earnestness, indicating diligence and taking matters seriously, as opposed to being frivolous¹⁶. The French legislator imposed this condition in 2008, using the term "le caractère sérieux" ¹⁷in the Organic Law on the Priority Question of Constitutionality. The

Algerian legislator later adopted this concept, translating it into the fourth paragraph of Article 1 of Organic Law 18-16, which was related to the application of the objection of unconstitutionality but has since been repealed. This requirement is also included in Article 21 of Organic Law 22-19, which stipulates that the objection must be serious to prevent objections intended only to prolong the dispute.

Overall, this condition aims to prevent the misuse of the right to raise an objection of unconstitutionality, which could potentially result in a fundamental change to the original case.

A. Assessing Seriousness

The issue of evaluating the seriousness of a constitutional claim may raise concerns about potential judicial arbitrariness in how judges assess such claims. There is apprehension that judges' judgments on the seriousness of a claim might encroach on the Constitutional Court's specialized role in constitutional matters. This concern is particularly relevant because the Algerian legislator has not set specific criteria for evaluating the seriousness of a constitutional claim, unlike some countries that have established such criteria. Instead, this evaluation has been left to the judge's discretion.

Even though the Constitutional Court holds exclusive jurisdiction over constitutional claims, the judges' discretion in assessing the seriousness of these claims before referring them to the Constitutional Court could potentially hinder the effective exercise of the right to challenge the constitutionality of laws. This situation highlights the need for a thorough examination and exploration of more flexible approaches to ensure the right to challenge laws is fully accessible.

Second requirement: Conditions Related to the Form of the Claim

1. Requirement to Submit the Claim in Writing

Article 19 of Organic Law 22-19, which outlines the procedures for raising and handling constitutional priority questions, mandates that the constitutional claim be presented in the form of a written petition. This petition must clearly specify the reasons for the claim and be distinct from the case currently before the court. A claim will not be considered unless it is submitted as a separate written petition that identifies the provision to be annulled, explains how it violates constitutionally guaranteed rights or freedoms, and is distinct in both form and substance from the original case.

The petition should focus solely on the impact of the contested provision on constitutional rights and its inconsistency with the Constitution, without addressing the main issues of the original case.

Regarding the involvement of a lawyer, the law does not explicitly require this, but it references the civil, administrative, and criminal procedure rules that stipulate legal representation before higher courts such as The Supreme Court and the State Council. In contrast, in primary and appellate courts, litigants may present their claims without the necessity of legal representation.

2. Exclusivity of Raising the Claim by the Parties

Article 17 of Organic Law 22-19 stipulates that a judge, regardless of their level, cannot raise the claim on their own initiative; it must be raised by the parties to the dispute. This provision is essentially an explanation of Article 195 of the recent 2020 constitutional amendment, which implicitly includes this condition that the right to raise a claim is limited to the parties involved in the case.

Thus, the right to raise a claim of unconstitutionality is not available to everyone but is restricted to the parties to the case. It is worth noting that the Algerian legislator has somewhat restricted the judge's powers by implicitly prohibiting them from raising a claim on their own. Additionally, the legislator did not address the possibility of raising the claim by the public prosecution, given that it is a party in criminal cases¹⁸. This is especially relevant as judges are more familiar with rights and freedoms than litigants. On the other hand, through detailed examination of the case and its justification, issues that may not have been apparent at earlier stages of the case could emerge, potentially revealing grounds for a claim that litigants may have missed.

The judiciary, at all levels, is responsible for ensuring justice and upholding the law. This is the primary role of judges, and there is no objection to allowing them to raise such claims, as this ultimately serves the cause of justice and its protection.

SECOND TOPIC: PROCEDURES FOR RAISING CLAIMS OF UNCONSTITUTIONALITY

Although the Constitutional Court is indeed the competent authority for claims of unconstitutionality, the case presented to it has gone through several stages and procedures, from being raised before the competent authorities in the original case to being decided by the Constitutional Court and notifying all concerned parties.

All these procedures and stages, organized by law, will be explained in brief elements by dividing them into two sections as follows:

FIRST REQUIREMENT: PROCEDURES TO FOLLOW BEFORE LOWER JUDICIAL AUTHORITIES

According to Article 15 of Organic Law 22-19, previously mentioned, a claim of unconstitutionality can be raised before all judicial authorities, regardless of their level, including primary courts, appellate courts, and criminal courts. This implies that such claims can be raised before all types of courts at various levels.

Article 19 of the same law indicates that the claim must be submitted in the form of a written petition, independent from the original case, and justified with appropriate grounds¹⁹.

Once the competent judicial authority in the original case receives the petition for unconstitutionality, it must immediately review it and, by a reasoned decision, decide whether to refer the claim to a higher authority or not, after consulting the public prosecutor or the state attorney, in accordance with Article 20 of Organic Law 22-19. The same procedure applies in urgent matters.

It is noteworthy that the aforementioned article does not specify a deadline for the original authority to review the claim, but it does set a 10-day deadline for sending the decision to higher authorities.

After verifying that the conditions for raising the claim of unconstitutionality are met, a decision is made to accept the claim and it is forwarded To the Supreme Court or the State Council, as applicable.²⁰.

Any party may intervene in the procedure for raising the claim of unconstitutionality before the judicial authority issues its decision on referring the claim to the higher authority, in accordance with Article 22 of Organic Law 22-19, provided that their intervention is in line with Articles 19 and 20 of the same law.

If the judicial authority accepts the claim, it must send it within 10 days of issuing the referral decision to the higher authority, along with the parties' briefs and statements, and notify the parties involved.

It is worth noting that Article 23 of the same law safeguards the referral decision by rendering it non-appealable, serving as a significant procedural constitutional

guarantee established by the drafters to ensure constitutional review, akin to the French model. This provision effectively strengthens the constitutional protection of the rights and freedoms of the party raising the objection.²¹.

If a claim of unconstitutionality is rejected, the judicial authority before which it was raised must notify the parties of its decision within three days of issuance. This rejection may only be appealed if the appeal specifically challenges the ruling on the original case or a part thereof, in accordance with a written, reasoned, and separate submission, as stipulated in Article 24 of the same law.

If the claim is referred, the referring authority must suspend resolving the dispute until it receives a decision from the Supreme Court. The requirement for a judge to defer a decision upon accepting the referral of the claim constitutes a strong procedural safeguard To safeguard the fundamental rights and freedoms implicated in the claim.

In the investigation phase, the resolution does not stop simply because the claim has been presented and referred. Similarly, if the concerned party is in detention, the referring authority does not suspend the resolution unless the claim aims to end the deprivation of freedom, as provided in Article 26 of the aforementioned Organic Law, due to the importance the legislator has placed on human freedom.

SECOND REQUIREMENT: PROCEDURES FOLLOWED BEFORE HIGHER JUDICIAL AUTHORITIES

1. Procedures Before the Supreme Court and the Council of State:

When a claim of unconstitutionality is referred by either the Supreme Court or the State Council, the respective President requests the Public Prosecutor or the State Attorney to provide their recommendations within five days. At the same time, the involved parties are allowed to present their written observations. However, Article 29 of Organic Law 22-19 does not establish a specific timeframe for the submission of these observations.

A - Deadlines for Decision (Article 30 of the same law):

According to Article 23 of Organic Law No. 22-19, the Supreme Court or the State Council is required to assess and determine the admissibility of a constitutional claim for referral to the Constitutional Court within a maximum period of two months from the date they receive the referral decision. This

deadline also applies to their preliminary review of the claim, as outlined in Article 31.

Additionally, Article 35 mandates that the referring judicial authority must inform the concerned parties of the decision within 10 days of its issuance.

In cases where the Supreme Court or the State Council rejects the referral, Article 37 stipulates that the rejection decision must be forwarded to the judicial authority that initially submitted the claim, which in turn is responsible for notifying the parties within five days.

B - Composition of Higher Judicial Authorities (Supreme Court or Council of State) for Reviewing the Referral:

The procedure for appointing the panel that reviews the referral has been revised from the previous method used under the Constitutional Council²². Article 32 of the aforementioned law outlines the new composition for deciding on referrals to the Constitutional Court, which includes:

- The President of each jurisdiction, or their deputy if necessary.
- The President of each relevant chamber.
- Three advisors appointed by the President as needed.

Once a decision is accepted, the Supreme Court or the State Council provides a reasoned ruling and forwards it to the Constitutional Court, accompanied by the parties' briefs and statements, as stipulated in Article 33 of the law..

Article 34 of Organic Law 22-19 specifies that the Council of State or the Supreme Court must suspend their decision on the matter until the Constitutional Court has ruled on the claim.

C - Exceptions to the Rule of Deferring the Decision:

Article 34 of the same legal provision specifies that the decision is not deferred until the Constitutional Court rules in the following situations:

- If the concerned party is deprived of liberty and the case seeks to secure the detainee's release.
- If the law mandates that authorities make a decision within certain urgent deadlines.

D - Automatic Referral:

A further safeguard introduced by recent amendments is the automatic referral provision. According to Article 36 of Organic Law 22-19, if the Supreme Court or the Council of State does not make a decision on the referral within two months, the referral will proceed automatically. This measure is designed to prevent any potential arbitrariness, neglect, or other delays.

2. Procedures Before the Constitutional Court:

Articles 38 and subsequent sections of the referenced law outline the procedures to be followed before the Constitutional Court once it receives the referral decision from the higher authorities. The procedures are as follows:

A - Notifying the Executive Branch:

The Constitutional Court is required to notify the President of the Republic and the Prime Minister or Head of Government, depending on the governance framework in place, of the referral decision it receives from one of the higher judicial authorities.

B - Notifying the Legislative Branch:

The Constitutional Court is required to notify both the President of the Senate and the President of the National Assembly of any referral decision it receives from higher judicial authorities. This notification includes the referral decision itself, along with the parties' briefs and statements.

Under Article 38, the Constitutional Court is obligated to transmit only the referral decision to the President of the Republic, excluding the parties' arguments and submissions. However, it must formally notify The Prime Minister or Head of Government, along with the Speakers of the National Assembly and the Senate, must also be formally informed. Furthermore, any party with a recognized legal interest may engage in proceedings before the Constitutional Court, provided they meet the eligibility criteria outlined in Article 21 of the law.

According to Article 40, sessions of the Constitutional Court are generally public²³, except in exceptional circumstances defined by its special regulations. Observations are presented directly before the Constitutional Court either by government representatives or by the parties through their legal counsel, in accordance with Article 41

If the original case is dismissed for any reason after a plea of unconstitutionality has been raised, this dismissal does not influence the Constitutional Court's ruling on the plea. This represents a significant step forward in safeguarding rights and freedoms, as it ensures that constitutional review proceeds independently of the outcome of the original case.

C - Deadlines for Decision (Article 43 of Organic Law 22-19):

Article 43 of the aforementioned law specifies that the deadlines for the Constitutional Court to rule on a plea of unconstitutionality are the same as those outlined in Article 195 of the Constitution. According to the 2020 constitutional amendment, the decision must be made within four months, with the possibility of a one-time extension based on a reasoned decision communicated to the parties.

It is noteworthy that a four-month period is relatively lengthy, especially when factoring in the time required for the claim to reach the Constitutional Court.

CONCLUSION:

The Constitution is characterized by the strength and supremacy of its provisions, as it encompasses the fundamental principles governing individuals, public entities, and the state as a whole. Consequently, it must be upheld, and all laws and regulations must align with its principles.

To ensure this, the drafters of the Constitution established various mechanisms for overseeing legal rules and safeguarding rights and freedoms. Among these, the mechanism for raising claims of unconstitutionality is particularly significant. This process is governed by Organic Law 22-19, which outlines the conditions and procedures for notifying.

Despite the advancements introduced by this law, following the 2020 constitutional amendment representing significant progress in constitutional oversight and the rule of law this study suggests that legislative efforts should continue to further refine constitutional litigation. Such efforts are crucial for providing the highest level of protection for rights and freedoms and ensuring adherence to constitutional principles.

Among the key recommendations resulting from this study:

- Allowing judges to raise claims of unconstitutionality on their own initiative, or at least granting them the ability to request reviews of the constitutionality of laws that they believe may infringe upon rights and freedoms, in order to uphold and reinforce the principle of legality.
- Amending Article 23 of Law 22-19 to specify a deadline for the review of the claim by the original jurisdiction, rather than only stipulating a deadline of 10 days for sending the decision to the higher authorities from the date of issuance.
- Establishing appropriate mechanisms to compensate litigants who missed the opportunity to raise a claim, particularly those who suffered significant losses due to the missed opportunity, considering that the constitutionality of laws is a fundamental issue.
- Reviewing the methods of appointing members of the Constitutional Court to support its independence and reinforce the principle of separation of powers by favouring election over appointment.
- Legislating for an independent and direct constitutional action before the Constitutional Court, in addition to the ancillary claim, to complete the framework of legal achievements in Algeria.

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Article 196 of the 2020 Constitutional Amendment, which replaced Article 188 Paragraph 02 of the 2016 Constitution: An Organic Law determines the procedures and modalities for notifying and referring cases to the Constitutional Court.

Tawihia Abou Daoud and Kheltawi Abdelkader, Legal Security and Its Role in Protecting Rights and Freedoms in the Algerian Constitutional System, Journal of Law and Society, University of Adrar, Algeria, Vol. 10, 2022, pp. 117-135.

Article 17 of Organic Law 22/19: Claims of unconstitutionality cannot be raised automatically by the trial judge, the public prosecutor, or the State Advocate.

Article 195 of the 2020 Constitutional Amendment uses the phrase “when one of the parties to the trial claims”.

Article 23-1 of Organic Law 2009-1523 of December 10, 2009, related to the application of Article 61 of the Constitution, Official Journal of December 11, 2009, p. 21379: Before the jurisdictions of the Council of State or the Court of Cassation, the claim that a legislative provision infringes upon rights and freedoms guaranteed by the Constitution must be presented in a distinct and reasoned written document. Such a claim may be raised for the first time in an appeal case. It cannot be raised *ex officio*.

The second paragraph of Article 17 of the aforementioned Organic Law: However, public prosecutors or the State Advocate may, upon request by the Constitutional Court, provide written observations regarding the claim of unconstitutionality.

Mohamed Boumediene, Justifications for Recognizing the Role of Algerian Judiciary in the Review of Constitutionality of Laws and Transforming the Constitutional Council into a Constitutional Court, Journal of Jurisprudence for Legal and Economic Studies, University of Tamanghest, Vol. 08, Issue 04, 2019, p. 21.

Article 188 of Law 16-01 dated 26 Jumada al-Awal 1427, corresponding to March 6, 2016, concerning constitutional amendments: The Constitutional Council can be notified of a claim of unconstitutionality based on a referral from the Supreme Court or the Council of State when one of the parties in the court claims that the legislative ruling affecting the outcome of the dispute violates the rights and freedoms guaranteed by the Constitution.

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This is what the French legislator has already prescribed in the second paragraph of Article 21 of Organic Law 2009-1523 of December 10, 2009: Presented in a distinct and reasoned written document, such a claim may be raised for the first time in an appeal case. It cannot be raised ex officio.

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Paragraph 02 of Article 195 of the 2020 Constitutional Amendment: When the Constitutional Court is notified based on the above paragraph, its decision must be issued within four months following the date of notification, and this period may be extended once for a maximum of four months.

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⁵ Tawihia Abou Daoud and Kheltawi Abdelkader, *Legal Security and Its Role in Protecting Rights and Freedoms in the Algerian Constitutional System*, Journal of Law and Society, University of Adrar, Algeria, Vol. 10, 2022, pp. 117-135.

⁶ Article 17 of Organic Law 22/19: Claims of unconstitutionality cannot be raised automatically by the trial judge, the public prosecutor, or the State Advocate.

⁷ Article 195 of the 2020 Constitutional Amendment uses the phrase “when one of the parties to the trial claims”.

⁸ Article 23-1 of Organic Law 2009-1523 of December 10, 2009, related to the application of Article 61 of the Constitution, Official Journal of December 11, 2009, p. 21379: Before the jurisdictions of the Council of State or the Court of Cassation, the claim that a legislative provision infringes upon rights and freedoms guaranteed by the Constitution must be presented in a distinct and reasoned written document. Such a claim may be raised for the first time in an appeal case. It cannot be raised ex officio.

⁹ The second paragraph of Article 17 of the aforementioned Organic Law: However, public prosecutors or the State Advocate may, upon request by the Constitutional Court, provide written observations regarding the claim of unconstitutionality.

¹⁰ Mohamed Boumediene, *Justifications for Recognizing the Role of Algerian Judiciary in the Review of Constitutionality of Laws and Transforming the Constitutional Council into a Constitutional Court*, Journal of Jurisprudence for Legal and Economic Studies, University of Tamanghest, Vol. 08, Issue 04, 2019, p. 21.

¹¹ Article 188 of Law 16-01 dated 26 Jumada al-Awal 1427, corresponding to March 6, 2016, concerning constitutional amendments: The Constitutional Council can be notified of a claim of unconstitutionality based on a referral from the Supreme Court or the Council of State when one of the parties in the court claims that the legislative ruling affecting the outcome of the dispute violates the rights and freedoms guaranteed by the Constitution.

¹² Farid Debouche, *The Constitutional Court in Algeria: A Study in Light of the 2020 Constitutional Amendment*, House of Ideas, First Edition 2023, p. 83.

¹³ Paragraph 05 of Article 198 of the 2020 Constitutional Amendment: Decisions of the Constitutional Court are final and binding on all public authorities and administrative and judicial authorities.

¹⁴ Ilham Kherchi and Warda Khelaf, *The Impact of the Constitutional Enshrinement of the Unconstitutionality Claim Mechanism on the System of Judicial Review of Laws in Algeria*, Journal of Humanities and Social Sciences, Algeria, Vol. 19, Issue 01-2022, p. 14.

¹⁵ Paragraph 2 of Article 21 of the aforementioned Organic Law: The challenged legislative or regulatory ruling must not have been previously declared as constitutional by the Constitutional Council or the Constitutional Court, except in cases of changed circumstances.

¹⁶ Jrouane Al-Sabeq, *The Treasure: Arabic-French Dictionary*, Al-Sabeq Publishing House, Second Edition 1997, p. 1039.

¹⁷ Article 23-2 of Organic Law No. 2009-1523 of December 10, 2009, related to the application of Article 61-1 of the Constitution, Official Journal of December 11, 2009, p. 21379: The jurisdiction rules without delay by a reasoned decision on the transmission of the priority constitutional question to the Council of State or the Court of Cassation. Transmission occurs if the following conditions are met: 1. The contested provision is applicable to the dispute or procedure, or constitutes the basis of the prosecution; 2. It has

not already been declared constitutional in the grounds and dispositive of a decision by the Constitutional Council, except in case of changed circumstances; 3. The question is not devoid of serious character.

¹⁸ Ahmed Belkheiri and Thamri Omar, *The Mechanism of the Unconstitutionality Claim before the Courts in Algeria According to the Provisions of the 2016 Constitutional Amendment*, Journal of Law and Society, University of Adrar, Algeria, Vol. 07, Issue 02, 2019, pp. 209-236.

¹⁹ This is what the French legislator has already prescribed in the second paragraph of Article 21 of Organic Law 2009-1523 of December 10, 2009: Presented in a distinct and reasoned written document, such a claim may be raised for the first time in an appeal case. It cannot be raised ex officio.

²⁰ Hayat Aouameria, *Algerian and Comparative Public Law Journal*, Algeria, Vol. 08, Issue 2, December 2022, pp. 305-319.

²¹ Camille Dolmaire, *The Alternative Condition of Novelty of the Claim Raised in Support of a Priority Constitutional Question*, French Review of Constitutional Law 2024/1 (No. 137), pp. 157-178, accessed online on 12/03/2024 at: <https://www.cairn.info/revue-francaise-de-droit-constitutionnel.htm>, accessed on 12/03/2024.

²² Mohamed Boumediene, *The Claim of Unconstitutionality According to the Algerian Constitutional Amendment of 2016: A Mere Imitation of the Erroneous French Model*, Journal of Law and Society, University of Adrar, Algeria, Vol. 07, Issue 01, 2019, pp. 56-87.

²³ Paragraph 02 of Article 195 of the 2020 Constitutional Amendment: When the Constitutional Court is notified based on the above paragraph, its decision must be issued within four months following the date of notification, and this period may be extended once for a maximum of four months.