

Journal of legal and social studies

Issn: 2507-7333

Eissn: 2676-1742

Activating the Constitutional Court's Constitutional Oversight

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Date of send: 05 / 03 / 2026	date of acceptance: 01 / 05 /2026	Date of Publication: 01/06/2026
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Abstract :

The Algerian National Constitution, under the 2020 constitutional reforms, assigned the task of reviewing the constitutionality of laws to the Constitutional Court, which enjoys independence, membership, and functionality, while maintaining integrity and accountability. This allows the Court to enjoy freedom in the constitutionality of laws in Algeria. With extensive reforms to the Constitutional Court, which must risk its independence as part of this process, both the court and individuals will enjoy final, binding, and binding constitutional authority.

Keywords: Constitutional reforms ; Constitutional Court ; absence; deletion of constitutionality.

Introduction :

Respecting the Constitution and adhering to its provisions to preserve the coherence of the legal system, as well as respecting individuals and their freedoms, are goals sought by every democratic system. Given the paramount importance of these principles in building a state of law and affirming the supremacy that the Constitution must maintain as the foundation of constitutional life in the modern state, Algerian lawmakers have emphasized the necessity of establishing a Constitutional Court whose goal is to protect rights and freedoms. This is achieved by making it a legal mechanism designed to protect the Constitution. Therefore, it is imperative for us to address the following question:

How is the Constitutional Court notified to oversee the constitutionality of laws, and how effective is it in doing so?

To answer this question, we must first address the mechanisms for notifying the Constitutional Court and the institutions authorized to notify it. We will then address the operational and investigative procedures followed by the Constitutional Court in handling notifications addressed to it.

THE FIRST TOPIC: Controls for Notifying the Algerian Constitutional Court

The Algerian Constitutional Court does not act to perform its oversight duties on its own initiative. Rather, it does so through notification, which is the sole mechanism for initiating its work and exercising its powers. This is done at the request of specific bodies authorized by the Constitution.

First requirement: Initiating Oversight by Bodies

The most important characteristic of the bodies charged with oversight of the constitutionality of laws in successive Algerian constitutions is that they do not consider or adjudicate the constitutionality of various legal texts, both national and international, unless a request is submitted by the relevant bodies specified in the Constitution and only within the texts subject to prior or subsequent oversight. Accordingly, the right to notification rests primarily with the executive bodies and Parliament¹.

- Notification by the executive authority:

The Algerian founder confirmed, through Article 193 of the 2020 constitutional amendment, his determination to uphold the executive branch's right to exercise oversight over the constitutionality of laws through the right of

the President of the Republic, the Prime Minister, or the Prime Minister, as the case may be, to notify the Constitutional Court, stating: "The Constitutional Court shall be notified by the President of the Republic...or by the Prime Minister or the Prime Minister, as the case may be."

The President of the Republic

Although the Algerian constitutional founder shares the right to notify the Constitutional Court with the public authorities, he has exclusively granted the President of the Republic the right to notify it regarding the constitutionality of organic laws before their issuance and after they have been ratified by both chambers of Parliament. This is a mandatory prior oversight, within the framework of which the President of the Republic also notifies the Constitutional Court regarding the internal regulations of the two chambers of Parliament, pursuant to paragraphs 5 and 6 of Article 190 of the 2020 Constitutional Amendment. He enjoys this right unilaterally, as the presidents of the two chambers of Parliament do not have the right to notify in this regard². Furthermore, the constitutional founder's recognition of the President of the Republic's right to notify extends optionally to other laws, pursuant to Article 193 of the 2020 Constitutional Amendment.

The Prime Minister or the Head of Government:

The constitutional founder, through the 2016 constitutional amendment, recognized the right of the Prime Minister to initiate oversight of the constitutionality of laws by notification, a matter which was settled through the 2020 constitutional amendment pursuant to the provisions of Article 193 thereof. However, it is a right that does not enable him to notify the Constitutional Court regarding the mandatory oversight of organic laws and internal regulations of the two chambers of Parliament, as well as armistice agreements and peace treaties, because, as we said previously, it is a field reserved for the President of the Republic and no one else, even if the person making the decision is the Prime Minister or the Prime Minister, as the case may be, as he is a second party in the executive authority, so he can thus notify the Constitutional Court regarding laws below that, such as ordinary legislation and regulations.

Notification by Parliament

Similar to the executive branch, the Algerian constitutional founder affirmed Parliament's right to use this mechanism, not only because legislation is an inherent prerogative of Parliament, but also to create a sense of balance between the powers in its use. The Constitutional Court is notified by components of the legislative body, including the Speakers of both Houses of Parliament and the representatives, in accordance with new quorum requirements introduced by the 2020 constitutional amendment.

1.2- Speakers of the Houses of Parliament

Referring to Article 193 of the 2020 constitutional amendment, we find that the Algerian constitutional founder has specifically granted the Speakers of the Houses of Parliament the right to use the notification mechanism. This is a logical consequence, given that the Constitutional Court serves as a body that ensures non-interference by the executive branch through voting and reduces the

phenomenon of political tension and discord between the two branches. In other words, the Constitutional Court seeks to create a sense of effective balance between these bodies and to ensure the protection of individual rights and freedoms. Therefore, the constitutional founder expanded the scope of notification to include both Houses of Parliament when it comes to the constitutionality of treaties, which are international texts outside the purview of Parliament, and ordinary laws. And so are the organizations³. although the practical reality proves the reluctance of the heads of the two chambers of parliament to use this mechanism, as Professor Ahsan Gharbi says in this regard: "However, it is logical that we do not see the head of a chamber in parliament challenging a law that was voted on by the majority in parliament, especially since the head of the chamber is usually from the majority party, with the exception of the last head of the National People's Assembly, who was elected in 2019 from an opposition party, or at least one that does not have a majority within the assembly. Here, it is possible to imagine the head of the assembly initiating oversight of the constitutionality of laws if he is not convinced of the provisions of the text approved by the majority of the constitution"⁴

second requirement: Individuals notifying the Constitutional Court of a judicial referral

True democracy cannot be established merely by fulfilling its formal condition of majority rule. Rather, it is also the rule of fundamental values, foremost among them human rights⁵. In accordance with this principle and to ensure the freedom of access to justice, the Algerian constitutional founder affirmed, in Article 195/1 of the 2020 constitutional amendment, his continuation of the approach through which individuals are granted the right to plead unconstitutionality. This constitutes an effective tool for preserving the rights and freedoms of citizens, ensuring that they are not violated by any violation that may originate from legislation or regulations tainted with unconstitutionality⁶. The text of which states: "The Constitutional Court may be notified of a plea of unconstitutionality based on a referral from the Supreme Court or the Council of State, when one of the parties to a trial before a judicial body claims that the legislative or regulatory provision upon which the outcome of the dispute depends violates their rights and freedoms guaranteed by the Constitution." Accordingly, notifying the Constitutional Court of a judicial referral is as follows:

2.1- Controls for individuals notifying the Constitutional Court

We previously learned that a plea of unconstitutionality is a procedure that allows aggrieved parties during a case or dispute before the court to plead the unconstitutionality of the law to be applied and upon which the outcome of the dispute depends⁷. In other words, it is a mechanism whereby individuals exercise oversight of the Constitutional Court by means of a judicial referral based on a dispute before the court by pleading the unconstitutionality of the legislative or regulatory provision upon which the outcome of the dispute depends, regardless of the nature of the latter, given that a plea of unconstitutionality is a substantive lawsuit limited to examining the constitutionality of the legislative or regulatory provision upon which the resolution of the dispute before the court depends.

According to the content of Article 195/01 above, in order to raise a plea of unconstitutionality, three conditions must be met:

- The existence of a dispute pending before the courts, regardless of its type, whether ordinary or administrative, in which one of the aggrieved parties initiates a challenge to the constitutionality of the legislative or regulatory provision on which the outcome of the dispute depends. This indicates that a claim of unconstitutionality is not filed directly before the courts.

- The claim must be raised by one of the parties to the dispute, whether plaintiff or defendant. This claim may also be a natural or legal person. It is noteworthy that the above text does not distinguish between nationals and foreigners in exercising the right to appeal, leaving room for interpretation⁸.

- The legislative or regulatory text to be applied to resolve the dispute must constitute a violation of the rights and freedoms guaranteed by the Constitution. Perhaps it is important to note in this context that the reason for linking the acceptance of a challenge to unconstitutionality, at least formally, to the necessity of its infringement or conflict with one of the rights and freedoms recognized by the Constitution. This is based on the fact that the judiciary is not only the basic guarantee of the rule of law, but also represents the basic guarantee of individual freedoms and rights⁹.

2.2- Controls for referring the plea of unconstitutionality to judicial authorities

It is well known that the court's jurisdiction is essentially limited and restricted to the original plaintiff's request and the dispute arising therefrom. The court may not rule on more than what was requested of it. However, the court's jurisdiction extends widely to other issues that stem from the dispute, including subsidiary or emergency issues that arise during the consideration of the case and over which the court has jurisdiction, given its complementary jurisdiction to its original jurisdiction to consider the original request. There are also defenses that are raised during the course of the dispute and over which the court considering the original request also has jurisdiction, based on its complementary jurisdiction, and that whoever has jurisdiction over the original request has jurisdiction over the branch arising therefrom¹⁰.

If the judicial authority before which the request to plead the unconstitutionality of the legislative or regulatory provision, on which the outcome of the dispute depends, is certain that it infringes on the rights and freedoms guaranteed by the Constitution, such as if the procedures stipulated in the legislation or regulation constitute a threat to the freedom of the accused, such as detention for investigation, pretrial detention, or if the procedures constitute an infringement on the sanctity of private life, such as searches, interception of correspondence and audio recordings¹¹. in addition to its certainty that the plea of unconstitutionality meets the established conditions, it issues a decision to refer it¹² . to the Supreme Court or to the Council of State, as the case may be. This shall be done by a decision attached to the petitions and memoranda of the parties within ten days of its issuance, and it shall be communicated to the parties and shall not be subject to any appeal. In this case, the ruling on the case shall be

postponed, except if the person is deprived of his liberty because of it¹³. By the same procedures, the lawsuit for the plea of unconstitutionality shall be initiated before the higher judicial authorities, which must decide on the referral of the plea of unconstitutionality to the Constitutional Court within two months from the date of receipt of the communication thereof, and this shall be done as a matter of priority. The judicial authority that sent the plea shall be informed of the non- The Constitutional Court shall issue a decision by the Supreme Court or the Council of State, and the parties to the dispute shall be notified within ten days from the date of its issuance¹⁴. It should be noted here that a plea of unconstitutionality may be raised directly before the Supreme Court or the Council of State during a dispute heard at first and last instance, in accordance with Article 02/01 of Organic Law 18-16.

By referring a plea of unconstitutionality to the Constitutional Court, its supervisory jurisdiction is established immediately after the notification letter is filed at its level, whether the referral is by a decision from the higher judicial authorities, which is the original referral. However, if the higher judicial authorities do not rule on the plea of unconstitutionality within the specified timeframes, it is automatically referred to the Constitutional Court for consideration, in accordance with the provisions of Article 20 of Organic Law 18-16. This Court must therefore decide on the merits within a maximum of four months, in accordance with the provisions of Article 195/2 of the 2020 Constitutional Amendment, starting from the date of referral. As an exception, the Constitutional Court may extend this period once, for a maximum of four additional months, based on a reasoned decision from the Constitutional Court, which is communicated to the relevant authority who is the notifier.

Although the referral system by the higher judicial authorities preserves the status of the judiciary and the authority of the higher judicial bodies by requiring the unconstitutionality claim to be submitted to these bodies before reaching the constitutional judicial bodies¹⁵. the constitutional founder should have abandoned it to simplify litigation procedures and preserve the rights of litigants related to the original claim.

The Constitutional Court's oversight jurisdiction over claims of unconstitutionality is among the jurisdictions that make its oversight judicial, as it is a subsequent oversight of the issuance, enforcement, or implementation of the law. Therefore, it assumes that we are dealing with a law that has completed its approval and promulgation procedures¹⁶

THE SECOND TOPIC: Procedures for the Constitutional Court's Operational Process

The oversight of the constitutionality of laws in the Algerian legal system is of paramount importance. This explains the restructuring of the body entrusted with it with each constitutional amendment, with the aim of making it the fundamental pillar for establishing a state of law, under which the constitution is upheld and rights and freedoms are protected. Within this framework, the country witnessed, in light of the constitutional reforms of 2020, the establishment of a Constitutional Court, which, upon assignment from the Constitutional Founder,

adjudicates on the matters of notification letters addressed to it. It then issues binding decisions for both authorities and individuals.

First requirement: Investigation and Deliberations

The Constitutional Court exercises its constitutionally mandated powers, which are convened upon receipt of a notification letter regarding any of them. Referring to the 2019 Regulations for the Rules of Procedure of the Constitutional Council, we find that it outlines the stages and procedures for examining a notification letter after its submission, as follows:

- The Constitutional Court is obligated to investigate the subject of the notification letter upon receipt. This is done regardless of whether the Court accepts consideration or not, as it has full discretionary power in this regard. If the Court accepts to rule on the subject of the notification letter, its President appoints one or more rapporteurs, as appropriate, to undertake the task of investigating the subject of the notification letter, preparing a report on it, and drafting a decision¹⁷. To this end, the rapporteur is authorized to seek all information and documents that may facilitate his or her duties. He or she may also consult experts on the subject after obtaining the approval of the President of the Constitutional Court¹⁸. After the rapporteur completes his or her assigned tasks, he or she shall deliver to the President of the Constitutional Court and its members a copy of the notification file, accompanied by a detailed report on the subject of the notification, as well as the draft decision¹⁹. As a subsequent stage after the Constitutional Court member has completed the investigation process, a deliberation session is held upon the invitation of its president, during which the reporting member is heard and the subject of the notification is studied unanimously. This is done in a closed session during which the court makes its decision by a majority of its members²⁰. In the event of a tie, the President's vote shall be decisive. The Constitutional Court must adjudicate on the matters of notification letters submitted to its offices within a maximum period of thirty days from the date of receipt, which may be reduced to ten days at the request of the President of the Republic, pursuant to Article 194 of the 2020 Constitutional Amendment.

second requirement: The Nature of the Constitutional Court's Rulings

The Algerian Constitutional Founder indicated that the Constitutional Court is obligated to adjudicate on the matters of notification by decision. Given that the constitutional dispute is of a substantive nature, this entails the necessity of acknowledging the validity of the rulings therein. It should be noted here that the ruling issued by the Constitutional Court does not fall outside of two options: either rejecting the notification and subsequently affirming the constitutionality of the contested law, or accepting the notification and ruling it unconstitutional²¹. The Constitutional Founder distinguished the decisions issued by the Constitutional Court from absolute validity in both cases through Article 198/5, stating that: "The decisions of the Constitutional Court shall be final and binding on all public authorities." ...and administrative and judicial," thus directing the will of the constitutional founder to affirm the non-appealability of the

Constitutional Court's decisions, in addition to their binding nature for all, whether official bodies or otherwise.

We note here that the pure, uncomplicated rulings issued by the Constitutional Court produce their effect without conditions or reservations. Professor Wagdy Ragheb Fahmy defined them as: "Rulings that decide on substantive claims and defenses, such as those that grant the opponent's substantive claims or rule to reject them." In this scenario, the Constitutional Court concludes that the legal text violates the Constitution by ruling that the text is unconstitutional, and thus acquires a binding force that prevents it from being resubmitted.

However, if the Constitutional Court does not find that the legislative or regulatory text challenged as unconstitutional is not tainted by unconstitutionality, the Constitutional Court rules to reject the appeal²².

The effect of Constitutional Court decisions is effective from the date of their issuance. This applies to legal texts that have entered into force, i.e., for subsequent review, with the exception of those related to the plea of unconstitutionality, which loses its effect from the date of the Constitutional Court's decision. As for laws that are not in force and are subject to prior review, they are not issued .

Therefore, the Constitutional Founder stipulated, through Article 198 of the 2020 Constitutional Amendment, that Constitutional Court decisions are final, have absolute authority, and are binding on all. Public, administrative, and judicial authorities must abide by them. This is based on the fact that constitutional lawsuits are, by their very nature, substantive lawsuits in which the dispute is directed against the legal texts challenged on the grounds of a constitutional defect. Therefore, the decisions issued therein have absolute authority, such that their effect is not limited to the parties that initiated the review, but rather extends to all parties, and all state authorities are bound by them²³.

Conclusion:

Through our examination of the mechanisms for oversight of the constitutionality of laws and their implementation in the Algerian system, we have reached several points, the most important of which are summarized below:

- The constitutional founder, through the 2020 constitutional amendment, was keen to adopt the method of judicial oversight of the constitutionality of laws, stipulating that it be an independent body charged with ensuring respect for the constitution.
- The right of individuals to approach the Constitutional Court was enshrined in the Constitution for the first time in the history of Algerian constitutions. This right is enshrined in the Constitution by pleading unconstitutionality through a judicial referral, which represents a qualitative leap in the field of constitutional oversight.
- The Constitutional Court's oversight role is embodied through direct notification by bodies—the executive branch and parliament—and indirect notification by individuals through pleading unconstitutionality through a judicial referral. As for the most important proposals, we believe that:

We stated previously that the constitutional founder's choice to shift the oversight of the constitutionality of laws from political to judicial oversight, and the provision for the establishment of a Constitutional Court, is an important step in the development of oversight of the constitutionality of laws in Algeria. However, this does not mean that further efforts are not needed to support the consolidation of the principles specific to the court, both as a body and as members, to serve as a fundamental pillar of the rule of law and as a protector of the public rights and freedoms of individuals, upholding the provisions of the Constitution and protecting its principles, as hoped for. Therefore, to achieve the intended effectiveness of oversight of the constitutionality of laws by the Constitutional Court.

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