



THE MECHANISM OF THE PLEA OF UNCONSTITUTIONALITY AND ITS ROLE IN BRINGING CONSTITUTIONAL JUSTICE CLOSER TO THE ADMINISTRATIVE LITIGANT

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Abstract:

The paper addresses the issue of the appeal of unconstitutionality mechanism, introduced by the Algerian constitutional amendment of 2016 and reaffirmed in the 2020 revision, as one of the posterior constitutional review methods. This mechanism aims to enable litigants, in general, to challenge legal provisions-whether legislative or regulatory-that may be contrary to the provisions of the Constitution, in order to guarantee their fundamental rights and freedoms.

The article also highlights the stages of adopting the appeal of unconstitutionality mechanism within Algeria's legal system, drawing inspiration from the French experience, as well as the conditions, mechanisms, and procedures that litigants must follow before the judicial bodies and the Constitutional Court.

Keywords: Constitutional review, appeal of unconstitutionality, fundamental rights, Algerian Constitution, Constitutional Court.

Introduction:

The Algerian legal system has been strengthened by the introduction of the appeal of unconstitutionality, both as a means of affirming and safeguarding the principle of constitutional supremacy and as a procedural guarantee for the protection of individual rights and freedoms against potential infringements. This mechanism enables any party with legal standing to challenge provisions they consider unconstitutional before the judiciary, under Article 195 of the 2020 constitutional amendment, which stipulates:

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"The Constitutional Court may be referred to through a plea of unconstitutionality upon referral by the Supreme Court or the Council of State, when one of the parties to proceedings before a court alleges that the legislative or regulatory provision on which the outcome of the case depends violates the rights and freedoms guaranteed by the Constitution..."

This mechanism was further consolidated by the enactment of Organic Law No. 22-19, which outlines the procedures and modalities for submitting and referring pleas before the Constitutional Court. With its adoption, the procedural framework governing the plea of unconstitutionality has become complete.

The present study, however, seeks to explore the following problematic: To what extent does the plea of unconstitutionality, as a new procedural development in the Algerian legal system, contribute to bringing constitutional justice closer to the administrative litigant?

In addressing this issue-and given that the French legal system was a pioneer in adopting the plea of unconstitutionality-we will refer to the French experience for comparative analysis throughout the study, particularly since France has served as a substance source for several legislative reforms.

SECTION I: STAGES OF ADOPTING THE PLEA OF UNCONSTITUTIONALITY

The French legal system has long served as a substantive source for numerous legislative frameworks, including the Algerian legal system, primarily due to historical and political ties. Given that France was a forerunner in adopting the Mechanism of the Plea of Unconstitutionality, (Maus, 2011, p15) we begin by exploring the historical context of this mechanism in France (first requirement), followed by its institutionalization in Algeria (second requirement).

First Requirement: The Question of Constitutional Priority in the French Legal System.

The 2008 reform represents a legal and judicial revolution in France. The appeal of unconstitutionality not only strengthened constitutional review but also democratized access to constitutional justice (paragraph 1), by empowering citizens and integrating the judiciary into constitutional protection, the mechanism solidified the principle



of constitutional supremacy and enhanced the legitimacy of the French rule of law (paragraph 2).

Paragraph 1: The appeal of Unconstitutionality in France- from judicial resistance to the strengthening of constitutional justice.

The French legal system introduced the appeal of unconstitutionality mechanism in 2008. This development marked a significant milestone in strengthening the protection of litigants' rights and freedoms. It transformed the citizen from a passive subject of the law into an active participant in safeguarding fundamental rights. By opening the gates of constitutional justice-once reserved for limited number of political actors (Guillaume, 2010, p 751)-the field of constitutional law moved beyond academia and into the courtroom.

Historically, the French judiciary faced considerable resistance (Debre, 2013, p54)to extending the power to refer questions of constitutionality to the Constitutional Council. French legal philosophy traditionally confined judges to interpreting rather than altering or annulling legal provisions, as legislation was considered the sole prerogative of the legislative authority (Robert, 1989, p 55) and, in exceptional cases, the President of the Republic. Granting the judiciary broader powers was seen as a potential threat, leading to what critics called the “government of judges”.

However, over time, legal scholars, judges, and politicians recognized that the Constitutional Council must assume a central role in the protection of fundamental rights and freedoms. No longer, should the Council merely react to political referrals concerning the constitutionality of laws or treaties; it should proactively respond to claims raised within judicial proceedings. This consensus led to expanding the referral mechanism to include the Court of Cassation and the Council of State through the appeal of unconstitutionality mechanism.

One of the key concerns for litigants has always been the duration of judicial proceedings. For example, cases before the Court of Cassation typically take around a year and a half to resolve, while the full litigation process may last between five to six years. The same delays are observed before the Council of State and even longer at the European Court of Human Rights. In contrast, the Constitutional Council rules on appeals of unconstitutionality within two months and

fifteen days an impressive timeframe expected to decrease as the Council gains more experience and procedural efficiency.

The President of the Constitutional Council emphasized the importance of legitimacy in its rulings. To enhance procedural legitimacy and transparency, the French system incorporated oral proceedings into the process. Lawyers now present appeals of unconstitutionality cases directly before the judges and members of the Council, in the presence of the litigant. This addition to the traditional written procedure allows litigants to feel more engaged and reassured about the process and its outcomes.

“The litigant must have the right—like any party before a judicial authority—to refer matters to the Constitutional Council, even if this requires the appointment of legal aid.” (Debre, 2013, p58)

Paragraph 2: The Emergence and Evolution of the Mechanism

The institutionalization of the appeal of unconstitutionality represents a substantial victory for the rights and freedoms of French litigants, as well as a significant shift in judicial autonomy. It marks a departure from undue political influence or lobbying pressures within the National Assembly. Currently, appeals of unconstitutionality account approximately 90% of the Constitutional Council’s decisions.

Moreover, the President of the Council commended the French political authorities for this constitutional initiative, which empowered both judicial bodies and citizens. He confirmed that constitutional review under this mechanism now concludes within two months and ten days.

The 2008 constitutional amendment—enacted on July 23—granted judicial bodies the authority to refer laws to the Constitutional Council for constitutional review when adjudicating disputes, provided that both the Court of Cassation and the Council of State approve the referral. This mechanism aims to achieve three objectives:

- Ensure the constitutionality of the legal system;
- Allow citizens to participate in defending their constitutional rights;
- Uphold the supremacy of constitutional norms.

In doing so, the legislature broadened the scope of constitutional review and included the judiciary as an essential actor in upholding constitutional supremacy (Sauvé, 2010, p98)



In essence, the appeal of unconstitutionality is a procedural tool whereby a litigant may raise a constitutional issue before a judicial authority, asserting that a legislative provision violates constitutionally guaranteed rights and freedoms. If certain conditions are met, the judge may refer the matter to the Constitutional Council for review, which may then amend or repeal the provision in question.

Second Requirement: The Institutionalization of the Plea of Unconstitutionality in the Algerian Legal System

This section explores how the plea of unconstitutionality has been institutionalized in Algerian law, first by examining its constitutional foundations (paragraph1), then its legislative foundations (paragraph2).

Paragraph1: Constitutional Foundations.

The 2016 constitutional amendment marked a qualitative leap in strengthening constitutional review (دئش، 2016، ص 160), by granting the Constitutional Council a new jurisdiction: to adjudicate any plea of unconstitutionality raised by a litigant during proceedings before administrative or ordinary courts, where the contested legal provision is deemed to infringe upon the constitutional rights and freedoms of that litigant.

Article 188 of the 2016 Constitution stipulated:

“The Constitutional Council may be seized with a plea of unconstitutionality upon referral by the Supreme Court or the Council of State, when one of the parties in judicial proceedings claims that the legislative provision on which the outcome of the case depends violates the rights and freedoms guaranteed by the Constitution.”

The 2020 constitutional amendment furthered this development by replacing the Constitutional Council with the Constitutional Court, while preserving the plea mechanism. Article 195 of the new Constitution provides:

“The Constitutional Court may be seized with a plea of unconstitutionality upon referral by the Supreme Court or the Council of State, when one of the parties in a trial before a judicial body alleges that the legislative or regulatory provision upon which the outcome of the case depends violates the rights and freedoms guaranteed by the Constitution.”

Paragraph 2 : Legislative Foundations.

The second paragraph of Article 188 of the 2016 constitutional amendment states:

“The conditions and procedures for the implementation of this paragraph shall be defined by an organic law.”

This constitutional directive materialized two and a half years after the amendment, through Organic Law No. 18-16, which laid down the conditions and procedures for implementing the plea of unconstitutionality, thus operationalizing the constitutional commitment to activating this mechanism.

Article 215 of this law stipulates:

“Pending the availability of all necessary conditions for the implementation of Article 188 of the 2016 constitutional amendment, and to ensure its effective enforcement, the mechanism set forth therein shall be established after a period of three (3) years from the date of entry into force of these provisions.”

This confirms the constitutional legislator’s intention to enforce Article 188 within a specific timeframe. As such, any claim to delay or suspend the application of the constitutional priority mechanism would be invalid since a strict three-year deadline was imposed-affirmed by the subsequent adoption of Organic Law No. 22-19, which outlines the procedures and modalities for referrals to the Constitutional Court.

However, the three-year period set for implementation has proven insufficient for fully embedding the plea mechanism within the Algerian legal system. Although it is intended primarily as a safeguard of litigants’ rights and freedoms, its proper implementation requires a comprehensive study and the adequate preparation of all actors within the judiciary. This is evidenced by the fact that Organic Law No. 18-16, which came into effect on March 7, 2019, was entirely repealed and replaced by Organic Law No. 22-19, which addressed numerous deficiencies in the former law.



From the above, it may be concluded that the legal birth of the plea of unconstitutionality in Algeria occurred with the 2016 constitutional amendment, despite its initial shortcomings, and the issuance of the aforementioned organic law, which was short-lived and ultimately superseded by the more robust Law No. 22-19.

Interestingly, while the French organic legislator granted judicial bodies the power to refer constitutional questions a full decade before Algeria, the Algerian legal system failed to give full effect to the underlying principle. The idea of raising constitutional compatibility was already hinted at in the preparatory drafts of Organic Law No. 98-01 on the Council of State. A close reading of the Constitutional Council's opinion on the constitutionality of this draft law reveals an implicit reference to this mechanism.

For example, Article 13 of the draft law stated:

“The Council of State, on its initiative, may draw the attention of public authorities to legislative, regulatory, or administrative reforms of public interest.”

However, the organic legislator ultimately excluded this provision. The Constitutional Council ruled that:

“By granting the Council of State the right to take the initiative in drawing the attention of public authorities to legislative, regulatory, or administrative reforms, even on a non-binding basis, the legislator would have exceeded the Council's consultative role, which, according to the final paragraph of Article 119 of the Constitution, is limited strictly to giving opinions on draft laws. Consequently, such a provision would contravene constitutional requirements.”

This interpretation reflects the Council's reluctance to involve the Council of State in constitutional referrals, a position that arguably weakens the legal system. Indeed, in the same opinion, the Council also excluded the possibility of the Council of State being consulted on draft ordinances and regulatory texts, because such a function is not constitutionally provided for under Article 119.

This raises a critical question: If an ordinance or regulatory text contains unconstitutional provisions, and the Council of State, in the course of adjudicating a dispute, identifies infringements on individuals' rights and freedoms, what avenue is available to the administrative judge (Montalvet, 2014, p21) to reconcile constitutional supremacy with the imperative to protect fundamental rights?

This matter underscores the functional importance of such a mechanism in affirming the material supremacy of constitutional norms, ensuring that the legitimacy of any legal rule stems from its conformity with higher-order constitutional standard. In this sense, the legality of any provision is conditional upon its adherence to these overarching principles(الخطيب، 1999، ص 532).

In conclusion, although the Algerian legal system was among the first to adopt the plea of unconstitutionality, it initially confined the referral mechanism—essentially, the act of “alerting” public authorities—to the Council of State. Recognizing the need to better protect fundamental rights and freedoms, the constitutional legislator later expanded this mechanism in line with comparative legal systems, notably by extending the right of referral to litigants themselves.

SECTION II: CONDITIONS AND PROCEDURES FOR RAISING THE UNCONSTITUTIONALITY PLEA

In light of the significance of the unconstitutionality plea as a mechanism to challenge the constitutionality of legislative or regulatory provisions, the Algerian legislator has subjected it to specific admissibility conditions (First Requirement: *Subject Matter and Conditions of the Unconstitutionality Plea*) and has regulated its procedural framework both before lower and higher judicial bodies on the one hand, and before the Constitutional Court on the other (Second Requirement: *Procedures for Raising the Unconstitutionality Plea*).

First Requirement: Subject Matter and Conditions of The Unconstitutionality Plea

Before addressing the conditions for the admissibility of the unconstitutionality plea in paragraph 2, it is essential to first highlight the evolution of its scope. While it was initially limited to legislative



provisions following the 2016 constitutional amendment, it was expanded to include regulatory provisions under the 2020 constitutional amendment in paragraph 1.

Paragraph1: Subject Matter of the Unconstitutionality Plea.

It can be stated that the constitutional legislator has broadened the scope of the unconstitutionality plea. While it was previously confined to legislative provisions under the 2016 amendment, the 2020 constitutional revision extended this scope to include regulatory provisions as well.

1- Initial Restriction to Legislative Provisions (CC.Français, 2025).

With reference to the 2016 constitutional amendment, the constitutional legislator explicitly stated that, "*When one of the parties in a trial before a judicial body claim that the legislative provision on which the outcome of the case depends violates the rights and freedoms guaranteed by the Constitution...*" Consequently, and by the legal principle that no interpretation is allowed in the presence of an explicit text, the unconstitutionality plea was confined solely to legislative provisions. This limitation was confirmed by Organic Law No. 18-16. According to Articles 2 and 8 of Organic Law No. 18-16, the legislator limited the plea strictly to legislative provisions, excluding regulatory texts from the scope of this constitutional review. Several observations can be made in this regard:

a- The organic legislator was arguably unsuccessful in this approach, especially considering the extensive corpus of regulatory texts governing various sectors.

b- Exempting regulatory texts from the scope of constitutional review through the unconstitutionality plea undermines the principle of legal certainty. While both legislative and regulatory texts follow specific procedures during enactment, regulatory texts are generally subject to less stringent requirements, making them more prone to constitutional challenges. This shortcoming was remedied by the issuance of Organic Law No. 22-19.

2- Expansion of the Scope to Include Regulatory Provisions.

One of the most significant aspects of the 2020 constitutional amendment is its affirmation and reinforcement of the unconstitutionality plea as a mechanism for protecting litigants' rights and freedoms. In this respect, the extension of constitutional review to include regulatory texts is a commendable constitutional development. Article 195 of the amended Constitution states:

"When one of the parties in a trial before a judicial body claim that the legislative or regulatory provision on which the outcome of the case depends violates the rights and freedoms guaranteed by the Constitution..."

This was reiterated in Article 21 of Organic Law No. 22-19, which stipulates the conditions for raising the unconstitutionality plea as follows:

"...The legislative or regulatory provision challenged must not have previously been declared consistent with the Constitution by the Constitutional Council or Constitutional Court, unless there has been a change in circumstances..." It is evident from the wording of this article that the organic legislator expanded the scope of the unconstitutionality plea to include regulatory provisions, whereas it was previously limited to legislative ones. This expansion is a welcome and well-considered development, as it ensures constitutional oversight of both legislative and regulatory texts. It also grants litigants, whether in ordinary or administrative proceedings, the ability to challenge legal texts—particularly those governing crucial sectors such as, for instance, the presidential decree on public procurement and public service concessions.

It is also worth noting that the earlier restriction of the unconstitutionality plea to legislative provisions alone significantly limited the number of decisions issued by the Constitutional Council. Since the mechanism's implementation on March 7, 2019, only three decisions have been rendered, mostly upon referral from the Supreme Court—a number that is relatively low given the breadth of Algeria's



legal system. The extension of the plea to include regulatory provisions will undoubtedly lead to a greater number of constitutional challenges.

Paragraph 2 : Conditions for the Plea of Unconstitutionality

Article 195 of the 2020 Constitutional Amendment stipulates:

"The Constitutional Court may be seized with a plea of unconstitutionality upon referral by the Supreme Court or the Council of State, when one of the parties in a trial before a judicial body alleges that the legislative or regulatory provision upon which the outcome of the case depends violates their rights and freedoms guaranteed by the Constitution."

When the Constitutional Court is seized with such a plea under the above provision, it must render its decision within four (4) months from the date of referral. This period may be extended once, for a maximum of four (4) additional months, by a reasoned decision of the Court, which must be communicated to the referring judicial authority.

The Algerian legislator, in line with its French model, dedicated Chapter IV of Organic Law No. 22-19 to the procedures and referral methods related to the plea of unconstitutionality. This chapter comprises 29 articles that specifically regulate the mechanisms for raising such pleas.

Article 21 of Organic Law No. 22-19 sets out the admissibility conditions for the plea as follows:

"The plea of unconstitutionality shall be referred to the Supreme Court or the Council of State, as appropriate, if the following conditions are met:

- The legislative or regulatory provision being challenged must be decisive to the outcome of the case or form the basis of prosecution;
- The provision must not have already been declared consistent with the Constitution by the Constitutional Council or the Constitutional Court, unless circumstances have changed;
- The plea must raise a serious constitutional question."

From the content of Article 195 of the Constitution and Article 21 of the Organic Law, it is clear that both constitutional and organic legislators have established three primary conditions for raising a plea of unconstitutionality:

1- The Existence of an Ongoing Judicial Dispute (Administrative or Ordinary):

The plea must be raised within the context of an actual dispute pending before either an administrative or ordinary judicial authority. There must be a substantive legal provision that the judge intends to apply in resolving the case. The litigant may challenge the constitutionality of this provision, arguing that it violates their constitutional rights or freedoms.

If the court considers the plea to be serious, it must suspend the proceedings and refer the constitutional issue to the Constitutional Court. This means that the plea of unconstitutionality cannot be raised in the abstract or outside of an existing legal proceeding. As indicated by the phrase "when one of the parties in a trial before a judicial body claim..." in Article 188, the mechanism is defensive in nature.

It allows litigants to seek the exclusion of a provision's application in a real and active dispute, believing that its enforcement would infringe on constitutionally protected rights and freedoms.

2- The Plea is raised by the Parties:

The constitutional legislator has granted litigants the right to challenge the constitutionality of laws via a plea during the course of a dispute, regardless of whether the party raising the plea is the claimant or the defendant. This right applies to both natural and legal persons. What matters is that the plea pertains to a legislative provision that affects the outcome of the case and is alleged to violate the rights and freedoms guaranteed by the Constitution.

It is noteworthy that the constitutional provision did not distinguish between nationals and foreigners in exercising this right, which opens the door to interpretation. This was the case in France until the French Constitutional Council clarified that foreigners also have the right to



challenge the constitutionality of laws applied to them if those laws violate the rights and freedoms, they enjoy in France.

3- The Violation of Constitutional Rights and Freedoms:

A plea of unconstitutionality may only be accepted if the challenged legislative or regulatory provision infringes upon the rights and freedoms enshrined in the Constitution. In this regard, the legislative provision referred to by the constitutional legislator is understood to include ordinary laws, treaties, and regulations, which are subject to optional constitutional review. It does not include organic laws or the internal rules of Parliament's two chambers, since these are subject to mandatory prior review by the Constitutional Court upon referral by the President of the Republic.

It is important to note that linking the admissibility of the plea — even formally — to a potential violation of constitutional rights and freedoms stems from the fact that the judiciary is not only the cornerstone of the rule of law, but also the primary guarantor of individual rights and freedoms.

In this context, the Constitutional Council or Constitutional Court must not have previously declared the provision in question constitutional.

As for the phrase “in the event of a change in circumstances,” it should be noted that:

“The Algerian Constitutional Council has not clearly defined its position regarding (شوقي، 2021، ص 24) the exception introduced by this phrase in its decision on the constitutionality of Organic Law No. 18-16.”

Similarly, the Constitutional Court has not addressed this in its opinion on Organic Law No. 22-19.

By contrast, the French Constitutional Council explicitly defined its position during its review of Organic Law No. 2009-1523, stating that the phrase "change in circumstances" is consistent with Article 62 of the French Constitution. Such a change may justify a new review if:

The applicable standards for constitutional review have evolved,

The factual or legal circumstances surrounding the provision have changed,

These changes affect the provision's current constitutionality.

4- The Requirement of Seriousness (Gravity):

The constitutional legislator did not set out specific criteria for trial judges to follow in assessing the seriousness of a constitutional plea. This condition aims to prevent abusive or frivolous claims that merely seek to delay proceedings. The French legislator, however, imposed that the plea must be serious or substantial (سعودي، 2019، ص 1609).

Seriousness is a key requirement (Stefanini, 2013, p12 et 13), and the party raising the plea must support it with sufficient legal arguments or evidence. Trial judges must evaluate the seriousness based on two main factors:

- Whether resolving the constitutional question is relevant and necessary to the outcome of the main dispute;
- Whether the plea plausibly demonstrates a violation of constitutional rights. Ultimately, trial courts enjoy discretionary power in assessing the seriousness of a plea.

In France, the approach distinguishes between lower courts and higher courts (Council of State and Court of Cassation):

Lower courts must ensure the plea is not devoid of seriousness.

Higher courts must determine whether the seriousness threshold is met.

The Algerian organic legislator has neither defined the concept of *seriousness* nor set out objective criteria for its evaluation. This legislative omission renders the requirement inherently ambiguous and perpetuates a degree of uncertainty in the practical implementation of constitutional review mechanisms.



Second Requirement: Procedures For The Plea Of Unconstitutionality

Before initiating the procedures concerning the priority question of constitutionality (paragraph 2), it is essential to examine these procedures within the context of the French judicial system (paragraph 1).

Paragraph1: In the French Legal System.

In its treatment of the mechanism of the plea of unconstitutionality, the French constitutional legislator left no room for ambiguity regarding the procedures, from the moment the plea is raised until it is decided upon. The procedure addresses three key aspects:

Eligibility to raise a constitutional question,

Filtering mechanisms via judicial authorities to avoid overloading the Constitutional Council's docket (Didier, 2011,p3),

The decision-making process within the Council itself.

Only the parties to the dispute may raise the constitutional question; judges may not raise it *sua sponte*, nor may third parties intervene and raise such issues. Furthermore, litigants cannot refer the matter directly to the Constitutional Council. Instead, it must pass through judicial channels for preliminary examination, ensuring that the issue is sufficiently serious and relevant to warrant a constitutional ruling.

Importantly, France's legal system, based on the separation of powers and the principle of checks and balances, empowers both citizens and litigants to participate in the constitutional review of public authorities' actions, regardless of their position or power. (Gavalda, 2013,p85).

It can be raised before any judicial authority, whether administrative or ordinary (Bernard, 2010,p57).

Paragraph 2: The procedures of the Plea of Unconstitutionality in Algerian Law

We address first (1) the procedure followed for raising the plea of unconstitutionality, and then (2) the main developments introduced by Organic Law No. 22-19.

1- The Procedure of the Plea of Unconstitutionality

Article 1 of Organic Law No. 22-19 expanded the jurisdiction of the Constitutional Court by defining the procedures and modalities of referral, thereby giving effect to Article 196 of the 2020 constitutional amendment. In contrast, the equivalent article in the repealed Organic Law No. 18-16 was limited to defining the conditions and methods of applying the plea of unconstitutionality.

According to Article 2, paragraph 2, referral to the Constitutional Court is made through the Council of State or the Supreme Court, excluding direct referrals by lower courts. This exclusion is logical, considering that both the Supreme Court and the Council of State serve as appellate bodies that supervise the rulings of ordinary and administrative courts, thus helping to avoid overburdening the Constitutional Court.

The organic legislator restricted the right to raise the plea to the parties to the case. Judges, public prosecutors, and the Government Commissioner cannot raise the plea *sua sponte*. However, the Public Prosecutor or Government Commissioner may submit written observations on the plea, at the Constitutional Court's request.

The plea must be submitted, under penalty of inadmissibility, in a separate, written, and reasoned memorandum. The court before which the plea is raised must immediately issue a reasoned decision regarding whether to refer the matter to the Supreme Court or Council of State, after consulting the Public Prosecutor and the Government Commissioner (Article 20 of Organic Law No. 22-19). The decision, along with all written pleadings and briefs, must be forwarded to the relevant higher court within ten (10) days and notified to the parties.

Because the procedures are specific, procedural laws must be aligned with Organic Law No. 22-19. Article 18 of the law provides that:



“Subject to the provisions of this organic law, the provisions of the Code of Civil and Administrative Procedure and the Code of Criminal Procedure apply to courts before which the plea of unconstitutionality is raised.”

This alignment is essential, given the technicality and urgency that characterizes such procedures.

2- Key Innovations Introduced by Organic Law No. 22-19
Organic Law No. 22-19 addressed several shortcomings of the repealed Law No. 18-16. Among its major developments:

a- Granting Standing to Third Parties with Legitimate Interest – at Two Levels:

Before the Trial Court: Article 22 allows any interested person to intervene by submitting a written, reasoned, and separate memorandum pursuant to Articles 19 and 21 of the law, as long as it is submitted before the court decides on referring the plea. If accepted, the intervening party is subject to the same procedural obligations as the main parties. This strengthens the protection of rights and freedoms.

This reflects a broadening of the notion of party standing, which is aligned with the objective of post-enactment constitutional review — i.e., ensuring that all actors can contribute to the defense of constitutional supremacy.

b- Time Limit for Notification of the Refusal to Refer:

To ensure procedural transparency, Organic Law No. 22-19 introduced a three-day deadline for courts to notify parties of their decision to reject a referral. This remedy fills a legislative gap that existed in Law No. 18-16.

c- Participation of the Government Commissioner Mandatory Opinion within Five Days:

Given the importance of the plea of unconstitutionality, Article 23 provides that upon receiving a referral from the Council of State, the Government Commissioner must issue his written submissions within five days. Article 23(3) also guarantees the right of parties to respond with written observations.

Conclusion:

The introduction of the plea of unconstitutionality in Algeria has markedly reinforced the rule of law by making constitutional justice more accessible to administrative litigants and providing them with a legal means to safeguard their fundamental rights. This mechanism allows individuals to challenge both legislative and regulatory provisions, thereby extending judicial oversight to regulations that had previously escaped constitutional scrutiny - a gap effectively addressed by Organic Law No. 22-19.

By affirming the supremacy of constitutional norms, the mechanism ensures that no legal rule is valid unless it aligns with constitutional principles, thus strengthening and broadening the principle of legality. However, its practical implementation raises critical questions regarding potential overuse and the true willingness of higher courts - the Supreme Court and the Council of State - to facilitate, rather than restrict, access to constitutional review.

This concern is underscored by the French experience, where around 75% of referral requests were dismissed by the Court of Cassation and the Council of State. Consequently, while the mechanism enhances rights protection, its effectiveness ultimately depends on the interpretative attitude and institutional commitment of the judiciary to uphold constitutional supremacy.

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