

The Jurisdiction of the Constitutional Court in the Field of A Priori Review -The Case of Legislative Ordinances-

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Abstract:

One of the innovations introduced by the 2020 constitutional amendment is the mandatory prior review by the Constitutional Court of legislative ordinances issued by the President of the Republic in urgent matters during Parliament's recess and after obtaining the opinion of the Council of State. The Constitutional Court renders a decision in this regard that has absolute res judicata effect. The President of the Republic then submits the ordinances he has issued to both chambers of Parliament at the beginning of the following session in order to confer legal force upon them through approval. Ordinances not approved by Parliament are deemed null and void. Exceptionally, however, where circumstances change and such ordinances affect one of the rights or freedoms of individuals, they may be subject to a plea of unconstitutionality before the Constitutional Court.

Keywords : Referral; Priori review; Constitutional court; Legislative ordinances; State council; Parliament.

الملخص:

من مستجدات التعديل الدستوري لسنة 2020، خضوع الأوامر التشريعية التي يتخذها رئيس الجمهورية في مسائل عاجلة في حال غياب البرلمان وبعد أخذ رأي مجلس الدولة، للرقابة الوجودية السابقة للمحكمة الدستورية والتي تصدر بشأنها قرارا يقضي بحجية الشيء المقضي فيه حجية مطلقة، ويعرض رئيس الجمهورية الأوامر التي أصدرها علي غرفتي البرلمان في بداية الدورة القادمة، لإضفاء الصبغة القانونية عليها بالموافقة، وتعد لائحة الأوامر التي لا يوافق عليها البرلمان، واستثناء وفي حال تغير الظروف وكانت هذه الأوامر تمس بأحد حقوق أو حريات الأفراد فقد تكون محل للدفع بعدم الدستورية أمام المحكمة الدستورية.

الكلمات المفتاحية: الإخطار؛ الرقابة السابقة؛ المحكمة الدستورية؛ الأوامر التشريعية؛ مجلس الدولة؛ البرلمان.

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Introduction:

Review of the constitutionality of laws is one of the most significant mechanisms for ensuring the supremacy of the Constitution and guaranteeing respect for its provisions by the various public authorities, given that it constitutes the supreme law of the State. Pursuant to this principle, every act of a legislative nature is subject to constitutional review, whether before or after its entry into force. In this context, the 2020 constitutional amendment enshrined both prior and subsequent review, entrusting their exercise to the Constitutional Court.

In order to strengthen the status of the Constitutional Court and broaden its jurisdiction in the field of constitutional review, the second paragraph of Article 142 of the 2020 constitutional amendment subjected legislative ordinances issued by the President of the Republic in urgent cases and during Parliament's absence to the Court's review. This seeks to strike a balance between the requirements of urgency, which allow the President of the Republic to legislate by ordinances having the force of law, and the requirements of constitutional legality.

Accordingly, to what extent does the Constitutional Court exercise its jurisdiction over the prior review of legislative ordinances as a mechanism for ensuring the supremacy of the Constitution? And what are the limits of such review in light of the urgent nature of legislative ordinances issued by the President of the Republic during Parliament's absence?

To address this research problem, the descriptive-analytical method has been adopted through the study and analysis of the relevant constitutional, legislative, and regulatory texts. The study is structured around two main sections:

Section One: The conceptual and constitutional framework of constitutional review of laws and the state of necessity, or "urgency".

Section Two: Legislative ordinances and their review under the 2020 constitutional amendment.

Section One: The Conceptual and Constitutional Framework of Both Constitutional Review and the State of Necessity ("Urgency")

The principle of constitutional supremacy is regarded as one of the most important foundations of the legal order in the modern state. This principle requires that all legal rules within the state, whether legislative or regulatory, conform to the provisions of the Constitution. In order to preserve the legal order within the constitutional framework and ensure that legal rules remain consistent with the Constitution, modern constitutions have adopted the principle of judicial review of the constitutionality of laws (**first**).

At the same time, one manifestation of cooperation between the legislative and executive branches lies in their shared participation in the legislative function. Parliament is no longer the sole authority in the lawmaking process, especially in situations of necessity and urgency associated with the absence of Parliament, where modern constitutions have empowered the executive branch to issue ordinances or regulations having the force of law (**second**).

First: The Concept of Constitutional Review and Its Types under the 2020 Constitutional Amendment

Constitutional review constitutes an important guarantee for ensuring respect for the Constitution. States have differed, however, in the way they organize this review, which explains the existence of several different forms of constitutional review. The methods by which such review is initiated also vary according to its type. For this reason, definitions of constitutional review differ depending on the mechanisms and institutional arrangements on which each form is based. Accordingly, this discussion begins with the different types of constitutional review, then proceeds to derive a general definition of constitutional review of laws. Under the 2020 constitutional amendment, the Algerian constitutional framework entrusted the review of the constitutionality of laws to the Constitutional Court.

I. Definition of Constitutional Review and Its Types

Constitutional review takes different forms and varies from one legal system to another depending on the mechanisms it relies upon (1). On that basis, it is possible to formulate a definition of constitutional review broad enough to encompass this diversity. Since such review is not exercised automatically, but rather set in motion through a number of procedures, it is also necessary to define the principal means by which it is triggered, including referral and the plea of unconstitutionality (2).

1/ Types of Constitutional Review: Given the role played by constitutional review in preserving and protecting the Constitution against any departure from its provisions—on the basis that the Constitution is the supreme fundamental law governing the foundations and general rules upon which the system of government rests—this objective can only be achieved if such review extends to all forms and levels of legislation, whether original legislation enacted by the legislative authority or subordinate legislation issued by the executive authority within the limits of its constitutional competence.(Al-Jamal, 2007, p. 129.) Therefore, most state constitutions have moved toward establishing and regulating constitutional review. Yet they have not adopted a single uniform model; rather, constitutional review has developed in varied forms and from different angles, which may be summarized as follows:

A/ Prior and subsequent review of the promulgation of the text, as follows:

- Prior review before the promulgation of the text, this form of review prevents many of the problems that may arise from the application of the law.
- Subsequent review after the promulgation of the text, this form of review reveals defects in legislation through its actual application.

B/ The body entrusted with constitutional review of laws, given the seriousness and precision of this task, there has been disagreement as to which body should exercise it, namely:

- It may be entrusted to a **judicial body**, on the basis that judges are better equipped than others to perform this function, since it concerns the application of law. This is referred to as **judicial review**.
- It may be entrusted to a body of a **political nature**, in order to uphold the principle of separation of powers and to avoid tension between the legislature and the judiciary. This is referred to as **political review**.

C/ The content of the ruling issued in deciding the question of constitutionality varies according to the timing of the review, as follows:

- In the case of **prior review before the promulgation of the text**, the outcome consists either in allowing the legislative enactment process to continue if the law is not contrary to the Constitution, or in halting that process if the law is found to be unconstitutional.

- As for **subsequent review**, the ruling on constitutionality is linked to the existence of a competent court and to the mechanism by which constitutionality is invoked. With regard to the effects of such a ruling, two issues arise:

- The binding force of the judgment, if it is absolute, it applies erga omnes; if it is relative, it is limited to the parties to the dispute.

- The temporal effect of the judgment, whether it applies retroactively or only for the future. (Al-Sanousi Mohamed, 2000, p. 3 et seq.)

2/ Definition of constitutional review of laws:

On the basis of the foregoing, constitutional review of laws may be defined as a set of mechanisms conferred by the Constitution on a competent body, whether political or judicial, with the purpose of verifying the conformity of laws and regulations with the Constitution. The result may be either the annulment of the unconstitutional text or a declaration of its unconstitutionality.

Constitutional review of laws may be initiated through several mechanisms, including:

A/ Referral: this is a request submitted by one of the authorities vested with the power of referral for the purpose of examining the constitutionality of a text subject to constitutional review. (Gharbi, 2021, p. 12.)

B/ The plea of unconstitutionality: this constitutes a form of subsequent constitutional review of laws, since it is raised after the law has entered into force. In this case, one of the parties to proceedings pending before a court argues that the law which the judge intends to apply to the dispute is unconstitutional because it conflicts with the Constitution and infringes the party's constitutionally guaranteed rights and freedoms. The judge then stays proceedings until the constitutionality of the impugned law has been determined. (Farcha, 2023, p. 79.)

II – Constitutional review of laws under the 2020 constitutional amendment:

Under the 2020 constitutional amendment, the Constitutional Court is an independent institution entrusted with ensuring respect for the Constitution. It exercises several powers, among them constitutional review of laws. In this regard, it exercises two forms of review: **prior review before the promulgation of the law (1)** and **subsequent review after the promulgation of the law (2)**.

1/Prior review by the Constitutional Court:

This is a preventive form of review exercised by the Constitutional Court before the promulgation of the law. It is set in motion through the mechanism of referral and takes two forms: **mandatory prior review (A)** and **optional prior review (B)**, as follows:

A/ Mandatory review:

This is a form of review intended to examine the conformity of the legal text, including the exact wording of its expressions and terminology, with the Constitution. This requires a comprehensive review of the entire text, both formally and substantively, from the law's initial endorsements to its final article. For this reason, such review is mandatory and takes

place prior to the promulgation and publication of the text.(Cherbal , 2006, p. 92) (Farcha, pp. 57–59.)

Under the 2020 constitutional amendment, the President of the Republic alone is vested with the obligation to refer matters to the Constitutional Court in this form of review in the following cases:

- Concerning the conformity of organic laws with the Constitution after their adoption by Parliament. (*Article 140, final paragraph, and Article 190(5)*).
- Concerning the constitutionality of legislative ordinances in the event of a vacancy in the National People's Assembly or during the parliamentary recess (*Article 142(2)*).
- Concerning the conformity of the rules of procedure of each chamber of Parliament with the Constitution (*Article 190(6)*).
- Concerning armistice agreements and peace treaties (*Article 102(2)*).

B/ Optional review: Optional constitutional review of laws may take place either before or after the promulgation of the legal text. It is not a comprehensive review of the entire text, but rather a review limited to the provisions specified in the referral. Nothing, however, prevents such review from extending to the whole text. Referral to the Constitutional Court in this type of review is optional and may be initiated by any of the bodies constitutionally empowered to refer matters to the Court.(Farcha, p. 66.)

Constitutional review is considered prior review in this case when the referral is optional and is exercised before the promulgation of the legal text.

Under the 2020 constitutional amendment, it is clear that the authorities entitled to refer matters to the Constitutional Court, and the scope of optional prior constitutional review before promulgation, are as follows:

- The authorities empowered to refer matters to the Constitutional Court are: the President of the Republic, the President of the Council of the Nation, the President of the National People's Assembly, the Prime Minister or the Head of Government, as the case may be, forty (40) deputies, or twenty-five (25) members of the Council of the Nation (*Article 193*).
- Ordinary laws, whose scope is defined in *Article 139*, are subject to optional prior review before promulgation, since the Constitutional Court may be referred to review their constitutionality before they are issued (*Article 190(2)*).
- Treaties are likewise subject to optional prior review before ratification, since the Constitutional Court may be seized with respect to their constitutionality before ratification (*Article 190(2)*).
- Ordinary laws may also be reviewed for their conformity with treaties before promulgation, and the Constitutional Court may be referred to this end by the authorized referring authorities (*Article 190(4)*) *.

2/ Subsequent review by the Constitutional Court (“optional review”): Subsequent review by the Constitutional Court operates through two mechanisms: the mechanism of referral (**A**) and the mechanism of the plea of unconstitutionality (**B**), as follows:

* “Legal texts subject to mandatory review or conformity review, such as organic laws or ordinances, are not subject to review of conformity with treaties, because they have already been subject to mandatory review or compulsory referral.” See: Farid Debboucha, op. cit., p. 69, footnote No. 3.

A/ Subsequent review through the referral mechanism: The 2020 constitutional amendment identified the cases of optional subsequent review through the referral mechanism by the authorities empowered to refer matters under *Article 193*. These cases are:

Review of regulations, Under the Constitution, the President of the Republic exercises autonomous regulatory power in matters not reserved to statute by means of presidential decrees.(Article 141(1) and Article 91(6–7) of the 2020 constitutional amendment.) In order to avoid overlap between the powers of the legislative branch and those of the President of the Republic, the constitutional framers defined the domain of legislation in *Articles 139 and 140*. Matters falling outside that domain are regulated by the President of the Republic within the framework of autonomous regulation, which is issued without the need for prior legislative authorization. The implementation of laws within the regulatory sphere also falls within the competence of the Prime Minister or the Head of Government, as the case may be, through implementing decrees applying the autonomous regulations issued by the President of the Republic.(Article 141(2) and Article 112(3–5) of the 2020 constitutional amendment.)

Since the regulatory acts of the President of the Republic and of the Prime Minister or Head of Government, as the case may be, are published without being submitted to Parliament, and since their scope is very broad, the 2020 constitutional amendment strengthened subsequent review over promulgated regulations, as follows:

- Regulations are subject to subsequent constitutional review after publication. The authorized referring authorities may refer regulations to the Constitutional Court with respect to their constitutionality within one month of their publication (*Article 190(3)*). This is a sufficient period to enable those authorities to ascertain the content of the regulatory text.
- Regulations are also subject to review for conformity with treaties. The Constitutional Court may be referred to by the authorized authorities within one month from the date of publication of the regulation (*Article 190(4)*).
- Subsequent review also extends to disputes that may arise between constitutional authorities, which may be referred to the Constitutional Court by the authorities empowered to do so (*Article 192(1)*).
- Likewise, subsequent review may concern the interpretation of one or more constitutional provisions, which may also be referred to the Constitutional Court by the authorities concerned (*Article 192(2)*).

B/ Subsequent review through the mechanism of the plea of unconstitutionality (“optional review”): The mechanism of the plea of unconstitutionality, or referral by judicial bodies, is regarded as a means of strengthening and activating the role of the Constitutional Court in reviewing the constitutionality of laws, particularly subsequent review, with the aim of protecting individual rights and freedoms where a legal provision conflicts with the Constitution and infringes those rights and freedoms.(Debboucha, p. 75.)

On the basis of the 2020 constitutional amendment, it appears that the authorities entitled to refer matters and the scope of constitutional review in this context are determined as follows:

- In cases involving a plea of unconstitutionality, the referral is made through the Supreme Court or the Council of State (*Article 195*).

- Referral occurs where one of the parties in proceedings before a judicial body claim that the provision on which the outcome of the dispute depends violates the rights and freedoms guaranteed by the Constitution (*Article 195*).

- The plea may concern the unconstitutionality of a legislative provision (*Article 195*). This means that an ordinary law, after its promulgation, may be subjected to subsequent review through the mechanism of the plea of unconstitutionality raised by litigants, for the protection of individual rights and freedoms where a legislative provision conflicts with the Constitution and affects those rights and freedoms.(Debboucha, p. 68.)

- The plea may also concern the unconstitutionality of a regulatory provision (*Article 195*). It is noteworthy that the constitutional legislator tightened review over regulations by subjecting them to a third form of optional subsequent review through the plea of unconstitutionality, expressly confirming that regulations are open to challenge on grounds of unconstitutionality.

Second: The Concept of the State of Necessity “Urgency”

The State may be confronted with circumstances that threaten public order and the proper functioning of public services, while ordinary legislation may prove incapable of responding to such situations. Constitutional scholarship has referred to this situation as the state of necessity (**I**), or as a condition of urgency requiring the prompt adoption of necessary measures that cannot tolerate delay, particularly when such circumstances arise at the same time as the absence of Parliament. (**II**)

I/ The state of necessity:

The idea of necessity emerged in the late nineteenth century in Germany and Italy, and subsequently in France. These countries then adopted a constitutional rule according to which the executive authority may issue ordinances or regulations having the force of law, on the basis of the doctrine of public necessity, whose source is found in Hegelian philosophy. This constitutional rule subsequently spread widely among modern States that incorporated it into their constitutions. If the state of necessity in constitutional law reflects the inadequacy of existing legal rules and their inability to protect the State and its fundamental institutions, then the absence of the legislative branch at a time when circumstances require urgent measures for the protection of the State represents one of the clearest manifestations of that inadequacy.(Helmy Fahmy, , 1980, p. 367.)

II – Legislation in the Absence of Parliament:

As a general rule, legislative authority belongs to Parliament. By way of exception, however, legislative power may be conferred upon the executive branch during Parliament’s absence, in order to spare the State the disruption that may affect its institutions in the intervals between parliamentary sessions—namely, “the annual recess period separating two consecutive sessions, one of which has ended and the other of which is forthcoming for the same assembly”(Helmy Fahmy, p. 371.)—or during the period following the dissolution of Parliament, which “extends between the final session of the dissolved Parliament and the first session of the newly elected Parliament.”(Helmy Fahmy, p. 372.) In such cases, the executive acts through the issuance of ordinances or regulations having the force of law. Lebanese and Egyptian scholarship has referred to these as “**necessity regulations**” because their issuance is conditioned upon a necessity that does not tolerate delay. The Algerian constitutional framers, by contrast, designated them as “**legislative ordinances**”, because their subject

matter falls within the legislative domain reserved to Parliament, yet the President of the Republic legislates and issues such ordinances in urgent situations coinciding with Parliament's absence.

Section Two: Legislative Ordinances and Their Review under the 2020 Constitutional Amendment

Legislative power is ordinarily exercised by the legislative branch. However, when Parliament is absent—whether as a result of its dissolution or during the interval between its sessions—and circumstances arise that cannot be addressed by the existing body of legislation and instead require new legal measures to confront urgent conditions, the 1996 Constitution, as amended in 2020, authorizes the President of the Republic under Article 142 to legislate by ordinance having the force of law. Such ordinances are adopted in the Council of Ministers and are subject, prior to their promulgation, to review by the Council of State and by the Constitutional Court within the framework of prior review (**First**). The President of the Republic must also submit the ordinances so adopted to Parliament at the beginning of its next session, and they may further be challenged before the Constitutional Court through a plea of unconstitutionality within the framework of subsequent review (**Second**).

First: Procedures for the Adoption of Legislative Ordinances and Their Prior Review

The President of the Republic exercises the power to legislate by ordinance* personally under Article 142 and may not delegate it (*Article 93(3) of the 2020 constitutional amendment*). Moreover, in the event of a vacancy in the office of the President of the Republic, the application of Article 142 is suspended, and the Head of State may not issue legislative ordinances. This is expressly provided for in *Article 96(4) of the 2020 constitutional amendment*.

Article 142 of the 2020 constitutional amendment provides that the President of the Republic may legislate by ordinance in urgent matters where the National People's Assembly is vacant or during parliamentary recesses. Such ordinances are adopted in the Council of Ministers (**I**) after obtaining the opinion of the Council of State and after mandatory referral to the Constitutional Court. (**II**)

I – Legislating by ordinance in the absence of Parliament:

The President of the Republic's power to issue legislative ordinances is a constitutionally limited power. The Constitution does not leave it to the President to determine freely the circumstances in which this temporary legislative authority may be exercised; rather, it subjects its use to several conditions:

1/ It must concern **urgent matters**, The President of the Republic may not legislate by ordinance merely because Parliament is absent. Parliament's absence must coincide with urgent circumstances that do not admit of delay and cannot be postponed until Parliament reconvenes, whether in ordinary or extraordinary session.

* In addition to the power of the President of the Republic to issue legislative ordinances during Parliament's absence pursuant to Article 142(1) of the 2020 constitutional amendment—which constitutes the subject of this article—the Constitution also grants the President of the Republic the power to issue legislative ordinances in exceptional circumstances pursuant to Article 142(5). The President of the Republic also has the power to promulgate the Finance Law by ordinance if Parliament fails to approve the Finance Bill within seventy-five (75) days from the date of its submission to Parliament. See Article 146(1–2) of the 2020 constitutional amendment.

2/ It must occur **in the absence of Parliament**, Article 142, paragraph 1, makes clear that Parliament's absence exists either in the event of the dissolution of the National People's Assembly (A) or during parliamentary recess (B), as follows:

A/ Dissolution of the National People's Assembly:

The 2020 constitutional framers distinguished between two forms of dissolution of the National People's Assembly: **dissolution by operation of law (mandatory dissolution)** and **presidential dissolution (discretionary dissolution)**.

• **Dissolution by operation of law (mandatory dissolution):** This form of dissolution is primarily linked to the Government's responsibility before Parliament. In other words, Parliament is dissolved automatically when the Government is unable to function in a stable manner, causing disruption in the relationship between the executive and legislative branches. In such a case, the Constitution imposes the automatic dissolution of Parliament as a response to this institutional crisis and returns the matter to the people through the calling of new legislative elections, with a view to restoring equilibrium between the executive and legislative authorities. The Constitution provides for this in the following cases:

◦ **Where the National People's Assembly refuses to approve the Government's programme:** when the Prime Minister or Head of Government, as the case may be, is appointed, they are required to present their programme to the National People's Assembly. If the Assembly rejects the Government's programme, the Prime Minister or Head of Government tenders the Government's resignation to the President of the Republic. The President then appoints a new Prime Minister or Head of Government, who in turn presents their programme to the National People's Assembly. If the programme is rejected a second time, this results in the mandatory dissolution of the National People's Assembly (*Article 108(1)*).

◦ **Where the National People's Assembly refuses to grant a vote of confidence:** in this case, the Prime Minister or Head of Government, as the case may be, submits the Government's resignation. Before accepting that resignation, the President of the Republic may resort to dissolving the National People's Assembly under *Article 151* of the 2020 constitutional amendment. (Article 111(6–7) of the 2020 constitutional amendment.)

• **Presidential dissolution (discretionary dissolution):** This is not the result of a legal obligation, but rather a form of dissolution provided for by the Constitution, which grants the President of the Republic the discretionary power to dissolve the National People's Assembly and call early legislative elections of his own initiative, after consultation with the constitutional bodies specified by the Constitution.

The 2020 constitutional amendment provides in *Article 151* that the President of the Republic may decide to dissolve the National People's Assembly or to call early legislative elections after consulting the President of the Council of the Nation, the President of the National People's Assembly, the President of the Constitutional Court, and the Prime Minister or Head of Government, as the case may be.

In both cases, elections must be held within a maximum period of three months. If it proves impossible, for any reason, to organize them within that time-limit, the period may be extended for up to an additional three months after obtaining the opinion of the Constitutional Court.

It may be observed that, whether Parliament is dissolved by operation of law or by presidential decision, both forms of dissolution are constrained by the same objective: the establishment of a new Parliament. Accordingly, dissolution is followed immediately by preparation for new or early legislative elections.

Consequently, the period of dissolution that may be used by Presidents of the Republic to legislate by ordinance will not be prolonged.

B/ During parliamentary recess:

The 2020 constitutional amendment adopted the principle of a single annual session. Parliament meets in one ordinary session each year, lasting ten (10) months, beginning on the second working day of September and ending on the last working day of June. This ordinary session may also be extended for a few days for the purpose of completing the examination of the items on the agenda, upon request by the Prime Minister or Head of Government, as the case may be (Article 138(1) of the 2020 constitutional amendment.)

Parliament may also be convened by the President of the Republic, either on his own initiative, at the request of the Prime Minister or Head of Government, as the case may be, or at the request of two-thirds of the members of the National People's Assembly, to meet in extraordinary session. Such a session ends as soon as the agenda for which it was convened has been completed (Article 138(2–3) of the 2020 constitutional amendment.)

It may therefore be noted that the constitutional framers' adoption of the principle of a single annual session lasting ten months, with only a limited possibility of extension to complete examination of the agenda, from September until June, constitutes a real constraint on the President of the Republic's power to issue legislative ordinances during that period.

This differs from the system under the 1996 Constitution, as well as the 2008 amendment, (Article 118(1) of the 1996 Constitution, as amended in 2008) under which Parliament met in two ordinary sessions each year, each lasting at least four (4) months. The interval between those two sessions constituted a period of recess for the legislative authority, which in practice gave Presidents of the Republic broader room to legislate by ordinance under that constitutional arrangement.

3/ Ordinances are adopted in the Council of Ministers: the final paragraph of *Article 142* of the 2020 constitutional amendment provides that legislative ordinances are adopted in the Council of Ministers, composed of the President of the Republic as chair, the Prime Minister or Head of Government, as the case may be, and the members of the Government (that is, all ministers).

Accordingly, the members of the Council of Ministers participate with the President of the Republic in deliberating on these ordinances, through hearing the views of all members of the Council—particularly the ministers whose sectors are directly concerned by them—enriching discussion, exchanging views on their subject matter, and assessing whether the urgent situation actually exists and what consequences may result from the adoption of such ordinances. This is particularly significant since, as is well known, the Government possesses a broad body of technicians and experts across all sectors. In this way, the President of the Republic is placed in a better position to make a sound judgment concerning legislation by ordinance during Parliament's absence.

II – Prior review of the issuance of legislative ordinances:

Since legislation by ordinance constitutes an exceptional mechanism allowing the President of the Republic to intervene in the legislative domain reserved to the legislative branch in cases defined by the Constitution, and in order to prevent misuse or excessive reliance on this exceptional power—which may affect individual rights and freedoms—the Algerian constitutional legislator has subjected it to prior review before promulgation by the Council of State (1) and the Constitutional Court (2).

1/ Review by the Council of State:

The prior review exercised by the Council of State over legislative ordinances before their promulgation is based on *Article 142(1)* of the 2020 constitutional amendment, as well as the organic law and internal rules of the Council of State. These legal texts determine both the procedures and the nature of the Council of State's review (A) and the legal effects of the Council's opinion concerning such legislative ordinances (B).

A/ Procedures for the Council of State's Review of Legislative Ordinances and the Nature of That Review

Article 142(1)–(6) of the 2020 constitutional amendment provides that the President of the Republic may legislate by ordinance in urgent matters, in the event of a vacancy in the National People's Assembly or during parliamentary recess, after obtaining the opinion of the Council of State. In this respect, the Council of State reviews legislative ordinances within its advisory jurisdiction. For that purpose, it deliberates in the form of an advisory committee chaired by the President of the Council of State (Articles 4, 14(2), 35, and 37 of Organic Law No. 18-02 of 4, 2018). Draft ordinances are referred to the Council of State by the Secretary-General of the Government after their approval by the Council of Ministers. Since such ordinances concern urgent matters, the review process before the Council of State must itself proceed expeditiously. For that reason, the Council of State's Rules of Procedure provide special procedures for them under Articles 132 to 135.

Under these provisions, the President of the Council of State appoints one member of the advisory committee as rapporteur and immediately transmits to that member the draft ordinance together with all relevant documents and supporting materials. The Council of State may also appoint one or more experts to assist the reporting State Councillor in carrying out their task. The President of the committee sets the date of the session devoted to examining the draft ordinance and informs the minister concerned, the Government Commissioner, and the members of the committee accordingly. The President of the committee directs the proceedings of the session, and the committee members discuss the final report prepared and presented by the rapporteur. The final report, which contains the opinion of the Council of State, is approved by a majority of the members present; in the event of a tie, the President's vote is decisive. It is then signed by both the rapporteur and the President of the advisory committee.

The original version of the Council of State's opinion is signed by the President of the Council of State and the reporting State Councillor and preserved in the Council's archives. The President of the Council of State then sends the Council's opinion to the Secretary-General of the Government in five copies. In its opinion, the Council of State proposes whatever amendments it considers necessary and focuses in particular on the

following:(Articles 136–138 of the Rules of Procedure of the Council of State, previously cited.)

- **Review of legality:** This consists in verifying that legislative ordinances conform to the Constitution, ratified international agreements, and legislative provisions in force, as well as confirming the competence of the authority that issued them and its compliance with the formal procedures governing their enactment.

- **Review of appropriateness:** This involves assessing whether the ordinance is suitable and appropriate to the objective for which it was adopted, and examining the extent to which the measures it contains are proportionate to the urgent circumstances that justified it and to the public interest pursued. Review of the appropriateness of the text is intended to ensure that urgency has not been misjudged and that this exceptional power has not been used excessively.

- **Review of legislative drafting:** This is carried out through a close examination of the formal and linguistic aspects of the ordinances in order to ensure that they are free from ambiguity or contradiction, to guarantee the quality and coherence of the text, the precision of the terminology used, and its consistency with the legal system in force.

- **Review of the text's enforceability and effects:** The Council of State ensures that the provisions of such ordinances are clear and coherent and that the procedures for their implementation are properly defined. This reflects the capacity of these ordinances to be applied effectively and to achieve the purpose for which they were enacted, while also taking into account the effects of their application, whether on the legal positions of individuals or on the functioning of public services, especially given that they are issued in urgent circumstances and in the absence of Parliament.

From the foregoing, it may be seen that the review exercised by the Council of State over legislative ordinances issued by the President of the Republic during Parliament's absence is a mandatory legal review conducted prior to promulgation and advisory in nature. Even so, the Council of State's review is not confined to merely formal or technical scrutiny of the ordinances. The final paragraph of Article 136 of the Council of State's Rules of Procedure shows that this review extends to the practical effectiveness of legislative ordinances and their applicability in reality. The Council of State also examines the consequences of their application, whether positive or negative. Accordingly, this review constitutes a genuine safeguard for making legislative ordinances more effective and more responsive to practical realities, in a manner that positively affects both the legal positions of individuals and the proper functioning of public services. This, in turn, enhances the quality and precision of legislative ordinances and promotes legal certainty in urgent situations coinciding with Parliament's absence.

B/ Effects of the Council of State's Review of Legislative Ordinances

From the foregoing, it appears that the 2020 constitutional amendment, together with the organic and regulatory texts governing the Council of State, requires draft legislative ordinances—after their approval by the Council of Ministers and before their promulgation—to be referred to the Council of State, which issues an opinion on them within the framework of its advisory powers. This gives rise to the following consequences:

- The President of the Republic must seek the opinion of the Council of State on draft ordinances, because this is a constitutional requirement; without it, the ordinances would be

unconstitutional. Accordingly, this review is advisory yet mandatory, and preventive in nature, since it is exercised over the draft ordinance before its promulgation.

- Although the Council of State's opinion on draft ordinances is advisory and does not formally bind the President of the Republic, the President benefits from its legal assessment—particularly with regard to legality, drafting, and appropriateness—given that the Council of State is a competent judicial body.(Article 179(2) of the 2020 constitutional amendment.) As a result, legislative ordinances are more likely to be free from the legal defects that might otherwise affect them.

The opinion of the Council of State also enables the President of the Republic to avoid difficulties in implementation, practical risks, and adverse consequences that draft ordinances may produce, particularly in relation to individual rights and freedoms. In this sense, the Council of State's opinion serves as a form of protection and safeguard against a later finding of unconstitutionality by the Constitutional Court, whether on formal or substantive grounds, and against annulment by Parliament for legal defects that could have been avoided before promulgation by the President of the Republic. This is especially important because, under Article 37 of Organic Law No. 23-06, Parliament votes on the ordinances submitted by the President of the Republic in each chamber without debate. In such a case, no amendment may be introduced, and the text is submitted as a whole for vote and approval without discussion on the merits. To avoid the rejection of such ordinances because of defects in drafting, appropriateness, enforceability, or harmful effects, the constitutional legislator acted wisely in requiring their submission to a specialized judicial body—the Council of State—before promulgation. In many cases, it is difficult to repeal ordinances once legal effects have already arisen from them, even though those defects could have been avoided before promulgation, particularly where individual rights and freedoms are at stake.

Accordingly, the Council of State's opinion on draft ordinances constitutes a prior and preventive form of review aimed at protecting legislative ordinances from annulment, whether before or after their promulgation. It follows that, if the President of the Republic wishes to avoid their annulment, due consideration should be given to the Council of State's opinion.

2/ Review by the Constitutional Court

The Constitutional Court's review of legislative ordinances is based on Article 142(2) of the 2020 constitutional amendment, as well as on the organic law and the Rules of Procedure of the Constitutional Court. These legal texts specify the authority competent to refer legislative ordinances to the Constitutional Court, the procedures governing such referral, and the nature of this review **(A)**, as well as the legal effects of the Constitutional Court's decision regarding those ordinances **(B)**.

A/ Procedures for the Constitutional Court's Review of Legislative Ordinances and the Nature of That Review

Article 142(2) of the 2020 constitutional amendment provides: *"The President of the Republic shall mandatorily refer these ordinances to the Constitutional Court with respect to their constitutionality, and the Court shall decide on them within a period not exceeding ten (10) days."* From this provision, it may be observed that the President of the Republic alone possesses the power to refer legislative ordinances issued during Parliament's absence to the Constitutional Court for review of their constitutionality. The President is required to refer the ordinances to the Constitutional Court before promulgating them, that is, after obtaining the

opinion of the Council of State. Referral is mandatory and is made by means of a reasoned letter of referral accompanied by the text under review.(Article 3 of Organic Law No. 22-19 ,2022.) The letter must indicate the existence of urgency and Parliament's absence. It is addressed to the President of the Constitutional Court together with the text forming the subject of the referral.

The letter of referral is entered by the registry of the Constitutional Court in the register of referrals according to the date on which it is received.(Article 9(1-2) of the Regulation determining the rules governing the functioning of the Constitutional Court, 2023.) The date of registration constitutes the starting point for the period laid down in Article 142(2) of the Constitution, namely ten (10) days. The President of the Constitutional Court appoints, from among the members of the Court, one or more rapporteurs to examine the referral file.* (Article 4 of Organic Law No. 22-19) The rapporteur is empowered to collect all documents and information relating to the case and may, with the approval of the President of the Constitutional Court, call upon any expert in the relevant field. Once the examination of the referral file is completed, the rapporteur prepares a report and a draft decision concerning the legislative ordinances referred to the Court.

The Constitutional Court convenes upon summons by its President. In the President's absence, one of the members may be designated to preside over the session; if the President of the Constitutional Court is prevented from acting, the session is chaired by the oldest member. The Court deliberates in closed session attended only by its members, and its deliberations are valid only if at least nine (9) members are present. The Court adopts its decision on the ordinances by a majority of the members present; in the event of a tie, the President has the casting vote. The Secretary-General prepares the minutes of the Court's meeting, and the members present and the recording secretary sign those minutes. The original of the Constitutional Court's decision on the ordinances is signed by the President of the Court and by the members present. The decision must be reasoned and issued in Arabic within a maximum period of ten (10) days from the date of referral. In accordance with Article 6 of Organic Law No. 22-19, previously cited, the Constitutional Court's decision is sent to the Secretary-General of the Government for publication in the *Official Gazette of the People's Democratic Republic of Algeria*. The Secretary-General registers the decision and ensures its preservation and archiving in accordance with the applicable legislation and regulations.(Articles 43 to 54 of the Regulation determining the rules governing the functioning of the Constitutional Court)

From the foregoing, it is clear that referral to the Constitutional Court concerning the constitutionality of legislative ordinances is mandatory and may only be made by the President of the Republic. The President may not promulgate legislative ordinances without first submitting them to the Constitutional Court. Consequently, the nature of this review is mandatory and prior to promulgation, that is, preventive. The Constitutional Court's review of these ordinances is therefore comprehensive, covering the entire text both formally and substantively, from the opening citations of the ordinance to its final article. Given the urgent character of these ordinances, the Constitution and Organic Law No. 22-19 require the

* "When examining one or several provisions, the Constitutional Court shall be bound by the text referred to it and may not examine other provisions in any other text not referred to it, even where there is a direct connection between them and the provisions subject to referral."

Constitutional Court to decide on them within a maximum of ten (10) days from the date of referral. This is a sufficient and reasonable time frame, particularly since the rapporteur may seek the assistance of experts or obtain any document or information relevant to the ordinance under review, which facilitates and accelerates the work.

B/ Effects of the Constitutional Court's Review of Legislative Ordinances

From the foregoing, it is clear that the 2020 constitutional amendment expanded the list of legal texts subject to constitutional review by enabling the Constitutional Court to exercise review over the legislative ordinances issued by the President of the Republic during Parliament's absence, prior to their promulgation and after the opinion of the Council of State has been obtained. As a result of this mandatory prior review, the Constitutional Court issues a decision concerning such legislative ordinances and transmits it to the Secretary-General of the Government for publication in the *Official Gazette of the People's Democratic Republic of Algeria*. The consequences may be summarized as follows:

- **Where the legislative ordinances are held constitutional:** if the Constitutional Court decides that the legislative ordinance referred to it is constitutional, and if any unconstitutional provisions are severable from the remainder of the ordinance, the decision is communicated to the President of the Republic. The President then promulgates and publishes the text of the legislative ordinance in the same issue of the *Official Gazette of the People's Democratic Republic of Algeria* in which the Constitutional Court's decision appears, immediately following that decision. The ordinance thereby enters into force and begins to produce its legal effects, after which it is submitted by the President of the Republic to Parliament for approval at the beginning of the next session.

- **Where the legislative ordinances are held unconstitutional:** Article 4(2) of Organic Law No. 22-19, previously cited, provides that: "*If the Constitutional Court decides that the provisions referred to it are unconstitutional, and their severance from the remainder of the text affects its overall structure, the text shall be returned to the referring authority.*" On that basis, the matter is returned to the President of the Republic, and the unconstitutional legislative ordinance is neither promulgated nor published and therefore produces no legal effects. However, Article 198(3) of the 2020 constitutional amendment provides that: "*If the Constitutional Court decides that an ordinance or regulation is unconstitutional, that text shall lose effect from the date of the Constitutional Court's decision.*" It may be noted here that the constitutional legislator assigned the same legal effect to review of ordinances and regulations, even though review of ordinances is mandatory and prior to promulgation, whereas review of regulations is optional and subsequent to promulgation. Consequently, the wording of Article 198(3)—that "the text shall lose effect from the date of the Constitutional Court's decision"—applies properly to regulations, but not to ordinances, since the latter have not yet been promulgated and have therefore produced no legal effects. Accordingly, the consequence of the unconstitutionality of an ordinance is simply that it is not promulgated and produces no legal effects.

- **The authority of the Constitutional Court's decisions:** the Constitutional Court decides on the constitutionality of legislative ordinances by majority vote of the members present. Its decision must be reasoned, issued in Arabic, and rendered within a maximum period of ten (10) days. Such a decision is final, binding, not subject to appeal, and endowed with the authority of res judicata in its absolute form. It is therefore binding on all public

authorities, as well as on the administrative and judicial authorities.(The final paragraph of Article 198 of the 2020 constitutional amendment)

Second: Subsequent Review of the Promulgation of Legislative Ordinances

Given the seriousness and importance of the legislative ordinances issued by the President of the Republic in conditions of urgent necessity and in the absence of Parliament, the 2020 constitutional amendment did not confine itself to subjecting them to prior review by the Council of State and the Constitutional Court before their promulgation. Rather, it also subjected them to review by both chambers of Parliament, as the bodies constitutionally vested with legislative authority, at the beginning of the next parliamentary session **(I)**. Since such ordinances may concern matters affecting individual rights and freedoms and are adopted in urgent circumstances, those circumstances may later change, which may in turn give rise to a plea of unconstitutionality before the Constitutional Court within the framework of subsequent review after promulgation **(II)**.

I – Submission of Legislative Ordinances to Parliament and the Effects Thereof

Although the President of the Republic may issue legislative ordinances in the absence of Parliament, those ordinances remain subject to review by both chambers of Parliament at the opening of the first subsequent session, in accordance with special procedures **(1)**. This may result in the annulment of ordinances not approved by both chambers of Parliament **(2)**.

1/ Procedures for the submission of ordinances to Parliament:

Article 142(3) of the 2020 constitutional amendment provides that the President of the Republic shall submit the ordinances he has adopted to each chamber of Parliament at the beginning of the next session for approval. This provision requires the President to place the ordinances before both chambers as soon as they reconvene, since Parliament is the original holder of legislative authority and must therefore be consulted in order to confer full legal force upon such ordinances through approval. However, unlike the amended Egyptian Constitution of 2019, Article 156 of which expressly provides that ordinances lose the force of law retroactively and automatically if not presented or approved, the Algerian provision does not specify the sanction for failure to submit the ordinances within the prescribed period.(<https://manshurat.org/node/14675>) This absence weakens what might otherwise have been an important constitutional constraint on the President's power to issue such ordinances and on the obligation to submit them in due time.

Article 37 of Organic Law No. 23-06, previously cited, together with Article 81 of the Rules of Procedure of the Council of the Nation, establishes that Parliament proceeds by vote without debate on the ordinances submitted by the President of the Republic to each chamber for approval at the opening of the next session, in accordance with paragraphs 1 and 3 of Article 142 of the Constitution. The competent committee examines the text approving the ordinance, hears the Government's representative, and prepares a report on the matter. The text approving the ordinance is then submitted in plenary session for approval in its entirety after hearing the presentation of the Government's representative and the report of the competent committee, but without debate on the merits. In this situation, no amendments may be proposed with respect to the ordinances: the text is presented as a whole for vote and approval, without substantive discussion. From this perspective, Parliament may either accept or reject the ordinances as a whole, but may not examine them article by article, since neither chamber is permitted to debate or amend them.

Yet if Parliament's role is confined to the mere acceptance or rejection of legislative ordinances in their entirety, this may place it in a difficult position: either it approves the ordinances despite reservations about some of their provisions, or it rejects them solely because it disagrees with a relatively limited aspect of them, only to begin once again the process of enacting a new law that may, in many cases, differ little from the rejected ordinance. (Ragheb Al-Hilou, 2000, p. 671.) Since Parliament is the body constitutionally entrusted with establishing legal rules, it would be preferable for it to be granted the power to amend such legislative ordinances, in accordance with the doctrinal maxim that *whoever holds the greater power necessarily holds the lesser*.

2/ Effects of Parliament's review of legislative ordinances:

Once the President of the Republic has submitted the legislative ordinances to each chamber of Parliament at the opening of the next session, he has fulfilled his constitutional obligation and enabled Parliament to exercise its review over the ordinances adopted in its absence. This may result in one of the following situations:

A/ Parliamentary approval: by approving the ordinances, Parliament confers full legal authority upon them, and they become laws in their own right.

B/ Parliamentary non-approval: in this case, the ordinance loses the force of law and ceases to produce legal effects. Article 142(4) provides that: "*Ordinances not approved by Parliament shall be deemed void.*" In this respect, two possible interpretations may be distinguished:

- The first is that annulment takes effect from the date of non-approval, meaning that the ordinances cease to produce effects only for the future. This is the view adopted by Abdel Aziz Shiha, who argues that the loss of legal force in such a case does not operate retroactively, since these ordinances originally derived their authority from the Constitution itself. Their loss of force, once submitted to Parliament, therefore begins from the date of rejection, at which point the exceptional legislative authority conferred by the Constitution upon the executive branch comes to an end and Parliament resumes its natural and original legislative competence (Abdel Aziz Shiha, 1978, p. 161)

- The second possibility is that annulment operates retroactively. Neither the Algerian Constitution, the organic law, nor the internal rules of the two parliamentary chambers clarifies the legal situations of individuals resulting from the application of these ordinances. By contrast, Article 156 of the amended Egyptian Constitution of 2019 adopts the view that, if such ordinances are submitted and not approved by the House, they lose the force of law retroactively, unless the House decides to validate their effect during the preceding period and settle the consequences that arose from them.

The first interpretation appears to be the one most consistent with paragraph 4 of Article 142 of the 2020 Algerian constitutional amendment.

C/ No decision is taken ("Parliamentary silence"): it may occur that the President of the Republic submits these ordinances to Parliament, but Parliament fails to take a position on all or some of them at the beginning of the session in which they are presented, especially since the Algerian Constitution provides for only one parliamentary session per year, with the possibility that the matter is not decided until the end of that session. For this reason, it would have been preferable for the constitutional framers, the organic law, or the internal rules of the two chambers to specify a fixed time-limit within which Parliament must decide on such

ordinances. This is all the more important because these ordinances are issued in urgent circumstances; those circumstances may disappear while the ordinances remain in force and continue to produce all their legal effects, potentially affecting individual rights and freedoms, pending Parliament's approval or rejection.

II – The Plea of Unconstitutionality

Since the Constitutional Court's decisions concerning legislative ordinances are final, not open to appeal, and endowed with the authority of *res judicata* in its absolute form, and since they are binding upon all public authorities as well as the administrative and judicial authorities, legislative ordinances that have already been subjected to mandatory review through compulsory referral are, as a general rule, not open to further review—whether review of conformity with treaties (Debboucha, , p. 69) or review through a plea of unconstitutionality. (Debboucha, p. 86) However, Organic Law No. 22-19, which governs the procedures and modalities of referral and remittal before the Constitutional Court, introduced an exception to this rule. Article 21, paragraph 3, provides that a plea of unconstitutionality may be transmitted to the Supreme Court or the Council of State, as the case may be, provided that the legislative or regulatory provision objected to has not previously been declared constitutional by the Constitutional Court, except where there has been a change in circumstances.

A **change in circumstances**, then, constitutes the exception in relation to legislative provisions that have previously been ruled upon by the Constitutional Court. French doctrine has interpreted a change in circumstances in two ways: (Rahmouni and Rahli, 2019, p. 77)

- It may refer to **legal circumstances**, meaning a change affecting the constitutional rule on the basis of which the Constitutional Council previously upheld the legislative provision.
- It may refer to **factual circumstances**, namely circumstances capable of affecting the contested provision in such a way as to render it contrary to the Constitution.

On the basis of the foregoing, the legislative ordinances issued by the President of the Republic during Parliament's absence concern matters that fall within the legislative domain of Parliament, including areas relating to rights and freedoms. The President issues these ordinances in urgent circumstances, and such ordinances may therefore regulate one of the fields concerning rights and freedoms. Once approved by Parliament, they become laws in their own right.

Those urgent circumstances, which coincided with Parliament's absence and justified the President of the Republic's resort to legislative ordinances, may later change and ordinary conditions may be restored. In that event, the urgent circumstances that originally justified the ordinances may no longer correspond to present realities. Parliament may also fail to decide upon them at the beginning of the parliamentary session in which they are presented and postpone consideration of them until a later stage, while they continue to produce legal effects despite the disappearance of the circumstances that originally justified them.

Accordingly, under Article 21(3) of Organic Law No. 22-19, legislative ordinances may be challenged through a plea of unconstitutionality where the urgent circumstances have changed and the ordinances affect one of the rights or freedoms guaranteed by the Constitution, or where the constitutional rule on which the Constitutional Court previously relied in upholding their constitutionality has itself changed.

Conclusion:

It is clear from the foregoing that the 2020 constitutional amendment did not merely subject legislative ordinances to the prior review of the Council of State and to subsequent parliamentary review at Parliament's first session. Rather, it also subjected them to constitutional review by the Constitutional Court, thereby ensuring that no ordinances are issued while tainted by unconstitutionality. Through our analysis of this subject, we have reached several findings and proposals, which may be summarized as follows:

First: Findings

1. The review exercised by the Council of State over draft legislative ordinances is characterized as mandatory and prior to their issuance, and is advisory in nature, meaning that it is not binding on the President of the Republic. However, its scope is not confined to formal or technical aspects; rather, it extends to assessing the effectiveness of such ordinances and their practical applicability, while examining their positive and negative effects. Accordingly, this review constitutes a safeguard for enhancing the quality of legislative ordinances and ensuring their suitability to real conditions, thereby promoting legal certainty and the proper functioning of public utilities, particularly in urgent circumstances.

2. Referral to the Constitutional Court concerning the constitutionality of legislative ordinances prior to their issuance falls within the exclusive competence of the President of the Republic. This review is mandatory, prior, and preventive in nature. It extends to examining the ordinance in its entirety, both formally and substantively, from its first endorsement to its final article. It is also characterized by urgency, as the Court must decide within a maximum period of ten days from the date of referral, a time limit that may be regarded as sufficient and reasonable.

3. As a result of the Constitutional Court's mandatory prior review of the constitutionality of ordinances, the Court issues a decision thereon. If it declares the ordinance constitutional, while finding that the unconstitutional provisions can be severed from the remaining provisions of the ordinance referred to it, the decision is notified to the President of the Republic and published in the *Official Gazette*. The text of the ordinance is then published immediately thereafter, enters into force, and produces its legal effects. However, if the Court rules that the referred provisions are unconstitutional and that severing them would undermine the overall structure of the text, the ordinance is returned to the President of the Republic; it is neither promulgated nor published, and produces no legal effect.

4. The wording of Article 198(3) of the 2020 constitutional amendment suggests that it equates the effects of review of ordinances with those of review of regulations, despite the difference in their legal nature. Ordinances are subject to mandatory prior review before their issuance, whereas regulations are subject to optional subsequent review after their issuance. Accordingly, the rule that a text loses its effect from the date of the Constitutional Court's decision applies to regulations, but not to ordinances that have not yet been issued and have not produced any effects. Consequently, a ruling declaring an ordinance unconstitutional entails that it shall not be issued and shall not produce any legal effect.

5. The Constitutional Court issues its decisions on the constitutionality of legislative ordinances by a majority of its members present. These decisions must be reasoned and drafted in Arabic. They are final and not subject to appeal, and they enjoy absolute res

judicata authority, binding all public authorities, including administrative and judicial authorities.

6. Paragraph three of Article 142 of the 2020 constitutional amendment does not specify the consequences of the President of the Republic's failure to submit legislative ordinances to both chambers of Parliament at the beginning of the following session for approval. Likewise, paragraph four of the same article, Organic Law No. 23-06, and the rules of procedure of the two chambers do not prescribe a time limit within which Parliament must decide on such ordinances. This legal gap results in the continued validity of these ordinances and the persistence of their legal effects, despite their issuance under urgent circumstances that may subsequently cease to exist, until Parliament expresses its position through approval or rejection.

7. Since Parliament holds the original competence in legislative matters, and pursuant to Article 37 of Organic Law No. 23-06, limiting its role to accepting or rejecting legislative ordinances in their entirety without discussion leads to a practical paradox: either Parliament approves them despite reservations concerning some of their provisions, or it rejects them because of a partial objection, thereby triggering a new legislative process that may not differ substantially from the content of the ordinance. It would therefore be preferable to recognize Parliament's right to discuss and amend these ordinances, on the basis of the principle that "he who has the greater power also has the lesser."

Second: Proposals

1. Since the Constitutional Court's review of legislative ordinances is mandatory and prior to their issuance, we propose that the constitutional legislator amend the second paragraph of Article 198 of the 2020 constitutional amendment by adding legislative ordinances to its scope, so that it would read as follows: **"Where the Constitutional Court decides that a law or legislative ordinance is unconstitutional, it shall not be promulgated."** As for the third paragraph of this article, it should be devoted solely to the effects arising from regulations. We therefore propose that it read as follows: **"Where the Constitutional Court decides that a regulation is unconstitutional, that text shall lose its effect from the date of the Constitutional Court's decision."**

2. In order to ensure that the President of the Republic is required to submit legislative ordinances to both chambers of Parliament at the beginning of the following session, and that Parliament is required to discuss and decide upon them within a specified period, we propose that the constitutional legislator amend the third paragraph of Article 142 of the 2020 constitutional amendment so that it reads as follows: **"The President of the Republic shall submit the ordinances he has adopted to each chamber of Parliament on the first day of the following session, for discussion and approval within one month from the beginning of the parliamentary session."**

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