CONSTITUTIONAL COURT SUPERVISION OF REGULATIONS IN LIGHT OF THE 2020 CONSTITUTIONAL AMENDMENT: ENSHRINING CONSTITUTIONAL LEGITIMACY

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Abstract *- This study aims to highlight the advancements implemented by the Algerian constitutional founder concerning the constitutional supervision of regulations following the 2020 amendment. It delves into the Constitutional Court's role in broadening its oversight to safeguard the principle of constitutional supremacy, alongside the preservation of rights and freedoms. Additionally, the paper scrutinizes the adequacy of mechanisms to initiate constitutional review by the regulatory authority, aiming to solidify constitutional legitimacy and foster a state governed by the rule of law.*

The findings indicate that the optional nature of constitutional supervision and the limitation of direct appeals to political entities—excluding individual petitioners—from accessing the Constitutional Court directly, along with the stringent conditions required to challenge the unconstitutionality of regulatory judgments, diminish the effectiveness of the Constitutional Court in its regulatory oversight role. Consequently, the study advocates for a reassessment of the criteria for challenging regulatory judgments' unconstitutionality and proposes granting individuals the ability to seek constitutional justice through preliminary litigation. This would empower the court to proactively intervene.

Keywords*: Constitutional Court; Notification; Compliance Control; Constitutional Supervision; Regulations; Challenge of Unconstitutionality.*

INTRODUCTION

The Algerian constitutional framework grants the executive branch the authority to issue regulations or decrees, positioning it as the principal entity responsible for managing public services and overseeing the state's public policy. This proximity to public needs ostensibly provides the executive with the requisite insight to prevent the abuse of regulatory powers and the issuance of regulations that could infringe upon individual rights and freedoms or contravene constitutional mandates. Consequently, the role of constitutional adjudication has been designated to oversee these regulatory activities.

Nonetheless, the oversight on the constitutionality of regulations by the Constitutional Council, initiated under the 1989 constitution and subsequently amended in the 1996 constitution revision of 2020[1], has remained largely theoretical. Despite the numerous executive regulations that potentially breach constitutional stipulations and impinge on numerous individual rights and freedoms, the Constitutional Council has rarely been summoned to exercise its supervisory powers.

This inactivity is attributed to the optional nature of constitutional supervision and the limitations on direct appeals, which are confined to political figures—specifically the President of the Republic, who wields a portion of the regulatory authority in matters surpassing those reserved for the legislative branch, and the presiding officers of the two parliamentary chambers (the President of the National People's Assembly and the President of the Council of the Nation).

[1]1996 Constitution published in the Official Gazette of the Algerian Republic No. 76 dated December 8, 1996, under Presidential Decree No. 20-442 dated December 20, 2020, concerning the issuance of the constitutional amendment, Official Gazette of the Algerian Republic, No. 82 dated December 30, 2020.

Moreover, although the 2016[2] constitutional amendment extended the direct appeal process to include another political figure, the Prime Minister, who is responsible for issuing executive decrees to enact laws and regulations and to specify their details, the practical application of constitutional supervision of regulations has remained stagnant, confined within the textual confines of the constitution, without actual implementation or impact.

However, the 2020 constitutional amendment marked a significant evolution in constitutional supervision, heralded by the constitutional founder's innovative approach. The erstwhile system of the Constitutional Council was phased out in favor of the newly established Constitutional Court. This transition aimed to fortify constitutional legitimacy and establish a robust rule of law.

The enhancement in constitutional supervision of executive-issued regulations was realized through an expanded mechanism of direct notification and a nuanced determination of the type of supervision applicable to each regulation. A novel approach was also introduced: compliance control of regulations in accordance with treaties. Furthermore, a new mechanism for challenging unconstitutionality was instituted, empowering litigants to seek constitutional justice. This mechanism enables individuals to contest regulatory judgments that infringe upon their constitutionally guaranteed rights and freedoms.

The constitutional founder delegated the responsibility to the organic legislator to delineate the prerequisites for accepting challenges to unconstitutionality. This directive culminated in Organic Law No. 22-19, dated 26 Dhu al-Hijjah 1443 corresponding to July 25, 2022, which outlines the procedures for notification and referral before the Constitutional Court.[3]

The significance of this study's topic derives from the pivotal role of constitutional supervision itself and the transformative impact of the 2020 constitutional amendment, which uniquely characterizes the oversight of regulatory authority. This study accentuates the Constitutional Court's crucial role in reinforcing constitutional legitimacy by purging the legal system of regulations that contravene constitutional provisions and undermine rights and freedoms.

This study endeavors to illuminate the innovations introduced by the Algerian constitutional founder in the sphere of constitutional oversight on regulations subsequent to the 2020 amendment. It aims to comprehend the Constitutional Court's role in broadening its oversight to preserve the principle of constitutional supremacy and protect rights and freedoms. Moreover, the study seeks to evaluate the adequacy of mechanisms instituted to initiate constitutional oversight over the regulatory authority.

Based on the aforementioned insights, the following research question is posited: To what extent is the Constitutional Court effective in its oversight of the regulatory authority in light of the 2020 constitutional amendment, and how sufficient are the mechanisms to activate this oversight?

This question will be explored through a descriptive analytical methodology, structured in two chapters: The first chapter examines notification as a direct mechanism for challenging the unconstitutionality of regulations, while the second chapter assesses the process of challenging unconstitutionality as a means to contest regulations

First Chapter: Notification as a Direct Mechanism for Challenging the Unconstitutionality of Regulations

The constitutional amendment of 2020 profoundly impacted the constitutional supervision of regulations issued by the executive authority through the mechanism of direct notification, as designated to political entities specified in Article 193 of the Constitution. This amendment decisively clarified the type of oversight applicable to each regulation, further enriched by the introduction of compliance control of regulations with treaties.

The Constitutional Court plays a pivotal role by interpreting and determining the specific nature of regulations subjected to its oversight. This chapter is structured to first elucidate the nature of

[2]Law No. 16-01 dated March 6, 2016, includes the constitutional amendment, Official Gazette of the Algerian Republic, No.14 dated March 7, 2016.

[3]Published in the Official Gazette of the Algerian Republic, No. 51 dated July 31, 2022.

regulations falling under the purview of the Constitutional Court, and second, to explore how these regulations are supervised in alignment with constitutional provisions or their compliance with international treaties.

First Section: The Nature of Regulation Subject to the Supervision of the Constitutional Court

Legal norms are structured hierarchically, akin to a pyramid in terms of their legal potency. At the apex of this hierarchy sits the Constitution, followed by international treaties, national laws, and subsequently subsidiary legislations such as regulations (decrees), which are promulgated by the executive authority. These regulations bifurcate into independent regulations and executive regulations.

1. **Independent Regulations**:

Often referred to as independent decrees, these are legislations in their own right, emanating directly from the Constitution rather than any preceding law.[4] These regulations manifest in various forms including regulatory decrees, public service decrees, police, and control decrees, and more uniquely, in exceptional scenarios like necessity decrees and delegation decrees.[5] Such regulations represent secondary legislation executed solely by the executive authority, notably the President of the Republic, without legislative body involvement.

This practice is encapsulated in matters not legislated by law, as stipulated in Article 141, paragraph one of the amended 1996 Constitution: "The President of the Republic exercises regulatory power in matters not reserved for the law." The boundaries within which the law operates are delineated in Articles 139 and 140 of the Constitution. Consequently, the constitutional architect granted the President expansive authority to wield regulatory powers, potentially at the expense of parliamentary oversight.

A prime illustration of this dynamic is observed in Presidential Decree 88-131 dated July 4, 1988, which orchestrates the interaction between the administration and citizens, epitomizing one of the pivotal independent regulatory texts derived directly from constitutional provisions rather than any preceding legal statute.

2. Executive Decrees or Executive Regulations:

These decrees are issued either by the Prime Minister or the Head of Government, contingent upon the specific case, with the purpose of implementing existing laws or regulations and delineating their particulars.[6] As stipulated in Article 141, paragraph two of the Constitution of 1996 (as amended in 2020), "The application of laws resides within the regulatory domain which is attributed to the Prime Minister or the Head of Government, as applicable."

Furthermore, Article 112 elucidates that, "The Prime Minister or the Head of Government, as per the case, in addition to the powers explicitly granted to him by other constitutional provisions, possesses the following authorities: 3- Implements laws and regulations; 5- Signs executive decrees."

While independent regulations such as public service decrees and police and control decrees embody a sovereign character and are fundamentally derived directly from the Constitution, distinct from the legislative process. According to the organic criterion, these are deemed administrative decisions, whereas under the substantive criterion, they are considered general and

[4]Samir Abdel Sayed Tanagho, General Theory of Law, Knowledge Establishment, Alexandria, Egypt, no publication date, p. 334; Walid Jawdat Ibrahim Al-Attar, Independent Regulations and the Competent Authority to Issue Independent Regulations, Legal Magazine, Faculty of Law, University of Cairo (Khartoum Branch), Volume 14, Issue 3, November 2022, p. 1050.

[5]Suleiman Mohamed Al-Tamawy, General Theory of Administrative Decisions, a Comparative Study, Arab Thought House, Cairo, Egypt, 1991, pp. 472-503.

[6]Samir Abdel Sayed Tanagho, op. cit., pp. 332-333.

abstract rules. Conversely, executive regulations (executive decrees) embody an administrative aspect, facilitating the practical implementation of laws and clarifying their nuances.[7]

It is imperative to acknowledge that while the executive wields the authority to exercise regulatory power as part of its routine functions in organizing and managing public services—owing to its proximity and insight into public needs—this power is not unbounded.[8] The constitutional founder has imposed constitutional supervision to ensure that the exercise of regulatory authority does not deviate into abuse, thereby safeguarding individual rights and freedoms.

According to Article 190/1 of the constitutional amendment of 2020, "...the Constitutional Court decides by a ruling on the constitutionality of treaties, laws, and regulations." Notably, this provision generically references "regulations," without distinguishing between independent and executive regulations, as further echoed in the regulatory ruling mentioned in Article 195's last paragraph.

This lack of specificity has sparked a jurisprudential debate regarding which types of regulations are indeed subject to the oversight of the Constitutional Court. Most jurisprudential interpretations have affirmed that only independent regulations, being directly emanated from the Constitution, fall under the purview of constitutional supervision. In contrast, regulations issued by the Prime Minister, which are primarily applications of laws, recede from constitutional scrutiny and are instead subject to the oversight of the administrative judge as administrative decisions.[9]

This interpretation was affirmed by the Constitutional Court in its pivotal interpretive decision of 2024 regarding the semantics of "regulation" as mentioned in Article 141 and "regulatory ruling" in Article 195's last paragraph. The court provided clarity in its ruling, noting:

- Since the executive regulation enacted by the Prime Minister or the Head of Government, depending on the scenario, is designed to enforce laws and independent regulations, it inherently follows and derives its authority from them.

Therefore, the term "regulations" in Article 190 (paragraph 3) and "regulatory ruling" in Article 195, first paragraph of the Constitution, specifically denote the independent regulatory texts issued by the President of the Republic under the auspices of regulatory power for matters not legislatively reserved per Article 141, first paragraph. These regulations alone are subject to constitutional supervision and the challenges of unconstitutionality. In contrast, the executive regulations managed by the Prime Minister or the Head of Government, depending on the case, fall under the purview of administrative judicial oversight.[10]

This interpretive ruling by the Constitutional Court has resolved the ambiguity surrounding the nature of regulations, unequivocally stating that only the independent regulations issued by the President are under constitutional oversight. Meanwhile, regulations enacted by the Prime Minister or the Head of Government recede from constitutional oversight and are subjected instead to the legitimacy control by the administrative judiciary.

Second Section: Regulation Supervision in Relation to the Constitution and International Treaties

[7]Said Boualshaer, The Algerian Political System, An Analytical Study of the Nature of the Regime in Light of the 1996 Constitution, Part Three: The Executive Authority, University Press Office, Algeria, Second Revised and Expanded Edition, 2013, p. 90.

[8]For more details, see Azzaoui Abdel Rahman, Distribution Controls Between the Legislative and Executive Powers (Comparative Study in Defining the Scope of Each Law and Regulation), Part One and Two, West House, Algeria, no publication date.

[9]Said Boualshaer, The Constitutional Council in Algeria, University Press Office, Algeria, 2017, p. 233; Masoud Sheihoub, The Constitutional Council as an Election Judge, Algerian Constitutional Court Magazine for Rights and Political Sciences, Volume 1, Issue 01, 2013, pp. 109-110; Bouhamida Atallah, The Constitutional Council: Oversight of Which Regulation? Algerian Magazine for Legal and Political Sciences, University of Algeria, Volume 39, Issue 3, 2003, pp. 88-90.

[10]Opinion No. 01 / R. M. D / T. D /24 dated Rajab 4, 1445 AH corresponding to January 16, 2024, regarding the interpretation of a phrase in Article 195 (First Paragraph) and in Article 141 of the Constitution.

Notification functions as the fundamental mechanism to initiate constitutional supervision of regulations pursuant to Article 193 of the 2020 Constitutional Amendment. This provision states: "The Constitutional Court is notified by the President of the Republic, the President of the Council of the Nation, the President of the National People's Assembly, or by the Prime Minister or Head of Government, depending on the case. It can also be notified by forty (40) deputies or twenty-five (25) members of the Council of the Nation."

The Constitutional Court lacks autonomous authority; it necessitates notification to engage its supervisory role over regulations, whether these are scrutinized in accordance with constitutional stipulations or for their conformity with international treaties. The following detail examines the procedures and implications of such supervisory practices:

Firstly: Regulation Supervision Concerning the Constitution

Article 190/1 of the 2020 Constitutional Amendment explicitly declares: "... the Constitutional Court decides by a ruling on the constitutionality of... regulations." This provision unequivocally mandates the Constitutional Court to undertake the constitutional supervision of regulations. It empowers the court to review the constitutionality or possible unconstitutionality of regulations upon receiving a notification from one of the political entities specified in Article 193. This clause underscores the court's critical role in ensuring that regulations adhere to constitutional standards, serving as a pivotal check on the powers vested in the executive and legislative branches.

Traditionally, the mechanism of notification, serving as a direct avenue for challenging the unconstitutionality of regulations, was confined to three principal political figures: the President of the Republic and the Presidents of the two parliamentary chambers. This scope was expanded with the 2016 Constitutional Amendment, which included an additional critical political figure, the Prime Minister or Head of Government, depending on the specific circumstances.

The 2020 Constitutional Amendment further revolutionized this process by empowering the parliamentary opposition with the right to notify the Constitutional Court concerning the constitutional supervision of regulations. This is detailed in Article 116-5: "The parliamentary opposition enjoys rights that facilitate their effective participation in parliamentary proceedings and the political landscape, particularly through notifying the Constitutional Court, in accordance with the provisions of paragraph 2 of Article 193 of the Constitution."

Additionally, the threshold required for such parliamentary notification was significantly lowered; whereas it previously necessitated fifty (50) deputies from the National People's Assembly or thirty (30) members from the Council of the Nation, it now requires only forty (40) deputies or twenty-five (25) members from the Council of the Nation. [11]This change substantially bolsters the parliamentary opposition's capacity to activate constitutional supervision over the regulations promulgated by the President of the Republic.

Furthermore, it is imperative to underscore that the oversight of regulations transpires post-enactment, as articulated in Article 190/3: "The Constitutional Court may be notified about the constitutionality of regulations within a month from their publication date." This protocol confirms that regulations are amenable to both prior and subsequent constitutional supervision, a principle previously established in Article 165 of the 1996 Constitution, which states: "The Constitutional Council decides on the constitutionality of treaties, laws, and regulations either by an opinion before they become obligatory or by a decision in the reverse case." [12]

Given this framework, while subsequent supervision is permissible, prior supervision is intrinsically unfeasible. Regulations are typically promulgated directly in the Official Gazette, and the notifying entities—except for the President of the Republic, who signs the decree—are generally unaware of

[11]Article 187 of the constitutional amendment of 2016 states: "The Constitutional Council notifies the President of the Republic, the President of the Council of the Nation, the President of the National People's Assembly, or the Prime Minister. It can also be notified by fifty (50) deputies or thirty (30) members of the Council of the Nation."

[12]See the confusion by the constitutional founder in establishing prior and subsequent oversight of independent regulations, Said Boualshaer, The Constitutional Council in Algeria, op. cit., pp. 230 - 240.

these regulations prior to their publication, thus making the prospect of the President notifying the Constitutional Court exceedingly improbable.[13]

The Constitutional Court must also decide on the constitutionality of the regulation and issue its decision within 30 days from the date of notification. In urgent cases, this period is shortened to 10 days at the request of the President of the Republic[14]. This period appears to be insufficient, especially if the Constitutional Court receives multiple notifications at the same time. Therefore, it would be advisable to grant a longer period, such as at least two months.

If the Constitutional Court decides on the constitutionality of a regulation, it continues to have its effects and enjoys the presumption of constitutionality, and it cannot be monitored again through challenging its constitutionality unless circumstances change. However, "if the Constitutional Court decides on the unconstitutionality of a regulation, then this text loses its effect from the day the decision of the Constitutional Court is issued."[15]

Secondly: Regulation Supervision Concerning International Treaties

In 2020, the constitutional founder significantly broadened the jurisdiction of the Constitutional Court regarding the supervision of regulations, by introducing a novel aspect to its supervisory role—specifically, the supervision of regulations' compatibility with international treaties. This extension involves scrutinizing how domestic regulations conform to or diverge from international legal frameworks[16]. Article 190/4 of the Constitution elucidates this role:[17] "The Constitutional Court decides by ruling on the compatibility of laws and regulations with treaties, under the conditions outlined in paragraphs 2 and 3 above."

This oversight mechanism is deeply rooted in the Constitution's preamble and further reinforced by Article 154,[18] which asserts, "Treaties ratified by the President of the Republic have supremacy over domestic laws." This supremacy necessitates vigilant protection against potential infringements by legislative or executive actions.[19] Moreover, the Constitution mandates that judges apply these ratified treaties, which, once ratified by the President, assume the status of traité-lois, thereby requiring explicit parliamentary approval.[20]

It is essential to recognize that the supervision of regulations' compatibility with treaties is an optional procedure contingent on facultative notification by designated political figures or bodies. These include the President of the Republic, the Presidents of the two parliamentary chambers, the Prime Minister or Head of Government—depending on the specific circumstances—or by forty (40) deputies or twenty-five (25) members of the Council of the Nation. Such notifications must be submitted within a month following the regulation's publication[21].

Upon receiving the notification, the Constitutional Court is then allotted 30 days to issue a ruling on the regulation's compatibility with the applicable international treaty. In cases deemed urgent, this timeframe is reduced to 10 days upon the request of the President of the Republic. These

[13]Article 7 of Organic Law No. 22-19 states: "When the Constitutional Court is notified by deputies or members of the Council of the Nation, according to Article 193 (Paragraph 2) of the Constitution, the notification letter must be accompanied by a copy of the treaty, agreement, convention, or law subject to the notification, along with a list of names, titles, and signatures of the notifying parties."

[14]Article 194 of the constitutional amendment of 2020.

[15]Article 198/3 of the constitutional amendment of 2020.

[16]DrajiBdiar, Limits of the Constitutional Court's Jurisdiction in Oversight of the Constitutionality of International Treaties According to the Provisions of the 2020 Constitutional Amendment, Journal of Rights and Political Sciences, Abbas Laghrour University of Khenchela, Algeria, Volume 10, Issue 01, 2023, p. 450.

[17]Paragraph 15 of the Preamble to the 1996 Constitution amended in 2020 states: "The Algerian people express their commitment to the human rights stipulated in the Universal Declaration of Human Rights of 1948 and the international conventions ratified by Algeria."

[18]Oumayouf Mohamed, Oversight of the Alignment of Laws and Regulations with Treaties in the Algerian Constitution, Critical Magazine for Law and Political Science, Faculty of Law and Political Sciences, University of Tizi Ouzou, Algeria, Volume 19, Issue 02, 2024, p. 354.

[19]Article 171 of the constitutional amendment of 2020.

[20]Oumayouf Mohamed, op. cit., p. 352.

[21]According to Article 190/3 of the constitutional amendment of 2020.

expedited periods align with those stipulated for the supervision of regulations under constitutional provisions.

Should the Constitutional Court find that the regulations are incompatible with the treaties, such regulations are invalidated from the day the Court's decision is issued[22]. Given the optional nature of this supervisory mechanism, regulations that are not notified to the Constitutional Court remain protected within the legal framework, despite potentially conflicting with international treaties.

In conclusion, while the constitutional supervision of regulations—whether related to constitutional provisions or treaty compatibility—is critically important, its practical application remains markedly insufficient and sporadic. Despite the issuance of numerous regulations by the President that might potentially violate constitutional provisions, many of these regulations elude supervision due to the limited scope of entities entitled to initiate notification.

These entities encompass the President, who partially exercises regulatory power in areas not reserved for legislative authority, the Prime Minister who issues executive decrees, the Presidents of the two parliamentary chambers, and parliamentary groups comprising forty deputies or twenty-five Council members. Notably, even with the empowerment of the parliamentary opposition to notify the Constitutional Court, there remains a significant gap in the proactive exercise of this constitutional oversight.

Expanding notification to various political entities could potentially activate constitutional supervision over regulations, thereby offering enhanced protection for rights and freedoms and ensuring constitutional legitimacy. It is imperative that political entities exercise their constitutional prerogatives to notify and engage the Constitutional Court’s oversight over regulatory powers.

Second Chapter: Challenging Unconstitutionality as a Mechanism for Contending the Unconstitutionality of Regulations

The mechanism for challenging unconstitutionality was initially adopted by the constitutional founder when Article 195 of the 2020 Constitutional Amendment was enacted, stating: "The Constitutional Court may be notified of challenges to unconstitutionality based on referrals from either the Supreme Court or the State Council. This provision is activated when a party involved in a legal proceeding before a judicial body contends that the legislative or regulatory judgment central to the resolution of the dispute infringes upon their rights and freedoms as guaranteed by the Constitution."

This clause clearly indicates that the constitutional founder did not provide for direct individual access to constitutional justice, but rather facilitated such access through the judiciary. The challenge pertains to a regulatory judgment pivotal to the dispute’s outcome, potentially violating the constitutionally guaranteed rights and freedoms. Furthermore, Article 21 of the Organic Law No. 22-19 introduced additional prerequisites for challenging the unconstitutionality of a regulatory judgment, which we will explore in two subsections—initially focusing on the conditions outlined in Article 195, followed by those stipulated by the organic legislator in Article 21.

First Subsection: Conditions Stated in Article 195 of the 2020 Constitutional Amendment

Article 195 mandates that the foundation for challenging unconstitutionality be a regulatory judgment upon which the dispute's resolution depends, and which breaches the rights and freedoms safeguarded by the Constitution. We delineate these conditions as follows:

Concept of Regulatory Judgment Subject to Challenge of Unconstitutionality:

As delineated in the first subsection of the initial chapter, only independent regulations promulgated by the President of the Republic are eligible for constitutional scrutiny and can be contested for unconstitutionality. An examination of the constitutional provisions reveals that Article 195 initially employs the term "regulatory judgment," whereas Article 198, paragraph 4, refers to "regulatory text," noting, "if the Constitutional Court rules on the unconstitutionality of a regulatory text...."

[22]Articles 4 and 5/2 of the Regulation Defining the Rules of Operation of the Constitutional Court, Official Gazette, No. 4, issued on January 22, 2023.

Revisiting Article 21 of the Organic Law, we encounter the term "regulatory judgment" again, which is also echoed in Articles 4, 36, 37, and 38 of the regulations governing the Constitutional Court's procedures[23]. This text implies a singular regulation, whereas the judgment is a component thereof. There appears to be a terminological discrepancy that the constitutional founder ought to resolve by standardizing the usage to "regulatory judgment."

Thus, the litigant challenges the unconstitutionality of a specific legal rule within the broader regulatory framework, as opposed to contesting the entirety of the regulation, which differs from subsequent supervision initiated through direct notification mechanisms, targeting the regulation as a whole.

That the Regulatory Judgment Violates Rights and Freedoms:

The inaugural chapter of the second section of the Constitution meticulously delineates rights and freedoms, spanning from Article 34 to Article 77. This segment codifies a spectrum of fundamental rights and freedoms applicable across generations, as per doctrinal classification.[24]

The Constitution’s preamble explicitly reaffirms the Algerian populace's dedication to the human rights as outlined in the Universal Declaration of Human Rights of 1948, alongside the international conventions that Algeria has ratified.[25] It further enumerates a series of principles that are instrumental for the constitutional judge in interpreting the breadth of rights and freedoms embedded within the constitutional provisions, which serve as the foundation for the court's judgments. Notably, the constitutional drafter has rendered the preamble obligatory, thereby integrating it into the constitutional framework.

Consequently, the act of contesting the unconstitutionality of a regulatory judgment is inherently tied to an alleged infringement of the rights and freedoms as stipulated by the Constitution and those enshrined in treaties ratified by Algeria. Absent such a breach, the Constitutional Court is mandated to affirm the constitutionality of the regulatory judgment.

Objection to the Regulatory Judgment on Which the Outcome of the Dispute Depends:

The constitutional architect initially instituted the mechanism for challenging unconstitutionality as articulated in Article 195 of the 2020 Constitutional Amendment: "The Constitutional Court may be apprised of a challenge to unconstitutionality based on a referral from the Supreme Court or the State Council, when a party in a trial before a judicial body alleges that the legislative or regulatory judgment foundational to the dispute's resolution contravenes their rights and freedoms as guaranteed by the Constitution."[26]

This stipulation necessitates a discernible nexus between the contested regulatory judgment and the original legal dispute before the judicial body, asserting that the regulatory judgment is pivotal for the adjudication of the dispute. Should the judiciary fail to recognize such a connection, the challenge shall not proceed to the Constitutional Court. This delineation implies that the judgment must influence the case either formally or substantively.

It is pertinent to highlight that this stipulation echoes the verbiage of Article 195 of the Constitution, thereby suggesting its redundancy in the Organic Law. It should be maintained solely in the Constitution or, alternatively, excised from the Constitution and incorporated, with additional stipulations, into the Organic Law as discussed in the ensuing subsection.

Second Subsection: Conditions Stated in Article 21 of Organic Law No. 22-19

Article 21 of the aforementioned Organic Law No. 22-19 mandates: "A challenge to unconstitutionality is directed to the Supreme Court or the State Council, as applicable, if the following criteria are met:

[23]Published in the Official Gazette No. 4, issued on January 22, 2023.

[24]For more details on rights and freedoms, see Said Boualshaer, The Constitutional Council in Algeria, op. cit., pp. 32-67.

[25]Paragraph 15 of the Preamble to the 1996 Constitution amended in 2020.

[26]Juradat Mohamed, The Subsidiary Challenge According to the Amended Law No. 3 of 2006 of the Supreme Constitutional Court of Palestine: A Comparative Study, Al-Najah Research Journal (Human Sciences), Nablus University, Palestine, Volume 37(1)2023, p. 113.

- The outcome of the dispute hinges upon the contested regulatory judgment, or it underpins the prosecution.
- The contested regulatory judgment has not previously been affirmed as constitutional by the Constitutional Council or the Constitutional Court unless the circumstances have notably altered.
- The issue at hand must be of significant gravity."

We will omit the first condition since it mirrors Article 195 previously discussed, and will elaborate on the remaining two conditions in the subsequent narrative.

That the contested regulatory judgment has not previously been affirmed as constitutional by the Constitutional Council or the Constitutional Court:

Except in instances where significant changes in circumstances have occurred, is pivotal. For a challenge against a regulatory judgment to be considered valid, it must not have undergone prior constitutional review, meaning it should not have been subjected to supervision via direct notification nor should there have been any previous challenges to its constitutionality. However, an exception to this rule is permitted when the circumstances under which the original judgment was deemed constitutional have substantially altered.

It is recognized that a modification in circumstances can necessitate a reevaluation of the same regulatory judgment under constitutional scrutiny. These circumstances could be of a legal or factual nature. Legal circumstances encompass changes that influence the prevailing constitutional standards,[27] such as the enactment of a new constitution or amendments to constitutional texts that render previously constitutional laws inconsistent with the newly amended or established constitution. This also encompasses shifts in the principles and interpretations of constitutional law as determined by the entity overseeing the constitutionality of laws under which the legal text was promulgated.[28]

Factual circumstances pertain to changes in the actual conditions, including developments in the economic, social, political, and even moral landscapes, as well as adaptations necessitated by scientific and technological progress.[29] Changes such as alterations in the political regime, inflation, or a health crisis represent shifts in the real conditions that underpinned the issuance of the legal text, providing the legislative authority with the rationale for its enactment.

Consequently, these new factual conditions may render the legal text incompatible with the present reality,[30] prompting the constitutional judge to assess whether the law remains appropriate for its time[31] and in alignment with evolving societal norms.[32]

The Constitutional Court's prerogative to revisit and potentially revise a previously constitutional ruling due to changed circumstances empowers it to prompt legislative adaptations to align with the evolving social context.[33] This mechanism of constitutional revision serves as a safeguard for the ongoing evolution of law and the protection of individual rights and freedoms. [34]

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[27]Decision No. 2009-595 DC of December 3, 2009, Organic Law on the Application of Article 61-1 of the Constitution. https://www.conseil-constitutionnel.fr/decision/2009/2009595DC.htm, Accessed on 20/07/2024.

[28]Ahmed Abdel Hasib Abdel Fattah El-Centerisy, Change of Circumstances and Its Impact on the Binding Nature of Judgments in Constitutional Litigation "Comparative Study", Paper Submitted to the Fourth International Scientific Conference at the Faculty of Sharia and Law in Tanta on Legal and Religious Adjustment of Contemporary Developments and Its Impact on Achieving Community Security (held from 11 to 12 August 2021), Special Issue of the Fourth International Scientific Conference, Part Three, Volume 36, Issue 1, p. 29.

[29]Apostolos Vlachogiannis, The Constitutional Council Facing Change of Circumstances: Reflections in the Light of American Experience, Jus Politicum, No. 11, p.3, [https://juspoliticum.com/article/Le-Conseil-constitutionnel-face-au-changement-de-circonstances-de-fait-reflexions-a-la-lumiere-de-l-experience-americaine-789.html, Accessed on 20/07/2024.

[30]Ahmed Abdel Haseeb Abdel Fattah El-Centerisy, op. cit., p. 26.

[31]Apostolos Vlachogiannis, op. cit., p.13.

[32]Ibrahim Atiya Mahmoud El-Mahdi, Re-examining the Constitutionality of Texts in Light of Changing Circumstances "Comparative Analytical Study of Constitutional Court Rulings", Journal of Legal and Economic Research (Mansoura), Faculty of Law - Damietta University, Volume 14, Issue 87, March 2024, pp. 433-695, p. 465.

[33]Claire Aguilon, Potential Scope and Effective Scope of Jurisprudential Interpretation of the Concept of Change of Circumstances, In French Constitutional Law Review 2017/3 (No. 111), pages 531 to 558, p.536. https://www.cairn.info/revue-francaise-de-droit-constitutionnel-2017-3-page-531.htm, Accessed on 20/07/2024.

[34]Claire Aguilon, op. cit., p.536.

However, should the circumstances remain unaltered, the Constitutional Court is precluded from accepting challenges to the constitutionality of the regulation, as articulated by the Algerian Constitutional Council in one of its rulings, which stated, "Decisions of the Constitutional Council permanently entail all their effects unless the Constitution is amended, and as long as the reasons establishing their pronouncement remain valid."[35]

The gravity of the issue raised is crucial:

This criterion, in conjunction with the aforementioned conditions, determines the viability of a challenge to unconstitutionality. If the judges presiding over the case are convinced of the challenge's significance, the matter is escalated to higher judicial authorities, either the State Council or the Supreme Court, depending on the jurisdiction, to ascertain the seriousness of the challenge. Thus, the challenge undergoes a dual-level review: initially by the judges in the lower courts, whether administrative or ordinary, and subsequently by either the State Council or the Supreme Court.

This implies that the judge plays a role in the processes of the Constitutional Court, a practice that is fundamentally unacceptable. However, it raises a pivotal question: How can a judge ascertain the seriousness—or lack thereof—of a challenge without probing into the constitutional merits of the regulatory judgment itself?

In one notable ruling, the Constitutional Council underscored that judges should not delve into constitutional matters; their oversight should strictly be limited to gauging the acceptability of cases. “Considering that the legislator, by empowering judges at judicial bodies to evaluate the conditions for accepting challenges of unconstitutionality, does not aim to endow these bodies with discretionary powers akin to those that reside solely with the Constitutional Council.”[36]

According to the Constitutional Council’s stance, judges are mandated to confine their role to overseeing acceptability, steering clear of constitutional supervision, which is the exclusive domain of the Constitutional Court. Despite these guidelines, the demarcation between acceptability monitoring and constitutional supervision remains nebulous and ill-defined.[37]

The criterion of seriousness introduces significant complexity in differentiating between acceptability control, as conducted by the referral judge, and constitutional supervision, which is constitutionally entrusted to the Constitutional Court[38]. If a decision regarding the acceptance of a challenge is rendered, it inherently involves an assessment of the constitutionality of the regulation in question, thereby informing the litigant of the constitutional or unconstitutional status of the regulatory judgment.

Consequently, the Constitutional Court only entertains challenges that are constitutionally viable and dismisses those deemed non-serious by the subject matter judge or higher judicial bodies, with no avenue for appeal as stipulated by Article 24 of Organic Law No. 22-19. This stance was affirmed by the Supreme Constitutional Court of Palestine in a judgment, noting that “this court’s law does not allow for the suspension of the substantive proceedings under review if a challenge is not deemed serious... to prevent the use of unconstitutionality challenges as a tactic to prolong litigation and obstruct the resolution of cases.”[39]

[35]Decision No. 01-Q.A - M.D - 95 dated 9 Rabi' al-Awwal 1416 AH corresponding to August 6, 1995, regarding the constitutionality of the sixth clause of Article 108 of the Election Law.

[36]Opinion No. 03/ R.Q.A/M.D dated 20 Dhu al-Qi'dah 1439 AH corresponding to August 2, 2018, regarding the oversight of compliance of the Organic Law defining conditions and modalities for applying the challenge of unconstitutionality.

[37]Rabia Rafik, The Seriousness Condition in the Challenge of Unconstitutionality, Collective Work, Organic Law No. 18-16 dated September 2, 2018, "Defines Conditions and Modalities for Applying the Challenge of Unconstitutionality" Comment on Article by Article, New University Publishing, Tlemcen, Edition 2020, p. 152.

[38]Rabia Rafik, op. cit., p. 151.

[39]Ruling of the Palestinian Supreme Constitutional Court in Case No. 5 of 2016 dated 26/9/2016, Palestinian Gazette. Issue 12, p. 10. Mentioned by Juradat Mohamed, op. cit., p. 107

A challenge must be regarded as serious in the sense that the referral judge acknowledges its potential for acceptance.[40] The resolution of the constitutional issue should constructively contribute to the substantive lawsuit, and the intent should not be to merely extend the dispute.[41]
It is, therefore, prudent for the organic legislator to reassess this condition and simplify it, allowing the acceptance of a challenge based merely on a slight suspicion of unconstitutionality in the contested text.[42]
The judiciary's involvement in assessing whether a regulatory judgment infringes upon rights and freedoms, and in determining the challenge's seriousness, contradicts the principle that the Constitutional Court—as dictated by the Constitution—is an autonomous entity[43]. The Constitution mandates referral[44].
In addressing the constitutional founder and the organic legislator's intent to mitigate frivolous lawsuits and alleviate the workload on the Constitutional Court, one potential resolution could be to establish a small committee of two or three members within the Constitutional Court to preliminarily examine these conditions. This committee would convene prior to the full assembly of the court, determining whether to dismiss the challenge or to proceed with comprehensive procedures of study, assessment, and decision-making[45]. Alternatively, increasing the membership of the Constitutional Court could also serve as a viable solution.
The Constitutional Court is mandated to deliver its verdict within four months of notification, a term extendable by an additional four months through a reasoned decision communicated to the referring judicial body [46]. Should the Constitutional Court deem a regulatory text unconstitutional, the text is rendered ineffective from the date specified by the court's ruling [47]. The constitutional founder prudently ensured that the decisions of the Constitutional Court are effective from the designated day, thereby preventing retroactive impacts that could potentially infringe upon acquired rights[48]. Decisions of the Algerian Constitutional Court are definitive, exerting absolute authority, and are binding on all state and public authorities, not subject to any form of contestation[49].
It is noteworthy that the Algerian constitutional architect has instituted the mechanism of challenging unconstitutionality via the judiciary. This means that a litigant cannot directly contest a regulatory judgment; instead, the judicial entity—either the State Council or the Supreme Court—must refer the challenge to the Constitutional Court. Should these bodies fail to refer the challenge within 30 days, it is automatically forwarded to the Constitutional Court[50]. This process is integral to public order; hence, a judge may not independently initiate such a challenge but must refer it to the Constitutional Court upon suspecting any constitutional discrepancies[51]. This protocol parallels the Egyptian approach, wherein the court of the matter is empowered to autonomously raise a challenge.[52]

[40]Rabia Rafik, op. cit., p. 159.

[41]Juradat Mohamed, op. cit., p. 104.

[42]Hakim Tabina, Judicial Oversight of the Constitutionality of Laws - The Egyptian Supreme Constitutional Court as a Model, Algerian Journal of Rights and Political Sciences, Volume 5, Issue 2, 12/01/2020, p. 167.

[43]Article 185 of the constitutional amendment of 2020 states: "The Constitutional Court is an independent institution charged with ensuring respect for the Constitution."

[44] Said Boualshaer, The Constitutional Council in Algeria, op. cit., pp. 248 - 249.

[45] Said Boualshaer, The Constitutional Council in Algeria, op. cit., p. 249.

[46]Article 195/3 of the constitutional amendment of 2020.

[47]Article 198/5 of the constitutional amendment of 2020.

[48] Said Boualshaer, The Constitutional Council in Algeria, op. cit., p. 230.

[49]Article 198/5 of the constitutional amendment of 2020.

[50]Article 36 of Organic Law No. 22-19

[51]Article 17/1 of Organic Law No. 22-19

[52]"If one of the courts or judicial bodies, while considering a lawsuit, perceives the unconstitutionality of a text in a law or regulation essential for resolving the dispute, it suspends the lawsuit and refers the papers without fees to the Supreme

Contrastingly, the concept of challenging unconstitutionality differs from the individual complaint system, akin to the constitutional complaint known in Germany, where individuals may directly approach the Constitutional Court to contest unconstitutionality without the prerequisite of an ongoing dispute.[53]

Moreover, certain constitutions authorize the Constitutional Court to initiate unconstitutionality reviews through adjudication autonomously. For example, the Supreme Constitutional Court of Egypt is vested with the power to enforce constitutional oversight over regulations during any of its functions,[54] be it interpreting a constitutional text or adjudicating a dispute. If it ascertains that a regulation's text contravenes constitutional mandates, it can independently declare its unconstitutionality. This capacity of the Supreme Constitutional Court to intervene directly reflects the constitutional founder's commitment to bolstering constitutional legitimacy.[55]

CONCLUSION

In concluding this study on the constitutional oversight of regulations in light of the 2020 constitutional amendment, it is essential to summarize the findings and propose several recommendations:

FINDINGS

- Both the President and the Prime Minister or Head of Government, depending on the case, exercise regulatory power. The President issues independent regulations beyond the legislative scope, while the Prime Minister or Head of Government is tasked with issuing executive decrees.
- The constitutional founder acknowledged the need for oversight of regulations but did not clarify which regulations were subject to this scrutiny. The Algerian Constitutional Court has since resolved this ambiguity by stating that only the independent regulations issued by the President, either as standalone legislations or as general and abstract rules, fall under its oversight. Regulations issued by the Prime Minister or Head of Government are exempt from this scrutiny.
- Expanding the notification process to various political entities enhances the constitutional oversight of regulations, thus bolstering the protection of rights and freedoms and reinforcing constitutional legitimacy.
- The constitutional founder broadened the Constitutional Court's jurisdiction over the oversight of regulations by incorporating a new approach: the assessment of the alignment of regulations with treaties.
- Despite the constitutional provision for oversight by the Constitutional Court, political entities have seldom utilized their constitutional right to initiate such oversight, leaving it largely theoretical rather than practical.
- Constitutional oversight of regulations remains discretionary, and direct notification is restricted to political entities, excluding individuals from direct recourse to the Constitutional Court.
- The Constitutional Court is obligated to render decisions on the constitutionality of regulations within 30 days of notification, with an urgency clause reducing this period to just 10 days.

RECOMMENDATIONS:

- Political entities should actively exercise their constitutional right to notify and engage the Constitutional Court's oversight of regulatory authority.

Constitutional Court to decide on the constitutional issue." Article 29/A of the Supreme Constitutional Court Law No. 48 of 1979, amended by Law 137 of 2021, dated August 15, 2021.

[53]For more details, see Said Nuhaili, Judicial Protection of Fundamental Rights in Germany - Individual Constitutional Complaint as a Model, Damascus University Journal for Legal Sciences, Volume 2, Issue 1, 2022.

[54]Article 27 of the Supreme Constitutional Court Law No. 48 of 1979.

[55]Youssef Abdel Mohsen Abdel Fattah, The Experience of Prior Oversight of the Constitutionality of Laws in the Egyptian and Kuwaiti Systems, Legal Magazine, Legislation and Legal Opinion Authority, University of Bahrain, Kingdom of Bahrain, Issue 7, Year 2017, p. 132, footnote 3.

- Extending the decision-making period for the Constitutional Court to at least two months on matters of constitutional oversight of regulations would be beneficial.
- The organic legislator ought to revisit the conditions for challenging the unconstitutionality of regulatory judgments, particularly the seriousness condition, to facilitate challenges based merely on slight suspicions of unconstitutionality.
- To mitigate frivolous lawsuits and lessen the workload on the Constitutional Court, forming a small committee of two or three members to preliminarily review these conditions at the Constitutional Court level could prove effective, as could an increase in the number of court members.
- Granting courts of first instance the authority to refer challenges of unconstitutionality directly to the Constitutional Court could improve judicial efficiency.
- Empowering the Constitutional Court to act on its own initiative in matters of constitutional oversight could enhance judicial responsiveness.
- Providing individuals with direct access to the Constitutional Court through individual complaints (constitutional complaints) would ensure broader protection of rights and accessibility to constitutional remedies.

Ultimately, the adoption of constitutional oversight of regulations through the mechanisms of challenging unconstitutionality and direct notification underscores the constitutional founder's commitment to enhancing constitutional oversight, establishing constitutional legitimacy, and affording greater protection for rights and freedoms. It is crucial for these mechanisms to be actively employed to ensure their effectiveness in practice.

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