

AREAS OF APPLICATION OF CONSTITUTIONAL CONTROL: A STUDY IN THE LIGHT OF CONSTITUTIONAL AMENDEMENT 2020

KENZA ZIANI¹, MOUNIR ZIANI²

¹University of Larbi Ben M'hidi, Oum El Bouagi, (ALGERIA). Email: kenzaziani990@gmail.com

²University of Batna1-El Hadj Lakhdar, (ALGERIA). Email: mounirziani190@gmail.com

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Abstract:

Constitutional control is one of the most important safeguards for the protection of the Constitution and the primacy of its rules over other pieces of legislation, and thus the protection of the rights and freedoms of individuals. This is an important and insurmountable measure. It would prevent regulations and laws from breaking with the provisions of the Constitution. In the 2020 Amendment, the Constitutional Founder expanded constitutional control to include constitutional control over treaties, laws and organizations, constitutional control over the compatibility of laws with treaties and constitutional control over presidential orders.

Key words: *Constitutional control, Constitutional Court, Constitutional amendment, Laws and treaties, constitutional supremacy, Constitutionality of orders.*

INTRODUCTION

The Constitution is the supreme and highest law of any State, which defines the identity of the State and the philosophy of its system of government. It also defines the public rights and freedoms of individuals in this State. and, undoubtedly, these are the biggest issues of any legal system, In addition, the Constitution is promulgated by the founding power of the State, the people or a constituent assembly elected by the people. Of course, this authority prevails over any other authority established by the legislature, the executive and the judiciary.

Constitutional jurisprudence agreed on the principle of the supremacy of the Constitution and even discussed constitutional jurisprudence on the existence of guarantees for the implementation of this principle. So there must be a way to ensure that it's respected and everyone's commitment to it. legislation, including verification of the compatibility of laws with its provisions, so the various modern constitutional systems are keen to ensure some kind of oversight of the legislative work enacted by the legislature's authority and the executive work of the Department, which is termed "constitutional control".

Underlines the importance of constitutional oversight in monitoring the accuracy of the application of the competencies distributed among the authorities, the failure of the legislature to exceed its competence under the provisions of the Constitution and compliance with the provisions of the principles of the Constitution, as well as its importance in protecting rights and freedoms from violation by unconstitutional laws; Besides Constitutional oversight is one of the most important guarantees of the Constitution's sovereignty. It is an important and irremovable one. It would prevent laws and regulations from derogating from the provisions of the Constitution, thereby respecting the different authorities' role and all their powers.

It should be noted that under the constitutional amendment of 2020, Algeria's legislature approved constitutional control, entrusting it to an independent institution of the Constitutional Court, thus adopting a judicial control approach to the constitutionality of laws, which focuses on many areas.

From this point of view, we raise the following problems:

- What are the areas of constitutional control under the Constitutional Amendment 2020?

This is what we will answer, relying on the analytical method through the study and analysis of the constitutional control provisions adopted in the constitutional amendment of 2020, in accordance with the following division:

The first axis: The concept of constitutional control

The second axis: scope of application of constitutional control

The first axis: The concept of constitutional control:

Determining the concept of constitutional control requires The definition of the concept of constitutional control and its importance, that's what we will clarify accordingly.

First- Definition of constitutional control:

We will indicate the linguistic definition of constitutional control (1) Then we touch on the importance of constitutional control (2).

1. The linguistic and terminological definition of constitutional control

1.1. The linguistic definition of constitutional control:

To indicate the exact intent of constitutional control, we must analyze the phrase into two words; Censorship is from "watch, Watch the thing, watch it, control Monitored and monitored by any guard" and " watch him Stay tuned, Wait and monitor it" Thus, the word is due to custody, monitoring and anticipation, in its origin.

The other word is constitutional, attributed to and restored to the Constitution itself; However, this word is not Arabic in origin, but in Persian origins¹.

1.2. The terminological definition of constitutional control:

There are many definitions of constitutional control, including;
 "Constitutional control is defined as the process through which we can bring the provisions of the law into conformity with the provisions of the Constitution"².
 "Constitutional control is the control of ordinary laws with a view to ensuring that these rules contained in the constitutional document are respected and do not contravene their provisions"³.
 "Constitutional control is the process by which laws are examined to determine their compatibility or difference after the Constitution"⁴.

Constitutional control is the process of verifying the violation of laws by the Constitution in order to ensure that laws issued by the legislative and executive branches are lawful"⁵.

¹ Hisham Ali Mohamed Al-Qatamin, Constitutional Control between Politics and Law (Jordan, Egypt and France Comparison Study), thesis for doctorate in law, Ain Shams University, Faculty of Law, Department of Public Law, 2019, p. 14.

² Abdelaziz Mohamed Salman, Constitutional Control of Laws, First Edition, Arab House of Thought, Cairo, 1990, p. 32.

³ Ramzi Taha al-Sha'er, Constitutional Justice in Bahrain, Comparative Study, Library of Arab Books, Cairo, 2003, p. 9.

⁴ Hisham Ali Mohamed Al-Qatamin, *op.cit*, p. 15

⁵ Elias Djawadi, «Constitutional Control of Regulations», *Journal of Jurisprudence for Legal and Economic Studies*, vol. 8, No. 4, 2019, p. 40.

In our view, constitutional control can be defined as: the control of legal norms in societies and the non-violation of the State's Constitution by any of its subsidiaries, thereby preserving public life. Constitutional control can only be discussed in the event of a State of law governed by the Constitution and subject to the principle of the primacy of the Constitution.

Second- The importance of constitutional control

Constitutional control is legally and practically important, and this will be explained by the following:

1. The importance of constitutional control in legal terms:

The legal importance of constitutional control is highlighted in many respects and summarized by⁶:

When constitutional control is in place, we are assured that there is a legal State, which is subject to a complete legal system and a legal step that ensures that laws and regulations do not emerge on the basis of the composition and organization of the State, as represented by the Constitution, which maintains the system that leads to the stability of the State in all respects.

-The importance of constitutional control is reflected in the control of the relations of State authorities and the promotion of the principle of separation of powers within the limits established by law not exceeding the Constitution, and the statement of its functions for each of these powers to operate in its own department and within the limits set by the Constitution without prejudice, thereby preserving the lawfulness of these authorities' conduct and maintaining their legal status, as well as that of individuals.

-Constitutional control guarantees the realization and preservation of individuals' rights and does not encroach upon or ignore them, i.e. it guarantees respect for the provisions and rules of the Constitution relating to these rights and freedoms.

-Constitutional control reflects the compulsory meaning of constitutional norms, which, if we ignore them, we are not in front of binding norms, and anyone who allows them the opportunity to override and violate their provisions and rules.

-Constitutional control is regarded as the keeper and guardian of the will of the people he has set out in his Constitution. The Constitution is the expression of the will of the people, who have mostly voted on it and approved all its rules, and therefore its rules may not be contravened.

2. Importance of constitutional control in practice:

Constitutional control is very important in practice, since those who draft and enact laws are reflected in the legislative branch in general, and it is inconceivable or unreasonable that members of Parliament have full or in-depth knowledge of legislation, social policies or even the needs of the people, which is impossible, if any, insufficient for this process or its outputs⁷. But in view of the constitutional oversight bodies, we find them to be a choice of jurists or a choice of politicians, intellectuals or parties together. Those who are fully aware of the State's political, social and economic reality and reality and also have the ability and knowledge to protect the people and the State through what is available to them from censorship, This is through the requirements of the Constitution which must apply to them and their appointment to such important bodies⁸.

⁶ Hisham Ali Mohamed Al-Qatamin, *op.cit*, p26.

⁷ Hisham Mohamed Fawzi, *Constitutional Control of Laws, Comparative Study between Egypt and America*, Arab Renaissance House, Cairo, 2006, p. 37.

⁸ Hisham Ali Mohamed Al-Qatamin, *op.cit*, p29.

we see for ourselves that constitutional control is a fundamental pillar of the preservation and unity of the State's entity and the protection of fundamental human rights and freedoms, and must be entrusted to specialized bodies of law adequately to understand constitutional, political, economic and social life more accurately than the Parliament that enacts laws.

The second axis: scope of application of constitutional control

Constitutional control is an important safeguard for the enshrinement of His Highness the Constitution Under the 2020 Amendment to the Constitutional Court, the Constitutional Founder has entrusted it as an independent body charged with guaranteeing His Highness the Constitution, through this study, we will address the definition of the Constitutional Court as a body competent to oversee constitutionality (first) and the scope of application of constitutional control in (second).

First: Definition of the Constitutional Court as a competent body for constitutional control

The Algerian Constitutional Founder introduced the Constitutional Court on the impact of the Constitutional Amendment of 2020 as an independent institution charged with ensuring respect for the Constitution, regulating the functioning of institutions and the activity of public authorities and defining the rules of operation of public authorities⁹, we will indicate the composition of the Constitutional Court (1), the conditions of membership (2), and the organic organization of the Algerian Constitutional Court (3).

1. Composition of the constitutional court:

Algeria's Constitutional Court consists of 12 members:

- The President of the Republic shall appoint four members, including the President of the Constitutional Court.
- The Supreme Court shall elect one member from among its members and one member from among its members elected by the Council of State.
- Six members elected by vote from among the professors of constitutional law, and the President of the Republic shall determine the conditions and the manner in which these members are elected¹⁰.

2 Conditions of membership in the Constitutional Court:

The Constitutional Court's membership requires a number of conditions:

- full years on election or appointment
- Having at least 20 years' experience in law and benefiting from a formation in constitutional law.
- A member of the Constitutional Court shall enjoy civil and political rights and shall not be sentenced to a penalty of deprivation of liberty.

Non-party membership of the Constitutional Court¹¹.

⁹ See article 185 of the Algerian Constitution, promulgated by Presidential Decree No. 20-442 on the promulgation of the Constitutional Amendment, Official Journal, N. 82, dated 30 December 2020.

¹⁰ See article 186 of Algeria's constitutional amendment of 2020, op. cit.

¹¹ See article 187 of Algeria's constitutional amendment of 2020, op. cit.

3.Organic organization of the Constitutional Court: Membership in the Constitutional Court is governed by a set of legal controls centered primarily on the term, renewal and incompatibility with membership and vacancies.

3.1- Term of office and renewal of the Constitutional Court:

Members of the Constitutional Court shall perform their functions once for a period of 6 years with no renewability, and half of the members of the Constitutional Court shall be renewed every three years, depending on the rules of procedure of the Constitutional Court¹².

3.2- Incompatibility with membership and vacancy:

With a view to improving the functioning of the Constitutional Court and lifting all forms of dependence on its members and ensuring their independence and full-time exercise of their constitutional functions, the Constitutional Founder requires that all members of the Constitutional Court, whether elected or appointed, should cease directly the exercise of any membership, any function, assignment or other function or any other activity or profession¹³.

The second axis: scope of application of constitutional control:

According to article 190 of the Algerian Constitution of 2020, constitutional control is based on treaties (1), laws (2) and orders (3), as well as on regulations (4). Laws and regulations are in conformity with treaties (5).

1. Treaties as a place of constitutional control

Algeria's Constitution distinguishes between treaties provided for in article 102 relating to armistice conventions and peace treaties which the President of the Republic must seek the Constitutional Court's opinion on, In addition to the need for explicit approval of the two chambers of Parliament and of the ordinary treaties relating to the normal activity of the executive branch provided for in article 159 of the Constitutional Amendment of 2020, so that the President of the Republic may ratify them as the authority to conduct the country's international relations. Constitutional Court on the constitutionality of treaties before ratification¹⁴.

According to article 190 of the Constitutional Amendment of 2020, "the Constitutional Court shall decide on the constitutionality of treaties... The Constitutional Court may be notified about the constitutionality of treaties.... " It is clear that constitutional control over treaties is permissible rather than compulsory.

2. Ordinary laws as a place of constitutional control

Supervision of the constitutionality of laws is aimed at preventing the issuance of legal texts contrary to the Constitution Article 148 of the Constitutional Amendment of 2020 stipulates that: " the President of the Republic promulgated the law within 30 days from the date of his receipt, However, if an authority provided for in article 193 notifies the Constitutional Court prior to the promulgation of the Act, this term shall be suspended until the Constitutional Court decides¹⁵.

¹² See article 188 of Algeria's constitutional amendment of 2020, op. cit.

¹³ See article 5/187 of Algeria's constitutional amendment of 2020, op. cit.

¹⁴ Madani Abdelkader and Salmi Abdelsalam, «Tendency to Judicial Oversight by the Constitutional Court in the Constitutional Amendment of 2020», *Journal of Legal and Economic Research*, vol. 4, p. 231.

¹⁵ Moulay Ibrahim Abdel Hakim and Patron Eid, «Constitutional Court under Algeria's constitutional amendment of 2020», *Journal of Jurisprudence for Legal and Economic Studies*, p. 11.

Article 139 of the Constitutional Amendment of 2020 defines the scope of ordinary laws, limiting them to 30 areas subject to constitutional control, so that the Constitutional Court may be notified of them before issuance by the President of the Republic¹⁶.

1.Orders as a place of constitutional control:

Orders are the constitutional instrument of the President of the Republic to exercise legislative function in the absence of legislative power Article 142 of the Constitutional Amendment of 2020 establishes the competence of the President of the Republic to legislate by order on urgent matters in case of vacancy of the National People's Assembly or during parliamentary recess after taking the opinion of the Council of State; The President of the Republic must, however, notify the Constitutional Court of the constitutionality of these orders, to be adjudicated within 10 days, This is Algeria's first initiative to subject the orders to constitutional control, by notifying the Constitutional Court, within one month of their issuance¹⁷.

2.Independent organization as a constitutional watchdog:

The Algerian Constitution does not specify the scope of the regulation for the President of the Republic, which promulgates presidential decrees that are not subject to any restriction, nor does it remain independent in terms of measures relating thereto, either as principles or as implementation, as long as they are considered distinct from law or legislation, and regulations are subject to constitutional control, as the Constitutional Court can be notified within one month of their promulgation¹⁸.

3.Control of the compatibility of laws and regulations with treaties:

Constitutional regimes differ in the position of international treaties between those who place them above legislation, and those who make them equivalent to legislation. However, most regimes in the countries of the world argue that a treaty after completing the constitutional procedures and the conditions required for its conclusion, ratification and dissemination, has the force of laws only and does not amount to constitutional texts¹⁹.

Article 153 of the Constitutional Amendment of 2020 stipulates that: "Treaties ratified by the President of the Republic in accordance with the conditions laid down in the Constitution shall prevail over the law." It is clear from the article that treaties take precedence over laws and thus are also designated as organizations. Under the Constitutional Amendment of 2020, the Algerian Constitutional Founder has given the Constitutional Court jurisdiction to adjudicate on the compatibility of laws and regulations with treaties, in order to confirm the primacy of treaties in a pyramid of criteria that incorporate the legal rule below²⁰.

CONCLUSION

At the end of this study, we record the following results:

-Constitutional control means that all authorities in the State, primarily the legislature, are bound by the rules and provisions of the Constitution. This obligation requires that no law be enacted in

¹⁶ See article 190/2 of the Constitutional Amendment of 2020, op. cit.

¹⁷ Madani Abdelkader and Salmi Abdelsalam, op. cit, p. 232.

¹⁸ Madani Abdelkader and Salmi Abdelsalam, op. cit,p.323.

¹⁹ Tawfiq Ramadan Qadir, The role of the Iraqi Federal Supreme Court in controlling the constitutionality of laws:(a comparative study), thesis for master's degree, Alexandria University, Faculty of Law, 2015, p. 99.

²⁰ See article 190 of the Constitutional Amendment of 2020, op. cit.

its entirety or some of its rules are incompatible with the provisions and provisions of the Constitution.

-Constitutional control in Algeria is regulated by a specialized tribunal established specifically to carry out that supervisory function. The constitutional founder also provides how it is constituted, competencies and procedures before it.

-The Constitutional Court is a guarantee of the protection of the Constitution and the superiority of its rules over other legislation, thereby protecting individuals' rights and freedoms.

-It is clear that Algerian legislation has sided with the approach of judicial control over the constitutionality of laws and has absolutely rejected the approach of political censorship. This approach is valid and preferable in many countries of the world and is consistent with the rule of law and the legal State and is thanked by Algerian legislation.

-For the first time in Algeria, the control of the consent of laws and regulations to treaties was recognized, but what could be noted was that the means of communication of the Constitutional Court had not been expanded by maintaining the mechanism of notification by the public authority and members of Parliament, which was the same as those used before the Constitutional Council.

-Within the 2020 Amendment, the Constitutional Founder expanded the scope of constitutional control to include constitutional control of the compatibility of laws with treaties and control of presidential orders.

From the previous findings, we could make a number of recommendations:

- The need to enable the members of the Constitutional Court to elect the President of the Constitutional Court.
- Effective approval of the control of the constitutionality of the organizations without suspending the practice of notifying them for a fixed period.
- Regulate the legal provisions on the control of the constitutionality of presidential orders.
- Members of the Constitutional Court should only have recourse to the Constitution, applying its provisions without considering any external influence, especially the political influence of people of executive power and favor on one hand at the expense of another.