

The legal basis for notifying the Constitutional Court in light of the Algerian Constitutional amendment of 2020.

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Abstract

Algeria witnessed a change in the body responsible for overseeing the constitutionality of laws after the constitutional amendment of 2020, where the Constitutional Court replaced the Constitutional Council, and was entrusted with the task of overseeing the constitutionality of laws. This shift aims to establish judicial control over the constitutionality of laws and impose certain controls on the Court to perform its supervisory role, which is initiated by specific entities notifying the Court. The Algerian constitutional founder determined the entities that have the right to notify the Constitutional Court, as specified in Articles 193 and 195 of the Algerian constitutional amendment of 2020. Notification can be direct or indirect, through referral from the Supreme Court or the Council of State, when one of the parties involved in a trial claims before a judicial entity that the legislative or regulatory judgment on which the outcome of the dispute depends violates their rights and freedoms guaranteed by the constitution.

Keywords: notification, Constitutional Court, prior verification, rights and freedoms, unconstitutionality plea.

Introduction

The provision on rights and freedoms in the core of the constitution is considered one of the most important guarantees for their protection. This has been recognized in the Algerian constitutional experience since the country's first constitution in 1963, where constitutional protection was granted. However, ensuring these rights relies on the existence of a body responsible for overseeing the constitutionality of laws. Initially, this task was entrusted to the Constitutional Council as a political body responsible for overseeing the constitutionality of laws.

After the constitutional amendment of 2020, Algeria witnessed a change in the oversight body, as the Constitutional Court replaced the Constitutional Council. This indicates a shift towards judicial oversight of the constitutionality of laws, replacing political oversight. Additionally, the notification process has been expanded, allowing individuals who claim that a legislative or regulatory judgment that the outcome of the dispute depends on violates their rights and freedoms as stipulated in the constitution to notify the Constitutional Court through referral from the Supreme Court or the Council of State. This issue of unconstitutionality plea is raised during an original lawsuit brought before the judiciary. Organic Law 18-16 regulates the conditions and procedures for initiating unconstitutionality pleas, based on the provisions of Article 188 of the constitutional amendment of 2016, which corresponds to Article 195 of the constitutional amendment of 2020.

The importance of this study lies in the changes Algeria has witnessed in the body responsible for overseeing the constitutionality of laws by adopting judicial oversight, manifested in the establishment of the Constitutional Court. The study also focuses on the notification mechanism as a means to activate the oversight of the constitutionality of law and this study has received significant attention from the legislative, legal, judicial fields and has sparked several academic discussions.

Based on the above, the following problem is posed: Does the notification mechanism provided for in the Algerian constitutional amendment serve as a sufficient means for the Constitutional Court to perform its duties regarding the oversight of the constitutionality of laws?

To address the study's subject and analyze some of its applications, it is divided into three sections. The first section focuses on conceptual and objective identification of notification. The second section discusses direct notification, while the third section explores indirect notification. The study concludes with a conclusion containing results and suggestions.

Conceptual and Objective Identification of Notification

The issue of oversight of the constitutionality of laws is entrusted to a body that varies depending on the political system of the state. The Algerian constitutional founder adopted the issue of overseeing the constitutionality of laws from the country's first constitution, except for the 1976 constitution. There has been a change in the Algerian political system regarding the body responsible for overseeing the constitutionality of laws, moving from political oversight through the Constitutional Council to judicial oversight through the Constitutional Court. This oversight is activated through notification by specific entities, allowing the Constitutional Court to exercise constitutional oversight. Therefore, in this study, we will explore the concept of notification (first subsection) and its scope (second subsection), as detailed below:

First Subject: The Concept of Notification

In this article, we discuss the definition of Notification (first branch) and its characteristics (second branch), which will be elaborated on below

First Branch: definition of notification

Referring to Algerian legislation, there is no specific provision regarding the definition of notification. This has led to the adoption of various juristic definitions. Among these definitions are: notification is "the action taken by the constitutionally authorized body to request the Constitutional Council's position on the constitutionality of a legislative or regulatory provision. This is done by directing a message from the legally authorized body to notify the Constitutional Council, in order to express its opinion or decision regarding the conformity of the provision with the constitution."⁽¹⁾

In another definition, notification is the "mechanism through which communication is made with the council or constitutional court, allowing it to exercise control over a specific matter. It is one of the most important procedures that activates the constitutional control over laws. The identification of the body with the right to notify ensures the nobility and respect of the constitution."⁽²⁾

It can also be defined as "the action taken by the constitutionally authorized body to request the Constitutional Council's position on the constitutionality of a legislative, regulatory, or treaty provision. This is done by directing a message from the legally authorized body to

notify the extent of conformity or constitutionality of the presented provision with the constitution, either wholly or partially."⁽³⁾

Second Branch: Characteristics of notification (4)

Article 193 of the constitutional amendment of 2020 states that: "The Constitutional Court is notified by the President of the Republic, the President of the Council of the Nation, the President of the National Popular Assembly, the Prime Minister, or the 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."

According to the provisions of this article, the characteristics of a notification can be summarized as follows:

1. The exclusive power of notification rests with certain parties: This can be deduced from the content of Article 193 of the constitutional amendment of 2020, which lists the individuals who have the right to notify the Constitutional Court in Algeria as follows: the President of the Republic, the President of the Council of the Nation, the President of the National Popular Assembly, the Prime Minister, or the Head of Government, depending on the case, 40 deputies or 25 members of the Council of the Nation.^(4,5)
2. Notification regarding texts and regulations subject to mandatory control by the Constitutional Court: The constitutional founder in Algeria specifically assigned the President of the Republic the obligation to notify in relation to organic laws and the internal regulations of the parliamentary chambers. This also applies to orders issued in accordance with Article 142 of the constitutional amendment of 2020 during the vacancy of the National Popular Assembly or during parliamentary recesses. Orders issued in exceptional circumstances are not subject to notification of the Constitutional Court. A careful reading of this article indicates that orders issued during the vacancy or during parliamentary recesses alone are subject to control by the Constitutional Court, and the constitutional founder required that they be discussed in the Council of Ministers.⁽⁵⁾
3. The political characteristic of notification: This highlights the relationship between the authorities that ensure the principle of separation of powers. All legislative and regulatory texts are subject to control by the Constitutional Court, which are issued by the President of the Republic, the Prime Minister, or the Head of Government, depending on the case and legislative authority.⁽⁵⁾
4. Exclusion of notification for individuals and natural persons and granting them the right to indirect notification: Laws do not provide for individuals' entitlement to file a lawsuit of unconstitutionality through an original lawsuit, which is one of the prominent features of judicial control over the constitutionality of laws applied in most countries. The constitutional founder only granted individuals the right to indirectly notify the Constitutional Court through the procedure of raising the issue of unconstitutionality.⁽⁵⁾

Second Subject: Areas of notification

It is evident from the text of Article 190 of the constitutional amendment of 2020, and from the first paragraph of Article 2 of Organic Law 22-19, which specifies the procedures and methods of notification and referral before the Constitutional Court, that the areas of notification are as follows:

1. The field of treaties, agreements, and conventions: The Constitutional Court can be notified regarding the constitutionality of treaties based on paragraph 02 of Article 190 of the constitutional amendment of 2020. Notification must be given before their

- approval, as specified in Article 190/2 of the constitutional amendment of 2020. If the Constitutional Court decides their unconstitutionality, they shall not be approved.⁽⁶⁾
2. The field of ordinary laws: The Constitutional Court can be notified regarding ordinary laws based on paragraph 02 of Article 190 of the constitutional amendment of 2020. Notification must be given before their issuance, as stated in Article 190/2 of the constitutional amendment of 2020. The President of the Republic has 30 days to issue the law starting from the date of receiving it ⁽⁶⁾, and the law shall not be issued if the Constitutional Court decides its unconstitutionality.⁽⁶⁾
 3. The field of regulations: The Constitutional Court can be notified regarding the constitutionality of regulations based on the third paragraph of Article 190 of the constitutional amendment of 2020. Notification must be given within a month from the date of their publication ⁽⁶⁾. If the Constitutional Court decides the unconstitutionality of a regulation, it loses its effect from the date of its decision.⁽⁶⁾
 4. The field of the compatibility of laws and regulations with treaties: This is a newly introduced case in the constitutional amendment of 2020, stated in the fourth paragraph of Article 190, which says: "The Constitutional Court shall determine the compatibility of laws and regulations with treaties, under the conditions specified in paragraphs 2 and 3 above."
 5. The field of disputes that may arise between the constitutional authorities: This is recognized by Article 192 in its first paragraph, stating: "The Constitutional Court can be notified by the specific authorities mentioned in Article 193 below, regarding the disputes that may arise between the constitutional authorities." The Constitutional Court shall be notified through a reasoned message, to resolve the dispute based on a decision within a maximum period of thirty (30) days from the notification date ⁽⁶⁾. However, these deadlines can be reduced upon the request of the President of the Republic to ten days in case of emergency. ⁽⁶⁾ Regarding the entities that can have disputes, we find them between the legislative and executive authorities, and the relationship between individuals who have the right to notify the Constitutional Court. Therefore, the judiciary is initially excluded as a constitutional authority that could have a dispute with another constitutional authority. The dispute may arise in the field of legislation, control, or consultation.⁽⁷⁾
 6. The field of interpreting a judgment or several constitutional provisions: This is recognized by the second paragraph of Article 192 of the constitutional amendment of 2020, which says: "These entities can notify the Constitutional Court regarding the interpretation of a judgment or several constitutional provisions, and the Constitutional Court expresses its opinion on them."

A part of the jurisprudence of interpretation defines it as: "Clarifying what was unclear or ambiguous in the required text in order to lift this ambiguity and clarify it, leading to determining the intention of the constitution to guarantee the unity of constitutional application and its stability." ⁽⁸⁾

The text of Article 192/2 of the constitutional amendment of 2020 indicates that: "These entities can notify the Constitutional Court about the interpretation of a judgment or several constitutional provisions, and the Constitutional Court expresses its opinion on them." The Constitutional Court is responsible for interpreting a judgment or constitutional provisions. The principle is that legislative texts should not be interpreted in a way that goes against their purposes, ⁽⁹⁾ so the interpretation should be "revealing the will of the legislator who drafted these texts, forming their content, avoiding the liberation, deception or misappropriation of this will, and committing to the reality of its dimensions and purposes. Therefore, these texts should

not be interpreted in a way that diminishes their true content or deviates from their objectives."⁽⁹⁾ The constitutional founder limited the right to submit a request for interpretation to the same entities that are entitled to notification, except for individuals. These entities include the President of the Republic, the Prime Minister or the Head of Government depending on the situation, the President of the People's National Assembly, the President of the Council of the Nation, forty (40) deputies, and twenty-five (25) members of the Council of the Nation.

Based on the above, the Constitutional Court issues its opinion within thirty (30) days from the date of notification, but these deadlines can be reduced upon the request of the President of the Republic to ten days in case of emergency.⁽⁹⁾

Second Section: Direct Notification

Direct notification is a type of notification that is carried out either by the President of the Republic, which is obligatory and related to specific areas, or by some authorities specified in the constitution. It will be detailed as follows:

First Subject: Obligatory Notification

The President of the Republic has the exclusive authority for this type of notification. Its areas include:

1. Notification for conformity of organic laws with the constitution: This is stated in Article 190 of the constitutional amendment of 2020, in its fifth paragraph: "The President of the Republic shall notify the Constitutional Court of the necessity of conformity between the organic laws and the constitution..." The reason for this is that organic laws differ from other ordinary laws as they regulate matters of constitutional nature and they supersede ordinary laws. Therefore, they must conform to the constitution as a higher authority.
2. Notification regarding the conformity of the internal regulations of the People's National Assembly and the Council of the Nation with the constitution: This is stated in the sixth paragraph of Article 190 of the constitutional amendment of 2020: "The Constitutional Court shall decide on the conformity of the internal regulations of each of the two chambers of the Parliament with the constitution, according to the procedures mentioned in the previous paragraph." The previous paragraphs refer to obligatory notification, which is within the prerogative of the parliament. Articles 5 and 6 of Article 190 of the constitutional amendment of 2020 indicated that the start point of the notification is after the Parliament's approval of the organic laws or the chamber's approval of its internal regulations. However, these paragraphs did not mention the end date of the notification. Nevertheless, the President of the Republic issues the laws within thirty days, during which the organic law is subject to conformity control before its issuance by the President of the Republic,⁽⁶⁾ and its issuance is subject to the decision of the Constitutional Court.⁽⁵⁾
3. Notification concerning the constitutional control of orders issued in accordance with Article 142 of the constitution: This condition was first introduced in the constitutional experience in the constitutional amendment of 2020, and it is within the prerogative of the President of the Republic. According to the provisions of the second paragraph of Article 142 of the constitutional amendment of 2020: "The President of the Republic is obligated to notify the Constitutional Court regarding the constitutionality of these orders." If the Constitutional Court decides their unconstitutionality, they lose their effect from the date of its decision.⁽⁶⁾

The constitutional founder did not specify deadlines for notifying the Constitutional Court regarding orders, nor did he refer to the start and end dates of notification. However, the Constitutional Court must be notified about the orders before they are presented to Parliament,⁽⁵⁾ and the Constitutional Court must decide on them within 10 days from the date of notification.⁽⁴⁾

Second Subject: permissive notification.

This type of notification is dependent on the authority that can use it, and thus, they have the freedom to use it or refrain from doing so. This is inferred from Article 190 of the constitutional amendment of 2020, which states: "The Constitutional Court can be notified...", indicating its permissibility and non-binding nature. The Algerian constitutional founder specified the authorities that can use it and the areas in which permissive notification can be realized.^(5,10)

1. President of the Republic: The President of the Republic derived the authority of permissive notification in all the constitutional amendments to the 1989 Constitution, including the current constitutional amendment.
2. Prime Minister or Head of Government: Referring to the constitutional experience, we note that the right of permissive notification granted to the Prime Minister was first mentioned in the constitutional amendment of 2016 and also in 2020, as a representative of the executive authority. This is because, according to Articles 112 and 141 of the constitutional amendment of 2020, the Prime Minister is responsible for implementing laws and regulations, which may encourage state institutions to fulfill their duties.
3. President of the Council of the Nation: The constitutional founder granted him this right, starting from the constitutional amendment of 1996 and subsequent amendments.
4. President of the People's National Assembly: The constitutional founder granted him this right since the first constitution of the Algerian Republic in 1963, as well as in subsequent constitutions and amendments. However, the 1976 Constitution did not regulate this right.
5. Forty deputies in the People's National Assembly: This right was decided for the first time in the constitutional amendment of 2016, requiring fifty (50) deputies. However, the number was reduced to forty deputies in the constitutional amendment of 2020.
6. Twenty-five members in the Council of the Nation: This right was mentioned for the first time in the constitutional amendment of 2016, requiring 30 members. However, the required number for notification was reduced to twenty-five (25) members in the constitutional amendment of 2020.

According to Article 193(2) of the constitutional amendment of 2020, the right to notification is granted through a notification letter signed by forty (40) deputies or twenty-five (25) members of the Council of the Nation. This applies to laws voted on by Parliament and ensures that the minority has the ability to oversee and prevent the dominance of the parliamentary majority, especially if they are from the ruling party. This is in accordance with Article 116 of the constitutional amendment of 2020, which grants parliamentary opposition the right to participate in parliamentary work and political life.⁽²⁾

Based on what has been presented, the Algerian constitutional founder granted the parliamentary opposition the right to notify the Constitutional Court by reducing the required threshold for signing the notification petition to either forty (40) deputies in the People's National Assembly or twenty-five (25) members of the Council of the Nation. This is based on the fifth clause (05) of Article 116, which recognized the rights of the parliamentary opposition,

including the right to notify the Constitutional Court according to Article 193(2) of the constitutional amendment of 2020.

Notification is important as it is a crucial stage in the legislative process, exercised when there is an unconstitutional provision. The constitutional amendment of 2020 allows the notifying parties to refer to the Constitutional Court in case of disputes between constitutional institutions.⁽¹⁰⁾

Indirect Notification (payment of unconstitutionality)

The Algerian legal system witnessed a change in the body responsible for overseeing the constitutionality of laws. While previous constitutions and constitutional amendments before the 2016 amendment did not grant individuals the right to challenge the unconstitutionality of laws, the 2020 constitutional amendment now allows individuals to raise the issue of unconstitutionality when laws violate rights and freedoms guaranteed by the constitution during a judicial lawsuit.⁽¹¹⁾ Although the issue of unconstitutionality is subject to specific criteria, this study refers to the concept of "payment of unconstitutionality" (first requirement) and the criteria for raising issues of unconstitutionality (second requirement).

First Subject: Concept of payment of unconstitutionality

The payment of unconstitutionality is considered a defensive measure raised by one of the disputing parties with the status and interest to challenge the constitutionality of the legislative ruling on which the dispute depends. It is claimed that the legislative ruling violates rights and freedoms guaranteed by the constitution before judicial or administrative authorities.⁽¹²⁾

The French Constitution of 1958, as amended in 2008, states in Article 61-1: "If, during proceedings before a judicial body, the existence of a legal provision that infringes the rights and freedoms guaranteed by the Constitution becomes apparent, the matter may be referred by the judicial body to the Constitutional Council for a decision within a specified period." The French legislator then enacted Fundamental Law No. 1523 of 2009 on the application of Article 61-1 of the constitutional amendment of 2008, using the term "primary constitutional issue" and included it in Article 23.⁽¹¹⁾

Some jurists argue that the French constitutional founder was more precise when using the term "Primary constitutional question," unlike the Algerian constitutional founder who used the term "payment of unconstitutionality." This is because, upon careful examination, it is clear that the mechanism does not constitute a challenge to unconstitutionality as it allows the judge to decide on the constitutional issue, as fully expressed in judicial oversight.

Therefore, the mechanism of payment of unconstitutionality is considered a preliminary issue that must be resolved before discussing the merits of the case. The Algerian constitutional founder included it for the first time in the constitutional amendment of 2016 in Article 188 and also in the constitutional amendment of 2020 in Article 195, which states: "The Constitutional Court may be notified of the payment of unconstitutionality by referral from the Supreme Court or the Council of State when one of the parties in the trial before a judicial body claims that the legislative or regulatory ruling on which the dispute depends violates their rights and freedoms guaranteed by the constitution."

Second Subject: Procedural requirements for unconstitutional payment

The procedural requirements for unconstitutional payment include formal and objective conditions, which can be summarized as follows:

First branch: Formal requirements

Formal requirements refer to the legal conditions that must be met for unconstitutional payment. These conditions may relate to the individuals who have the right to raise the issue of unconstitutional payment, as well as the authority before which the payment is raised. The following points clarify these requirements:

First point: Parties with the right to raise the issue of unconstitutional payment

According to the constitutional amendment of 2020 in Article 195 and Organic Law 18-16 in Article 02, the unconstitutionality of a legislative provision that determines the outcome of a dispute can be challenged by the other party to the dispute before the courts. This can be done through a subsidiary lawsuit that can be raised at all stages of the proceedings. This indicates that this right is available only to the parties involved in the dispute when considering a dispute presented before the courts. According to Article 04 of Organic Law 18-16,⁽¹³⁾ the judge cannot raise this issue of their own accord because it does not concern the general system. Thus, the court handling the original claim suspends the case and refers it to the Supreme Court or the Council of State, depending on the situation.⁽¹⁴⁾

Second point: Conditions related to the authority before which the issue of unconstitutional payment is raised

The issue of unconstitutional payment can be raised when a dispute is pending before a judicial authority that is subject to either the administrative or ordinary judicial system, as stated in Article 02 of Organic Law 18-16.

It should be noted that the issue of unconstitutional payment cannot be raised before the Supreme Court of the State, nor can it be raised before the Court of Dispute Settlement. Additionally, it is not admissible before administrative authorities exercising quasi-judicial powers.⁽¹³⁾

Third point: The request for unconstitutional payment must be in the form of a written and separate memorandum

Another formal requirement is that the constitutional claim must be raised separately from the original claim⁽¹²⁾, otherwise it will be rejected. The memorandum must be accompanied by a statement of appeal before the Criminal Court. The term "separate" means that the constitutional claim must be independent and not submitted with any other request or application that differs in substance. It is also required that the memorandum be written, and specifying the cause of action is one of the essential procedural steps to complete the claim.⁽¹³⁾

Second branch: Objective requirements

Objective requirements for unconstitutional payment are as follows:

First point: The legislative or regulatory provision challenged must infringe upon the rights and freedoms of individuals

The challenged law must violate the rights and freedoms guaranteed by the constitution. This is stated in the constitutional amendment of 2020 in Article 195. This requirement is recognized by most constitutions, including the Moroccan and French constitutions.⁽¹³⁾

It is worth noting that the Algerian constitutional amendment of 2020 added regulatory provisions to the category of provisions subject to unconstitutional payment. These are decrees that have the force of law and have previously escaped scrutiny.⁽¹⁵⁾

Second point: Absence of a prior decision by the Constitutional Court declaring the provision in question constitutional, unless there has been a change in circumstances

According to Article 198/5 of the constitutional amendment of 2020, decisions of the Constitutional Court are final and binding on all public, administrative, and judicial authorities. Therefore, they cannot be challenged by these authorities or by individuals. This is because the Constitutional Court has already issued a decision declaring the provision to be constitutional.^(13,16)

Third point: Seriousness of the payment

It is required that the payment has an impact on the case and is not simply intended to prolong the dispute. The seriousness of the payment is evaluated by the judge to whom the payment is presented. If the reasons stated in the memorandum are not sufficient, the payment is considered not serious. The payment is also not serious if the reasons are not mentioned in the memorandum at all. Therefore, the judge has the right to reject the payment due to its lack of seriousness.⁽¹⁷⁾

Conclusion

The Algerian constitutional experience has witnessed significant development in the control of the constitutionality of laws, especially since the constitutional amendment of 2020, which marked a qualitative leap from political oversight to judicial oversight. The range of notified bodies has been expanded to include various entities, including parliamentary opposition. Individuals claiming that a legislative or regulatory provision violates rights and freedoms specified in the constitution can notify these entities through a referral from the Supreme Court or the Council of State.

Based on the above, we have reached a set of results that can be summarized as follows:

1. The Algerian constitutional founder granted certain bodies the right to notify the Constitutional Court, sometimes directly and mandatory, specifically regarding organic laws, internal regulations of parliamentary chambers, and orders. It can also be permissive in relation to ordinary laws, international agreements, and regulations, as well as the conformity of laws and regulations with treaties. It may also relate to disputes that may arise between constitutional authorities. The constitutional founder also allowed indirect notification, which is manifested in the referral of unconstitutionality.
2. The right to refer unconstitutionality was mentioned for the first time in the Algerian constitutional experience in Article 188, and it is also included in the current constitutional amendment in Article 195.
3. The Algerian constitutional founder specified the mechanism of referring unconstitutionality with a set of formal and substantive conditions, including the parties to the dispute, and it cannot be raised by the judge.

Based on this, we propose the following:

1. Expansion of notification to other entities such as civil society associations, the National Human Rights Council, and the High Authority for Transparency and the Prevention and Combating of Corruption.

2. Expansion of notification to judicial bodies by referring the Constitutional Court, not only to the Supreme Court and the Council of State, but also to other judicial bodies. Expanding the referral supports the preservation of the legal validity of legal texts, especially considering the extensive expertise of judicial bodies in detecting texts that violate the constitution.
3. The need to allow the Constitutional Court to take automatic action whenever there is a violation of the rights and freedoms of individuals.

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