

Title: The Authority Responsible for Constitutional Oversight in Algeria (Before and After the 2020 Constitutional Amendment)

Hana Arour

Dr., Faculty of Law and Political Science, Department of Law, Ziane Achour University of Djelfa, Algeria,
hanaaarour@gmail.com

Received: 05.01.2025 Accepted: 06.04.2025 Publishing: 18.05.2025 Doi: 10.56334/sci/8.5.05¹

Abstract

The 2020 constitutional amendment replaced the body responsible for constitutional oversight, formerly the Constitutional Council, with a new institution, the Constitutional Court. This reform formed part of a broader series of constitutional reforms undertaken by the Algerian state at the level of various institutions. However, the fundamental components of the Constitutional Council remain evident, particularly in the composition and eligibility criteria for members, as well as in the role of the president of the Republic in the formation of the Constitutional Court and its powers. Moreover, the same parties authorised to refer matters to the Constitutional Council have been retained under the new system. As such, constitutional oversight in the Algerian system continues to present shortcomings that must be addressed to align with other systems' more effective constitutional bodies.

Keywords: Constitutional Court, Constitutional Council, 2020 Constitutional Amendment, Constitutional Oversight, Algeria

Introduction

Within the framework of rigid constitutions, constitutional norms are regarded as superior to all other legal rules within the state. They are binding upon all public authorities by the principle of the supremacy of the Constitution. This principle entails that the state's entire legal system must be aligned with constitutional provisions in form and substance. Any legal rule that contradicts the Constitution is deemed unconstitutional and must therefore be annulled to ensure respect for the Constitution. On this basis, laws must be reviewed to assess their conformity with the constitution, a process called the review of constitutionality.

¹ CC BY 4.0. © The Author (s). Publisher: IMCRA. Authors expressly acknowledge the authorship rights of their works and grant the journal the first publication right under the terms of the Creative Commons Attribution License International CC-BY, which allows the published work to be freely distributed to others, provided that the original authors are cited and the work is published in this journal.

Citation. Arour H. (2025). The Authority Responsible for Constitutional Oversight in Algeria (Before and After the 2020 Constitutional Amendment). *Science, Education and Innovations in the Context of Modern Problems*, 8(5), 46-57; doi: 10.56352/sci/8.5.05.
<https://imcra-az.org/archive/362-science-education-and-innovations-in-the-context-of-modern-problems-issue-4-vol-viii-2025.html>

This mechanism was established to guarantee the supremacy of the constitution and is entrusted to specialised bodies. Although the core idea is widely accepted, its implementation varies across constitutional systems, particularly with respect to the body's structure entrusted with such oversight. In some systems, safeguarding constitutional supremacy has been assigned to the ordinary judiciary, represented by the various courts constituting it. The United States of America is the cradle of this type of constitutional review, following the landmark 1803 decision of the Supreme Court in *Marbury v. Madison*, which employed the principle of constitutional superiority with exceptional skill.²

In contrast, several European countries, including Austria, Germany, and Italy, were influenced by the Austrian jurist Hans Kelsen and his theory of the hierarchical structure of the legal order. These countries opted to establish constitutional courts or institutions that are distinct and independent from the ordinary judiciary.³

Algeria's first Constitution, promulgated in 1963, initially addressed this matter. This foundational document entrusted the task of constitutional review to the Constitutional Council, which was mandated to ensure respect for the Constitution and regulate the functioning of constitutional institutions. However, the Council never came into practice because of the suspension of the Constitution itself.

The 1976 Constitution made no mention of constitutional review. Nevertheless, the events in 1988 prompted the drafting of a new Constitution in 1989, which re-established the Constitutional Council with the principal mission of ensuring compliance with the Constitution. This function was reaffirmed in the 1996 Constitution and its subsequent amendments, particularly the significant 2016 revision, which marked a critical phase in the evolution and effectiveness of constitutional oversight. The 2016 amendment modified the Council's structure, activation mechanisms, and other important elements.

² Zuhair Shukr, *Al-Nazariyya al-'Āmma li-l-Qaḍā' al-Dustūrī*, vol. 1, 1st ed. (Beirut, Lebanon: Dār Bilāl, 2014), 9.

³ Issam Sa'īd 'Abd Aḥmad, *Al-Raqāba 'alā Dusṭūriyyat al-Qawānīn: Dirāsa Muqārana*, 1st ed. (Lebanon: al-Mu'assasa al-Ḥadītha li-l-Kitāb, 2013), 212.

However, the 2020 constitutional amendment introduced a distinct shift from previous approaches. It abolished the Constitutional Council and established a Constitutional Court, thus marking a new orientation in the exercise of constitutional oversight in Algeria.

All of these significant developments lead us to pose the following central research question:

How Did the Algerian Constitutional Legislator Regulate the Body Responsible for Constitutional Oversight Before and After the 2020 Constitutional Amendment, and to what Extent Will This Reform Contribute to the Development of Constitutional Review in Algeria?

To address this research question, the study has been divided into two main sections:

❖ **Section One:** The composition and membership requirements of the body responsible for constitutional oversight in Algeria (before and after the 2020 constitutional amendment).

❖ **Section Two:** The procedures governing the body's operation responsible for constitutional oversight in Algeria (before and after the 2020 constitutional amendment).

Section One: Composition of the Body Responsible for Constitutional Oversight in Algeria (Before and After the 2020 Constitutional Amendment)

Constitutions commonly establish mechanisms for constitutional review to ensure that enacted laws do not contradict constitutional provisions. This is one of the most important means of safeguarding the Constitution's supremacy. It also serves to maintain the separation of powers by preventing any branch of government from infringing upon the jurisdiction of another. Moreover, it guarantees that all three branches of government remain within the bounds of the Constitution while exercising their respective functions.

To examine this subject in detail, it is necessary to study the body's composition tasked with constitutional oversight in Algeria (first subsection), followed by an analysis of the membership criteria required for appointment to that body (second subsection).

Subsection One: Composition of the Body Responsible for Constitutional Oversight in Algeria

Before the 2020 amendment, Algerian constitutions affirmed that the body responsible for constitutional oversight was the Constitutional Council, which was entrusted with ensuring compliance with the Constitution. This necessitates beginning the present study by examining the composition of the Constitutional Council (First Branch), followed by a discussion of the composition of the current Constitutional Court as provided in the existing Constitution, along with a comparative analysis of the two (Second Branch).

First Branch: The Composition of the Algerian Constitutional Council

Immediately following independence, the Algerian constitutional legislature adopted the concept of constitutional review through the Constitution of 8 September 1963.⁴ According to Articles 63 and 64 of that Constitution, the Constitutional Council comprised seven members. These included the First President of the Supreme Court, the Presidents of the Civil and Administrative Chambers of the Supreme Court, three deputies appointed by the National Assembly, and one member appointed by the president of the Republic. The members of the Constitutional Council elected their president, who did not possess a casting vote.

The 1989⁵ Constitution maintained the same number of members in the Constitutional Council as stipulated in the 1963 Constitution, namely, seven members. However, the distribution of members representing the three branches of power within the Council differed.⁶

Under this arrangement, the president of the Republic appointed three members, including the president of the Constitutional Council, who held a casting vote in the event of a tie. In addition, the National People's

Assembly president was elected, and the Supreme Court elected two members.⁷

The provisions of the first paragraph of Article 164 of the 1996 constitutional amendment set out the composition of the Constitutional Council, which consisted of nine members. These included three members, one of whom was the president of the Council, appointed by the president of the Republic; two members elected by the National People's Assembly; two members elected by the Council of the Nation; one member elected by the Supreme Court; and one member elected by the Council of State.

According to Article 183 of the 2016 constitutional amendment, the composition of the Constitutional Council, which enjoyed administrative and financial independence, was expanded to twelve (12) members. Four members, including the President of the Council and the Vice President, represented the executive authority. The legislative authority retained the same number of representatives as in previous constitutions, namely, four members. To strengthen the Council with expertise in the judicial field, the judicial authority was also granted four representatives, with two members drawn from each of the two central judicial bodies. This adjustment aimed to address the increasing responsibilities of the Constitutional Council following the expansion of its jurisdiction by increasing the number of its members on the one hand and attempting to establish a balance among the three branches of government on the other hand.

However, this balance was widely perceived as merely formal and insufficient to shield the Constitutional Council from fluctuations in Algeria's constitutional system. Nor did it remove the Council's structure from a state of dependence. These criticisms accelerated the call to transform the Constitutional Council into a Constitutional Court, as proposed in the preliminary draft of the 2020 constitutional amendment.

Second Branch: The Composition of the Algerian Constitutional Court

The 2020 constitutional amendment, in Article 186, granted the president of the Republic the authority to

⁴ *Constitution of 1963*, promulgated on 10 September 1963, *Journal Officiel de la République Algérienne*, no. 64 (10 September 1963).

⁵ *Constitution of 1989*, issued by Presidential Decree No. 89-18 of 28 February 1989, *Journal Officiel de la République Algérienne*, no. 9 (1 March 1989).

⁶ According to Article 154, paragraph one, of the *Constitution of 1989*: "The Constitutional Council shall be composed of seven members."

⁷ Farid 'Alwash, *Mechanisms for Protecting the Constitutional Legal Norm in Algeria* (Alexandria, Egypt: Dār al-Jāmi'a al-Jadīda, 2010), 195.

appoint one-third of the members of the Constitutional Court, that is, four members, including the president of the Court. It further stipulated that half of the members of the Court, namely, six members, are to be elected by universal suffrage from among constitutional law professors, with the conditions and procedures of their election to be determined by the president of the Republic. In addition, the amendment granted the judicial authority the right to elect two members of the Constitutional Court, one member elected from among the members of the Supreme Court and another elected by the Council of State from among its members.⁸

Accordingly, the Constitutional Court consists of four members, including the president, appointed by the executive authority. This number is identical to that previously appointed by the president of the Republic to the Constitutional Council. Two additional members are elected from within the judiciary. However, despite the constitutional legislator's adoption of the electoral method, the selection of these two judges is effectively determined by their institutional positions, thus amounting to a de facto appointment.

The remaining six members of the Constitutional Court are elected by vote from among constitutional law professors. This raises a significant question concerning the strict correspondence to the field of specialisation: does eligibility require precise expertise in constitutional law?⁹ Or is possession of a general academic qualification in the field deemed sufficient?¹⁰

⁸ *Presidential Decree No. 20-442 of 15 Jumada al-Awwal 1442, corresponding to December 2020, concerning the promulgation of the constitutional amendment approved by the referendum of 1 November 2020, Official Gazette of the People's Democratic Republic of Algeria*, no. 82 (30 December 2020), 4.

⁹ Aḥsan Gharbī, "A Reading of the Composition of the Constitutional Court in Light of the 2020 Constitutional Amendment," *Journal of Legal and Social Sciences* 5, no. 4 (December 2020): 568.

¹⁰ This category raises numerous questions, the first being the procedure or body responsible for conducting the elections. The second concerns the criteria for identifying constitutional law professors. Whether this should be based on teaching the subject, which must fall under the specialisation of constitutional law, or according to the "training" referred to in Article 187 of the 2020 constitutional amendment. It should be noted that the amendment does not specify the nature, supervising authority, or duration of such training. It merely states that the president of the Republic shall define the conditions and procedures for electing this category.

Furthermore, the constitutional legislator has excluded political representation from the composition of the Constitutional Court by eliminating the role of the legislative authority in its formation. Thus, the legislature has been deprived of any representation within the Constitutional Court.¹¹

Although the 2020 constitutional amendment retained the same total number of members as the former Constitutional Council did, with twelve members¹², the distribution of representation among the three public authorities in the composition of the Constitutional Court remains unbalanced.¹³

Subsection Two: Conditions of Membership in the Body Responsible for Constitutional Oversight in Algeria

To ensure the independence of members of the body responsible for constitutional oversight and to allow them to dedicate themselves fully to their duties, specific conditions have been established. These conditions form part of the general principles governing the assumption of such responsibilities. The chief among them is the requirement that, upon election or appointment as a member of the constitutional oversight body, the individual must cease to hold any other office, function, assignment, or activity, including any form of private practice. This condition was consistently applied before and after the 2020 constitutional amendment.

In addition to this fundamental requirement, several other conditions may be outlined as follows:

First: Attainment of the Legal Age

Previous Algerian constitutions and regulations governing the functioning of the Constitutional Council did not stipulate a specific legal age requirement for membership. However, a customary minimum age of

¹¹ Jamāl bin Sālim, *The Plea of Unconstitutionality Between Foundation, Codification, and Practice: The Algerian Model*, 1st ed. (Algiers: Bayt al-Afkār, 2020), 65.

¹² This number is consistent in the constitutions of several countries, including Spain, Morocco, and Tunisia, although the appointment procedures differ. Amīn 'Āṭif Ṣalībā, *The Role of Constitutional Justice in Establishing the Rule of Law: A Comparative Study* (Tripoli, Lebanon: al-Mu'assasa al-Madaniyya lil-Kitāb, 2002), 69.

¹³ Aḥsan Gharbī, "A Reading of the Composition of the Constitutional Court in Light of the 2020 Constitutional Amendment," previously cited, 566.

forty years was implicitly observed in practice.¹⁴ This practice was later codified in the constitutional text. Article 184 of the 2016 constitutional amendment formally established the requirement that individuals appointed or elected to the body responsible for constitutional oversight must have reached the full age of forty (40) years on the day of their appointment or election.¹⁵

The 2020 constitutional amendment, in Article 187, followed the same approach as its predecessor concerning the legal age requirement for members of the Constitutional Court. However, it raised the minimum age to fifty (50) full years on the day of election or appointment. This provision reveals a certain inconsistency with the legal age recognised in other domains, particularly when one considers that candidacy for the presidency of the Republic, despite the significance of the position, requires only a minimum age of forty (40) years.

Accordingly, it would have been more appropriate for the constitutional legislature to retain the age of forty as the minimum requirement for membership in the Constitutional Council while setting a maximum age limit of seventy-five (75) years.¹⁶

Second: Professional Experience in the Field of Law and Training in Constitutional Law

Before the 2016 constitutional amendment, no constitutional provision or article within the regulatory framework governing the functioning of the Constitutional Council in Algeria specified the conditions for

membership in the body responsible for constitutional oversight. As a result, the president of the Republic enjoyed considerable discretion in appointing representatives of the executive branch to the Constitutional Council, often guided by political considerations.¹⁷

However, Article 184 of the 2016 constitutional amendment required members to adhere to specific conditions when appointed to the constitutional oversight body. These conditions included eligibility criteria and professional experience in the legal field, thus marking a departure from the previous practice.

In setting professional experience as a condition for membership in the Constitutional Council, the 2016 constitutional legislature aimed to develop the Council further and enhance its work quality. The 2016 constitutional amendment stipulated that members of the Constitutional Council must possess no less than fifteen (15) years of professional experience in one of the following areas: higher education in the field of legal sciences, the judiciary, legal practice before the Supreme Court or the Council of State, or in a high-ranking position within the state.¹⁸

This requirement did not limit eligibility to legal expertise alone. Instead, it reflected the necessity of not excluding political considerations in selecting members, thereby allowing the inclusion of individuals with experience in other areas of public service.¹⁹ As the jurist Henri Rousso observed, “*We must understand clearly that a commitment to legal competence does not necessarily mean avoiding politically influenced appointments, as some might believe.*”²⁰

The 2020 constitutional amendment followed the same path, with Article 187, paragraph 2, pursuing the same objective. It required that any member of the Constitutional Court, whether appointed or elect-

¹⁴ Al-Azhar La ‘bīdī and Mabrukā Maḥraz, “Constitutional Review in the Maghreb Countries under Constitutional Reforms: Algeria, Tunisia, Morocco as Models,” *Journal of Legal and Political Sciences*, no. 14 (October 2016): 220. Article 184 of *Law No. 16-01 of 26 Jumada al-Awwal 1437 corresponding to 6 March 2016 on the Constitutional Amendment, Official Gazette of the People’s Democratic Republic of Algeria*, no. 14 (7 March 2016), 2.

¹⁵ As stated in *Presidential Decree No. 20-251 of 15 September 2020 convening the electoral body for the referendum on the draft constitutional amendment, Official Gazette of the People’s Democratic Republic of Algeria*, no. 54 (16 September 2020), Article 187 of the amendment raised the age requirement for members of the Constitutional Court—whether elected or appointed—to fifty full years at the time of their election or appointment.

¹⁶ Nūr al-Dīn ‘Arāsh, “Activating Constitutional Review in Algeria under the 2020 Constitutional Amendment,” *Journal of Studies on the Effectiveness of Legal Norms* 4, no. 2 (2020): 214.

¹⁷ Abd al-Qādir Sharbāl, *Decisions and Opinions of the Constitutional Council in the Interpretation of the Provisions of the Algerian Constitution* (Algiers: Dār Hūma, n.d.), 28.

¹⁸ Article 184, paragraph 2, of the *2016 Constitutional Amendment*. See also: Boukra Idris, Al-Mabādi’ al-‘Āmma li-l-Qānūn al-Dustūrī wa al-Nuẓum al-Siyāsiyya (Algiers: Dīwān al-Maṭbū‘āt al-Jāmi‘iyya, 2016), 231.

¹⁹ Rachida al-‘Āmm, *Al-Majlis al-Dustūrī al-Jazā’irī* (The Algerian Constitutional Council), 1st ed. (Cairo: Dār al-Fajr, 2006), 109.

²⁰ Ibrahim Balamhadi, *Al-Majlis al-Dustūrīyya fī Duwal al-Maghrib al-‘Arabī* (Constitutional Councils in the Maghreb Countries), Master’s thesis in Public Law: State and Public Institutions, Faculty of Law, University of Ben Youssef Ben Khadda, Algeria, 2009–2010, 20.

ed, possess at least twenty (20) years of legal experience and have received training in constitutional law.

However, the constitutional text did not clarify how such extensive legal experience should be acquired. Whether this experience may be accumulated through academic teaching at universities or other law-related professions, such as legal practice or judicial service, remains unclear.

Third: Enjoyment of Civil and Political Rights and Absence of Party Affiliation

The successive constitutions of the Algerian Republic before 2016 supported the establishment of the Constitutional Council and its operational mechanisms through its rulings, emphasising the necessity of including competent members. However, they did not define the specific conditions required to attain such a position.

The 2016 constitutional amendment introduced new and distinct concepts by explicitly setting out the conditions that members of the constitutional oversight body must meet. These included competence, age, and the prohibition against holding multiple concurrent memberships.

The 2020 constitutional amendment continued to elaborate on the eligibility criteria for membership in the constitutional oversight body. It explicitly required that members of the Constitutional Court enjoy full civil and political rights, must not have been convicted of a liberty-depriving sentence, and must not belong to any political party. This aligns with the eligibility criteria for membership in the French Constitutional Council, which requires its members to enjoy civil and political rights.²¹

In addition to the aforementioned conditions, Article 188 of the 2020 constitutional amendment set the term of membership in the Constitutional Court at six (6) years, nonrenewable. Half of the remaining mem-

bers are to be renewed every three years, except the president of the Constitutional Court, who the president of the Republic appoints for a nonrenewable term of six (6) years. This term is relatively short compared with those applied in other constitutional courts.²²

Given the sensitive position that the president of the Constitutional Court may assume, particularly if they are called upon to exercise the functions of Head of State owing to a vacancy in the presidency coinciding with a vacancy in the Presidency of the Council of the Nation, the president of the Court must meet additional criteria. These are the same conditions required for candidacy for the office of the President of the Republic, as set out in Article 87 of the 2020 constitutional amendment, except for the age requirement.²³

Section Two: Procedures Governing the Operation of the Body Responsible for Constitutional Oversight in Algeria (Before and After the 2020 Constitutional Amendment)

The body entrusted with constitutional oversight is the sole authority empowered to exercise control over the constitutionality of laws, as it is the institution responsible for ensuring compliance with the Constitution and overseeing its interpretation. The forms of constitutional review vary, including a review of conformity and constitutionality. However, such review mechanisms are not self-activating and require referral by designated authorities. These include the president of the Republic, the president of the Council of the Nation, the president of the National People's Assembly, the Prime Minister or Head of Government (as the case may be), and members of Parliament. These constitute the traditional referral mechanisms (*Subsection One*).

Moreover, constitutional oversight may also be initiated through a plea of unconstitutionality, representing the modern referral method (*Subsection Two*).

Subsection One: Traditional Methods of Activating the Constitutional Oversight Body in Algeria

²¹ Article 10 of *Ordonnance No. 58-1067 of 7 November 1958 on the Organic Law Regarding the Constitutional Council*, as amended by *Organic Law No. 2013-906 of 11 October 2013 on Transparency in Public Life*, states: "The Constitutional Council shall, where applicable, declare the automatic resignation of any of its members who has engaged in an activity, accepted a function, or assumed an elective mandate incompatible with their status as a member of the Council, or who no longer enjoys civil and political rights. A replacement shall be appointed within eight days."

²² Nūr al-Dīn 'Arāsh, *op. cit.*, 220.

²³ Article 188 of the 2020 Constitutional Amendment.

The 1989²⁴ Constitution represents the proper foundation for constitutional review in Algeria through establishing the Constitutional Council, as provided in Article 156. Under this provision, the President of the Republic and the President of the National People's Assembly could refer to the Council.

The 1996²⁵ Constitution expanded the list of referring authorities by adding the president of the Council of the Nation as a new actor authorised to seize the Constitutional Council. Furthermore, the 2016 constitutional amendment introduced the office of the prime minister as an additional authority entitled to initiate a referral.

Article 193 of the 2020 constitutional amendment preserved the aforementioned entities as traditional means of referring matters to the Constitutional Court.

First: The President of the Republic

In line with the status of the president of the Republic within the Algerian political system as the guardian of the Constitution and the authority responsible for preventing its violation,²⁶ the constitutional legislator granted the president the right to refer matters to the body responsible for constitutional oversight. This was first established under Article 166 of the 1996 Constitution, which authorised referral to the Constitutional Council, and was reaffirmed by the 2016²⁷ Constitutional amendment in Article 187, paragraph one.

The President of the Republic exercises a mandatory referral when it concerns organic laws or the internal regulations of the National People's Assembly and the Council of the Nation. This type of referral must occur prior to the enactment of the text. This obliga-

tion is outlined in paragraphs two and three of Article 186 of the 2016 amendment and the corresponding paragraphs of Article 165 of the 1996 Constitution.

The constitutional legislature also introduced a mandatory referral to the Constitutional Court by the president of the Republic regarding ordinances issued under Article 142 of the 2020 constitutional amendment.²⁸

In contrast, an optional referral is provided under Article 190 of the 2020 constitutional amendment. This permits the president of the Republic to refer matters concerning the constitutionality of treaties prior to their ratification, ordinary laws before their promulgation, or regulations within one month of their publication. The president may also request a review of the conformity of laws or regulations with international treaties.

Second, the Presidents of the Two Chambers of Parliament

Given that the logic underlying constitutional review ensures the soundness of legislative acts and their conformity with the Constitution, a logic that aligns fundamentally with the principles of legislation in preserving the rule of law and protecting public rights and freedoms, the constitutional legislator recognised the right of members of the legislative authority to initiate such review. This right was first granted to the National People's Assembly under the 1963 Constitution, as stipulated in Article 64, and reaffirmed in the 1989 Constitution under Article 156.

The 1996 Constitution maintained the exact mechanism for referral to the Constitutional Council, with the National People's Assembly president continuing to exercise this authority. Furthermore, introducing a bicameral legislature by the 1996 Constitution led to the establishment of an additional constitutional body alongside the National People's Assembly, the Council of the Nation. In addition to its legislative function, the president of the Council of the Nation was also granted the power to refer matters to the Constitutional Council and thereby activate constitutional oversight, as stated in Article 166 of the 1996 Consti-

²⁴ *Constitution of 1989, Official Gazette of the People's Democratic Republic of Algeria*, no. 9 (1 March 1989).

²⁵ *Constitution of 1996, Official Gazette of the People's Democratic Republic of Algeria*, no. 76 (8 December 1996).

²⁶ Hassānī Muḥammad Munīr, *Tawṣī'at Ḥaqq Ikhtār al-Majlis al-Dustūrī li-l-Barlāmāniyyīn Ta'nīn li-l-Wazīlā al-Tashī'iyya* (Expanding Parliamentarians' Right of Referral to the Constitutional Council as a Safeguard for the Legislative Function), University of Kasdi Merbah, Ouargla, 3.

²⁷ *Law No. 16-01 of 6 March 2016 on the Constitutional Amendment, Official Gazette of the People's Democratic Republic of Algeria*, no. 14 (7 March 2016).

²⁸ Aḥsan Gharbī, "Constitutional Review under the 2020 Constitutional Amendment," *Journal of Law and Human Sciences* 13, no. 4 (2020): 29.

tution and confirmed by Article 187 of the 2016 constitutional amendment.

The 2020 constitutional amendment followed the same path set out in Article 193. It grants both the president of the National People's Assembly and the president of the Council of the Nation, independently, the right to refer to the Constitutional Court matters concerning the constitutionality of treaties, ordinary laws, and regulations and the compatibility of laws or regulations with ratified treaties. They exercise this right in their capacity as representatives of the people. This form of referral is considered optional.

The granting of the right to refer matters to the body responsible for constitutional oversight to the legislative authority, represented by the presidents of the two chambers, which may be justified as a "consecration of the principle and logic of majority and minority within the parliamentary chambers themselves." This right is accorded to the legislative authority because it represents the people and the general will and is the original holder of the legislative function, thus requiring its consent even when the government exercises such legislative functions.²⁹

Third: The Prime Minister or Head of Government

In 2016, the constitutional legislature extended the right of referral to the prime minister, the second key figure within the executive branch, to strengthen the effectiveness of constitutional review and expand the opportunities for referral to the Constitutional Council.³⁰ This authorisation enabled the Prime Minister to refer matters to the Constitutional Council to review the constitutionality of ordinary laws, treaties, and regulations. Such a referral is considered optional.³¹

This new approach represents an additional safeguard to prevent the enactment of any law that contravenes the provisions of the Constitution. It reflects the application of the principle of balance between the branches of power and the protection of citizens' rights and freedoms and is therefore commendable. However, the likelihood of this right being exercised

remains low, as the Prime Minister, who typically holds a parliamentary majority, can, in practice, prevent the passage of an unconstitutional law without the need to refer it for constitutional review.³²

On the other hand, it may be observed that the prime minister's exercise of the right of referral could be conditional upon the will of the president of the Republic, particularly given that the prime minister's powers have been reduced under the constitutional amendment.³³

According to Article 193 of the 2020 constitutional amendment, and depending on the circumstances, the authority to refer matters to the Constitutional Court is exercised either by the prime minister or the head of government. This distinction arises from the adoption of two possible titles for the head of the executive: the government is led by a head of government if the legislative elections result in a parliamentary majority or by a prime minister if the elections yield a presidential majority. In both cases, the officeholder retains the same powers and subordinate status vis-à-vis the president of the Republic.³⁴

Fourth: The Right of Members of Parliament

The recognition by the constitutional legislature in 2016 of the right of members of the National People's Assembly and the Council of the Nation to refer matters to the Constitutional Council represents a necessary safeguard aimed at activating the constitutional review process in Algeria. Article 187, paragraph two, of the 2016 constitutional amendment granted the right of referral to fifty (50) deputies and thirty (30) members, thereby enabling the parliamentary opposition to initiate constitutional oversight. This measure contributes to constructing a state governed by the rule of law and reinforces pluralistic democracy.³⁵

²⁹ Hassānī Muḥammad Munīr, *op. cit.*, 4.

³⁰ Ya'īsh Tammām Shawqī and Danish Riyād, "Expanding the Referral Power to the Constitutional Council and Its Role in the Development of the Constitutional Oversight System," *Journal of Legal and Political Sciences*, University of El Oued, Hamma Lakhdar, no. 10 (October 2016): 158.

³¹ Boukra Idrīs, *op. cit.*, 232.

³² Ūnīṣī Linda, "The 2016 Constitutional Amendment and Its Impact on the Development of Constitutional Oversight in Algeria," *Journal of Law and Political Sciences*, University of Abbas Laghrour, Khenchela, no. 6 (June 2016): 107.

³³ Ya'īsh Tammām Shawqī and Danish Riyād, *op. cit.*, 158.

³⁴ Article 103 of the 2020 Constitutional Amendment states: "The government is led by a Prime Minister if the legislative elections result in a presidential majority. It is led by a Head of Government if the elections result in a parliamentary majority. The government shall consist of the Prime Minister or Head of Government, as the case may be, and the ministers who compose it."

³⁵ Boukra Idrīs, *op. cit.*, 232.

The objective of this amendment was to enhance the independence of constitutional review.³⁶ Moreover, it will strengthen pluralist democracy by enshrining the rights of the parliamentary opposition to refer laws passed by Parliament to the Constitutional Council. This approach is consistent with the French constitutional legislature, who granted the parliamentary minority the right to seize the Constitutional Council.³⁷

The referral letter must include the specific provisions subject to review and the justifications that support the referral. It must also be accompanied by a list containing detailed information, including the names, surnames, signatures, and official identification cards of the deputies of the National People's Assembly or members of the Council of the Nation. In addition, the referral letter must be formally submitted by one of the authorised referring parties to the registry of the Constitutional Council. These requirements are stipulated in Article 10 of the 2016 Rules Governing the Functioning of the Constitutional Council.³⁸

The 2020 constitutional amendment reduced the quorum required for deputies or members of the Council of the Nation to validly refer matters to the Constitutional Court concerning treaties, ordinary laws, regulations, or the conformity of such texts with treaties. The threshold was lowered from fifty (50) deputies or thirty (30) members of the Council of the Nation to forty (40) deputies or twenty-five (25) members.

Nevertheless, this quorum remains high and does not effectively enable the parliamentary opposition to exercise its right of referral to the body responsible for constitutional oversight, a right established by Article 116 of the 2020 constitutional amendment.³⁹ This situation calls for a further reduction in the required quorum, particularly for the Council of the Nation members. The proportional representation allocated to each chamber does not achieve parity

regarding the right of referral, which remains optional rather than mandatory.

Subsection Two: Modern Methods of Activating the Constitutional Oversight Body in Algeria

The 2016 constitutional amendment introduced a new mechanism through which citizens could protect the rights enshrined in the Constitution in the event of a violation by the legislative or executive authority. Article 188 of the 2016 amendment granted citizens the right to refer matters to the Constitutional Council and established the procedural pathway via the Supreme Court or the Council of State. It also defined the scope of this right as violations of the rights and freedoms guaranteed by the Constitution. It clarified its timing in the context of a case pending before a court, whether civil, criminal, or administrative.⁴⁰

Referral to the Constitutional Council through a plea of unconstitutionality falls within the a posteriori (ex post) review category, as specified in Article 9 of the 2016 Rules Governing the Functioning of the Constitutional Council. This amendment represents a qualitative leap in strengthening and activating constitutional oversight. It enables the body responsible for constitutional review to exercise control through a plea of unconstitutionality, which is a form of review carried out after the promulgation of a legislative or regulatory text, and it is initiated through referral by either the Council of State or the Supreme Court.⁴¹

First Branch: The Plea of Unconstitutionality as a New Mechanism for the Operation of the Constitutional Oversight Body in Algeria

Article 188 of the 2016 constitutional amendment adopted the modern mechanism known as the **plea of unconstitutionality** within the Algerian constitutional system for the first time. This mechanism strengthened constitutional protection and safeguarded citizens' constitutionally guaranteed rights and freedoms. The amendment established the fundamental principles for applying this mechanism, whereas the organic law set out the detailed conditions for its implementation.

³⁶ Al-Azhar La 'bīdī and Mabrukha Mahraz, *op. cit.*, 220.

³⁷ Maysāwī Hanān, "The Impact of the 2016 Constitutional Amendment on the Algerian Constitutional Council in the Field of Constitutional Oversight," *Journal of Advanced Legal Research (JAL)*, no. 4 (June 2016): 34.

³⁸ *Rules Defining the Functioning of the Constitutional Council, Official Gazette of the People's Democratic Republic of Algeria*, no. 29 (11 May 2016).

³⁹ Article 193 of the 2020 Constitutional Amendment. Article 187 of the 2016 Constitutional Amendment.

⁴⁰ Jamāl bin Sālim, "The Citizen's Right to Refer to the Constitutional Council: The French Model," *Journal of Legal Research and Studies and Its Foundations*, no. 9 (August 2016): 197–198.

⁴¹ Aḥsan Gharbī, *op. cit.*, 26.

The 2020 constitutional amendment retained this mechanism and its conditions of application while further reinforcing it in several respects.

Suppose that the body responsible for constitutional oversight determines that the legislative text is unconstitutional. In that case, the text loses its legal effect as of the date specified in the oversight body's decision. By Article 191 of the 2016 constitutional amendment, this decision is binding on all public authorities, administrative bodies, and judicial institutions.⁴² and Articles 195 and 198, paragraph 4, of the 2020 constitutional amendment.

A set of conditions must be met for a referral to the body responsible for constitutional oversight. These were initially established in Article 188 of the 2016 constitutional amendment and later reaffirmed in Article 195 of the 2020 constitutional amendment. Additional requirements were set out in Organic Law Nos. 18–16,⁴³ given that the constitutional legislature remained consistent with this approach. These conditions are as follows:

➤ There must be a pending judicial dispute before a court that falls within the ordinary or administrative judiciary, excluding the Tribunal of Conflicts and the primary criminal courts. If the competent judicial authority deems the plea of unconstitutionality serious, it must suspend its ruling until the question of constitutionality is resolved. Accordingly, a plea of unconstitutionality may be raised only within the framework of an original action involving a genuine dispute between parties. This mechanism functions as a defensive remedy through which an individual seeks to prevent the application of a legal provision deemed unconstitutional to their case.⁴⁴

➤ A subsidiary plea must be raised by one of the parties to the proceedings, as the plea of unconstitutionality is not considered a matter of public order. The right to raise such a plea belongs to all individuals without distinction. The phrase “one of the parties

to the proceedings” includes both natural and legal persons.⁴⁵

➤ The legislative or regulatory provision that is the subject of the plea must be such that its application directly affects the outcome of the dispute or constitutes the legal basis for prosecution. A plea of unconstitutionality is admissible only in cases where a legislative provision infringes on the rights and freedoms guaranteed by the Constitution. The term “legislative provision” refers to those laws subject to optional review, including ordinary laws, treaties, and regulations.

➤ The text challenged by the unconstitutionality plea must infringe constitutionally guaranteed rights and freedoms. The 2020 constitutional amendment expanded the scope of the plea to include regulatory and legislative provisions, thereby strengthening the protection of rights and freedoms.⁴⁶

The legislative or regulatory provision subject to the unconstitutionality plea must not have already been declared constitutional or in conformity by the Constitutional Court unless circumstances change. The plea must be earnest and not aimed at obstructing the administration of justice.⁴⁷ In addition, it must be submitted as a written, separate, and reasoned memorandum; otherwise, it should be considered inadmissible.

Second Branch: Judicial Authorities Competent to Refer Matters to the Constitutional Oversight Body

The constitutional legislature adopted the mechanism of the subsidiary plea of unconstitutionality rather than the original action brought directly by citizens, owing to the disadvantages associated with the latter, notably its adversarial nature and the potential for many vexatious claims. In its most recent amend-

⁴² Boukra Idrīs, *op. cit.*, 233.

⁴³ *Organic Law No. 18-16 of 22 Dhū al-Hijjah 1439, corresponding to 2 September 2018, establishing the Conditions and Modalities for the Implementation of the Plea of Unconstitutionality, Official Gazette of the People's Democratic Republic of Algeria*, no. 54 (5 September 2018), 10.

⁴⁴ Ya'ish Tammām Shawqī and Danish Riyāḍ, *op. cit.*, 161.

⁴⁵ Ūnīsī Linda, *op. cit.*, 110.

⁴⁶ Jamāl bin Sālim, “The Transition from the Constitutional Council to the Constitutional Court in Algeria: A Change in Form or in Substance?” *Centre for Legal and Political Research and Studies*, vol. 5, no. 2 (2021): 314.

⁴⁷ According to paragraph 3 of Article 8 of *Organic Law No. 18-16*, this is the same condition adopted by the French legislator when regulating the Question Prioritaire de Constitutionnalité (QPC). See: Article 23-2, paragraph 3, of *Organic Law No. 2009-1523 of 10 December 2009 on the Application of Article 61-1 of the Constitution, Journal Officiel*, 11 December 2009, p. 21379: “La question n'est pas dépourvue de caractère sérieux” (“The question is not devoid of serious character”).

ment, the legislator embraced the subsidiary plea by allowing any party to a civil or administrative dispute to raise a plea of unconstitutionality directly before the competent courts, whether from the ordinary or administrative judiciary.⁴⁸

However, these courts are not obliged to refer the plea to the Constitutional Council (now the Constitutional Court); instead, they exercise discretionary power to assess the seriousness of the plea and may proceed with referral only after verifying that the contested legal provision raises a legitimate constitutional issue, which is consistent with their legal expertise.⁴⁹

For the timeframe for adjudicating the plea, the Constitutional Court must issue its ruling within the deadline specified in Article 195(2) of the 2020 constitutional amendment. This period is a maximum of four (4) months, calculated from the date of referral by the Supreme Court or the Council of State. This deadline may be extended once, for an additional four (4) months, by a reasoned decision issued by the president of the Constitutional Court and communicated to the referring judicial authority.⁵⁰

The body responsible for constitutional oversight renders its decision a final and binding ruling applicable to all public, administrative, and judicial authorities.⁵¹ Most members present adoption decisions, and the president's vote is decisive in a tie. However, in cases concerning the constitutionality of organic laws, an absolute majority of all members are required for the decision to be valid.

Conclusion

In its 2016 amendment, the constitutional legislature granted individuals the right to refer matters to the Constitutional Council through a plea of unconstitutionality, on the basis of a referral from the Supreme Court or the Council of State. This measure was intended to provide an effective guarantee for protecting individual rights and freedoms and establish a more substantive form of constitutional review beyond a mere procedural request. However, this step proved insufficient to elevate constitutional oversight

in Algeria to the desired level. This shortcoming prompted the constitutional legislature to respond to criticisms using the 2020 constitutional amendment, which replaced the Constitutional Council, formerly an independent body entrusted with ensuring compliance with the Constitution, with a new constitutional authority, the Constitutional Court. This Court is constitutionally mandated to ensure respect for the Constitution and to regulate the functioning of institutions and the activities of public authorities.

Nevertheless, the most recent constitutional amendment retained several foundational elements of the Constitutional Council within both the organisational and functional dimensions of the Constitutional Court, including the rules governing its operation, such as the mechanism of referral and the procedure of the plea of unconstitutionality. However, this does not imply that the 2020 constitutional amendment failed to introduce substantive innovations. In contrast, it incorporates several important changes that, hopefully, will contribute to enhancing the effectiveness of constitutional oversight, such as the inclusion of university professors through an electoral process rather than by appointment.

In addition, several observations may be noted as follows:

- The rationalisation of the exercise of the plea of unconstitutionality by individuals through the establishment of a filtering system to exclude frivolous or unsubstantiated pleas that serve only to prolong judicial proceedings and unnecessarily burden the Constitutional Court.
- The competent courts must assess the seriousness of the constitutional pleas raised concerning the laws applicable in the trial to prevent excessive accumulation of such pleas before the Supreme Court or the Council of State.
- The unconstitutionality plea has been treated merely as a form of referral without fully acknowledging its potential in advancing Algerian justice toward the genuine protection of rights and freedoms.

Reform must not be limited to the structural transformation of the oversight body alone. Although the constitutional legislature, through the 2020 amendment, sought to overcome many of the criticisms that had previously characterised constitutional review in

⁴⁸ Ya 'Ish Tammām Shawqī and Danish Riyād, *op. cit.*, 163.

⁴⁹ Jamāl bin Sālim, *op. cit.*, 205.

⁵⁰ Article 195, paragraph 2, of the *2020 Constitutional Amendment*.

⁵¹ Final paragraph of Article 198 of the *2020 Constitutional Amendment*.

Algeria, the reform has nonetheless given rise to a new set of concerns that continue to constrain the effectiveness and stature of the Constitutional Court. These include the method by which the president of the Court is appointed, the referral mechanism that remains restricted by time limits, and the prohibition against ex officio referral by the members of the Court themselves. Without action or initiative by the designated referring authorities, the body responsible for constitutional oversight cannot autonomously enforce constitutional protection. Despite its new title as a "Constitutional Court" and the appearance of institutional independence, it still retains several features of the former Constitutional Council. It remains deprived of the power of self-referral.

Bibliography

Books

1. Amīn ‘Āṭif Ṣalībā, *Dawr al-Qaḍā’ al-Dustūrī fī Irsa’ Dawlat al-Qānūn: Dirāsa Muqārana* (Tripoli, Lebanon: al-Mu’assasa al-Madaniyya lil-Kitāb, 2002).
2. Bukrā Idrīs, *al-Mabādi’ al-‘Āmma lil-Qānūn al-Dustūrī wa al-Nuṣum al-Siyāsīyya* (Algiers: Dīwān al-Maṭbū‘āt al-Jāmi‘iyya, 2016).
3. Jamāl bin Sālim, *Da’wā al-Da’ bi’Adam al-Dustūrīyyah bayna al-Ta’ṣīl wa al-Ta’sīs wa al-Mumārashah: al-Namūdḥaj al-Jazā’irī*, 1st ed. (Algiers: Bayt al-Afkār, 2020).
4. Rashīda al-‘Āmm, *al-Majlis al-Dustūrī al-Jazā’irī*, 1st ed. (Cairo: Dār al-Fajr, 2006).
5. Zuhayr Shukr, *al-Nazariyya al-‘Āmma li-l-Qaḍā’ al-Dustūrī*, vol. 1, 1st ed. (Beirut, Lebanon: Dār Bilāl, 2014).
6. ‘Abd al-Qādir Sharbāl, *Qarārāt wa Ārā’ al-Majlis al-Dustūrī fī Ta’wīl Aḥkām al-Dustūr al-Jazā’irī* (Algiers: Dār Hūma, n.d.).
7. Iṣām Sa’īd ‘Abd Aḥmad, *al-Raqāba ‘alā Dustūrīyyat al-Qawānīn: Dirāsa Muqārana*, 1st ed. (Lebanon: al-Mu’assasa al-Ḥadītha lil-Kitāb, 2013).
8. Farīd ‘Alwāsh, *Āliyāt Ḥimāyat al-Qā’ida al-Qānūniyya al-Dustūrīyya fī al-Jazā’ir* (Alexandria, Egypt: Dār al-Jāmi‘a al-Jadīda, 2010).

Master’s Theses

1. Ibrāhīm Balamhadī, *al-Majlis al-Dustūrīyya fī Duwal al-Maghrib al-‘Arabī* (Constitutional Councils in the Maghreb Countries), Master’s thesis in Law, Specialisation: State and Public Institutions, Faculty of Law, University of Ben Youssef Ben Khadda, Algeria, 2009–2010.
2. Ḥassānī Muḥammad Munīr, *Tawsī‘at Ḥaqq Ikhtār al-Majlis al-Dustūrī li-l-Barlāmāniyyīn Ta’nīn li-l-Wazīfā al-Tashwī‘iyya* (Expanding Parliamentarians’ Right of Referral to the Constitutional Council as a Safeguard for the Legislative Function), University of Kasdi Merbah, Ouargla.

Journal Articles

1. Aḥsan Gharbī, “al-Raqāba ‘alā Dustūrīyyat al-Qawānīn fī Zill al-Ta’dīl al-Dustūrī li-Sanat 2020” (Constitutional Review under the 2020 Constitutional Amendment), *Majallat al-Ḥuqūq wa al-‘Ulūm al-Insāniyya* 13, no. 4 (2020).
2. Aḥsan Gharbī, “Qirā’a fī Tashkīlat al-Maḥkama al-Dustūrīyya fī Zill al-Ta’dīl al-Dustūrī li-Sanat 2020” (A Reading of the Constitutional Court’s Composition under the 2020 Amendment), *Majallat al-‘Ulūm al-Qānūniyya wa al-Ijtīmā’iyya* 5, no. 4 (December 2020).
3. al-Azhar La’bīdī and Mabrukā Maḥraz, “al-Raqāba al-Dustūrīyya fī al-Duwal al-Maghāribiyya fī Zill al-Iṣlāḥāt al-Dustūrīyya: Jazā’ir, Tūnis, al-Maghrib Namūdḥajan” (Constitutional Review in Maghreb States under Constitutional Reforms: Algeria, Tunisia, and Morocco as Models), *Majallat al-‘Ulūm al-Qānūniyya wa al-Siyāsīyya*, no. 14 (October 2016).
4. Ūnīsī Linda, “al-Ta’dīl al-Dustūrī 2016 wa Atharahu fī Taṭwīr al-Raqāba al-Dustūrīyya fī al-Jazā’ir” (The 2016 Constitutional Amendment and Its Impact on the Development of Constitutional Review in Algeria), *Majallat al-Ḥuqūq wa al-‘Ulūm al-Siyāsīyya*, University of Abbas Laghrour, Khenchela, no. 6 (June 2016).
5. Jamāl bin Sālim, “al-Intiqāl min al-Majlis al-Dustūrī ilā al-Maḥkama al-Dustūrīyya fī al-Jazā’ir: Taghyīr fī al-Shakl am fī al-Jawhar?” (The Transition from the Constitutional Council to the Constitutional Court in Algeria: A Change in Form or Substance?), *Dā’irat al-Buḥūth wa al-Dirāsāt al-Qānūniyya wa al-Siyāsīyya* 5, no. 2 (2021).

6. Jamāl bin Sālīm, “Ḥaqq al-Muwāṭin fī Ikhtār al-Majlis al-Dustūrī: al-Namūdḥaj al-Faransī” (The Citizen's Right to Refer to the Constitutional Council: The French Model), *Majallat al-Buḥūth wa al-Dirāsāt al-Qānūniyya wa Asāsuhu*, no. 9 (August 2016).

7. Maysāwī Ḥanān, “Athar al-Ta’dīl al-Dustūrī 2016 ‘alā al-Majlis al-Dustūrī al-Jazā’irī fī Majāl al-Raqāba al-Dustūriyya” (Impact of the 2016 Constitutional Amendment on the Algerian Constitutional Council in the Field of Constitutional Oversight), *Majallat Jil al-Abḥāth al-Qānūniyya al-Mu’ammaqa*, no. 4 (June 2016).

8. Nūr al-Dīn ‘Arāsh, “Tafīl al-Raqāba al-Dustūriyya fī al-Jazā’ir fī Zill al-Ta’dīl al-Dustūrī li-Sanat 2020” (Activating Constitutional Oversight in Algeria under the 2020 Amendment), *Majallat al-Dirāsāt Ḥawla Fa’āliyat al-Qā’ida al-Qānūniyya* 4, no. 2 (2020).

9. Ya’īsh Tammām Shawqī and Danish Riyād, “Tawsī’ Ikhtār al-Majlis al-Dustūrī wa Dawruhu fī Taṭawwur Niẓām al-Raqāba al-Dustūriyya” (Expanding Referral to the Constitutional Council and Its Role in the Development of Constitutional Oversight), *Majallat al-‘Ulūm al-Qānūniyya wa al-Siyāsiyya*, University of Hamma Lakhdar, El Oued, no. 10 (October 2016).

Legal Texts

1. *Constitution of 1963*, Official Gazette of the People's Democratic Republic of Algeria, no. 64 (10 September 1963).

2. *Constitution of 1989*, Official Gazette of the People's Democratic Republic of Algeria, no. 9 (1 March 1989).

3. *Constitution of 1996*, Official Gazette of the People's Democratic Republic of Algeria, no. 76 (8 December 1996).

4. *Law No. 16-01 of 6 March 2016 amended the Constitution*, Official Gazette of the People's Democratic Republic of Algeria, no. 14 (7 March 2016).

5. *Rules Defining the Functioning of the Constitutional Council*, Official Gazette of the People's Democratic Republic of Algeria, no. 29 (11 May 2016).

6. *Law No. 16-01 of 26 Jumada al-Awwal 1437, corresponding to 6 March 2016, on the Constitutional Amendment*, Official Gazette of the People's Democratic Republic of Algeria, no. 14 (7 March 2016), 2.

7. *Presidential Decree No. 20-442 of 15 Jumada al-Awwal 1442 corresponding to December 2020 on the promulgation of the Constitutional Amendment approved in the referendum of 1 November 2020*, Official Gazette of the People's Democratic Republic of Algeria, no. 82 (30 December 2020), 4.

8. *Presidential Decree No. 20-251 of 15 September 2020 convened the electoral body for the constitutional amendment referendum*, Official Gazette of the People's Democratic Republic of Algeria, no. 54 (16 September 2020).

9. *Organic Law No. 18-16 of 22 Dhu al-Hijjah 1439 corresponding to 2 September 2018 on the Conditions and Modalities for the Implementation of the Plea of Unconstitutionality*, Official Gazette of the People's Democratic Republic of Algeria, no. 54 (5 September 2018), 10.

10. *Rules Defining the Functioning of the Constitutional Council*, Official Gazette of the People's Democratic Republic of Algeria, no. 29 (11 May 2016).

11. *Ordonnance n° 58-1067 du 7 novembre 1958 portant loi organique sur le Conseil constitutionnel, Loi organique n° 2013-906 du 11 octobre 2013 relative à la transparence de la vie publique*.

12. *Loi organique n° 2009-1523 du 10 décembre 2009 relative à l'application de l'article 61-1 de la Constitution*, *Journal officiel de la République française*, 11 December 2009, p. 21379.