

Constitutional Court as a Mechanism for Protecting Fundamental Rights and Freedoms According to the 2020 constitutional amendment-

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Abstract

Using its constitutional jurisdiction to examine and resolve legal disputes, the Constitutional Court acts as a vital buffer against internal legal crises in a country. By ensuring that their activities closely adhere to the letter and spirit of the constitution, it assists different constitutional organizations. This places the Constitutional Court at the center of the organization responsible with protecting fundamental liberties and rights. Furthermore, the defense of these rights against legislative overreach can be effectively achieved by raising the argument of unconstitutionality. Therefore, it is crucial to examine the ways in which the Constitutional Court protects fundamental liberties and rights, particularly in light of the 2020 constitutional amendment, and to emphasize the role that it plays in defending these rights against violation.

Key words: Protection of Fundamental Rights, Constitutional Court, Plea Unconstitutionality.

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Introduction:

The 2020 constitutional amendment¹ in Algeria brought about significant and fundamental changes in several crucial and sensitive domains. These changes include enshrining civil society's role in public affairs management, combating corruption within the framework of participatory democracy, limiting electoral terms to a maximum of two, and establishing various advisory bodies to contribute to the public interest and enhance the performance of administrative institutions. Additionally, the amendment created administrative courts of appeal to strengthen two-tier litigation in administrative matters. Perhaps the most notable change for public law researchers is the establishment of the Constitutional Court to replace the Constitutional Council.

The transformation of the Constitutional Council—previously a body for reviewing the constitutionality of laws—into a Constitutional Court remains the most prominent feature of

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Algeria's recent constitutional amendment. This new entity is considered a judicial body tasked with ensuring the supremacy of the constitution, although the constitutional founder did not explicitly refer to it as such.²

The organization of the Constitutional Court is detailed in Chapter Four of the amended Algerian Constitution of 2020, under the title "Oversight Institutions." Article 184 and subsequent articles define oversight institutions as constitutional bodies and supervisory apparatus charged with investigating the conformity of legislative action with the Constitution and the methods of using public funds. Given its importance, the current Constitution dedicates 14 articles to organizing the Constitutional Court, demonstrating the significant attention it has received, particularly when compared to the number of articles allocated to other sections of the same chapter.

The Constitutional Court's importance among various constitutional institutions was further enhanced by the constitutional founder's introduction of a new constitutional provision, unprecedented in Algeria. Article 171 states: "In the exercise of his functions, the judge is bound to apply ratified treaties, the laws of the Republic, and the decisions of the Constitutional Court." This provision effectively makes the Constitutional Court's decisions a new source of legality rules that the administration must adhere to and judges must apply to disputes before them. Consequently, Article 171 grants the Constitutional Court the authority to establish legal rules with constitutional value.

Beyond its role in protecting the principle of constitutional supremacy, the Constitutional Court plays a crucial role in safeguarding human rights. This is achieved through mandatory consultation required of executive institutions in their decisions related to human rights, as well as through the mechanism of constitutional challenge, which the Constitution only permits when the contested legal text pertains to rights and freedoms enshrined in the Constitution. Indeed, the very act of verifying the conformity of legal texts with the Constitution is itself a paramount guarantee of fundamental rights and public freedoms.

While the aforementioned points highlight the importance of the Constitutional Court and the necessity of examining the constitutional framework that governs it and defines its competencies and functions, this importance is further amplified by the fact that the constitutional founder did not refer to an organic law for organizing the Constitutional Court (except in matters related to constitutional challenges). Moreover, most previous studies on the subject have focused on the Court's supervisory competencies, such as reviewing the constitutionality of treaties, laws, and regulations, without addressing the advisory competencies granted to the Constitutional Court in various constitutional articles. These advisory powers effectively position the Court as the primary consultant to the executive authority and the most frequently consulted advisory body, both in normal times and during crises, with the aim of protecting constitutionally established human rights.

Additionally, many constitutionalized rights and freedoms remain mere rhetorical statements and decorative rights, awaiting actual implementation through legislation and protection from legislative overreach through oversight that ensures constitutional supremacy.

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All of the above leads us to question: **Can the Constitutional Court in Algeria be considered a true protector of fundamental rights and freedoms, or is it merely a guarantor of constitutional supremacy?**

This is the main research problem, which leads us to several sub-questions:

1. How has the 2020 constitutional amendment strengthened the Constitutional Court's powers in protecting fundamental rights and freedoms?
2. What are the prospects for the Court in this field?
3. Is the constitutional challenge mechanism a procedural guarantee for these rights?

To address these questions, the scope of this study is defined as examining the contribution of constitutional justice in Algeria to human rights protection and the development of its legislative framework, with the aim of highlighting the constitutional provisions that enable the Constitutional Court to fulfill this role.

We have adopted a descriptive approach to shed light on the Constitution after the 2020 amendment, occasionally employing a historical method to compare the provisions of the current constitutional amendment with those established in the 2016 amendment. This will be explored through the following sections:

Section One: The Scope of Competencies of the Constitutional Court in Protecting Rights and Freedoms within the Algerian Constitution

Section Two: Fundamental Rights and Public Freedoms and the Scope of Their Exercise in the Constitutional Amendment of 2020

Section One :

The Scope of Competencies of the Constitutional Court in Protecting Rights and Freedoms within the Algerian Constitution

The Constitutional Amendment of 2020 expanded and enhanced the role of the Constitutional Court in protecting fundamental rights and public freedoms through several provisions, which broadened its competencies in this domain. This was achieved by defining its scope through provisions related to its members and functioning (First requirement), or those that determine its advisory competencies related to human rights (Second requirement), or through prohibiting infringement upon fundamental rights and public freedoms in the constitutional amendment (Third requirement).

First requirement: Provisions Related to the Organization and Functioning of the Constitutional Court.

in Algeria, it is necessary to examine its definition. We observe that the Constitution has placed it in a legal position describing it as the Before exploring the competencies of the Constitutional Court regulator and overseer of the functioning of institutions and the activities of public authorities, not limiting itself to its traditional role in constitutional oversight. This represents an

explicit expansion of the sphere of constitutional control.

Considering the circumstances that accompanied the constitutional amendment in 2020, we note that the establishment of the Constitutional Court came to reinforce rights and freedoms and protect them from any violation. A foreign author commented on this matter, stating that "this amendment came to address the imbalances that targeted the organization of public authorities in the state due to the lack of respect for the principle of separation of powers, which led to infringement upon constitutionally guaranteed fundamental rights and public freedoms."¹³

Moreover, the 2020 amendment further enhanced the value and content of decisions issued by the Constitutional Court by including in its composition six (06) professors elected from public law faculty, which has been a doctrinal demand long desired in scholarly writings in this field. This was constitutionalized in 2020 through Article 186, which outlined the composition of the Constitutional Court and made half of it consist of public law scholars. It is generally agreed that public law professors, particularly those researching constitutional law, are best suited to examine the extent to which legal texts respect human rights in light of constitutional provisions. This is especially true given the conditions required of them by the Constitution under Article 187, particularly the experience requirement. Furthermore, Article 188/1 stipulates that the President of the Constitutional Court must meet the conditions for running for the Presidency of the Republic, except for the age requirement, due to the importance of their position and the tasks entrusted to them, especially since exceptional circumstances may lead them to assume the presidency one day.

This is further reinforced by Article 189, which grants members of the Constitutional Court judicial immunity. However, we emphasize that the Constitution requires members of the Constitutional Court to take the constitutional oath before the First President of the Supreme Court.

This raises questions about why the Supreme Court was chosen over the Council of State, negating the principle of alternation typically observed in maintaining equality between the two judicial hierarchies in Algeria. Indeed, this may suggest a potential infringement on the principle of independence of the Constitutional Court as a whole. In this regard, we propose that the constitutional oath be taken before the President of the Conflict Court to avoid any ambiguity.

To facilitate access to the Constitutional Court and thus expand the scope of protection it provides, the Algerian Constitution, since 2016, has unprecedentedly expanded the entities authorized to notify the Court under Article 193, including:

- 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
- Forty (40) deputies or twenty-five (25) members of the Council of the Nation. The 2020 amendment reduced this number from the previous requirement of fifty (50) deputies or thirty

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(30) members of the Council of the Nation under the 2016 constitutional amendment. All of this will undoubtedly bring constitutional review closer to the citizen, either indirectly through their representatives, especially after reducing the required number, or directly through the mechanism of constitutional challenge.

Second requirement: The Advisory Competencies of the Constitutional Court and Human Rights.

Among the advisory competencies enjoyed by the Constitutional Court, which do not directly relate to human rights but will inevitably reflect on their protection and development, we note the obligatory referral to the Constitutional Court to confirm or declare certain situations that may affect the security and safety of the entire country. This includes confirming the incapacity that may befall the President of the Republic,⁴ or a presidential candidate.⁵

Additionally, the President of the Republic is obligated to consult the President of the Constitutional Court before declaring states of siege, emergency,⁶ and war.⁷ The Constitutional Court's mandatory opinion is also required regarding armistice agreements and peace treaties.⁸

These areas that necessitate the Constitutional Court's opinion - whether through its full composition or via its President - highlight the position that allows it, on many occasions, to express its opinion for the protection of fundamental rights and public freedoms, whether from actual aggression or exceptional circumstances that the country may experience, or to declare a truce to limit the tragedies that befall human rights. Furthermore, the Constitutional Court possesses advisory competencies in important areas that the Constitution directly links to fundamental rights and public freedoms. We mention two instances:

First Branch: The Constitutional Court's Opinion on the Draft Constitutional Amendment as a Guarantor of Fundamental Rights and Public Freedoms.

According to Article 219 and subsequent articles of the Constitution, when proposing a draft constitutional amendment, and before submitting it to a popular referendum for voting, the President of the Republic may shorten the amendment procedures by directly proceeding to a vote within both chambers of Parliament, provided that his project obtains three-quarters of the members' votes.

In this case, the Constitutional Court is rightly considered the arbiter in determining the extent of infringement on human and citizen rights and freedoms, through Article 221 of the Constitution, by means of a reasoned opinion that allows the President of the Republic to forgo the popular referendum to pass the constitutional amendment.

Second Branch: The Constitutional Court's Opinion as a Guarantor of the Principle of Equality Before the Law.

All are equal before the law, and therefore no one can evade subjection to the law in any form, especially in the case of a crime committed. However, the Constitution may, in return, grant immunity to some, not in view of their persons, but considering that their positions and the tasks they perform require constitutional independence and immunity. This ensures their impartiality

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and avoids pressures that may affect them, making them citizens immune from judiciary in the performance of their duties.

In this regard, the Constitutional Court plays a prominent role in limiting the abuse of this immunity, or its use as a constitutional umbrella to evade criminal prosecution for acts unrelated to the tasks for which it was granted. Article 130⁹ of the Constitution allows notifying entities to notify the Constitutional Court to issue a decision on whether to lift immunity, thus becoming a true guarantor of the principle of constitutional supremacy, equality before the law, and the rule of law.

However, despite the importance of the Constitutional Court's advisory opinion, the Constitution did not specify how it is to be taken. Article 197 of the Constitution¹⁰ stipulated that the Constitutional Court's decisions are taken by majority as a general principle and require an absolute majority for organic laws, but it overlooked regulating the opinion.

Third requirement: Prohibition of Infringing on Fundamental Rights and Public Freedoms in Constitutional Amendments

Article 223¹¹ of the Constitution established an objective prohibition that the constitutional founder cannot infringe upon, making it a real constraint on infringing fundamental rights and public freedoms from any party, even if it were the supreme legal text in the country. This is particularly significant given that Article 223 included fundamental freedoms and human and citizen rights among the provisions or subjects that cannot be infringed upon in constitutional amendments.

We view this prohibition as one of the greatest guarantees provided by the Constitution to protect fundamental rights and freedoms, as it has prohibited itself from infringing upon them within potential amendments, with the Constitutional Court remaining the guarantor of this guarantee itself. The drafters of the Constitution removed matters related to rights and freedoms and their guarantees not only from the jurisdiction of the legislator but also from the jurisdiction of the constitutional amendment authority,¹² thus making the subject of fundamental rights and freedoms immune from any subsequent constitutional amendment.

Second section:

Fundamental Rights and Public Freedoms and the Scope of Their Exercise in the 2020 Constitutional Amendment

There is a very strong and direct relationship between the mechanism of constitutional challenge and the protection of rights and public freedoms, to the extent that the Constitution has made infringement on constitutionally established rights and freedoms a condition for accepting a constitutional challenge (First Requirement), detailing the scope of exercising fundamental rights and public freedoms in the 2020 constitutional amendment (Second Requirement) and presenting various models for protecting fundamental rights and public freedoms (Third Requirement).

First Requirement: Fundamental Rights and Public Freedoms as a Condition for

Constitutional Challenge.

Fundamental rights and public freedoms hold an important position within various legal texts, from international treaties and covenants to domestic texts in their highest form, namely the Constitution. The stipulation of these rights within the Constitution serves as a guarantee that any right may enjoy. Therefore, we find many jurists and those concerned with certain modern rights, such as the right to culture or the right to sustainable development, consistently calling for the constitutionalization of these rights as a first step to preserve them from transgressions by ordinary and subsidiary legislation. The second step is represented in the review of the constitutionality of laws and regulations, which has undergone several developments until it reached the point of enhancing referral cases before the Constitutional Court through the mechanism of constitutional challenge as a primary guarantee against any infringement of fundamental rights and public freedoms.

The plea of unconstitutionality emerged in France in 2008 on the occasion of the constitutional amendment dated 23-07-2008, where the French legislator termed it the "priority preliminary ruling on the issue of constitutionality" (question prioritaire de constitutionnalité). In Algeria, the constitutional founder adopted the mechanism of the plea of unconstitutionality within the constitutional amendment of 2016. Subsequently, Article 195¹³ of the 2020 Constitution addressed the plea of unconstitutionality.

This is a type of ex post facto review of the constitutionality of legislative texts. It is embodied through a referral from the Supreme Court or the Council of State in the event that one of the parties claims that a legislative or regulatory text violates one of the constitutionally established rights or freedoms.

The plea of unconstitutionality can be defined as "the legal means used by one of the parties on the occasion of an existing litigation to claim that a legal text is inconsistent with the provisions of the Constitution if its application would infringe upon constitutionally guaranteed rights or freedoms."¹⁴

By adopting this mechanism, the constitutional founder has further enhanced the role of the Constitutional Court in protecting fundamental rights and public freedoms, breaking the traditional custom that had confined its role to protecting the principle of constitutional supremacy.¹⁵

One of the most significant features of the 2020 Constitutional Amendment is that it clearly expanded the scope of the plea of unconstitutionality to include both legislative and regulatory texts, whereas previously it was limited to ordinary legislation only, excluding subordinate legislation. This is in contrast to the situation in France, where Article 61-1 of the French Constitution states:

"If, during proceedings in progress before a court of law, it is claimed that a legislative provision infringes the rights and freedoms guaranteed by the Constitution, the matter may be referred by the State Council or by the Cour de Cassation to the Constitutional Council, within a determined period. An Institutional Act shall determine the conditions for the application of the present article."¹⁶

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Since the 2020 Constitutional Amendment, the scope of the plea of unconstitutionality in Algeria has become broader than in France, which is a positive development that we value. This is because regulatory texts have also come into direct contact with the fundamental rights and public freedoms of citizens, particularly presidential decrees that are responsible for regulating matters outside the scope of legislation. Some may find it surprising that the Constitution excludes treaties from the scope of the plea of unconstitutionality, despite their often-close relation to human rights. However, this is due to the fact that treaties are usually subject to prior review for their conformity with the Constitution.

The condition and focus of the plea of unconstitutionality are fundamental rights and freedoms. Therefore, Article 195 stipulated that the plea is to be made when it is claimed that the legislative or regulatory text violates the fundamental rights and freedoms guaranteed by the Constitution. This is in contrast to some constitutions that require the plea to relate to a text that violates the Constitution as a whole in one of its provisions, as is the case in Tunisia and Egypt¹⁷ However, the Constitution limited the scope of protection only to the rights and freedoms guaranteed by the Constitution, despite the existence of other fundamental rights guaranteed by international treaties that are not mentioned in the provisions of the Constitution. Moreover, some fundamental rights are considered to be among the general principles of law that do not need to be explicitly stated, and thus fall outside the scope of the plea of unconstitutionality despite their importance.

The Algerian Constitution after the 2020 amendment notably attempted to ensure constitutional protection for the greatest possible number of fundamental rights and public freedoms. However, it overlooked the constitutionalization of some fundamental rights guaranteed by the Universal Declaration of Human Rights, which Algeria has ratified and which has become part of its domestic legislation. For example, the right to a standard of living adequate for the health and well-being of oneself and one's family – ensuring a dignified life – as stated in Article 24 of the Universal Declaration¹⁸, is among the rights overlooked by the Algerian Constitution. Under the current situation, a citizen cannot challenge the constitutionality of the law determining the guaranteed national minimum wage on the grounds that it does not provide a respectable standard of living, due to the absence of this right in the Constitution.

Referring to Article 195 of the Constitution, we must point out the legislative omission contained in Organic Law 22-19.¹⁹ Article 15 of this law defines the constitutional challenge as the procedure raised by one of the parties to a case before a judicial body in accordance with Article 195 of the Constitution.

However, does its scope include only legislative texts as in the repealed Organic Law 18-16, or regulatory texts as well? Is its scope the protection of fundamental rights and public freedoms enshrined in the Constitution or not? These are the questions that the legislator has remained silent on, which can only be interpreted as a legislative omission that must be addressed in the future, especially since the organic law came to implement Article 195 of the Constitution, not to reduce its scope.

The wording of Article 15 stems from Decision No. 04 of the Constitutional Court dated 29-06-2022, which ruled that the organic law in this article is an almost complete copy of Article 195 of

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the Constitution, and that this infringes on the principle of separation of powers and constitutes an encroachment by the legislative authority on the constituent authority. However, we believe that the legislative omission remains within Article 15 of Organic Law 22-19 and that restating the conditions for constitutional challenge after the text is an application of the Constitution and not a text creating a provision not mentioned in the Constitution.

Considering that the executive authority is most in contact with citizens and closest to the suspicion of infringing their rights and freedoms, informing it of the Constitutional Court's decisions is in itself a guarantee of fundamental rights and public freedoms, given the obligation it carries and its status as one of the most important sources of administrative legitimacy.

Article 24 of Organic Law 18-16²⁰ stipulated that the Constitutional Court's decision should be notified to the Supreme Court or the Council of State to inform the judicial body before which the constitutional challenge was raised. However, it overlooked the issue of informing the legislative and executive authorities of the Constitutional Court's decision, despite its importance, especially since Article 21 of the same law requires taking into account the observations of the President of the Republic, the President of the Council of the Nation, the President of the People's National Assembly, and the Prime Minister. Therefore, we recommended amending Article 24 of Organic Law 18-16 to require the Constitutional Court to notify its decision to the President of the Republic, the President of the People's National Assembly, and the President of the Council of the Nation, in addition to the bodies currently mentioned in this article.²¹

With the issuance of Organic Law 22-19, we find that it has adopted this approach and, through Article 43 paragraph 2, requires the notification of the Constitutional Court's decision to the President of the Republic, the President of the Council of the Nation,²² the President of the People's National Assembly, and the Prime Minister or the Head of Government, as the case may be, in addition to notifying the Supreme Court or the Council of State. Despite these shortcomings that we have observed, and based on what has been presented, it can be said that the Constitutional Court, through the mechanism of constitutional challenge, is considered a fundamental guarantor of fundamental rights and public freedoms. This is reinforced through the following results:

- The constitutional challenge deepens the citizen's role in the process of reviewing the constitutionality of laws and regulations directly, without the need for referral bodies.
- The constitutional challenge is not merely a popular tool in the hands of citizens to be used as they please, but has been codified by the legislator under an organic law that defines its controls.
- The Algerian Constitution has not adopted the mechanism of direct constitutional lawsuit; rather, it must pass through the challenge method.
- The mechanism of constitutional challenge reinforces the role of the Constitutional Court in reviewing the constitutionality of laws and makes it more effective in protecting constitutionally enshrined rights and freedoms, in light of the expansion of this review to include

regulations after it was limited to legislative provisions only in 2016.²³

Second Requirement: The Scope of Practicing Fundamental Rights and Public Freedoms in the 2020 Constitutional Amendment.

What distinguished the previous and successive constitutions of the Republic was the inclusion of an explicit article at the end of the provisions regulating rights and freedoms, outlining the restrictions on exercising these rights and freedoms. Some articles also explicitly included conditions and limits for their practice. The goal of establishing these conditions, whether through an explicit article or within the articles containing rights and freedoms, was the necessity of maintaining public order and the foundations upon which the Algerian state and society are built.

As for the 2020 constitutional amendment, the constitutional founder adopted the approach of the 1963 and 1970 constitutions in delineating the scope of practicing fundamental rights and public freedoms by adding an explicit article, which is Article 34²⁴. However, this time in the 2020 amendment, it appeared at the beginning of the first chapter containing fundamental rights and public freedoms in the second section of the Constitution. Perhaps the return to this format reflects the constitutional founder's keenness to respect the scope of practicing and protecting fundamental rights and public freedoms. This article may contribute to defining the limits of technological development uses in the field of fundamental rights and public freedoms, given its potential risks.

Article 34 of the Constitution embodied the scope of practicing fundamental rights and public freedoms with a degree of distinction. Its first paragraph stipulated the constitutional protection for exercising these rights and freedoms by stating: "The constitutional provisions related to fundamental rights and public freedoms and their guarantees are binding on all public authorities and bodies." This is an important constitutional guarantee for protecting rights and freedoms. The same article then restricted the scope of fundamental rights and public freedoms for logical reasons stated in its second paragraph: "Rights, freedoms, and guarantees can only be restricted by law and for reasons related to maintaining public order and security, protecting national constants, and those necessary to protect other rights and freedoms enshrined in the Constitution."

This restriction was relative, as it was linked to the condition that these restrictions should not affect the essence of rights and freedoms, as stipulated in the third paragraph of Article 34: "In all cases, these restrictions cannot affect the essence of rights and freedoms." The article concludes with a fundamental guarantee in the field of rights and freedoms, which is achieving legal security through which the state ensures, when developing legislation related to rights and freedoms, to guarantee its accessibility, clarity, and stability.

The formulation of this article at the introduction of the chapter regulating fundamental rights and public freedoms is a new addition to the 2020 constitutional amendment. In our view, the presence of this article in this position in the constitutional document and with this formulation ensures, on one hand, guarantees for protecting constitutionally enshrined fundamental rights

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and public freedoms, and on the other hand, through the scope of their restriction, ensures the continuity of the state which, in some cases, supersedes these rights and freedoms. We can mention, for example, the global pandemic that humanity has experienced since 2019, which in many countries necessitated restricting some rights and freedoms in line with the global health situation.²⁵

The 2020 constitutional amendment also expanded the objective scope of fundamental rights and public freedoms by either refining and reformulating articles that were present in the previous constitutional amendment to fulfill the purpose of their inclusion in the Constitution. For instance, we can mention, but not limited to, Article 35, which states that: "The state guarantees fundamental rights and freedoms."

"The institutions of the Republic aim to ensure equality for all male and female citizens in rights and duties by removing all obstacles that hinder the development of human personality and prevent effective participation of all in political, economic, social, and cultural life."²⁶

This article reformulated Article 34 of the 2016 constitutional amendment by adding the first paragraph in the new Article 35 and also adding the term "Republic" when referring to the institutions that aim to ensure equality in rights and duties. The nature of institutions may be broad, why not be defined, while this task is entrusted to the state. This adjustment by addition came to confirm the constitutional founder's keenness on the Republic undertaking this task.

Fundamental points were also added within articles that came to expand their scope of application, such as Article 39,²⁷ which also included the punishment by law of torture and human trafficking in addition to cruel, inhuman, or degrading treatment that was included in Article 40 of the 2016 constitutional amendment.

Substantial additions were also made in various areas, including, for example: freedom of assembly and peaceful demonstration are guaranteed and exercised upon mere declaration; the right to establish associations is guaranteed and exercised upon mere declaration; associations can only be dissolved by judicial decision; detailing the content of press freedom while prohibiting the publication of discriminatory and hate speech; the necessity of informing any detained person of the reasons for their detention; the obligation to subject minors to medical examination at the end of the custody period; detailing the subject of consumer protection; ensuring the neutrality of educational institutions and preserving their pedagogical and scientific character, to protect them from any political or ideological influence.²⁸

This is regarding the revision of some articles and detailing their content. The objective scope of fundamental rights and public freedoms was also expanded by including new articles in the 2020 constitutional amendment that were not present in its predecessor. For example, Article 40,²⁹ which states: "The state protects women from all forms of violence in all places and circumstances in public spaces and in professional and private spheres. The law guarantees victims' access to reception structures, care systems, and judicial assistance."

All these additions, both in terms of arranging fundamental rights and public freedoms in the constitutional document and in terms of their scope and area of practice, are considered a qualitative leap in this field. The constitutional founder did not merely promote these

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fundamental rights and public freedoms but also imposed a more effective control system regarding ensuring their protection. This is embodied through the working system of the Constitutional Court and its various jurisprudences.

Third requirement: Jurisprudence of the Algerian Constitutional Judiciary in Protecting Fundamental Rights and Public Freedoms

The Algerian constitutional judiciary often declares legal articles unconstitutional, either wholly or partially, based on respect for human rights and the fundamental principles that guarantee the basic rights and fundamental freedoms of citizens.

An example of this is the reservation expressed by the Constitutional Council regarding the review of the conformity of the organic law amending and supplementing the organic law on elections with the Constitution. The Council considered that granting monitoring committees the right to access candidate lists could infringe on the constitutional principle that affirms the inviolability of citizens' private lives. Therefore, the Council saw the need to add penal provisions in this organic law to protect the human right to privacy.³⁰

The Constitutional Council also protected the right to engage in trade union activity. In one decision, it found that the legislator had restricted the practice of trade union activity after declaring the trade union right when it decided that a judge exercises trade union activity after declaring this before the Minister of Justice. The Council justified its opinion based on the principle that all citizens have the right to engage in trade union activity without restriction or condition.³¹

In a recent decision, the Constitutional Court declared Article 24 of Law No. 13-07 regulating the legal profession constitutional.³² It explained that the legal guarantees that a lawyer benefits from while performing their duties according to the last paragraph of Article 24, which enables them to freely exercise the constitutionally guaranteed right of defense and protection from all forms of pressure, do not conflict with the right to protection of private life and honor guaranteed by Article 47 of the Constitution .³³ This is as long as the lawyer performs their duties to the extent required by the defense requirements within the framework of the Constitution and the law, which does not conflict with the rights and freedoms enshrined in the Constitution.

Conclusion:

The most important feature of the 2020 constitutional amendment is the expansion of mechanisms for notifying the Constitutional Court. This includes enabling ordinary citizens, individually and without representation, to raise the issue of unconstitutionality of any legislative or regulatory text. This triggers a long series of procedures, reaching one of the judicial system's peaks, which directly refers the matter to the Constitutional Court to decide on the text's conformity with the Constitution. This is done through the mechanism of constitutional challenge.

Throughout its constitutional developments, especially since 2016 (although before 2020, the focus was on the Constitutional Council), the Constitutional Court was established to ensure the supremacy of the Constitution over all lower-ranking legal texts and to verify the application of

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some supreme constitutional principles, such as the separation of powers and the principle that the people are the source of all sovereignty.

However, successive practices of the Constitutional Court, and before it the Constitutional Council, have proven that the constitutional judge has another role allowing him to protect human rights, either directly or indirectly. This led us to question: Is the Constitutional Court truly a protector and guarantor of fundamental rights and freedoms?

After in-depth research into the texts of the Algerian Constitution amended in 2020, we concluded that the Constitutional Court in Algeria is indeed a guarantor of the fundamental rights and public freedoms of citizens. Its work is not limited to reviewing the constitutionality of laws and treaties. The 2020 constitutional amendment has greatly enhanced its powers in this area, both through its composition and working rules, and through the mandatory consultation it provides when it comes to rights and freedoms.

All this leads us to expect a promising future and horizons for the Constitutional Court in the field of human rights protection, provided that it primarily looks forward to this noble constitutional task and does not limit itself to the conformity process only.

Findings:

Through this research, we have reached the following findings:

- The Constitutional Court is considered a guarantor of the principle of constitutional supremacy, equality before the law, and the rule of law as a whole.
- The immunity of Constitutional Court members and its independence are guarantees that directly or indirectly seek to protect fundamental rights and freedoms.
- The objective prohibition on amending the Constitution constitutes the greatest guarantee provided by the Constitution to protect fundamental rights and freedoms, as it has forbidden itself from infringing upon them in potential amendments, with the Constitutional Court remaining the guarantor of all this.
- The Algerian constitutional founder has expanded the scope of constitutional challenge in Algeria since 2020 to include legislative and regulatory texts, which is a positive development we value, considering that regulatory texts have also come into direct contact with citizens' fundamental rights and public freedoms, especially presidential decrees specialized in regulating matters outside the legislative domain.

Recommendations

We can also record some recommendations and suggestions, including:

1. Given the prominent role of the Constitutional Court in guaranteeing fundamental rights and public freedoms, we suggest, to further enhance this role and to avoid some observations made on it in the current organization, reviewing Organic Law 22-19 and enriching it with articles that clarify its relationship with fundamental rights and freedoms to avoid the

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legislative omission that this law carries.

2- We suggest that the constitutional oath be taken before the Conflict Court, as it is a neutral judicial body between the two judicial pyramids in Algeria, instead of requiring Constitutional Court members to take the constitutional oath before the First President of the Supreme Court according to Article 186 of the Constitution, which raises questions about overlooking the State Council and favoring the Supreme Court with this feature.

3. To expand the scope of the Constitutional Court's protection of rights and freedoms, we believe that Article 195 of the Constitution has narrowed the scope of constitutional challenge by limiting it only to rights and freedoms guaranteed by the Constitution. However, there are other fundamental rights guaranteed by international treaties, and other fundamental rights considered general principles of law, all of which fall outside the scope of constitutional challenge. Therefore, we suggest linking the mechanism of constitutional challenge to the protection of citizens' fundamental rights and freedoms by keeping the wording open and not restricting it to constitutional rights only.

4. Organic Law 22-19 did not clarify the issue of mandatory legal representation in constitutional challenge procedures, an omission we recommend avoiding in the future.

5-We call on the constitutional judge in Algeria to emulate some comparative experiences and reveal the fundamental rights and public freedoms implicitly present in the Constitution's articles and especially in its preamble, so that the protection applied becomes more objective rather than just procedural.

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²⁰Organic Law 18-16 of September 2, 2018, defining the conditions and methods of application of the defense of unconstitutionality, *Official Gazette* No. 54. French - *Journal of Legal and Political Research*, Issue 06, June 2018, Jijel, Algeria, p. 54.

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²³Ben OuidaneZouina, *The constitutional value of economic freedoms*, *Journal of the Constitutional Council*, Issue 18, 2021, Algeria, p. 25.

²⁴Article 34 of the constitutional amendment of 2016, as well as Article 34 of the constitutional amendment of 2020.

²⁵We can consider the global pandemic - Corona - and the difficult health conditions experienced by humanity since 2019 as evidence of the need to restrict some rights and freedoms by law in order to preserve rights and freedoms that are considered more important.

²⁶Article 35 of the Constitutional Amendment 2020.

²⁷Article 39 of the Constitutional Amendment 2020

²⁸See Articles 41 to 62 of the Constitutional Amendment 2020.

²⁹Article 40

³⁰Opinion No. 01, dated 05-02-2004, JR, No. 9, dated 01-02-2004.

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