

Legal security between ruling of unconstitutionality and the immediate and direct effect-a comparative study-

الأمن القانوني بين رجعية الحكم بعدم الدستورية والأثر الفوري المباشر-دراسة مقارنة-

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Abstract :

In this study, we will address the point related to the extent to which the rule of unconstitutionality is triggered and its impact on the principle of legal security, since the ruling of unconstitutionality in general may bring about a change in the legal system, and may lead to a legislative vacuum, which may affect the relative stability of legal rules in terms of time, Especially if the legislative text judged to be unconstitutional was applied during a period of time that led to the arrangement of individuals' situations accordingly. Therefore, the matter requires setting controls that limit the retroactive effect of the unconstitutional ruling, in a way that serves the interests of individuals affected by the rule of unconstitutionality.

Keywords: *Acquired rights; The reactionary rule is unconstitutional; Stability of legal conditions; Legal security; Immediate and direct impact.*

ملخص:

سنتناول في هذه الدراسة، النقطة المتعلقة بمدى إطلاق رجعية الحكم بعدم الدستورية وتأثيرها على مبدأ الأمن القانوني، ذلك أن الحكم بعدم الدستورية عموماً قد يحدث تغييراً في النظام القانوني، وقد ينجر عنه فراغ تشريعي، مما قد يؤثر على الاستقرار النسبي للقواعد القانونية من حيث الزمان، خاصة إذا كان النص التشريعي المحكوم بعدم دستوريته قد تم تطبيقه خلال فترة من الزمن أدت إلى ترتيب أوضاع الأفراد بناءً عليه. لذلك فإن الأمر يستلزم وضع ضوابط تحد من سريان الأثر الرجعي للحكم الصادر بعدم الدستورية بما يخدم مصالح الأفراد الذين طالهم حكم عدم الدستورية.

كلمات مفتاحية: رجعية الحقوق المكتسبة، الحكم بعدم الدستورية؛ استقرار الأوضاع القانونية؛ الأمن القانوني؛ الأثر الفوري والمباشر.

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I-Introduction:

It is established that the jurisprudence and the judiciary that constitutions are superior and superior to the rest of the laws in force internally, and given that they constitute basic laws in the country, respecting them requires the legislator to observe the principle of the supremacy of the constitution during the enactment of laws and regulations in accordance with and in conformity with the provisions and rules of the constitutional text and to ensure that they do not violate it. But the elevation of the constitution becomes without practical or even legal value if no kind of supreme oversight is achieved over laws and regulations to ensure that they do not violate the supreme constitution, and the body that assumes constitutional control must have the power to cancel legislation that contravenes the constitution or at least impose abstention from its implementation. (Rifaat, 2007, p. 131.)

What justifies adopting the principle of monitoring the constitutionality of laws is the protection of fundamental rights and freedoms in the first place. Whereas stipulating it in the constitution and authorizing the authority to regulate it to the legislative authority is not sufficient, but rather it must be supported by a legal mechanism capable of repealing it, which contradicts it with the provisions of the constitution (RAMDANI, June 2018, p.10.) . In this context, the Algerian constitutional founder followed the approach of his French counterpart in adopting political oversight through a constitutional council, relying on tribal oversight over the issuance of the law and postural oversight of it under the dangers by the President of the Republic, the Prime Minister, the heads of the National Assembly and the Municipal People's Assembly, as well as the parliamentary opposition. What is striking is the adoption by the individuals of the constitutional institution of monitoring the defense of unconstitutionality through Article 188 of the constitutional amendment in March 2016. However, establishing a posteriori control over the constitutionality of laws may raise the problem of the impact of decisions issued unconstitutional on existing legal centers under the unconstitutional law, since the latter should be excluded from the legal system. Arranged from the results on the ground, but seeing the issue from the perspective of legal security necessarily requires the execution of the effect of the unconstitutional rule for the future only, and this of course since the declaration of its unconstitutionality pursuant to the rule of direct effect of the decisions and opinions of the Constitutional Council in order to preserve the legal positions that have arisen in the past and their stability and respect for rights Acquired under it!

If we look closely at Article 191/2 of the 2016 Constitutional Amendment, which states: "If a legislative text is deemed unconstitutional on the basis of Article 188 above, then this text loses its effect from the day determined by the Constitutional Council's decision (Article 191/2 of the Constitution of November 28, 1996, amended and supplemented by Law No. 16-01,2016) then we find that the founder The Constitutional Council left the issue of determining the effect of the ruling on unconstitutionality from the discretion of the Constitutional Council, which places upon it a new task, which is to achieve a kind of balance between its authority to judge the unconstitutionality of the texts subject to censorship and the retroactive effect it contains, on the one hand, and the right of individuals to enjoy a sufficient amount of stability And stability in their legal positions and respect for their acquired rights, which fall under the concept of legal security, on the other hand. And the problem that arises in this regard, how can the Constitutional Council reconcile the principle of legality on the one hand and the principle

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of legal security on the other hand? What is the effect of this on the acquired rights and on the owner of the payment itself?

In this study, we will try to provide an overview of the concept of legal security as a first requirement, then we will look at its foundations, or as some have called it, its image as a second requirement, to arrive in the last to the position of the Algerian Constitutional Council on the impact of the rule of unconstitutionality on the principle of legal security and try to balance the two ideas as a third requirement.

II - The concept of the legal security principle:

Interest in legal security has increased, especially in recent times, due to its association with several areas of importance in society, and perhaps achieving legal security in any country is considered the main entrance to ensuring social and economic security and the subsequent stability in the political field, and then the stability of the legal centers of public bodies and natural individuals (Rouchu, 2018, p.109.) This principle is considered one of the most important foundations of the modern legal state based on the rule of law, and its effect is that the public authorities are obligated to ensure a measure of stability in legal relations and a minimum level of stability for legal centers so that people can act with reassurance on the guidance of the existing legal rules and regulations in their work and arrange their situations in their light, without Exposure to sudden actions that undermine their legitimate expectations and undermine their legal status (Sorour, 2002, p.84.) .

The origin of the term legal security is referred to in German law in the aftermath of the Second World War as a result of a new outlook that has become characteristic of the relationship between the state and the citizen based on the concept of "the state of law." (Sylvia , 2001, p12.) And it came in the decision of the German Federal Constitutional Court on 12/19/1961: The state of law, the citizen is supposed to be able to anticipate the possible interventions of the state in its legally protected field and take appropriate rulings. He must be able to be reassured that his behavior in conformity with the applicable law will be recognized and with all the legal consequences that were previously associated with it (Paraskevi, 2011, p48.). Legal European Community on the occasion of the Bosch case on 6/4/1962 (, Public report 2006 Studies and documents of the Council of State no57, 2006, p284.). To gradually implement the principle into the internal laws of European countries, including France, in which the State Council devoted its report for the year 1991 to discussing the idea of legal security, but it did not recognize the principle judicially except on the occasion of its consideration of the Society KPMG case on 03/24/2006 (CE, Ass, 24mars2006).

I.1 Defining legal security and distinguishing it from similar terms:

The term legal security is a broad term in terms of meanings and dimensions, so it does not have the legislators 'definition of it, which made the issue fall on the responsibility of jurisprudence and the judiciary in finding a definition for it.

I.1.1 The judicial definition of legal security:

Many modern jurisprudence has expressed the principle of legal security, among them the European Court of Human Rights, saying: "As the law in order to achieve security must be

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accessible and signature," (Ramdani , 2018, p.30.)as the French State Council affirmed in its general report for the year 2006, which contained in some parts what The following: "The idea of legal security means the commitment of the public authority to achieve a measure of stability in legal relations and a minimum level of stability for legal centers in order to provide security and reassurance for all parties to legal relations. It is an expression of the political climate that guarantees permanent legal treatment and keeps pace with all social and economic transformations that may harm social stability." (Ramdani, *ibid.*, P. 31.)

I.1.2 The jurisprudential definition of legal security:

The jurisprudence defines legal security as: "Every legal system of protection aims to ensure (without surprise) the optimal implementation of obligations, and excludes or at least reduces suspicion or suspicion in the application of the law." (Cornu, 1987) This definition considers legal security a matter of the parties to the contract only, while it is a principle that does not only guide the scope of contracts. Another opinion defines legal security as: "the ideal that the law must address by issuing sequential, coherent, relatively stable and available rules that allow individuals to set expectations." (cabrillac, 2010, p61.)

The idea of legal security means "the existence of a kind of relative stability in legal relations and a minimum level of stability for legal centers for the purpose of spreading security and reassurance among the parties to legal relations, regardless of whether they are private or public legal persons so that these persons can arrange their positions according to the existing legal rules at the time they start their work without To be exposed to surprises or unforeseen actions emanating from one of the three state authorities, and that would undermine all stability or undermine the spirit of confidence and confidence in the state and its laws. (Bawab, 2018, p.18.), All attempts to define legal security share in common that it falls within human rights. Rather, it is considered one of the most important of these rights and at the same time it is considered the main factor in ensuring and protecting these rights, because without a strong legal system, human rights will not exist in reality. (Lekhdari, without a year of publication, p. 222.)

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I.2.1 Distinguishing legal security from similar concepts:

The idea of legal security may be similar to other legal ideas and rules, as we find modern terms that appeared alongside the traditional meaning of legal security, including:

Economic security: it is achieved by providing the appropriate environment for the growth of business and the increase in foreign investment, which is a basic pillar of development, because it constitutes an addition to production capacity and an increase in wealth because of the effect that this has on satisfying needs and providing services.

There is intellectual security, which is the protection of society's thought and beliefs from being affected by aggression or harm because this would eliminate the sense of calm, tranquility and stability that people have, and threaten the life of society. The sources should be reliable, as well as protecting society from any deviant, perverted ideology that calls for crime, extremism and terrorism. (Rifat, 2011 , p.17.)

Add to this psychological security, family stability, and environmental security represented in obtaining a clean environment free from pollution, as well as food security and health security through prevention and protection from disease and infection, which provides a safe life. In addition, we find information security from the dangers of electronic crime and military, scientific and political security. etc. All of these are considered forms of security, but they are not sufficient on their own to achieve the meaning of stability. Therefore, the most important condition for achieving them all is to ensure the stability of the legal system and to clearly define legal centers without confusion, ambiguity or uncertainty. (Hafdi , 2018, p.12.)

I.2.2 Distinguishing the idea of legal security from personal security:

Personal security is intended to protect a person's life from a material and moral point of view. Within its framework, the application of the principle of legality of crimes and penalties is violated, so that there is neither crime nor punishment without a text, and the presumption of innocence, which means that the accused is innocent until proven guilty (Articles 56/58/59 of the 2016 constitutional amendment.), Whereas the idea of legal security protects the legal status of the human being from any breach by any of the state authorities.

III distinguishing legal security from the right to physical security:

Physical security means the set of economic and social rights stipulated in the constitution and which the state is obligated to guarantee to individuals such as the right to work or the right to social security and health care..While such rights and freedoms place obligations on the state within the limits of its material capabilities and in accordance with the principle of equality before the law, the state It is obligated to protect the legal positions of the individual who obtained it according to the legal rules in force and enjoy the evidence of health.

I.1 The foundations and requirements of legal security and the position of the Algerian Constitutional Council regarding the balance between it and the reactionary ruling on unconstitutionality:

The term legal security requires the fulfillment of a set of principles or may be considered conditions for its embodiment, without which this principle cannot be fulfilled (the first requirement). And since the Algerian constitutional founder has adopted the system of defending the unconstitutionality of the legislative rule, we devote (the second requirement) to

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analyze his position on the issue of reconciling the impact of the ruling on unconstitutionality and the principle of legal security.

I.1.1 The requirements of achieving legal security:

Legal security aims to protect individuals from the negative effects of the law, especially the lack of clarity or instability of legal rules, by continuing the legal rules in the past, ensuring that legal rules are anticipated in the future, in addition to ensuring the security of legal relations in the future, these elements fall under the title Requirements for legal security, detailed as follows:

I.1.2 Non-retroactivity of laws:

This principle means that new laws do not withdraw from the past and are limited to ruling the future. The men of the law agree that it is a legal principle stipulating that the law does not apply to events that occurred before its promulgation, meaning that it has a direct effect (Jalab, 2018, p.73; Kamira, , 1969, p. 340; Alaa, without a year of publication , p.9.) The constitutional founder was keen to explicitly stipulate it in accordance with Article 58 of the 2016 Constitutional Amendment, which states the following: "There is no condemnation except by virtue of a law issued before the criminal act was committed."

I.1.3 The idea of legitimate expectation or legitimate trust:

It means the state's commitment not to surprise or surprise individuals with what it issues of individual laws or decisions that contradict their legitimate expectations and are based on objective foundations drawn from the existing regulations adopted by the state authorities (Bawab, previous reference, p.20). Therefore, the legal text must have clarity, ease of understanding and timeliness in order to achieve its quality and thus enhance the confidence of those addressing it, instead of over-referring the regulatory texts and suspending the enforcement of their issuance, and in return, the legal text must be interpreted by the executive authority in accordance with the spirit of the law in order to safeguard the rights and freedoms. That is why legal security is closely related to judicial security (Article 157 of the Algerian constitution amended in 2016).

I.1.4 Protecting and Respecting Acquired Rights:

The acquired right is a legal status whereby the benefit obtained by a person as a result of a law or administrative decision is protected from cancellation or amendment, and the protection of the acquired right is considered a subject of conflict between both the principle of legal security and the principle of legality, where the first stipulates that the rights obtained by people should not be disturbed and fortified, while the second is intended to withdraw every unlawful decision, regardless of the rank, of rights.(Ben Chouhra, 2018, p. 4; Bahaa El-Din, 2018, p. 32.)

I.2 Restricting the Retrospective Effect of Ruling on Unconstitutionality:

The retroactivity of the ruling on unconstitutionality means that the law ruled unconstitutional is considered to have no legal value from the time of its issuance, meaning that its effect applies to all the legal centers that were established according to it and on the conditions, rights and duties that were decided under it (Hassanein, 2011, p. 277.)

Among the most important justifications for accepting and recognizing the retroactive effect of ruling unconstitutional (Albinoquj , 2014, p. 65.) , we find:

First - the revealing nature of the ruling (Compilation of Constitutional Court Rulings, Part 3, Case No. 19 (04/08/1995); : Mohamed Salah, 2003, p. 65.) It is well known that judicial rulings do not exist and do not create the right, but rather reveal its existence. Therefore, if a

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constitutional court or constitutional council decides that a legislative text is unconstitutional, then it will result in its annulment and nullity, it does not establish this nullity but rather decide something that already exists under the existing constitution. When the legislation is determined to be unconstitutional, it is considered null since its existence because it was found in violation of the constitution.

Second - The seriousness of defending unconstitutionality: With regard to countries that take constitutional control by way of payment - including Algeria according to the latest constitutional amendment of 2016 - the ruling on unconstitutionality must benefit from the person concerned in his case filed on the merits of him, and if this ruling has no retroactive effect The judge subject to the original dispute applies that law even if the result of submitting it to censorship is the judiciary that it is unconstitutional, and this contradicts common sense and the purpose of the existence of the defense and strips the right to litigation from its content. In contrast to the opinion regarding the revealing nature of the rule unconstitutionality, a trend emerged in jurisprudence calling for the adoption of the direct effect of the ruling on unconstitutionality, as it is an innovator and originator (. Maha Bahjat, 2006, p 93.) Which means the cancellation of the legislative text ruled to be unconstitutional as of the date of publication of the ruling, and upon it all the effects that the legislative text had arranged before the ruling are true, current and sound, which has no effects for the future only. One of the advantages of this proposal is preserving the idea of legal security, but at the same time we will be facing a contradictory situation on the one hand we find legal centers that were formed before the ruling of unconstitutionality and others formed after it, a situation that creates discrimination in how to deal with these centers as the first is not affected by the ruling in While the legal centers that were formed after him, the direct effect works on them.

From this standpoint, we will talk about the position of the Algerian constitutional founder on this issue, especially after his adoption of the mechanism for defending unconstitutionality under Article 188 of the 2016 constitutional amendment.

I.2.1 The position of the Algerian Constitutional Council in the field of balancing the retroactivity of the ruling on unconstitutionality and the principle of legal security:

It is well known that the Algerian constitutional founder is often influenced by his French-style amendments. (Belmhidi , 2009/2010 n p.4.) The same applies to the subsequent monitoring of the constitutionality of laws, but despite the call for a large part of jurisprudence on the need to include a mechanism for the unconstitutionality of the defense system in the Algerian constitutional system, this was not achieved until after the last constitutional amendment of 2016 under Article 188 thereof. In this paragraph, we will try to find out the effect that the Algerian constitutional founder has given to the unconstitutional rulings issued by the Constitutional Council in the context of the payment of individuals based on Article 191/2 of the constitutional amendment, so will it have a direct or retroactive effect? And before that, the position of the French Constitutional Council and the Egyptian Supreme Constitutional Court will be presented, as a guide and comparison, as they are the first in the field of rulings related to the unconstitutionality of a legal text based on the payment submitted by individuals.

I.2.2 An analytical study of the position of the French Constitutional Council regarding the retroactivity of the ruling on unconstitutionality and its impact on legal security:

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If we refer to the text of Article 191/2 of the 2016 Constitutional Amendment, we find that it states as follows: "If a legislative text is considered unconstitutional on the basis of Article 188 above, this text loses its effect as of the day determined by the decision of the Constitutional Council." By reading this paragraph, it becomes clear to us that he did not specify the exact date of the validity of the decisions of the Constitutional Council, which included the unconstitutionality of the legislative text, if it was effective from the day it was issued or from the day it was published in the official gazette, meaning that he left the discretionary power of the Constitutional Council in assessing this, and that In contrast to the French constitutional founder who clearly stated that the original in the decisions of the French Constitutional Council is that they are enforceable with immediate and direct effect, and an exception may be decided by the Constitutional Council with retroactive effect if circumstances so require, which is stipulated in Article 62/2, which reads as follows: "The text declaring its unconstitutionality On the basis of Article 61/1, it is considered null as of the date of publication of the decision, or at a later date specified by this decision, and the Constitutional Council determines the conditions and limits within which the effects arranged by this text can be reconsidered. (Mohamed, 2010, p. 64 and beyond; Xavier, 2010-p.285 and follow-up.)" But the question that arises is what will happen to the substantive dispute over which the initial constitutional issue has been raised if the Constitutional Council decides to set another date subsequent to the entry into force of its decision of unconstitutionality? Does this mean that the court of the matter before which the argument was raised will apply the text - despite its unconstitutionality - because of The Constitutional Council postponed the application of the effects of its unconstitutionality into the future?

Just common sense requires that the situation that led to the issuance of the decision of unconstitutionality must be excluded from the immediate and direct effect of the Constitutional Council's decision that it is unconstitutional, and therefore the text ruled unconstitutional must not be applied to the substantive dispute on which the initial constitutional issue was raised. This is for the Constitutional Council to make a retrospective report of its decision by way of an exception from the direct effect, using the position granted to it by the second paragraph of Article 62 of the Constitutional Amendment of 2008. (Mahmoud Subhi, without a year of publication, p. 651.)

I.2.3 The position of the Egyptian constitutional judiciary on the retrogression of the ruling on unconstitutionality and the achievement of legal security:

On the other hand, we find that Article 49 of the Egyptian Supreme Constitutional Court law amended according to Decision Law No. 168 of 1998 stipulates that: "A ruling that a text in a law or a regulation is unconstitutional shall not apply it from the day following the publication of the ruling unless the ruling specifies a date for that. Another, provided that the ruling on the unconstitutionality of a tax provision is only direct, in all cases, without prejudice to the applicant's benefit from the ruling that this text is unconstitutional. If the ruling on unconstitutionality is related to a criminal text, the convictions issued based on that text are considered as if they were not. " (In the explanatory memorandum to the decree of Law No. 168 of 1998 issued to amend the third paragraph of Article 49 of the Supreme Constitutional Court Law justifying this amendment, it was stated that: Economically, they are matters related to each other by a close bond. It was envisaged to amend the provision of the third paragraph of the Supreme Constitutional Court Law No. 48 of 1979 in order to ensure the achievement of the following purposes:

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First: Empowering the court with the authority to determine the retroactive effect of its judgment in light of the special circumstances that relate to some of the constitutional cases it is looking into, taking into account the elements surrounding them and the seriousness that accompanies them.

Second: Reporting a direct impact of the ruling if it is related to the unconstitutionality of a tax provision..).

Some jurisprudence has argued that the general rule after amending this paragraph has become a direct and non-retroactive effect in the apparent meaning of Text (Shaaban, , 2000, p. 668 and beyond.).However by referring to the rulings of the Supreme Constitutional Court after the amendment, we find that it confirmed the retroactive effect of its rulings as a general rule (the verdict issued in the 1/12/2003 session in Case No. 192 of the year 21 BC, Court Judgments Collection - Part X - p. 898.)

The exceptions to this principle are:

- Determining the direct impact regarding the unconstitutionality of tax texts, due to practical considerations related to the interest of the public treasury, which in the event of the court's annulment of a tax with retroactive effect, will be obliged to return its proceeds that it spent in covering its burdens to those who paid it before, which is incapable of continuing to implement its plan in the field of development, No exception is made from this case except for the plaintiff who argued that the tax review is unconstitutional before the trial court or the plaintiff and the defendant in the case of direct referral from the trial court or the person who will benefit from the final outcome of the ruling that the text addressed by the Constitutional Court is unconstitutional.

- The exception relating to rights and positions that have been established upon the issuance of the ruling of unconstitutionality by a judgment that has acquired the power of the adjudicated order, a characteristic that can only be established for final judgments that have exhausted the regular methods of appeal or with the lapse of the statute of limitations period.

- Among the positive aspects of Article 49 of the amended and supplemented Supreme Constitutional Court Law, in addition to the explanatory memorandum, is that it has detailed the cases in which the retroactive effect is applied. It also preserved the right of the plaintiff to benefit from the ruling of unconstitutionality and applied the rule of law that is best suited to the application regarding the accused and his conviction. It adopted the retroactive effect of a ruling that the text of the conviction was unconstitutional, and on the other hand tried as much as possible to take into account the requirements of legal security by applying the direct effect of acquired rights.

I.2.4 The prospects for the Algerian Constitutional Council's application of the ruling on the unconstitutionality of the law in terms of time - between reaction and the principle of legal security:

If we go back to the Algerian constitutional founder, we notice that he has not determined his final position yet regarding the issue of the time frame for the application of the unconstitutional ruling, since he has not precisely defined the meaning of the phrase "starting from the day determined by the decision of the Constitutional Council," it may specify a direct impact and may set a retroactive effect. The return for the person who made the payment did not specify the fate of his lawsuit in the matter and whether the text will be applied to it despite its unconstitutionality and even though he is the one who submitted the payment, since the issue

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violates his rights and freedoms. It should be noted that the first defense of unconstitutionality was submitted to the Constitutional Council based on two referrals (the two cases No. 01-2019 / DA and No. 02-2019 / DAD)from the Supreme Court on monitoring the constitutionality of Article 416 of the Criminal Procedure Code, which contradicts Article 160 of the Constitution, which explicitly states that the law guarantees the right to litigation in two degrees, and it was decided in a public session held on November 26, 2019, the following:

First: The declaration of partial conformity to Article 416/1 of the Code of Criminal Procedure to the Constitution

Second: The unconstitutionality of the legislative provision mentioned in the first paragraph of Article 416 of the aforementioned law in its part drawn up as follows: “If you pass a penalty of imprisonment or a fine exceeding 20,000 DZD for a natural person.”

Third: The unconstitutionality of the legislative provision mentioned in the first paragraph of Article 416 of the aforementioned law in its part written as follows: “And 100,000 dinars for a legal person”.

The unconstitutionality of the legislative provision mentioned in the second paragraph of Article 416 of the aforementioned law in its part drawn up as follows: “The judge for the imprisonment penalty, including those covered by the suspension of execution.”

Although this ruling is considered a precedent in the history of the Algerian constitutional judiciary, the Constitutional Council has not yet determined the effect of this ruling. Fenish, the President of the Constitutional Council, said during his inauguration of the work of the international forum on “dealing with the effects of the decisions of the Constitutional Council on the defense of unconstitutionality” that: Despite the fact that the ruling issued by the Constitutional Council to annul it is binding and not subject to appeal by any authority, there remains the question of the temporal impact of the application of the ruling, so that the Council has to determine whether the legal effect of this ruling is immediate or postponed (elkhabar.com/2019/11/27/42-27/11/2019). If the two words “immediate or deferred” are emphasized, it is evident from them that the President of the Constitutional Council aims, through his statement, that the ruling of unconstitutionality is effective with direct effect and not retroactively, and in both cases, whether canceled immediately or postponed, it will negatively affect the rights of the owner. The argument that he submitted to protect a right or basic freedom, because if the ruling on unconstitutionality is applied immediately, this does not go to the past, and consequently to the existing substantive case against which the plea was filed, and if the application of the ruling on unconstitutionality is postponed, the text ruled unconstitutional will be applied to the dispute. The matter is presented before the trial court, which is illogical and undermines the essential purpose of the payment mechanism, which is to protect basic rights and freedoms from the texts affected by them through the right to litigation. And while waiting for the Constitutional Council to issue its decision on determining the date of activation of the annulment and the entry into force of its effect (A member of the Constitutional Council, Al-Hashemi Brahimi, explained that “the ruling on unconstitutionality does not present in itself any problems because it is immune to any form of appeal in the future except for a change in circumstances. The Constitutional Council has the discretionary power to determine the date of activation of the annulment and its entry into force. This step comes - according to Brahimi - for practical considerations, so that the Constitutional Council must - as he said - make a comprehensive assessment of the legal, financial and administrative implications of the decision taken by it in order to deal flexibly with the new situation, *ibid*)., we hope that it will take into

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consideration Considering the fairness of the author of the payment of a retroactive report, an exception to the direct effect, as well as the case for the criminal text in the area of conviction ruled unconstitutional, and in this way it can be said that he balanced the idea of legal security on the one hand And the purpose of activating the unconstitutionality payment mechanism by individuals.

IV- Conclusion:

In the end, we conclude that Algeria has known a great path in strengthening the system of rights and freedoms and establishing the rule of law in light of the requirements of good governance through the last constitutional amendment of the year 2016, which provided for the first time individuals the right to notify the Constitutional Council based on a referral from the Supreme Court or the State Council If it becomes evident to him that the legislative provision that will be applied to the conflict violates the rights and freedoms guaranteed by the constitution. Organic Law 18/16 clarifies the conditions and methods of applying the plea of unconstitutionality.

As for the effects of the ruling on unconstitutionality, it was stipulated in Article 191/2 of the Constitutional Amendment of 2016, but it was somewhat vague and not detailed with leaving the discretionary power in determining its time scope for the Constitutional Council, which was observed through the first two decisions of the Constitutional Council not to The constitutionality of Article 416 of the Criminal Procedures Law. Among the most important points reached are the following:

- The legal effect of the ruling unconstitutional is the abolition of the legislative ruling and its removal from the Algerian legal system
- The annulment ruling may result in the cancellation of the entire law if most of its provisions are inconsistent with the constitution, or an article or paragraph thereof, as happened with Article 416 of the Criminal Procedure Law (the first and second paragraphs of it) and in this case it is ruled that the law will remain with special conditions in addition to Parliament's responsibility to amend clauses or articles ruled unconstitutional.
- The text of Article 191/2 places upon the Constitutional Council the task of balancing the observance of the principle of legal security and the stability of legal rules and the centers formed under them - and this can only be done through the adoption of the direct effect of the ruling on unconstitutionality - and on the other hand the realization of the principle of legality, which requires abolishing The legislative ruling is unconstitutional with retroactive effect, by adopting one of them and leaving the other in accordance with the requirements and circumstances of each case.
- Through the statements of the President of the Constitutional Council and some of its members, it can be said that the Constitutional Council is moving towards adopting the direct effect of the ruling that it is unconstitutional, but it is necessary to pay attention to the necessity of observing the right of the party to the payment to benefit from this provision in the first place and that the Constitutional Council decides an exception on the rule of direct effect regarding In this case, the ruling of unconstitutionality applies retroactively to the dispute in connection with which this defense was raised.

Finally, more detail must be made regarding the time scope for the validity of the ruling on unconstitutionality, because of its close relationship with the principle of legal security on the one hand and the principle of legality on the other hand, as did the Egyptian legislator, despite

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his determination of the retroactivity rule that is in line with the principle of legality, but he Establishing exceptions related to the protection of legal security requirements.

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