

Refferal System for submitting unconstitutionality of laws and its application a comparative study.

نظام إحالة الدفع بعدم دستورية القوانين وتطبيقاته_دراسة مقارنة.

⁽¹⁾Dr safi hamza

⁽¹⁾ University of Biskra (Algeria)

safihdroit@gmail.com

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Abstract:

Most of the comparative systems have adopted the principle of the unconstitutionality of laws as one of the basic mechanisms of individuals for the protection of the rights and freedoms guaranteed by the constitution, where the consequences of activating the mechanism to address the violations and breaches that may be committed by the legislator toward those rights and freedoms, which deprives individuals subject to exercise them in accordance with the approved by them to the Constitution of the Foundations and controls.

The introduction of such a mechanism is required in a range of conditions and procedures that should be met for the health of the process, perhaps the most prominent issue of assignment, i.e. how the constitutional oversight bodies in the case where the constitutional separation, there is the adoption of a mechanism for direct referral by the Court subject to these actors, the constitutional control, there is the indirect reference to this constitutional body.

key words:

The parties to the case - Legislative provision - Refer indirectly - filtering - Raise submitting .

¹ - Corresponding author: safihamza,safihdroit@gmail.com.

ملخص:

لقد تبنت معظم الأنظمة المقارنة مبدأ الدفع بعدم دستورية القوانين كأحد الآليات الأساسية المقررة للأفراد من أجل حماية الحقوق والحريات الأساسية التي كفلها لهم الدستور، حيث يترتب عن تفعيل هذه الآلية التصدي للانتهاكات والخروقات التي قد اقترفتها المشرع تجاه تلك الحقوق والحريات مما يحرم الأفراد ورهن ممارستهم لها وفقا لما أقره لهم الدستور من أسس وضوابط.

ويشترط في الأخذ بهذه الآلية مجموعة من الشروط والإجراءات الواجب استيفائها من أجل صحة العملية لعل أبرزها مسألة الإحالة، أي كيفية اتصال هيئات الرقابة الدستورية بهذه الدعوى الدستورية والفصل فيها، فهناك من تبنى آلية الإحالة المباشرة من قبل محكمة الموضوع على هذه الجهات (هيئة الرقابة الدستورية)، وهناك من تبنى الإحالة غير المباشرة على هذه الهيئة الدستورية.

الكلمات المفتاحية:

أطراف الدعوى- حكم تشريعي- إحالة غير مباشرة- التصفية- إثارة الدفع.

introduction:

Take the issue of the rights and freedoms guaranteed to individuals considerable space to the international community to pursue the search for problems that stand in the way wait for and possible solutions, which tried to materialize through many of the supporting international conventions and conferences to be devoted to the maintenance of rights and freedoms.

Which in turn, was reflected in the domestic legal systems, where the bulk of the States sought to adopt those fundamental rights and freedoms recognized by individuals and include basic legislation as rights that cannot be waived or prejudice to the substance and principles on which it is based.

However, this was not a quotation proper procedure move along various axes: -for the preservation of the violation and restriction of the party lawmaker, which calls upon the report of the quotation issue another mechanism to ensure full these rights and freedoms, which is reflected in the question of the submitting of a constitutional laws.

This procedure, which was known as the light for the first time in France under the constitutional amendment of 2008 on the impact of the text of article 16.1, where empowered individuals on the occasion

of a lawsuit before the Court challenging the constitutionality of any legislative provision may prejudice the rights and freedoms guaranteed by the Constitution.

That this mechanism requires many of the controls and procedures for the proper activation, perhaps the most prominent of the assignment which countries differed in terms of the question of the enshrined there are regulations from the indirect method of assignment, any reference to the supreme judicial bodies in the state for the liquidation of those defenses to the latter briefed the constitutional oversight bodies defenses which satisfied the conditions approved by the legislature, in order to eliminate the malicious defenses useless.

Which had already been raised in the context of addressing this subject can raise a problem: What procedural controls to bring submitting the unconstitutionality of laws to the constitutional oversight bodies? And what are its effects?.

I) Legal controls to refer to the constitutionality of laws:

The referral to the constitutionality of laws by judicial bodies to the constitutional oversight bodies are not automatic, but is subject to a group of controls and procedures to be met before the presentation of these categories of defenses on regulatory bodies, otherwise the payment was met with refusal from before.

A) raise submitting the constitutionality of the law:

To go into the question of the constitutionality of the law or not to make such a submitting by the persons who are entitled to this right only, this procedure is not guaranteed to everyone in order to control the process.

1- The authority to raise of non-constitutional law:

Empowered the majority of the constitutions, which claimed responsibility for the method of submitting to the constitutionality of laws, and the parties to the proceedings have the right to raise the submit without the others, and that this right is not scheduled for all members of society, but rather requires that the motive for raising a deduction in the case⁽¹⁾ and the court could not raised before the

¹-That is, there is a dispute before a judicial authorities in the state, whether ordinary or administrative contacts which emerges from the text of article 61-1 of the French

conflict and raise the submitting of non-constitutional law itself even if the payment of the general system⁽¹⁾.

Where the draft organizational law No. 51/86 on the identification of the conditions and procedures for the application of chapter 133 of the Moroccan Constitution parties to the proceedings that they "each defendant or a defendant in a case before the court, and all of them or demands against civilians or civilian official in the case⁽²⁾."

That is the right decision for all persons, natural or juridical, whether they were persons of such moral public bodies, public institutions and local administrative units or private companies, associations, unions and the words all persons not only to the citizens of the state, but extend to foreigners, which the French Constitutional Council in one of the issues starved as granting foreigners residing in France, enjoy the rights and freedoms of the constitutional right to raise the value of the submitting the unconstitutionality of laws ; Except for the rights which the Constitution French citizens only the right to vote, which means a holiday parties to any proceedings before a judicial authorities submit the constitutionality of legislative text applicable to the case if it affects one of the basic rights and fundamental freedoms⁽³⁾.

A link to the constitutionality of the existence of a lawsuit makes the acceptance of the terms of the acceptance shall be subject directly to the judicial proceedings for the form and substance of the

Constitutional & proceedings before a judicial authority, which is what the Algerian constitutional founder also through article 188 of the Constitution¹; showing one of the parties to the trial before the judicial body, which is the same as the founder of the Tunisian Constitutional text in chapter 54 of the law on the basis of the number 50 for the year 2015 & liabilities in cases originally published before the courts.

¹ -Seidani louanouci jajika; The mechanism of pushing the unconstitutionality in the Algerian constitution, intervention at a national forum on the Constitutional Council in light of the amendment of March 6, 2016, reforms scheduled for practice, on April 27, 2017, Faculty of Law and Political Science Abdel Rahman Mirra University, Bejaia(*Algeria*).

² -Article 2/ B of The Regulatory Bill No. 15/86 on defining the terms and conditions of regulatory law No. 13-66 relating to the Constitutional Court, Official Gazette; No. 6288, 4 September 2014, p 6661.

³ - Muhammad Ali Sweilm, The Architecture of the Contemporary Constitution, comparative study in the light of jurisprudence and constitutional justice, University Publications House, 2014, p. 302.

Prosecutor⁽¹⁾, article 13 of the Code of Civil Procedure and administrative paragraph 01 Algerian that "No person may litigation unless the characteristics, and has a list of potential interest or recognized by the law⁽²⁾."

-The Interest: The interest in this appeal is the benefit of the provision of unconstitutionality of the legal text and requires that there be a link between the substantive action and the constitutional claim that the text raised should be unconstitutional as the basis of the claim, which means that the constitutional issue must be a matter of priority to be The refore, if the origin is in the interest clause of the Constitutional Council system, it is of an objective nature and an exception that is personal in narrow areas of appeal, the other is the case in a constitutional proceeding in which the interest is as a personal rule⁽³⁾; The interest in the constitutional suit is characterized by the fact that the right protected by the Constitution and that the assault against it is a legitimate act embodied in the provisions of the law or the list challenged to its unconstitutionality. 7/1984 In the 35th case of year 2, which states " It is decided that the court's jurisdiction is to accept the challenge of unconstitutionality that the appellant has a personal and direct interest in the nature and mandate of this interest in the merits of the substantive proceedings that raised the argument of unconstitutionality. On its occasion, in which the judgment affects the judgment in it"⁽⁴⁾.

2- The basis to raise submitting the unconstitutionality of laws:

Based on the parties to the case when provoked to push constitutional to the existence of legislative wisdom to the trial judge

¹ -Amaimi Radwan, contributing to the proper download of the requirements of Chapter 133 of the Constitution, an article published at <http://www.hespress.com> on January 20, 2016 at 12.08 and 12/01/2018 at 16.05.

² -Article 13 of the Law 08/09 of February 25, 2008, on civil and administrative procedures, The Official Gazette of Algeria, issue 21 of April 23, 2008.

³ Hzil Jalloul -The Status and Interest in Constitutional Disputes 'Comparative Study', Memorandum for Master's degree in Public Law, Faculty of Law and Political Science, Abu Bakr Belkaid Tlemcen University, 2013/2014, p. 117.

⁴ - Zeid Ahmed, challenging the constitutionality of the laws 'comparative study', thesis to complete the requirements of the Master's degree in Public Law, Graduate School, Najah National University, Nablus, Palestine, 2012, p 94; 95.

applied them and violates their basic rights and freedoms guaranteed by the Constitution.

-The existence of a legislative provision depends the money dispute:

By reference to the draft organizational law No. 51/86, we find that he had known the law one of the parties to the proceedings that affect the rights and freedoms that all appropriate legislative nature to be applied in a case before the court and pay party that the application will lead to the infringement or violation or deprivation of a right or freedom of the freedoms guaranteed by the Constitution ⁽¹⁾ .

-The violation of the rights and fundamental freedoms:

The argument that the unconstitutionality of laws is limited to the rights and freedoms guaranteed by the Constitution without exceeding them⁽²⁾, as the Algerian and Moroccan constitutional institutions have narrowed down the arguments that the laws are unconstitutional and limited only to the fundamental rights and freedoms guaranteed by both the constitutional N Moroccan and Algerian, similar to what the French constitutional founder went on after the constitutional amendment of 2008 through article 61.1 of it, in order to narrow the forms of constitutional violations and reduce the use of this right and not to leave the door open to all forms of constitutional violations in order to not hit the stability Legislative texts in these states.

However, the founder of the Tunisian Constitutional out of this rule, the floodgates to all aspects not only in constitutional, not by legal provisions affecting the rights and freedoms of the Tunisian citizen, though this would cleanse the Tunisian legal provisions contrary to the provisions of the constitution, but at the same time this may lead to the recognition of the Constitutional Court of the submitting which would prejudice the stability of the Legislative Assembly in the country.

¹ -Article 2, paragraph A of the Regulatory Bill 15/86.

² - Salem Haddad, the after-watch of the constitutionality of Morocco's laws under the 2011 constitution, published on Rabat's website <http://zaiocity.net> on Thursday, March 10, 2016, 11/01/2018 at 10:30 p.m.

In spite of the limited defenses on the basic rights and freedoms, but there see this side that he had opened the door to raise several questions about the meaning of the rights and fundamental freedoms do you mean the rights and freedoms that the Constitution dealt with the formal sense or exceeds that to include all the rights and freedoms guaranteed by the constitution in the material content⁽¹⁾ .

Could not only the concept of the rights and freedoms guaranteed by the Constitution exclusively to the preamble of the constitutions of the Maghreb states and the rights and freedoms but can expand the areas of these rights and freedoms and to ensure that the constitutional legitimacy in the application of the laws of these countries⁽²⁾, And that was the French constitutional council had settled the matter through one of its provisions on the impact of its decision on the compilation of 1971 where it during its consideration of the law amending the law containing the association had the boundaries of those rights and freedoms, which include the preamble of the Constitution of 1958 and the assignee of the Charter of the environment as well as the preamble of the Constitution of 1946, as well as of the Declaration of Human Rights and Citizens for the year 1789 to add to it after that the principles recognized by the laws of the Republic and the principles and objectives of the constitutional value⁽³⁾ .

Procedures for raising a constitutional motion:

Advance parties to the proceedings to Submit the unconstitutionality of laws at the request of the reasoned written,

¹ -Ammar Abbas, conditions of pushing for the unconstitutionality of laws on constitutionally guaranteed rights and freedoms, intervention at a national forum on the Constitutional Council in light of the Amendment of March 6, 2016, reforms scheduled for practice, on April 27, 2017, Faculty of Law and Political Science sought by Abdul Rahman Mirra University, Bejaia(*Algeria*).

² -Salem Haddad, former reference and Ammar Abbas, former reference, without a page.

³ -Ammar Abbas, former reference, without a page.

separate from the rest of the proceedings in the other, under the non-acceptance⁽¹⁾.

Where the condition of chapter 55 of the Basic Law of the Constitutional Court of Tunisia that payment is the unconstitutionality of laws under a separate note reasoned liberated by the lawyer of the Ceremony to comment and have to explain the reasons for the payment as well as determining the detailed provisions of the impugned Law⁽²⁾.

Article 05 of the draft organizational law No. 51/86 a set of conditions to be fulfilled to accept payment so that a note of payment must be submitted separately and signed by the party or by a lawyer registered in the body of lawyers in Morocco with the observance of the international conventions in force.

In addition to paying the amount of the judicial fee, which determines the amount in accordance with the legislation in force, and the memorandum of appeal contains the provision of the text of the legislative subject of the argument of unconstitutionality, which the payer considers to infringe on the right of his rights or freedom guaranteed by the Constitution and a statement of violations, violations or haram. It is the right or freedom of the said to provide proof that the law in question has been applied or intended to be applied by the court in the case or the ruler or constitutes a basis for follow-up as the case is made, provided that the submit note shall be attached to a copy of which is equal to the number of parties and, if necessary, any other document the party concerned wishes to edit. No to it in court⁽³⁾.

That the failure of one of the previous statements, especially with regard to the submit of the contested law attach payment shows

¹-Alian Bouzian, The Mechanism of Argument of Unconstitutionality and Its Implications for the Activation of Constitutional Justice, Constitutional Council journal, Issue 2, 2013, p. 71.

² -Chapter 55 of the Basic Law No. 50 of 2015 dated December 3, 2015 on the Tunisian Constitutional Court, the official leader of the Tunisian Republic, issue 98, dated December 8, 2015.

³ -See Article 5 of the Regulatory Bill 15/86.

the lack of acceptance, which went to the Egyptian Supreme Constitutional Court in one of its provisions while "approved since article 30 of the law on the Constitutional Court of the Supreme Court Act 48 of 1979 stipulated that &'must include the resolution issued by the assignment to the Supreme Constitutional Court or the proceedings in accordance with the provisions of the preceding article, a statement of the legislative text of the contested decision of unconstitutionality prosecutor violating the constitutional text and contrary"; As a result, the legislator was obliged to accept constitutional claims, so that the decision to refer or the newspaper of the case contains the substantial statements provided in article 30 that indicate the seriousness of these claims and determine their subject matter, in accordance with the constitutional presumption in the interest of the laws and so that those concerned, including the Government, are allowed to do so. Those who have been granted article 35 of the Court Act to declare the decision or the newspaper to prove all its aspects and in the light of this can make their observation suppositions and narrated them on the dates set by article 38 of the same law; The Commission of Commissioners shall prepare the subject after violating these dates and identify the constitutional and legal issues raised and express its opinion as required by article 40 of the Supreme Constitutional Court Act referred to, and since it is established from the newspaper of the case that it came without the statement of the text The constitutional claim that he violated Law No. 119 of 1964 to him as it did not show the constitutional violations that affect the provisions of the impugned law is totally unconstitutional and without specifying a specific provision on which any face of a constitutional violation, the newspaper of the case may have failed to explain the aspects of article 30 of the Court Act constitutional as described above and therefore the constitutional claim is unacceptable⁽¹⁾.

¹ - Omar Hamza Turkmani, Constitutional Court in Palestine in accordance with the Law of the Supreme Constitutional Court No. 3 of 2006 comparative analytical

B) The filtering:

After raising the Submit and fulfilling the required formal requirements, the judicial bodies at the first and second levels shall undertake preliminary monitoring to ascertain the seriousness of the payment and provide the conditions required for its promotion, as indicated by article 23.2 of the Regulatory Act 2009/1523 so that the referral to The Council of State or the Court of Cassation only meets the conditions set out in this article, which require that the contested law be applicable to the dispute or to legal proceedings or as a basis for prosecutions, and its constitutionality has not been decided by the Constitutional Council unless the circumstances on which the party's defence was founded change; And that the issue is important ⁽¹⁾.

1- The challenged law applicable to the dispute or the legal actions or represents the basis for the prosecution:

In the sense that the law be paid unconstitutionality applied to the subject of the original conflict, in order to avoid disruption of the work of judicial authorities to the response of the original proceedings and reduce the constitutional defenses⁽²⁾, that is to say, any chapter in the constitutional issue necessary chapter in the substantive issue which was raised upon payment and productive, if the judge deemed subject that legislation paid unconstitutionality is not linked to the conflict before it and apply it refused to accept the Submit unconstitutionality submitted by parties to the proceedings⁽³⁾.

So is the law of the subject of the Submit is applied or to be applied by the court⁽⁴⁾, which is indicated by the founder of the Moroccan Constitution, or to stop him money conflict as adopted by the founder of the Algerian constitutional council, however, the founder of the Tunisian Constitutional did not take this requirement, leaving the

study, a letter to complete the requirements for a master's degree in public law, faculty of law, Al-Azhar University, Gaza, Palestine, 2010, p. 209.

¹- see Article 23-2 created by Constitutional Law No. 2008-724 of 23 July 2008 to modernize the institutions of the Fifth Republic(1) J.O. R.F 24July 2008.

² -Ammar Abbas, former reference, without a page.

³ -Omar Hamza al-Turkmani, former reference, p. 217.

⁴ -Article 05, paragraph 07 of the Regulatory Bill 15/86.

legislature, in which the provisions of the Basic Law of the Constitutional Court under article 1 of the⁽¹⁾ .

2- The lack of separation in the constitutionality of the law, unless circumstances change:

This requirement excludes the constitutional presumption where it is intended that this law, which is motivated by its unconstitutionality by one of the parties to the proceedings, has not been decided by the Constitutional Council or the Constitutional Court, which is stipulated in the draft regulatory law through article 5, paragraph 08 of it, which states that This requirement excludes the constitutional presumption where it is intended that this law, which is motivated by its unconstitutionality by one of the parties to the proceedings, should not have been decided by the Constitutional Council or the Constitutional Court, which is stipulated in the draft regulatory law through article 5, paragraph 08 of it, which states that "it shall not have been It has already been decided whether the law in question will be matched unless the basis on which the Submit was based has been changed.

It should be noted in this condition that the French or Moroccan legislator has left the door open on this matter, where if the grounds on which one of the parties to the proceedings claim the unconstitutionality of the law, despite the constitutionality of the law, may be reviewed by the bodies of slavery On the constitutionality of the laws⁽²⁾ .

3- To be an important issue:

The legislator establishes the link between the case in which the argument of unconstitutionality has been raised and the merits of the merits, suggesting that the disputed constitutional issue must be a preliminary matter so that it must be decided first so that the court can decide on the substantive case in which the Submit was raised and therefore the E the other is unconstitutional, such as passing certain

¹ -Ammar Abbas, former reference, without a page.

² -See article 5, paragraph 08 of the Regulatory Bill 15/86.

legislation without following the procedures required by the Constitution can only be triggered in accordance with the method of control prior to the enactment of the law⁽¹⁾.

The assessment of the seriousness and importance of the submit is up to the trial judge and the decision on the constitutional issue raised should be productive in the adjudication of the substantive case, and the unconstitutional ity of the judgement will benefit him, who raised the Submit if the unconstitutional ity of the judgement does not have any legal effect on the litigant in the proceedings. Objectivity is an unproductive case and the constitutional issue raised is of no importance, which necessitates the refusal to submit by the trial judge⁽²⁾.

C) Decide on the filter:

The judicial authorities (at the level of the first and second degrees or the supreme judicial bodies) upon receipt of the evidence objecting to match a legislative provision with the rights and freedoms guaranteed by the constitution on the one hand and international commitments after making sure the previous conditions, a priority on the decision to refer the issue to the Constitutional Council or the Constitutional Court of Cassation⁽³⁾, in order to eight days from the date of payment before it⁽⁴⁾ and does not accept any form of appeal⁽⁵⁾.

II): The procedural system to refer to the oversight bodies on the constitutionality of laws.

Take assignment of defenses on the oversight bodies on the constitutionality of laws two photocopies, direct reference to these categories of bodies before the courts of the subject or assignment indirectly where referral of the defenses of the supreme judicial

¹ -Muhammad Ali Sweilm, former reference, p. 303.

² - Salah Khalaf Eid, Federal Supreme Court in Iraq, composition and competences (comparative study), a master's degree in public law, faculty of law, University of Nahrein, Republic of Iraq, 2011, p. 108.

³ - Section 23-2 of Order 58-1067 of November 7, 1958.

⁴ - Article 06, paragraph 01 of the Regulatory Bill 15/86.

⁵ - Section 23-2 of Order 58-1067 of November 7, 1958.

bodies, the first of which is the liquidation of accentuating those defenses, to be forwarded to the constitutional oversight bodies.

A) Direct referral to the oversight bodies on the constitutionality of laws:

Taking this trend, the Tunisian by the Basic Law to the constitutional court where necessitated the courts when you submit before the unconstitutionality of laws refer the matter immediately to the constitutional court and may not appeal the decision of the reference to any aspect of the challenge even intervene⁽¹⁾.

A referral appointment signed by the President of the court concerned the writer and must contain the names and titles of the respective parties and the medieval defamations levelled to the challenged law and its provisions paid unconstitutionality with a brief presentation of the facts of the original case directly associated with this submitting and the decision of the referral to the Constitutional Court, annexed to the note by pay under chapter 55 of this law⁽²⁾.

B) The indirect reference to the oversight bodies on the constitutionality of laws:

1-The referral by the Court:

After the trial court has confirmed that the submitting has been fulfilled under article 23.2 of the Regulatory Act 2009/1523, the decision to refer to the Council of State or the Court of Cassation shall be sent as a case within eight days of the date of its release, accompanied by the legal notes and final requests of the parties, and the decision to refer may not be challenged, and the refusal of the referral by the trial court cannot be challenged unless the resolution of the entire dispute or part of it is challenged⁽³⁾.

However, following the draft regulatory law 15/86, the Moroccan legislator limited the authority to which the defences from the Trial Court are referred only to the Court of Cassation, where all cases relating to the prodding unconstitutionality of the laws are referred to

¹ -Chapter 56 of the Basic Law No. 50 of 2015.

² -Chapter 57 of the Basic Law No. 50 of 2015.

³ - Article 23-2 of Order 58-1067 of November 7, 1958.

the First President of the Court of Cassation in accordance with the provisions of article 6 of this law and immediately feel that the Attorney-General of the King in this court shall be referred to the court⁽¹⁾.

Before appeals are sent by the supreme judicial bodies; The Supreme Court, the Council of State) to the oversight bodies on the constitutionality of laws update liquidation (monitoring) as previously we have to make sure that the submissions received in accordance with the procedures set out in the Organizational Law No. 2009/1523, as in this case to the Council of State or the court of cassation (Supreme Court) to make sure that the referral of the requirements contained in paragraph 1 and 2 of article 23.2 and the issue was new or of importance⁽²⁾.

2-The referral by the supreme judicial bodies:

Following the receipt of the referral from the end of the trial courts to the supreme judicial bodies, depending on the situation, whether under article 23.2 or under the last paragraph of Article 23.1 a decision of the Council of State or the court of cassation in the assignment within three months from the date of arrival of the reference after the liquidation procedure⁽³⁾.

The decision of the Council of State or the Court of Cassation to notify the Constitutional Council of the constitutional priority issue is accompanied by memorandums or final requests of the parties, and the Council of State or the Court of Cassation reserves the right not to refer the case to the Constitutional Council if the submitting does not meet the required conditions and is handed over; The Constitutional Council is a copy of the reasoned decision by which the Council of State or the Supreme Court decided not to notify it of a priority constitutional issue.

¹ -See Article 10, paragraph 1 of the Regulatory Bill 15/86.

² - Article 23-5 of Order 58-1067 of November 7, 1958.

³ - Article 23-4 of Order 58-1067 of November 7, 1958.

Also, if the Council of State or the Court of Cassation does not issue its decision within three months, the matter will be referred to the Constitutional Council⁽¹⁾.

The draft regulation 15/86 has proceeded in this way by stating that the body appointed by the First President of the Court of Cassation shall decide on a decision within a period of 3 months from the date of the referral in article 6 of it, refer the submitting to the Constitutional Court with the notes and conclusions of the parties and report to the court before which the payment was raised⁽²⁾.

If the Court of Cassation does not rule on the unconstitutionality of a law within three months, it will be automatically referred to the Constitutional Court for decision⁽³⁾.

c) The effects of the assignment:

The referral to the constitutionality of the law, both in the trial court or the supreme judicial bodies, resulting in the arrest of the case to the original while chapter in submitting by the Constitutional Council, as a rule, however, respond to the few exceptions where the courts continue to walk in the original proceedings despite raise pay when available some cases mentioned by the French legislator through organizational law 2009/1523.

1- Turn off the hearing in the case of origin:

The referral of the argument of the unconstitutionality of laws, whether on the supreme judicial bodies (Supreme Court, The Council of State) or the bodies oversight of the constitutionality of laws, entails the suspension of the consideration of the original case, where the trial court or the competent body when it initiates its powers to refer The questionable legislative provision that the substantive proceedings should be discontinued and the decision on the constitutional issue is pending, as the decision to refer is not merely a suspicion of the unconstitutionality of the legislation, so that the interest of the litigants remains in place until a decision is made by the

¹ - Article 23-7 of Order 58-1067 of November 7, 1958.

² -See Article 11 of the Regulatory Bill 15/86.

³ -See Article 12 of the Regulatory Bill 15/86.

higher judicial bodies Or regulatory bodies if notified to decide the validity of the legislation or its corruption⁽¹⁾.

This is as indicated by Article 23.3 of the Regulatory Act 209/1523, when it states that "when the matter is referred, the court postpones sentencing until the decision of the Council of State, the Court of Cassation or the Constitutional Council is received if it is notified.....⁽²⁾".

This is what was adopted by the Basic Law of the Tunisian Constitutional Court through chapter 58 of it, which states that the decision to refer suspends the hearing of the original case and suspends the deadlines from the date of its issuance until the court before which it is raised to push the decision of the Constitutional Court or the expiry of its conclusion by a decision To the Constitutional Court without his receipt⁽³⁾.

The Egyptian Supreme Constitutional Court also confirmed this order in a ruling which ruled that what was done to the court that the connection of the constitutional litigant to it by filing it with it in accordance with the rules and in accordance with the procedures stipulated in its law means entering into its possession to dominate it alone, it is not permissible yet It is convened that the trial court shall take action or issue a ruling preventing the adjudication of the constitutional matters raised by it, as its judiciary suspends the proceedings before it and refers the papers to the Supreme Constitutional Court to decide on its constitutionality, which has emerged as a legal provision that has raised suspicions of unconstitutionality, The dispute before it is an engine of constitutional rivalry and the court of the subject after the constitutional issues raised

¹ -Omar Hamza al-Turkmani, former reference, p. 210.

² - Article 23-3 of Order 58-1067 of November 7, 1958.

Article 23-5 of Order 58-1067 of November 7, 1958.

³ -Chapter 58 of the Basic Law No. 50 of 2015.

by the decision to refer to the Supreme Constitutional Court were suspended Substantive⁽¹⁾.

2-Proceed with the original claim:

The Regulatory Act 2009/1523 has provided some exceptions where the trial court can complete the case if a postponement of its decision would deprive a person of liberty because of the case or when the case aims to discontinue proceedings restricting freedoms.

The court may also decide without waiting for the decision on the constitutional issue of priority if the law or regulation binds the court of first instance in this case without delay and an appeal against its decision may be postponed by the Court of Appeal and may not postpone its consideration if it is the case; They are obliged to pronounce the judgement within a specified period or in haste, or the postponement of the hearing of the case may lead to irreparable or clearly excessive consequences with regard to the rights of one of the parties where the French legislator authorized the court that referred the matter to decide on the cases to be settled immediately.

If an objection to cassation is lodged while the verdict is delivered without waiting for the decision of the State Council, the Court of Cassation or the Constitutional Council, if notified, the consideration of any appeal is postponed as long as the constitutional issue is not considered as a priority and the matter is different when a party is deprived of its liberty as a result of the case, When the law obliges the Court of Cassation to decide within a specified period.

The suspension of consideration of the original invitation does not prevent further investigations, and the Court may take temporary and precautionary measures that it deems appropriate for the substantive decision on the invitation⁽²⁾.

This is the same approach that the Moroccan legislator followed through the draft regulatory law of the Constitutional Court, where he listed some exceptions in which the courts of the Kingdom may

¹ -Omar Hamza al-Turkmani, former reference, p 210.

² - Article 23-3 of Order 58-1067 of November 7, 1958.

proceed with the case despite the referral of the submission to the Court of Cassation or the Constitutional Court⁽¹⁾.

3-Notification of the referral decision:

The French Constitutional Council, which has been notified in accordance with the provisions of the Regulation 2009/1523 Act, shall immediately inform the President, the Prime Minister, the President of the French National Assembly and the French Senate, where they can send their observations on the priority constitutional issue to the Constitutional Council⁽²⁾.

The Moroccan Constitutional Court shall report the referral decision to the Prime Minister, the President of both houses of parliament and the parties who can submit their briefs or observations on the subject of submitting within a deadline set by the Constitutional Court.

Conclusion:

Recognizing the unconstitutionality of laws is a qualitative shift towards enshrining constitutional justice in the country, It was violated by the state authorities.

However, this mechanism has resulted in a range of drawbacks:

1-The reading of the comparative regulatory texts of this mechanism makes it clear that this right is limited only to the parties to the case, which takes it, and it was the first part to expand the authority entitled to raise the argument that the laws are unconstitutional for every person who has an interest in the application of this law, whether it is the two entrances in the The failure of the interventionists or anyone whose application of this legislation causes harm and violates the fundamental rights and freedoms guaranteed by the Constitution.

2-This mechanism is also concerned by the fact that the parties to the proceedings are not given the opportunity to argue directly with the oversight bodies on the constitutionality of laws and the need to refer

¹ -See Article 12 of the Regulatory Bill 15/86.

² - Article 23-8 of Order 58-1067 of November 7, 1958.

them to the higher judicial bodies, which would prolong the consideration of defences, which would inevitably negatively affect the interests of the parties and lead to their disruption and delay. In some cases, the higher judicial bodies may even abuse their constitutionally mandated authority and refer these defences on flimsy grounds, given the sheer amount of defences that may be received in addition to other cases that fall within their original jurisdictions and therefore it was part of the first part to make it available; The opportunity for individuals to submit directly to constitutional oversight bodies.

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