Judicial and constitutional control over the regulatory authority of the President of the Republic in Algerian legislation

الرقابة القضائية و الدستورية على السلطة التنظيمية لرئيس الجمهورية في التشريع الجزائري

Slimani Hindoun [1],

[1] Faculty of law University d'Alger1 (Alger), ousstadas2009@gmail.com

Received:10/12/2019 *Accepted:* **29/07/2020** *Published:* **septembre/2020**

الملخص:

لقد أقر المؤسس الدستوري الجزائري لرئيس الجمهورية صلاحية ممارسة السلطة التنظيمية في المسائل غير المخصصة للقانون و ذلك بموجب المادة 1/143 من التعديل الدستوري لسنة 2016 ؛ مانحا له بذلك مجالا واسعا يمارس من خلاله اختصاصه التنظيمي و بالمقابل حصر المؤسس الدستوري مجال البرلمان بتحديده للميادين التي يمكن أن يشرع فيها و هذا ما نصت عليه المادة 140 و 141 من نفس التعديل . وهذا ما جعل السلطة التنظيمة لرئيس الجمهورية آلية دستورية مدعمة لمركز الرئيس في مواجهة البرلمان في مجال صنع القانون ؛ ولكن هذا لا يعني إطلاق هذه السلطة الممنوحة له و عدم إخضاعها للرقابة فكل من التنظيم و القانون يخضعان للرقابة و ذلك في حالة تعدي أي سلطة على مجال الأخرى.

الكلمات المفتاحية :السلطة التنظيمة –الرقابة القضائية على السلطة التنظيمية –الرقابة الدستورية على السلطة التنظيمية – مجلس الدولة – المجلس الدستوري.

Abstract:

In accordance with Article 143/1 of the Constitutional Amendment of 2016, the Algerian constitutional founder of the President of the Republic acknowledged the power to exercise regulatory authority in matters not reserved for the Parliament. In return, the constitutional founder limited the areas of competence of the Parliament regarding areas which it is allowed to pass legislation according to articles 140 and 141 of the Constitutional Amendment of 2016 and other articles in the Constitution, and this has made the regulatory authority of the President of the Republic a constitutional mechanism supporting the position of the President of the Republic in the face of Parliament in the area of law making.

Key words: regulatory authority- judicial oversight of regulations-constitutional oversight of organizations-constitutional council-council of state.

1- Introduction

Auteur correspondant: Slimani Hindoun e-mail: usstadas2009@gmail.com

The organizational power exercised by the President of the Republic derives its strength and basis from the Constitution (Article 125/1 of the 1996 Constitutional Amendment, which corresponds to Article 143 of the Constitutional Amendment of 2016) and not from the law, and that gives it a great and distinct value. However, this value and rank do not prevent organizations from being under control, because they are like the rest of the legal texts in the State subject to judicial control by the State Council and control of both ordinary and administrative judiciary as well as control by the Constitutional Council, and this protection and maintenance of the principle of the supremacy of the Constitution. Thus, the independence of organizations from the law does not mean that they are independent of the Constitution, but derive their strength and foundation from it. Therefore, organizations are subject to control in case they violate the constitution no matter what they are.
Therefore, the following problem can be raised:

How to exercise control over the work of the organizational power of the President of the Republic?

The answer to this question requires us to seek judicial control on the regulatory authority of the President of the Republic by the State Council and control of both the administrative judiciary and the ordinary judiciary (Title I), and then search for constitutional control over the regulatory authority of the President of the Republic by the Constitutional Council (Title II).

2- Title I: Judicial control over the regulatory authority of the President of the Republic

Based on the Constitution of 1976[1], the law in its narrow sense of the Algerian constitutional system has a specific area, which changed the rule that was previously in force according to the Constitution of 1963[2], which left the parliament a large space to launch legislation in various fields of social, political and economic life. According to the Constitution of 1963, the regulatory authority of the President of the Republic was the exception.

However, the revolution that provoked by the constitution of 1976, and subsequently enshrined in the 1989[3] Constitution and the amended Constitution of 1996[4] as well as the 2016 Constitutional Amendment[5] in the legal field, without prejudice to the hierarchy of legal rules, which means that there is a sphere that can not be addressed by the latter because – in fact – it is allocated to the regulatory authority of the President of the Republic.
Because of this competition, the constitutional founder, especially in light of the amendment of the Constitution of 1996 and the 2016 constitutional amendment, has taken a series of measures that can be said to have been in favor of the regulatory authority of the President of the Republic due to the role he may play in preventing Parliament from expanding its legislative sphere at the expense of presidential organization.
In this topic we will deal with the advisory function of the State Council (first subtitle) and then to the administrative and ordinary judiciary (second subtitle) as follows:

2.1- First subtitle: through the advisory function of the State Council

The Constitutional Amendment of 1996 and 2016 was the first to introduce the State Council as a constitutional institution, in compliance with Article 152 of the 1996 Amendment to the Constitution, which corresponds to Article 171 of the Constitutional Amendment 2016 which states: The Supreme Court and the State Council unify jurisprudence across the country and make sure to respect the law).
Article 02 of Organic Law No. 98-01[6] defines it as "to serve as the governing body for the activity of administrative tribunals, which is subordinate to the judiciary and ensures the

unification of administrative jurisprudence in the country and ensures the respect of the law and enjoys the independence in the exercise of its jurisdiction".

As an organ of the judicial Authority, it originally had a judicial function only, as was the case with the administrative chamber of the Supreme Court, but in fact the reverse is often the case, because the State Council, in addition to its judicial function, has a second, equally important, function which is the advisory function mentioned in the Article 119 of the 1996 Constitution, which corresponds to Article 136 of the Constitutional Amendment of 2016 as follows: "The draft law are presented to the Council of Ministers, after taking into consideration the opinion of the Council of state, and then the prime Minister deposit it to the National People's Assembly or the Council of the Nation office".

In order to discuss the advisory function of the State Council, we addressed:

Section I: Field of the consultative function of the State Council

The Council of State derives its consultative function mainly from the text of Article 119 of the 1996 Amendment to the Constitution, which corresponds to Article 136 of the Constitutional Amendment of 2016 - mentioned above - and the text of Article 04 of Organic Law 98-01, which states that: "The Council of state should pronounce itself on draft laws in accordance with the conditions prescribed by this law and the specific modalities of its rules of procedure", and the Article 12 of the same law states also that: "The Council of state should pronounce itself on draft laws notified in accordance with provisions that are stipulated in Article 04 - mentioned above – and then propose the amendments he deemed necessary".

What is deduced from these texts is that the State Council constitutes, for the Government, a Council Chamber in the area of legislation that means that if the latter wishes to present a specific project, it must first turn to the State Council for its opinion on this draft[7].

Section II: regulations of the consultative function of Council of state

The regulations of the consultative function of Council of state are as follows:

First clause: Form the State Council when deliberating in the consultative field

Article 14 of Organic Law 98-01 states that: "The State Council shall be organized to exercise its jurisdiction of a judicial nature in the form of chambers, which may be divided into sections.

In order to exercise its consultative functions, it shall be organized in the form of a General Assembly and a Standing Committee".

Article 35 of the same law stipulates: "The Council of State shall deliberate in the consultative field in the form of a General Assembly and a Standing Committee."

Second clause: Procedures to be taken in the Consultative Field

Article 41 of Organic Law 98-01 states that: "Forms and modalities of procedures in the consultative field shall be determined by regulation."

Within this framework, the Executive Decree No. 98-261 of 29 August 1998[8] has already defined the forms, procedures and modalities in the consultative field in front of the State Council as follows:

Firstly: Notification: The State Council shall be notified of the draft laws by the Secretary General of the Government, after their approval by the Council of Government. Each draft law and all its file elements shall be sent by the Secretariat of the Government to the Secretariat of the Council of State.

Secondly: Receiving the draft law by the State Council and submitting it to the competent authority:

After receiving the file of the draft law, The President of the State Council, shall, as appropriate do:

1- The designation of a State Counselor as a decision maker, in the ordinary case, after that, the draft law which shall be examined and discussed by a working group of consultants in sessions. The Minister concerned or his representative shall have the right to be present.
2- Refer the draft law in exceptional and urgent cases mentioned by the Prime Minister to the Chairman of the Standing Committee who must immediately appoint a State Councilor as a decision maker.
In both cases, a copy of the file is sent to the Governor of the State, who appoints one of his assistants and instructs him to follow up the proceedings and submit his written observations.
Thirdly: Define the agenda: When the preparatory work is completed - for the preparation of the draft final report – the President of the Council of State, shall determine the date of the meeting and the agenda, and then notify the concerned minister or ministers.

Fourthly: **Holding the session**[9]**:** The session in which the State Council exercises its consultative function, as the case may be, shall be held in the form of a general assembly or a standing committee, during which the report prepared by the State Counselor shall be read and submissions prepared by the Governor of the State or one of his assistants, included a general discussion on the content of the draft final report, concluded by a deliberation involving the Governor of the State or one of his assistants, shall be taken by a majority vote of the members present, in the case of a tie, the President shall have a casting vote.

After deliberation and ratification of the final report, the State Council has, by this way, expressed its opinion.

Fifthly: **Reporting or communicating the Opinion of the Council of State to the Government:** The opinion of the Council of State, written in the form of a final report, shall be sent to the Secretary General of the Government by the President of the Council of State.

Third Clause: The Legal Nature of the State Council Opinion

The Opinion expressed by the State Council may include proposals to either[10]: enrich the text, modify it or remove it if it contains provisions that may be declared unconstitutional.

In this regard, is the government obliged to respect the conclusion of the State Council's opinion, or is it entitled to uphold its draft as presented to the Council, thereby putting aside the opinion of the Council of State?

Most, if not all, Algerian jurisprudence has argued that notifying the Council of State about draft laws and requesting its opinion on them by the Government is compulsory and obligatory, as stated in Article 2 of Executive Decree No. 98-261 which states that: **"Notifying the State Council of draft laws is obligatory".**
On the other hand, some of Algerian jurisprudence - and we support it - that the government cannot issue a text different from the original draft, which was referred to the State Council for consultation[11].

There is a view that[12] :" The expression (to take the opinion) in the constitutional text does not involve more than an explanation, so that the principle that the Council of State, in the legislative sphere, exercises the role of the consultative body does not always have the characteristic of compulsory force is not always correct, and we have a good example in the Article 37 of French Constitution of 1958, which stated that: **(other issues that are not within the scope of the law is a prerogative of the organization. Legislative texts dealing with these issues may be amended by decrees after taking the Council of State opinion).**

2.2 - Second subtitle: by the control of the administrative judiciary and the ordinary judiciary

The modern state is a state of law, so it seeks to impose the rules on all individuals in their behavior and actions, as well as on the activity and actions of central and decentralized state bodies[13].

That what was adopted and confirmed by all successive constitutional texts, such the Article 74 of the 1976 Constitution that stipulates that: **"Everyone must respect the constitution and to comply with the laws and regulations of the Republic. There is no excuse for ignorance of the law"** as stipulated in articles 57 of the 1989 Constitution and 60 of the Constitutional Amendment of 1996 and 74 of the Constitutional Amendment of 2016: "No excuse for ignorance of the law. Everyone must respect the Constitution and the laws of the Republic".

Although the Algerian constitutions stipulate that judgments are rendered in accordance with the law in its broadest sense, the text of Article 152 of the Constitutional Amendment of 1996 which corresponds to Article 171 of the new Constitutional Amendment of 2016, which provides the adoption of judicial duality, specifically by the supervision of the administrative and ordinary judiciary.

Section I: through administrative judicial control

Presidential regulations emanating under the Regulatory Authority of the president of the republic, according to the material organic criteria, are considered as a legislative act because of the nature of the legal rules which they contain which are a general and abstract rules, as well as laws, therefore they represent one of the sources of the legal system in the state, and therefore they must be considered as one of Sources of Legitimacy[14].

Since presidential regulations are an element of legitimacy, the public and administrative authorities of the state must strictly respect them, if not, individuals are entitled to access to justice to present an appeal against the emanating decisions in case they are taken differently. In this regard, the Article 134 of 1989 Constitution stipulates that**: "The judiciary shall hear appeals against administrative authorities' decisions"**, and the Article 143 of the 1996 Constitution, which corresponds to Article 161 of the 2016 Constitutional Amendment, stipulates that: **"The judiciary shall hear appeals against decisions of administrative authorities"**.

On the other hand, the administrative judiciary, represented by the Council of State and the administrative judicial bodies, must take into consideration the presidential regulations and apply them whenever necessary in the cases of proceedings before it, because the judiciary in general and the administrative judiciary in particular are always obliged to establish its rulings and decisions not only on laws in a narrow sense, but it is also based on organizations of all kinds, including, of course, presidential organizations, as they are like laws in terms of defining rights and obligations.

The control of the administrative judiciary over the regulatory authority of the President of the Republic is in effect as:

1. Control that protects legitimacy.
2 - Control that limits legitimacy.

First Clause: As a control that protects legitimacy:

That happens through legal judicial proceedings, which is a set of substantive claim brought by persons involved and stakeholders before the competent administrative judicial authorities, and this claim is established on the basis of public legal standing, and in addition to protecting the private interest of its plaintiffs, it works for the Public interest by protecting

the legitimacy of administrative acts and the legal system in the country, then the legal claiming is intended to protect the concept of the rule of law and the principle of legitimacy in the country[15]. Among the most important legal claiming we find the annulment claim and it can be defined as: a judicial proceedings filed in order to litigate some national or internal administrative decisions, by its challenging its legitimacy in preparation for demanding its cancellation and invalidation by putting a definitive end to its effects.
In order to objectively accept the request for annulment, the complainants must prove that the decision in question is vitiated by at least one of the internal or external deficiencies that affect administrative decisions in its bases[16].

Second Clause: as a control that limits legitimacy

It is well known that judicial control can only be exercised on the basis of a claim brought by the concerned party. A judge cannot intervene in disputes between public administration and individuals on his own, but may be obliged to adjudicate a dispute when he is asked to intervene, otherwise he is considered as a perpetrator of a crime of denial of justice.

However, there are some presidential regulations issued under the regulatory authority of the President of the Republic that can not be appealed judicially before the administrative court, because the latter considers it an action that falls into the action of the government, or what is also known as acts of sovereignty[17].

When an administrative judge is questioned to see any appeal lodged against the presidential regulations, he opposes its admissibility by using an insinuation such[18]: “These actions are not of a nature to be appealable”.

On the basis of the foregoing, it can be said that: While many judicial cases consider the control of the administrative judiciary over acts of sovereignty as a control limiting the scope of legitimacy, it is also considered to be a control of Regulatory Authority of the Judiciary of the President of the Republic.

Section II: trough the supervision of the ordinary judiciary (court)

Most countries have established ordinary courts or judicial bodies that intervene automatically in criminal cases, but they can not intervene in civil cases as long as they are not invoked by people in a lawsuit.

Recourse to justice is not a duty for anyone victim of a violation of his right, neither to himself nor to his society, as the jurist "Ahrandj" had said it seems to be a perfect idea, even if it aims to establish the rule of law, and therefore it has not been adopted by most of the world's legislations[19].

Accordingly, the general rule in the field of civil litigation is that the judge is not competent to consider disputes by himself, that means that the civil judge may not search and request litigations to adjudicate them against the will of the litigants. Therefore, the judge differs from Public Prosecutor's office which can initiate public proceedings on its own[20].

In any case, we will try in this section to know the modalities and methods of the contribution of the ordinary judicial control on the authority of control of the President of the Republic, by determining specifically its role and its mission:

1 - Control of the criminal (penal) justice.

2- Control of the civil justice.

First Clause: Control of the criminal (penal) justice

The Code of Criminal Procedure, with its rules aimed at defining and clarifying the procedures by which the right to punishment is used, protects both the accused and the victim rights, and also ensure – by the way of Public Prosecutor's office - public interest.

Referring to Article 467[21] of the Penal Code which stipulates: "Courts and Judicial Council continue to follow laws and regulations relating to articles not provided in this law", we find that the criminal justice controls the regulatory authority of the President of the Republic and protect it through public proceedings initiated before the Public Prosecutor's office.

Public proceedings may be defined as: a judicial process that is exclusively brought before the criminal court by the Public Prosecutor's office, that pleaded for and demands that society implement the law embodied in the State's right to punish.

On the basis of the foregoing, we can say that although the control exercised by the criminal courts over the regulatory authority of the President of the Republic is regulated in various procedures in public procedure, the basis of the latter varies according to the nature of the cases of abuse, and that in the case where the victim was:

- Regulatory text emanating from the regulatory authority of the President of the Republic, in this case the offense is considered a criminal offense, and its perpetrators are thus pursued and punished.

- If the case falls within the jurisdiction of the President of the Republic and the offender was one of the judges or one of the officers of the judicial police, the offense must be considered as a crime, and the offender must be so prosecuted and punished.

Second Clause: Civil Judicial control

The establishment of legal rules in the State is not limited to a single public authority or body, and there is a possibility of conflict and contradiction between these rules, and therefore a conflict between the authorities and the bodies that drafted it, and without any doubt, the phenomenon of inconsistency or contradiction between the legislations constitutes a general presumption[22].

Obviously, this phenomenon may not be a problem, if the contradiction between one text and another, or between a previous and a later one, the civil judge will proceed to the principle of the special text restricting the general text for the first case, and the principle of the subsequent text supersedes the previous text for the second case, and one of both texts is exclude and apply the remaining text on the case at hand on.

However, the phenomenon of incompatibility may be a problem in itself if it if they involves legal rules that do not have the same degree of mandatory[23], that holds one presidential order and the other an executive order issued by the Prime Minister under his regulatory authority, in this case, and to resolve the conflict that can occur between a presidential and an executive order, the judge can refer to:

- Decision of the Civil Chamber of the Supreme Court No. 130145 of 12 July 1995.

- Decision of the Civil Chamber of the Supreme Court No. 264463 of 09 October 2002.

Thus, if the Civil Court of the Supreme Court, without directly examining the legitimacy, adheres to the principle of the hierarchy of laws to exclude and neglect the implementing regulations if they violate a higher legislation, it is possible to imagine that they would apply the same solution in the case where the presidential regulation - issued by the President of the Republic under its regulatory authority - instead of law.

3 - Title II: Constitutional control over the regulatory authority of the President of the Republic

The Article 165/1 of the 1996 Constitutional Amendment states that: “In addition to its competences explicitly vested in it by other provisions of the Constitution, the Constitutional Council shall decide on the constitutionality of treaties, laws, and regulations, either with giving its opinion before they become enforceable, or by a decision in the opposite case. This corresponding to Article 186 of the 2016 Constitutional Amendment that states: "In addition to other competences explicitly vested in it by other provisions of the Constitution, the Constitutional Council shall decide on the constitutionality of treaties, laws and regulations."

Consequently, organizations, such as the law, are subject to control by the Constitutional Council, in order to ensure that they do not violate the Constitution, and do not infringe on the domain reserved to the Parliament.

If the regulations emanating by the President of the Republic under his regulatory authority are subject to this type of control in case of infringement on the field of law, what is the content and what the nature of this control? What are its implications for the field of law? Does it provide a strong constitutional protection for the field of law similar to that of the regulatory authority?

This is what will be answered in this section, by addressing the elements of control of the Constitutional Council on the organizations and their aspects (first subtitle), and then we highlight the procedures and phases applied to this control and sanction deriving therefrom (second subtitle).

3.1 -first subtitle: elements of control of the Constitutional Council on the organizations and their aspects

The field of regulatory authority is protected by the Constitutional Council by the control of the constitutionality of organic and ordinary laws that transcend their constitutionally defined limits.

In this regard, the following problems can be raised: If the infringing organizations in the field of law are subject to the control of the Constitutional Council, what are the elements of such control? What are their aspects?

This is what will be answered through exposure to the elements of control over the organizations (Section I), and then the aspects of this control (Section II).

Section I: Elements of Constitutional Control over Organizations

The control over organizations includes, in the case of possible violations of the Constitution in general and in the case of infringement of the law in particular, a set of elements:

First clause: The Constitutional source of control over organizations

As an extension of the autonomy of organizations over the law, the process of control of any infringement of the law will not be derived from the latter, but directly from the Constitution, it is this Constitution, which determines this process of control by determining the body in charge of its exercise, which is the Constitutional Council.

It also defines the method of operation of this control (through a notification from the President of the Republic, the President of the National People's Assembly or the Council of the Nation or the constitutional council, in light of the amendment of the Constitution of 1996, but under the Constitutional Amendment of 2016, the notification has been expanded and can be notified by 50 deputies or 30 member of the Council of nation[24].

Second Clause: substantive character of control over the organizations

The control over the organizations from any potential infringement on the field of law is substantive, in the sense that it targets the organizations themselves, and not the body that issued it. Thus, if the Constitutional Council decides that an organization is unconstitutional, it will never fall back on the President of the Republic who is constitutionally empowered to exercise this jurisdiction.

Third Clause: Conditionality and limited Control over Organizations

This control is conditional on the one hand, and limited on the other. It is conditional on notifying the Constitutional Council about any possible regulation in the field of law, because of the Constitutional Council cannot exercise this control on its own.

This control is also limited to certain parties or bodies that monopolize this notification process under Article 166 of the 1996 Constitution, which corresponds to Article 187 of the 2016 Constitutional Amendment.

Fourth Clause: duality of Control over Organizations

Control of organizations is permissible, in the sense that notifying the Constitutional Council about the infringement of any independent decree on the field of law is a permissible matter that can be exercised or refrained from, unlike the control over the constitutionality of organic laws that transcend its domain and infringe on the field of regulatory authority, in which case it is mandatory[25].

This control or censorship is also dual, which means that the independent decree is subject to two types of control, either previous control through which the Constitutional Council issues an opinion, or a subsequent censorship to issue a decision on the organization subject of the notification.

Section II: Aspects of Constitutional Control over Organizations

The process of control of the constitutionality over the organizations issued by the President of the Republic under his organizational authority takes two aspects, both formal and objective, as follows:

First Clause: Formal control over the constitutionality of organizations

The formal control over the constitutionality of the organizations, especially due to the lack of respect for the rules of competence, and because of the lack of respect for constitutionally defined procedures, as follows:

Firstly: Failure to respect jurisdictional rules:

Pursuant to the provisions of Article 01/125 of the 1996 Amendment to the Constitution, which corresponds to Article 143 of the 2016 Constitutional Amendment, the President of the Republic exercises regulatory authority in matters not allocated to the law. Here we deduce that the regulations issued under this authority are the exclusive prerogative of the President of the Republic to exercise them in a personal capacity. In the event that such regulations are issued other than by the President of the Republic, the notification authorities may appeal them to the Constitutional Council on the grounds of non-compliance with the rules of jurisdiction.

For information, any infringement by the President of the Republic shall be considered as a violation of the rules of jurisdiction requiring notification to the Constitutional Council by the authorities responsible for the notification.

Secondly: Failure to respect forms and procedures defined by the constitution

The Constitutional Founder stipulates that the process of drafting it should be through specific procedures, forms, and certain phases defined by the articles of the Constitution, namely, the phase of the proposal (Article 119 of the 1996 Constitution, which corresponds to Article 136 of the Constitutional Amendment 2016), the phase of examination, the phase of voting (Article 120 of the 1996 Constitution, corresponding to Article 136 of the Constitutional Amendment of 2016), and then the ratification phase (Articles 126 and 127 of the 1996 Constitution, corresponding to Articles 144 and 145 of the Constitutional Amendment 2016).

In the event that the Parliament does not respect the previous constitutional phases and procedures, the law will be unconstitutional requiring the intervention of the Constitutional Council after notification.

Second Clause: Substantive control over the constitutionality of organizations

In addition to the necessity of viability of the form of the organizations, the content of these organizations must be respectful of the provisions of the Constitution.

Perhaps the best example of this is that we find the opinion of the Algerian Constitutional Council No. 04 of 19/02/1997, which states that[26]:

- "... considering that the Constitutional Founder, by adopting the principle of separation of powers as a fundamental principle of the organization of public authorities, has determined the competence of each of them, which can be exercised only in the areas and according to the modalities, explicitly specified by the Constitution...", even if the matter is related here with the unconstitutionality of a presidential decree in accordance with Article 124 of the 1996 Constitution, its effects are due to the regulatory competence of the President of the Republic pursuant to Article 125/01 of the 1996 Constitution.

Because the Article 02 of the Judicial Division Order referred the question of the number, seat and jurisdiction of the courts to the organizations, which is a matter for the law under article 122 of the 1996 amendment of the Constitution, which is considered an infringement on the Parliament competence.

3.2 – Second subtitle: Procedures of constitutional control over the organizations and their sanctions

the problem raised by this Topic is: What are the procedures of constitutional control over infringing organizations in the field of law? What is the sanction?

This is what will be answered through exposure to the procedures of control of the organizations (Section I) and then touched upon the sanction of this control (Section II).

Section I: Procedures for Constitutional Control over Organizations

These procedures are defined in accordance with the specific regulations of the Constitutional Council's operating rules28[27] as follows:

First Clause: Notification about the Presidential Decree

In case there is any violation of the field of law by an independent organization, the notification authorities concerned shall send a notification letter to the President of the Constitutional Council that must contains the subject of notification[28] through a precise definition of the text or texts that violates law and which the decree must include and it should be attached to this letter[29].

This notification letter is then recorded in the notification register at the level of the General Secretariat of the Constitutional Council, and the notifies receives a notification.

This notification shall include the date from which the term[30] shall enter into force or the period specified for the opinion or decision of the Constitutional Council. This time limit is set in accordance with Article 167 of the 1996 Amendment to the Constitution which is 20 days[31], and in Article 189 of the 2016 Constitutional Amendment is 30 days from the date of notification.

This period may be insufficient compared to the important and sensitive work of the Constitutional Council on the protection of the two spheres, especially since the specific rules of procedure of the Constitutional Council did not specify whether the letter should state the reasons for the notification[32].

Perhaps the reality of the work of the Constitutional Council proved that the notification letters addressed to it from the notification bodies are not caused, as it is requested to consider the constitutionality of the legal text without specifying the reasons for its unconstitutionality, which led the Constitutional Council to do, every time, a intense search on the reasons for the unconstitutionality of the text presented to it[33]. This confirms the insufficiency of the previous period (20 days) under the amendment of the Constitution of 1996, but the 2016 constitutional amendment has replaced the previous period (20 days) for a period of 30 days following the date of notification to decide on the constitutionality of independent organizations transgressing the field of Law. This will reflect negatively on the process of issuing sound opinions and decisions on the constitutionality of texts in general and on the protection of the field of law and independent regulation in particular[34].

Second Clause: Investigate Presidential Decree

After having registered the notification letter according to the previous procedures, the president of the Constitutional Council appoints a rapporteur from among its members with a mission to examine the file of notification and to prepare a draft opinion or decision[35], as the case and this, whether by prior or subsequent control.

Therefore, the rapporteur has all the constitutional powers that enable him to fulfill his mission, and thus has the right to collect all documents and information related to the subject matter of the notification, and to seek the assistance of an expert if necessary.

He will have the task of investigating and preparing a draft opinion or decision within the previous period or deadline set by Article 167 of the 1996 amendment to the Constitution.

After accomplishing his mission, the Rapporteur shall submit a copy of the notification file annexed to the report and the draft decision or opinion to the President of the Constitutional Council and to each member[36] of it.

Here, we note the essential and effective role played by the rapporteur, considering that the basic phase of opinion and decision has been prepared by this member, and the members of the Council must discuss and vote..

Therefore, nothing prevents the President of the Constitutional Council from appointing a rapporteur from among the members of the Council according to the degree of loyalty to him and to the President of the Republic who appoints both of them, which may be particularly necessary in differences and disparities between the members of the Council representing the three authorities of the country.

This undeniably reflects the strength and importance of the level of representation of the President of the Republic within the Constitutional Council, and in addition to the strength of its level of representation in terms of quantity, he is also strong in qualitative terms, as it has the right to appoint the President of the Constitutional Council, who has the power to appoint the Rapporteur with important powers.

Third Clause: Meetings on Presidential Decree

After all the previous procedures, a meeting will be held under the chairmanship of the President of the Constitutional Council in order to study and discuss the notification file submitted by the rapporteur. If there is an objection to the Chairperson, he may select one of the members to act on his behalf.

The meeting shall conclude with the issuance of an opinion or decision (as appropriate) on the independent presidential decree in question. Knowing that the previous meeting can only be held in the presence of at least 07 members of the Constitutional Council, and its deliberations are valid only if they are in closed session[37].

In that light, we note that the likely nature of the President's vote is a positive aspect of the importance of the representative level of the President of the Republic with regulatory authority within the Constitutional Council, considering that the President of the Constitutional Council is one of the members appointed by the President of the Republic, and this appointment is based on personal and political considerations[38].

By extension, the jurists called for the election of the president of the Constitutional Council to be made among the members, knowing that the weighted vote can only be credible if it has an independent voice.

After taking the opinion or decision, the Secretary-General of the Constitutional Council as the registrar of the Council meetings with the members present shall sign the minutes of the meetings of the Constitutional Council.

Also, the Chairman and the members present shall sign the opinions and decisions of the Constitutional Council. These opinions and decisions must be issued in Arabic and within the specified period following the date of the notification[39].

After that, these views and decisions are recorded by the Secretary-General of the Council and archived and they shall be notified to the President of the Republic and to the President of the National People's Assembly or to the President of the Council of Nation if such notification is issued by them. It shall also be notified to the Secretary-General of the Government for publication in the Official Journal[40].

Section II: Resulting sanction of Constitutional Control over Organizations

The Algerian constitutional founder has instituted two types of constitutional control over the independent organizations about its infringement of the law, and that by taking into consideration the type of control, is it a prior control over the issuance of this type of organization, or is it a subsequent control of its issuance, as follows:

First Clause: Resulting sanction of prior control

The prior control by the Constitutional Council shall be on the presidential decree before its issuance. That means that this Decree which is subject to notification has not entered into force yet. In this case, the Council shall issue an opinion about the constitutionality or unconstitutionality of this decree[41].

This may raise an important question about the legal force of this "opinion", which may suggest the use of the constitutional founder to be considered non-binding contrary to the decision issued on the basis of subsequent control.

This raises the question: is the opinion of the Constitutional Founder in Article 165 of the 1996 Constitution, which corresponds to Article 186 of the 2016 Constitutional Amendment on prior control binding or not? If it is not binding, is it necessary for the President of the Republic to abide by him in the case of the prior control over his independent organization?

In fact, although the constitutional founder's use of the term "opinion" suggests that prior control is non-binding consultative control, the control of the Constitutional Council is binding, whether in the form of an opinion or a decision, otherwise it would not exist.

Also, the constitutional founder could have avoided such a problem by unifying the sanctions between prior and subsequent control, since they have the same binding legal effect as the party who promulgated the unconstitutional legal text.

Consequently, the constitutional founder did not distinguish opinion and decision in the context of the work of the Constitutional Council in terms of authenticity, but rather in

terms of the timing of the control, the opinion being linked to the prior checking, while the decision is related to the subsequent control[42].

Therefore, the Constitutional Council's opinions are binding in conjunction with a moral implicit sanction derived from the primary mission of the Constitutional Council in ensuring respect for the Constitution. This mission gives him the power to protect the will of the constitutional founder from any violation or infringement.

Even if this is done by the President of the Republic, which remains one of the constitutional institutions that can in no case override the Constitution as it derives its existence and powers from it.

However, the specific system of rules regulating the work of the Constitutional Council removed all confusion about the mandatory opinion of the Constitutional Council, and not only made it associated with a moral implicit sanction understood from the context of the texts, but also through the article 54 that confirmed explicitly its mandatory force for all which states that: "The opinions and decisions of the Constitutional Council are final and binding on all".[43]

Accordingly, the opinions of the Constitutional Council shall be binding on all authorities in the country, including the President of the Republic, who shall abide by them in case of infringement of his independent decree on the field of law and the Constitutional Council should be notified thereof before it enters into force.

Second Clause: Resulting sanction of subsequent control

The main mission of the Constitutional Council is to protect the Constitution by targeting all legal provisions that are contrary to its principles and articles.

If a presidential decree comes into force and contravenes the rules of competence by infringing the fertile area allocated to the law, the Constitutional Council intervenes in this case through subsequent control by a decision, as stipulated in Article 165 of the 1996 Amendment to the Constitution, which corresponds to Article 186 of the Constitutional Amendment 2016.

This decision is final and without appeal[44], it must be equally binding for all public authorities, judicial and administrative, including the President of the Republic, in the case of a decision of unconstitutionality of an independent presidential decree violating the jurisdiction and the field of law.

As long as the subsequent control is aimed at the independent decree after its entry into force, it is natural that this decree will produce legal effects. Therefore, and in order to respect acquired rights, the Algerian constitutional founder approved Article 169 of the 1996 constitutional amendment, which corresponds to Article 191 of the 2016 constitutional amendment,[45] provided that the decision of the Constitutional Council take effect immediately. Therefore, the rights and effects prior to the publication of this decision remain valid. Thus, the decision of the Constitutional Council does not apply retroactively, but with immediate effect[46].

Articles 06 and 07 of the law regulating the work of the Constitutional Council provide for two cases in which an independent, unconstitutional or infringing regulatory text is returned to the body entrusted with notifying.

Article 06 dealt with the case where the Constitutional Council declared unconstitutional an article or a text of an independent presidential decree and this text cannot be separated from the rest of the provisions of the said independent decree subject to notification. In this case, the text of the provision in question will be returned to the body responsible for the notification.

On the other hand, Article 07 dealt with the question of whether the constitutionality of a text of an independent regulatory decree infringed the law, requires dealing with other texts relating to the decree under notification and that The parties responsible for the notification have not informed the Constitutional Council about this, and also that if the process of separating them from the text may affect its entire structure. In this case, the text will be returned to the body responsible for the notification.

4 - Conclusion

After examining the subject **"Organizational authority of the President of the Republic in Algerian legislation"**, it appeared that the President of the Republic enjoys a great privilege over the Parliament in the establishment of general and abstract rules governing the life of individuals, We have had confirmation through the launch of the constitutional founder of the fields of regulatory power in non-exclusive areas, which can attract and encompass all areas; however the founder has limited the competence of Parliament in certain areas to respect without leaving the predefined frame.

In addition, the President of the Republic controls the specific area of the law exclusively through his control of the legislative process, from beginning to end, since the President dominates the legislative initiative, by his control of the process of discussion and vote, and finally he controls the fate of the laws by asking for a second deliberation.

We must also not forget the fact that the Constitutional Council, as part of its protection of the sphere of regulatory power, relies on the principle of separation of powers and constitutional provisions, which has allowed it to support this protection based on this important principle derived from the spirit of the Constitution.

It is not the only Constitutional Council that protects the sphere of regulatory power, but the State Council also fulfills this role through its consultative function on draft laws in accordance with Article 119 of the 1996 Amendment to the Constitution and Article 136 of the 2016 Constitutional Amendment, which does not benefit the field of law. Due to the fact that the regulations issued by the President of the Republic under his regulatory authority are not subject to the opinion of the Council of State in accordance with the Constitution, as well as through the control of both the administrative judiciary and the ordinary judiciary.

On the other hand, it can be said that these organizations are not subject to effective and strong control proved by the practical reality, which shows that no presidential decree since the establishment of the Constitutional Council in 1989 to direct constitutional control, despite the existence of some of them contrary to the Constitution, and this shows the weak reality of constitutional control Presidential regulations because of the reluctance of the authorities responsible for notification to use their right of notification against presidential decrees.

In light of this, the competition between the organizations of the law is in fact a competition from the executive authority represented by the President of the Republic to the

Parliament, as the President of the Algerian Constitution, after consulting the constitutional founder of the modern method of distributing jurisdiction, was able to overtake Parliament in the process of producing general and abstract rules. This superiority is justified by the electoral legitimacy held by the President of the Republic in the Algerian Constitution, which outweighs the legitimacy of the election of the Parliament, which contains the Council of Nation (a certain third and the other indirectly elected).

But it must be said that the privilege of the President of the Republic through his authority and superiority over parliament in making the general and abstract legal rules, should not go beyond his control and domination of law-making even in a narrow sense. Because the superiority of the President of the Republic in a broad and unspecified field can be welcomed with great satisfaction, after imposed by the former President, but what is not acceptable is the great control that the President has over the law-making process and the specific area of Parliament exclusively.

Nor can appreciate the strong discretionary power of the president in issuing regulations in normal circumstances, especially the issuance of such regulations without any neighboring signature make him subject to parliamentary control.

Constitutional control of legal texts, including law and regulations, is also necessary in order to respect the Constitution. Therefore, the weak reality of the control of the Constitutional Council in the face of presidential decrees in general and independent in particular, cannot be accepted because of the failure of the authorities responsible for notification to play their role in this.

This unfortunate reality has extended to the control of the Algerian State Council as the competent in the face of administrative decisions of a central nature.

Therefore, the regulatory authority should be an effective constitutional mechanism to move the legal wheel to the best and optimal, and not just a mechanism that serves the principle of concentration and personalization of power, which is negative for the legal life in the country.

For this reason, we hope that the regulatory authority will remain within the positive role for which it has decided, and not deviate from it by the need to remain distinguished by the law in the limits of launching its subjects and restricting the subjects of the law, and not beyond it to the control of the incumbent on the creation and scope of Parliament, because It would rob his original competence and deviate from Algerian legal life.

We also hope to activate the constitutional control over the regulations issued by the President of the Republic under his regulatory authority and infringing on the field of law, through:

* As long as the regulatory authority enjoys this importance in the Algerian Constitution by enabling the President of the Republic to compete with Parliament in the process of setting general and abstract rules, it is necessary to determine the constitutional stages of the development of presidential decrees issued under it, so that they are subject to constitutional control in case they violate these stages as is the case with regard to the law.

* Limiting the launching of the presidential decree and subjecting it to the adjacent signature, so as not to escape parliamentary oversight at least, and so that the government does not use it

as a protective shield in order to materialize the president's program and his blueprint for action.

* The need to recognize the mandatory control of the organizations, as they are personal, unrestricted and competitive with the law in the making of general and abstract rules. This mandatory will prevent the regulations from escaping from constitutional control, because they will be compulsory without being locked in the will of the body responsible for notification, which will ultimately return to the field of Parliament to provide strong protection for it.

* In light of the lackluster reality of the process of notifying the Constitutional Council against presidential organizations, we can be optimistic about the initiative to amend the Constitution for 2016, which expanded from the authorities responsible for notification, and did not make it confined to the President of the Republic and the presidents of the two chambers of Parliament. On the other hand, it must be said that the embodiment of the bodies entrusted with the notification proposed in the new constitutional amendment should not only remain ink on paper, but must be embodied in practice and practically, because under the sweep and control of the parties of the pro-and pro-president power, and under the microscopic presence of parties In terms of quantity and quality, opposition MPs may not be able to successfully improve regulatory oversight over organizations, which will ultimately negatively affect parliament.

5-Referances :

11 -Ordinance No. 76-97 of November 22, 1976 containing the constitution official , Journal, No. 94 of November 24, 1976.
2 -Constitution of September 8, 1963 (frozen).
3- Presidential Decree No. 89-18 of February 28 ,1989 relating to the amendment approved in the referendum of 23february 1989, official , Journal No.9 of March 1 ,1989.
4 -Presidential Decree 96-438 of December 7,1996 issuing the text of constitutional amendment ratified in the referendum of November 28,1996, official , Journal No.76 of December 8, 1996.
5- Law No.16-01 of March 6, 1996 , containing the constitutional amendment , official, journal , No.14 of March 7,2016.
6 -Organic Law 98-01 of 30 May 1998 relating to the competences, organization and functioning of the State Council, Official Journal, No. 37 of 1 June 1998, complemented by the Organic Law 11-13 of 26 July 2011, Official Journal, No. 43 of 3 August 2011.
7- Ammar Boudiaf, Algerian Judicial System, Dar Al Rayhan for Publishing and Distribution, Algeria 2003, p. 129.
8- Executive Decree 98/261 of August 29, 1998, on the Determination of Forms, Procedures and Modalities in the Consultative Field before the Council of State, Official Journal, No. 64 of September 1, 1998.
9 -BOUDJADI OMAR, Jurisdiction of the Administrative Judiciary in Algeria, Ph.D. Faculty of Law, University of Tizi-Ouzou, 2011, pp. 385 and beyond.
10- Mohammed Seghir Baali, Brief in Administrative Disputes, Dar Al Oloum for Publishing and Distribution, Annaba 2005, p. 119.
11 -Abdelrezzak Zouina, Consultative Opinion of the State Council, Journal of the State Council, No. 01, 2001, p. 30.
12 -Ammar Boudiaf, Algerian Judicial System, op. cit. p 313.
13- Ammar Boudiaf, Appeal for annulment in the Code of Civil and Administrative Procedures, First Edition, Djossour Publishing and Distribution, Algeria, 2009, p. 8.
14 -Sami Djamel El Dine, Regulations and Guarantees of Judicial Control, Dar Al Maarif Establishment, Egypt 1982, p. 67.
15- Ammar Aouabdi, Judiciary interpretation in administrative law, Fifth Edition, Dar Houma, Algeria 2006, p. 103.
16- Ammar Aouabdi, The General Theory of Administrative Disputes in the Algerian Judicial System, Part 2, Office of University publications, Algeria 1995, p. 499.
17- Souad Ben Serria, The Position of the President of the Republic in the 2008 Amendment, Balqees Publishing House, Algeria 2010, p. 167.
18 -Ahmed mahiou ;Administrative Disputes, university press office , Algeria2003, p 164
19 -Boubachir M'hand Amokran, Code of Civil Procedure - proceeding Theory - litigation Theory- Special Procedures, University publications office, 2008, p. 70.
20- Nabil Ismail Omar, Mediator in the Code of Civil and Commercial Procedures, New University House, Alexandria, 1999, p. 11.
21 -Ordinance No. 156/66 of 8 June 1966 containing the amended and supplemented Penal Code, p. 196.
22 -Ammar Boudiaf, Algerian Judicial System, op. cit. p 305.

23 -Ahmed Hammiouda, The Principle of Hierarchy of Legal Rules and its Effects on the Judicial Function, Graduate High School of Justice, Algeria, 2006, p. 3.
24 -See Article 187 of the 2016 Constitutional Amendment , op.cit
25 -Ammar Abbas, The Role of the Algerian Constitutional Council in Securing the Principle of the superiority of the Constitution, Dar El-Khaldounia, Algeria, 2010, p. 40.
26- Boussatla Shahrazad, Medour Djamila, the principle of control over the constitutionality of laws and its applications in Algerian legislation, Journal of Jurisprudence, Faculty of Law and Political Science, University of Mohammed Khider - Biskra, Algeria, No. 4, March 2008, p. 346.
27 -The Regulations of April 16, 2012, defining the rules of work of the Constitutional Council, Official journal No. 26 of 3 May 2012, No. 26.
28 -Saleh Belhadj, Political Institutions and Constitutional Law in Algeria from Independence until now, University publications office, 2010, p. 322.
29 -Article 08 of the Law Specifying the Rules of the Constitutional Council (April 16, 2012), p 05.
30 -Article 09/01, ibid.
31 -Article 09/02, op.cit .
32 -Farid Allouache, Algerian Constitutional Council, Organization and Competence, Journal of the Legal Forum, Faculty of Law and Political Science, Mohamed Khider University - Biskra, No. 5, March 2008, p. 108.
33- Farid Alouach, Mechanisms for the Protection of the Constitutional Legal Rule in Algeria, New University House, Egypt, 2010, p. 205.
34 -See Article 189/1 of the 2016 Constitutional Amendment ;op.cit
35- See Article 11 of the Rules Governing the Constitutional Council (April 16, 2012), op. Cit.
36 -See Articles 12 and 13 of the system regulating the rules of the Constitutional Council work, op. Cit.
37 -See Article 14, 15, 16, 01 of the Regulations Governing the Constitutional Council work, op. Cit.
38- Mouloud Didane ,Investigator of constitutional law and political systems ,Dar Enadjah for publishing and distribution ; Algeria 2005 , p 113.
39 -See Articles 17,18,19 of the Regulations Governing the Constitutional Council work, op. Cit.
40- See Articles 19/2,21,22, ibid
41- See Article 186 of the 2016 Constitutional Amendment ;op.cit
42 -Amar abbess ,The role of the Algerian constitutional council in ensuring the supremacy of the constitution , Dar Atakafa for publishing and distribution , Algiers 2010,p 82
43 -See Article 191 /2 of the 2016 Constitutional Amendment ,op.cit
44 -See Article 54 of the Regulations Governing the Constitutional Council work, op.cit
45 -See Article 169 of the 2016 Constitutional Amendment ;op.cit
46- Farid Allouache, Algerian Constitutional Council, Organization and Competence, Journal of the Legal Forum, p 113 ,op.cit