

**CONSTITUTIONAL PROTECTION OF FUNDAMENTAL
RIGHTS IN THE ALGERIAN CONSTITUTIONAL SYSTEM**

الحماية الدستورية للحقوق الأساسية في النظام الدستوري الجزائري



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Abstract

The incorporation of human rights principles into the internal legal system has made legal thinking devise two mechanisms to this end: The System of General Rights and Freedoms, which is regulated by the legislator by statute and protected only by the ordinary court; and The System of Fundamental Rights, which is established in the constitution by the Constituent, and protected by the constitutional justice. The relevance of which arises from its protection to certain rights and freedoms from the legislator's potential violation, thereby acting as a constitutional protection to these rights, and ensuring them more inviolability.

As such, the Algerian Constituent has adopted this protection by establishing a constitutional council which monitors the oversight of the Constitution through verifying the constitutionality of law texts. This leads to a careful consideration of the extent of this protection and its effectiveness in the Algerian system.

Keywords: general rights and freedoms; fundamental rights; Parliament; Constituent; Constitutional Council; constitutional justice; constitutional protection.

المخلص:

إن تجسيد مبادئ حقوق الانسان داخل النظام القانوني الداخلي، جعل الفكر القانوني يبتكر آليات لذلك، منظومة الحقوق والحريات العامة، التي ينظمها المشرع بالقانون، ويحميها القاضي العادي فقط. ومنظومة الحقوق الأساسية، التي يؤسسها المؤسس الدستوري في الدستور، وتحميها العدالة الدستورية. وتأتي أهمية هذه الأخير من كونها حماية لبعض الحقوق والحريات الأساسية ضد مساس المشرع في حد ذاته بها. بهذا فهي تشكل حماية دستورية لهذه الحقوق، وتمنحها حصانة أكثر. وقد تبنى المؤسس الدستوري الجزائري هذه الحماية بتأسيسه لمجلس دستوري يسهر على إحترام الدستور من خلال رقابته لدستورية النصوص القانونية، الأمر الذي يدعوا الى معرفة حجم هذه الحماية وفعاليتها في النظام الجزائري.

الكلمات المفتاحية: الحقوق والحريات العامة. الحقوق الاساسية. البرلمان. المؤسس الدستوري. المجلس الدستوري. العدالة الدستورية. الحماية الدستورية.

Introduction

Comparative experiments have proved that the parliament or the legislator in general, may pose a threat to individual rights and basic freedoms while regulating them¹, particularly the fundamental rights regulated under their limited authority. Therefore, there emerged a need for a legal mechanism to protect these rights from the abuses of the parliament itself. Hence, Western Constitutionalism has created a constitutional protection through the inclusion of these rights and basic freedoms in the constitution making them basic laws while allowing the law to enforce and develop them. This led to the emergence of a need for permanent organs to oversee the enforcement as well as the

protection of this constitutional protection. This responsibility was conferred upon the organs of constitutional justice owing to their mechanisms and abilities that assert their competence in this regard².

In this regard, the Algerian Constitution provides for a system of constitutional protection of fundamental rights by entrusting the Constitutional Council with control over its effectiveness, since fundamental rights are fundamental constitutional principles. **This calls into question the architecture of this organization for the constitutional protection of fundamental rights, and how effective it is?** This organization reflects another aspect of the parliament's relationship with the Constitutional Council, which is reflected in the philosophy of constitutional protection of fundamental rights (First), with the reality of its exercise in the Algerian political system (Second).

First: the philosophy underlying the constitutional protection of fundamental rights

The constitutional protection of fundamental rights is considered a new mechanism in the Western Constitutionalism as it represents one of the functions of the contemporary constitutional justice in charge of ensuring their insertion in the majority of contemporary systems (A), among which is the Algerian system, wherein the emergence of constitutional protection is associated with the progress of its constitutional justice (B).

A- The constitutional protection as a function of the constitutional justice

The constitutional justice is defined as the institutions and methods guaranteeing the primacy of the constitution³, and has become a requirement for dealing with the Legislative and Executive Powers' significant and alarming growth by maintaining a balanced relationship and addressing the fundamental rights and basic freedoms⁴. The constitutional justice is, therefore, the legal mechanism tasked with the constitutional protection of fundamental rights against the abuses of

public institutions. This protection is said to be a judicial guarantee for determining the fundamental rights (1), and the basis of its legitimacy is the philosophy of inherent rights (2).

1. The constitutional protection as a judicial guarantee for determining the fundamental rights

The constitutions of some of the compared countries use the term “*constitutional protection*”, as in the case of the Basic Law of Germany and the Italian and Austrian constitutions⁵. However, this term is not used in many modern constitutions, as this protection is established per se, and the constitutional judge is to ensure it though not stated by the Constituent.

Constitutional Protection simply means that fundamental rights are protected constitutionally, mainly to restrain the legislator from prejudicing these rights and freedoms, whereas the constitutional courts, in some systems, protect the fundamental rights from the actions of public administrations and ordinary courts, and in these systems, it is rather difficult to distinguish between the fundamental rights protection mechanisms and those of other rights and freedoms protection as it is also difficult to determine the protected fundamental rights as such⁶.

In this regard, and in comparative law, the Fundamental Law of Germany defines fundamental rights as the rights stated in the constitution, granted special protection from what would infringe upon their essence, established by grounding a special appeal to the constitutional court⁷.

This demonstrates that the German system determines fundamental rights by relying on a special judicial guarantee that protects them: the German Federal Constitutional Court⁸. But in the case of France, things are different. Not only has the 1985 constitution not made any statement regarding fundamental rights, but it has also not established any judicial guarantee to determine and protect those rights mentioned in the preamble. This has bound constitutional professors to

reconstruct a definition of the fundamental rights based on both their normativity degree, and on the presence of a special judicial oversight to protect them. Constitutional control can, thus, be adapted to act as the desired judicial oversight, despite its imperfections. Thus, determining the fundamental rights is related to implementing a constitutional control and developing it.

In this regard, both Louis FAVOREU and Otto PFERSMANN Jurists believe that there would be no fundamental rights without clearly stating them in the constitution (or in an international convention) and protecting them by a judicial oversight from the abuses of the Legislator; as fundamental rights are, according to them, inseparable from the oversight of the constitutionality of the laws (or conventionality control)⁹. This concept of fundamental rights seems extremely positive, as it is based on the jurisprudence of the constitutional council, and viewed as playing the role of a judicial organ. With the Western Constitutionalism's shift from "general freedoms" towards this concept of "fundamental rights", the nature of their protection has also changed. It is no longer a political legislative protection, but a constitutional one; both technical and legal¹⁰.

It is notable how weak is the character of these rights with regard to their judiciousness, as their fundamentality has become inherent in a judicial oversight that permits claiming the right before the law. This confirms the task of the judicial oversight which is to determine fundamental rights and to protect them. Moreover, the concept introduced by the two abovementioned jurists renders all rights enshrined in the constitution or international convention to be fundamental rights, disregarding their association with the notion of rights and freedoms. This is, in some respects, a vague concept as it makes fundamental rights disappear amongst the reference rules of the constitutionality block, ergo difficult to determine¹¹.

Regarding this point, fundamental rights, as those behind this notion explained, represent an authorization to act. This description

permits to exclude principles of the constitutionality block that concern the Institutions of State, from the concept of fundamental rights, overcoming the problem of them disappearing in the constitutionality block. The concept of legal enforceability would also make of fundamental rights personal rights to the beneficiaries, what also helps overcome deficiencies of the judicial guarantee, which is restricted to verifying the constitutionality of the laws.

However, individuals do not have the right to execute this oversight in the Algerian system for it is only performed by a referral to the constitutional council, what dismisses the personal character of the fundamental rights; except when individuals are allowed to engage into constitutional justice. Jurist Pfersmann had similarly denied the personal character of fundamental rights, considering the fact that beneficiaries not holders of fundamental rights, will not be holding constituted original personal rights. Given the fact that constitutional oversight is not open to the individuals, claiming respect for their own rights is not possible. Consequently, it is necessary to distinguish between and beneficiaries and holders of fundamental rights; the latter being those entitled to notify the oversight organ.

Furthermore, Louis Favoreu has refuted doubts regarding the individuality of fundamental rights as he states that the power of these rights to litigation is not necessarily linked to their personal nature, because constitutional oversight allows the protection of fundamental rights and freedoms from infringements of public institutions and not individuals¹². Otherwise, individuals would be claiming the protection of their basic rights in Ordinary Court, if not possible before the constitutional judge¹³.

Moreover, the determination of the supra-legislative principles forming fundamental rights is one of the challenges facing the involved parties, especially since the Algerian constitution has not provided a special appeal that allows beneficiaries to claim supra-legislative rights. Therefore, constitutional oversight is the only mechanism that protects

them as a judicial guarantee to preserve respect for supra-legislative principles, where the constitutional judge can monitor a normative text voted by parliament as a result of a violation of constitutional principles or a convention protecting human rights, and no other judges can do so in the Algerian political system. It has become clear from this clarification that judicial guarantees are necessary to secure the constitutional protection of fundamental rights. This guarantee is “constitutional control” in the Algerian system.

2. The Natural Law as a basis for the legitimacy of the constitutional protection of fundamental rights

The support of the Natural Law school¹⁴ of thought for the legitimacy of the constitutional judge in the modern era has been due to the weakness shown by the role of the Positive School of thought for the Protection of Human Rights and Freedoms. Where the latter abides to the content of positive law alone, the judge is restricted to the literal interpretation of the original text. This approach has received heavy criticism by the Natural Law school who called for the adoption of free scientific research to create more guarantees of rights and freedoms¹⁵. They considered that the role of the constitutional judge in this field is absolute and is not limited by any normative text, its basis is the supremacy of the principles of human rights (and hence fundamental rights and freedoms) to other principles and rules, and the fear of the dominance of the parliamentary majority over the fate of the positive text.

The emanation of the constitutional oversight for the protection of fundamental rights and freedoms in the Natural Law school is due to **its** strong belief in the **superiority** of the principles of human rights **over** other legal principles and rules. This school of thought emphasizes that the concerned organs of the state cannot adopt laws as they please, but must strive to make these laws compatible with human rights and freedoms, because, to them, the existence of the latter is a priority and

above the state and its powers, which is the reason for the drafting of written constitutions¹⁶. In this sense, the Natural Law (henceforth Natural Law) school of thought sees the constitutional judge as a guardian of human rights and freedoms.

For these reasons, the Natural Law school of thought legitimated the constitutional judge's control and considered it to be a control that does not violate the principles of democracy, as long as it placed human rights and freedoms first and imposed them absolutely on all authorities. This has directed constitutional jurisprudence in comparative law to consecrate some basic legal principles without resorting to specific texts and codifiers, such as the principle of the Continuity of the Public Utility¹⁷.

On the other hand, the execution of the constitutional oversight of the constitutional rights and liberties, as per the Natural Law school, is not merely a simple technique aimed at subordinating legal rules to the principle of the hierarchy of laws, but **is** above all the means through which the state is subject to law and is committed to respect human rights and freedoms¹⁸. In other words, the constitutional judge, by resorting to human rights and freedoms, is working to restrain the parliamentary majority in its qualitative legislation, which is compatible with its political proposals. In democratic systems, the parliamentary majority is bound by the nature of the change that emerges from the democratic game, for today's majority may be tomorrow's minority, and vice versa. The role of the constitutional judge is to ensure the stability and protection of fundamental rights from the danger of changing ideologies and fluctuations in the legislative field resulting from the succession of parliamentary majorities. For this reason, it is said that the constitutional judge is "the suppressor of the Majority Democracy". Resulting from this comes the questioning of the concept of democracy by the NR doctrine, especially when barriers are eliminated from the parliamentary majority¹⁹. At that time, this democracy deviates from its basic goals to become a mere authority in

favor of the majority, per to them. Therefore, this school clings to the legitimacy of the role of the constitutional judge, through which the minority can impose on the ruling majority not to violate rights and freedoms, and not to violate the constitutional guarantees granted to it.

B- The constitutional protection of fundamental rights in Algeria

The emergence and development of constitutional protection in Algeria is mainly linked to the development and the alteration of the Algerian political system, as well as to the different political and security circumstances experienced by the country which have directly affected the nature of the recognized fundamental rights and freedoms and how they are protected. During the one-party era, before 1989 Constitution, the system was lacked constitutional protection mechanisms, (1). It shortly established a constitutional protection of quality after the multi-party era, that is, after the promulgation of the same Constitution (2).

1. The lack of constitutional protection before the 1989 Constitution

This period was characterized by the adoption of the one-party system as a political ideology, and the embrace of totalitarianism as an economic approach in Algeria. At that time, the founder of the constitution recognized a number of fundamental rights and freedoms of the Algerian citizen, which were proportional to the characteristics of the regime in that period. Both the execution and the regulation of some of these rights and freedoms have been left to the legislator to render through the law. What is notable is the lack of procedural mechanisms that protect constitutionally fundamental rights and freedoms in this era. This can be illustrated by the study of two distinct phases of the political system of Algeria at that time.

The first phase started from the 1963 Constitution until the coup d'état of 19 June 1965. This phase was characterized by the disruption

of the constitutional protection of fundamental rights, although the founder of the first constitution of the Republic disclosed the establishment of its mechanisms. A number of rights and freedoms were detailed into a list of ten articles. The establishment of a constitutional council, thus, was instructed to monitor the constitutionality of laws and legislative orders either by a referral from the President of the Republic or from the President of the National Assembly²⁰. However, the political events at the time prevented the continuation of this constitution, as it was suspended after less than one month of its entry into force due to the implementation of Article 59 of the President of the Republic to take exceptional measures in order to protect the independence of the nation and the institutions of the Republic. This has disrupted the formation of a constitutional council which again led to the obstruction of the constitutional protection of fundamental rights and freedoms. The risk of infringement of the latter has even increased when the President of the Republic exercised all powers, including legislative and executive powers, in accordance with the provisions of exceptional measures²¹.

The second phase of the political system, at that time, begun from the coup d'état previously mentioned until the vote on the Constitution of 1989 in which the constitutional protection of fundamental rights was abolished. The Constitution of 1963 was completely annulled, not suspended, for almost a decade. This situation has revoked many state institutions and the constitutional legitimacy of those that remained²². What resulted was the abolishment of The National Constituent Assembly, the cancellation of the elections for the establishment of The National Assembly²³. The President of the State, consequently, took over the legislative function to exercise it by orders. The absence of constitutional control has endangered rights and freedoms, especially fundamental rights and freedoms when organized by orders, when the ruling group did not wish to establish a constitutional oversight over their validity despite the establishment of other advisory bodies, such as

the Supreme Judicial Council and the National Economic and Social Council.

In 1976, the people voted for a new constitution for the Republic, which was still not sufficiently engaging the constitutional protection of fundamental rights. The constitutional founder has enlisted them in thirty-six (36) articles; most of them were referred to the law to execute them²⁴. The legislative initiation was granted to the President of the Republic and the deputies of the National People's Assembly²⁵. Still, the Constitution did not establish any mechanism to build sustainable institutions to ensure the constitutionality and validity of laws, similarly to the previous Constitution, which missed the constitutional protection of fundamental rights and freedoms when regulated them by legislation. Both phases do not differ in this regard.

2. The establishment of constitutional oversight following the 1989 Constitution

The Algerian regime witnessed two constitutional stages after the 1989 constitution. There was a development in the constitutional justice and a variance in the nature of the protection, from general and indirect protection, before the amendment of the Constitution, to a general and direct protection after the amendment (b).

a. General and indirect constitutional oversight before the amendment of 2016

The deterioration of the system of rights and freedoms in the state has generated social and economic tensions at the end of the eighties (80s) of the last century, which led to the burst and upheaval on October 05, 1988: citizens take to the streets demanding more freedoms in all fields. In response to these changes, the people voted for the 1989 constitution which entailed a profound transformation of the Algerian political system by opening up the market and its approach to multi-partyism.

This transformation has forced the constitutional founder to redraft basic rights to suit the new requirements of the political and social systems, and to recognize the legislator's involvement in the objective organization and update of some of them. The important improvement is the establishment of the Constitutional Council that is assigned to ensure the respect for the Constitution by evaluating and correcting the decisions of the Parliament²⁶. This mechanism guarantees the prevalence of the constitutional rules over other rules and builds a procedural protection of the fundamental rights and freedoms therein mentioned.

The amendment to the Constitution of 1996 later confirmed this protection by expanding the right to notify the Constitutional Council and considering the constitutional oversight of the organic laws both mandatory and essential before its promulgation²⁷. The importance of the rights and freedom's protection increased when the constitutional council was assigned to monitor the parliament's respect for these rights when regulating them, especially when its word appears to be decisive in the matter, That is, subsequent controlling of parliamentary decisions, with regulate a sufficient constitutional authority to ensure adherence to constitutional jurisprudence. It is a clear reference to the founder's constitutional intention to establish a state of law.

In this regard, the protection of the fundamental rights and freedoms benefited with numerous guarantees in the Comparative Law, complemented by other qualitative ones. General guarantees are those guarantees resulting from a constitutional oversight of the legislations. This protection is exercised, in the European model, either by a preceding and subsequent abstract oversight to the promulgation of the law, or by a realistic oversight through protesting its constitutionality is referred to the ordinary judge is tasked to manage the case²⁸. As for the special guarantees, they are those established by some comparative constitutions through the establishment of special measures qualifying individuals to directly notify the constitutional judge in order to protect

their fundamental rights. This is achieved by granting them the right in directly bringing to trial individual constitutional cases²⁹.

Concerning the Algerian system before the 2016 Constitution amendment, the constitutional protection of fundamental rights was regarded as a general protection, since the nature of constitutional control was a judicial control over the constitutionality of legislative texts; an abstract control prior to or subsequent to the enactment of the law, and it does not refer to a particular event or a particular infringement on the right or liberty of a given individual. Hence, the constitutional protection of fundamental rights is not open to individuals directly and does not establish any special procedures for this purpose. This is logical, considering that it is an abstract, not realistic, oversight and does not directly protect specific rights. The practice of this oversight comes before the occurrence of the transgressions per se. This leads us to conclude that the constitutional protection of fundamental rights in the Algerian political system is a general and an indirect protection.

b. The establishment of a general constitutional protection directly after the amendment of the 2016 Constitution

In addition to organizing the mandatory referral, and the adoption of the European model of constitutional justice, it was only logical to take the referral mechanisms to execute it and to secure the political philosophy of the model. The referral can, then, be executed by politicians, heads of political bodies, such as the President of the Republic, The president of the National Assembly, The president of the National Popular Council, the Prime Minister³⁰. As a result of the establishment of the notion of the Minority Opposition in the political system, 50 senators and 30 members of the Council of Nation were authorized to notify the Constitutional Council, as an empowerment of the minority to confront and oppose the decisions of the parliamentary majority proclaimed in the legal texts. The opposing parties will be able

to work mutually if they reconcile during the discussion and vote procedures to represent their interests relating to the same law. In this regard, the Parliamentary Minority is said to be able to issue a legal text without a referral to the Constitutional Council. If the majority and the parliamentary minority do not agree, then the latter may engage the constitutional council to protect their interests³¹.

Taking into account the nature of the legal texts notified to the Constitutional Council, involving the minority appears to be a good idea to benefit from the Constitutional protection of the general freedoms and rights, still it is noteworthy to mention that this protection does not concern the right or freedom of the members of parliament, but rather the general rights and liberties regulated by the text in question.

This individual empowerment in the constitutional justice was inspired from the legal Anglo-Saxon judicial system, as its philosophy enfold the protection of rights and freedoms from legislations under constitutional oversight. We find many existing similarities between the German-Latin and the Anglo-Saxon legislations in contemporary systems, as well as the forms of institutions and their functions in liberal countries, from which systems that consider the European model as an example of constitutional justice. Some of the most important American constitutional justice techniques helped in the openness of some European systems; individuals could at last take part in European constitutional justice³². This effect eventually touched the Algerian political system as well; this shows in the constitutional amendment of 2016 through the unprecedented recognition of the constitutional judge the rights of individuals to claim the unconstitutionality of a law if this latter affects their rights and freedoms³³. This can be achieved if the case is referred to the Supreme Judicial Court of Justice or State Council.

That being the case, the notion of referral seems to be not political to maintain institutional balance, but it has a legal judicial aspect linked, by the founder of the constitution, to the infringement of the

fundamental rights and freedoms. So, he did not make it to them before the promulgation of the relevant text, since its infringe on fundamental rights and freedoms is not yet certain, and leave it until its imbalances and dangers are proven, after implementation it, in a real dispute before a judicial body, in the administrative or ordinary judicial system. This provisions established a directly constitutional protection of fundamental rights³⁴.

The exception of unconstitutionality is directed as far as to the Supreme Court and the Council of State, which again refers it to be studied by the Constitutional Council, which monitors the constitutionality, or the non-constitutionality, through the aspects raised in the appeal. Its declaration of the unconstitutionality will remove the statutory provision from the legal system, and then the Supreme Judicial Authority, which referred it to him, will be notified of this decision, which by its turn will return the case to the relevant court for an adjudication in accordance with that of the Constitutional Council.

Second: The Reality of the constitutional protection of fundamental rights in the Algerian political system

Like any constitution, the Algerian Constitution recognizes a number of fundamental rights and freedoms and divides them into two distinct categories in terms of organization: a category that is exclusively organized by the constitutional founder, and a second category referred to the legislator who would be in charge of both its regulation and activation to establish the competence of law in this field³⁵.

By following the European model of Constitutional justice, a Constitutional Council has been founded having the liability of protecting the Constitution This function gives him an opportunity to protect fundamental rights, by supervising the constitutionality of the regulations and laws, as well as its supervision of the constitutional amendment draft. In this regard, the Constitutional Council noted the role it can play in this area by declaring that "... it is not the competence

of the Constitutional Council to intervene in determining the legal conditions for the exercise of the fundamental rights and freedoms of citizens. It can ensure, however, the compliance of legal texts to constitutional principles »³⁶. This confirms that this protection is linked to the effectiveness of the Constitutional Council's oversight of the compliance of the laws. In this manner, the weakness that characterizes this oversight in the Algerian system will inevitably affect the constitutional protection of fundamental rights and freedoms, and will make it a weak mechanism in this perspective (A). Which necessitates the Constitutional Council to adopt a jurisprudential policy to ensure it and develop in its jurisprudence (B).

A- Weak constitutional protection of fundamental rights

The activation and establishment of fundamental rights by law is not limited to the will of the Parliament, but is shared by all initiators of the legislative texts; the Government through its laws draft and the President of the Republic through his orders. However, the most important role in this regard remains for the Parliament given its excellent place in the political system, firstly, as the representative of the people; secondly, as the owner of the legislative authority, and thirdly, as the competent authority to discuss the texts and ratify them before they are promulgated, which confirms its responsibility for the prejudice of the fundamental rights in all forms of legislation³⁷. On the other hand, it did not leave adequate opportunities to the constitutional council to protect these rights when translated it in the laws, , for its protection is ultimately related to the extent to which it is capable of enforcing constitutional oversight as a judicial guarantee, and with the field of this control. With referance to the constitution it makes sure the failure of procedures this guarantee (1), and limited its field (2) and all this affects the constitutional protection of the fundamental rights and freedoms.

1. Insufficiency of judicial guarantee procedures

The system of rights and freedoms is established with the recognition of the constitutional founder in order to guarantee its supremacy and immunity, as well as its regulation in accordance with the principles of the political system of the State. The legislator's role is then to elaborate and disseminate it in the form of realistic legal rules according to common life requirements to become public rights and freedoms destined to the citizens³⁸. In this regard, the jurisdiction competence of the parliament in this field is justified by its mandate upon the people, owner of fundamental rights. However, the danger of violating the latter remains possible when the parliamentarians themselves fail to regulate them by legislation, leaving it to government projects, especially as the latter is competent to enforce the laws through their public administrations.

It is clear that the basis for the danger to fundamental rights is the failure of the representative democracy system to play its full role. This failure has been redressed in some comparative systems by adopting constitutional justice to benefit from the constitutional oversight of the protection of fundamental rights³⁹. With reference to the rules governing the constitutional control in the Algerian system, the procedures for their implementation are also insufficient for the insurance of constitutional protection of fundamental rights; it do indeed show seriousness in tackling this matter. In this regard, the Constitution has stated that fundamental freedoms guaranteed, what provid them a substantive constitutional protection, which the constitutional judge must follow as normative constitutional rules⁴⁰.

However, what distinguishes this protection is its limitations and non-exhaustiveness of all the basic rights enshrined in the law. The Constitution requires to the Organic Laws, specific in scope, the conformity oversight in order to ensure compliance with the Constitution, while the constitutional control of Ordinary Laws is depends on the will of the owners of the right of referral. Although it is open to constitutional scrutiny before and after the enactment of the

ordinary law, the issue of the protection of fundamental rights remains in the hands of those who do not much satisfied with the supervision of their acts, which, again, does not nullify the risk of violating these rights, especially in light of the important legislative flow of Ordinary Laws and the regulatory texts executing them. Most of them are but laws drafts.

Additionally, with reference to the Constitution, it appears neutralizing, by witty manner, of the referral mechanism away from of the legislative power in favor of the executive power. Thus, the former won't much benefit of constitutional justice in the protection of fundamental rights. The first aspect of this neutralization is reflected in the discretionary power of the President of the Republic and Prime Minister in the exercise of referral in accordance with article 187 of the Constitution, to rule on the constitutionality of the Ordinary Laws before or after promulgation. It is also imperative to notify the Constitutional Council of Organic Laws prior to promulgation, as well as to notify of internal regulations of the two Houses of Parliament prior to their entry into force.

The second face of this neutralization is manifested in restricting the referral of legislative power in call of its presidents or fifty deputies or thirty members to the constitutional council to execute its oversight, accordance with the article 187 above mentioned. The two presidents of parliamentary chambers, they are members elected by their colleagues in each chamber according on majority voting system⁴¹. In this regard, the presidential system provides political and legal guarantees to the majority in parliament to make it a presidential majority in most cases, thus securing the election of the two presidents from the presidential majority⁴². However, their authority is optional concerning Ordinary Laws referral to the Constitutional Council, and the likelihood of their exercise against government projects is weak according to the said political context⁴³. As for the notification of the parliament members, its implementation is depends upon the availability of an oppositional

quorum in the chambers of Parliament, so that it can oppose the parliamentary majority in the draft texts that may affect constitutional rights and freedoms. The 2016 amendment to the Constitution requires the signing of a referral letter within the National People's Assembly by 50 deputies out of 577 in the same chamber, and requests the signing of 30 members of the National Assembly out of 144 members. Although this quorum is to obtain political consensus for referral, it will be a barrier to its implementation in the absence of real opposition within the Parliament, as well as in light of the apparent spread of the presidential coalition and presidential alliances, that is, alliance with the majority. Therefore, will missed opportunity of benefiting more from the Constitutional Council oversight for protection of fundamental rights and freedoms⁴⁴.

In addition to neutralizing the referral, the reluctance of parliamentarians to initiate suggestions of laws, taking into account the obstacles facing them in this area, will pave the way for the Government to opt for the normative production while drafting laws. It is unlikely, in such a case, that the executive authority- represented by the President of the Republic and the Prime Minister- will notify the Constitutional Council with the projects proposed by the government, and approved by the Council of Ministers⁴⁵.

All the above makes the hegemony of the executive authority over the implementation of the referral clear, thereby reducing the role of the Parliament in the protection of fundamental rights through Constitutional Justice. The practical impact is therein demonstrated.

2. The limited scope of the judicial guarantee

In addition to the deficiency of constitutional procedures, the weakness of the constitutional protection of fundamental rights may be due to the narrow subject of constitutional control. Where the activation these rights do not depends only on translated it in the laws by the legislator, but it exceed that to the regulation process which has an important role in determining rights and freedoms. The law is a general

and abstract rule to enshrine constitutional principles according to the requirements of social, economic, political, and cultural among others. That is, it puts fundamental rights and freedoms into practice according to the circumstances. However, the legal rules remain directly applicable only after they are embodied by executive decrees of the Prime Minister, in which the founder has granted him the constitutional competence to enforce the laws. In addition, the regulatory authority has enabled the organization of other areas outside the areas devoted to the law which are broader, no less important than them, and may directly relate to fundamental rights⁴⁶.

All this confirms that the final say in the definition of fundamental rights, really, is in the hands of the regulatory power and not the laws, and this highlights the risk of regulating fundamental rights and freedoms; the risk be more likely with the practice of the legislative function using only draft laws that the Prime Minister will work to implement using his regulatory power. Therefore, ensuring full constitutional protection of fundamental rights requires extending of constitutional control for regulation, as the last ring in the system of rights and freedoms. Thus, guaranteeing the exhaustive protection of the Constitution from distorted interpretations, thereby protecting the fundamental rights listed therein.

This matter has a great ambiguity in the Algerian constitutional system. The Constitution stipulates that " the Constitutional Council shall rule on the constitutionality of treaties, statutes and regulations ...". However, this text does not specify which regulations are subject to constitutional scrutiny: Is the work of the executive branch from presidential decrees and executive, the targeted, or is it all legal act in form of regulations, including sub-regulations? Plus, the practice has not seen any referral to the constitutional council for examine the constitutionality of regulatory work. Which confirms the vagueness of the constitutional rule mentioned, and then the escape of the regulation

from the constitutional control, despite the magnitude of the danger it poses to the fundamental rights.

Moreover, contrary to the deficiency of constitutional protection of fundamental rights and freedoms against infringements of legislative norms, such protection is considered qualitative and effective in the face of parliamentary norms for two reasons: regarding the subject of those rules and its relationship to fundamental rights, as well as the procedures for execution in this area.

Firstly, Constitutional Councils have been founded to assess the work of Parliament⁴⁷. This will does not only embody the integrity of the normative function by insuring their validity and the safety, but it also through the rationalization of the rules governing parliamentary action per se. Its basis is set on avoiding that the parliaments create, on their own accord, rules of conduct and apply them directly without the need for another authority to intervene, which may make them, if not rationalized, a source of infringement of rights and freedoms⁴⁸.

In this context, the guarantee of the rights and freedoms of individuals is considered to be the duty of the representatives of the people which they fulfill through the function of both the legislation and the parliamentary control, though sometimes it is them who endanger these rights and freedoms when changing the nature of the rules that the founder of the constitution has drawn to delineate their respective duties. Inflicting change upon those rights and freedoms is seen negative when the outcome of this change is a concession of a part of the functions of the parliament to the government. It is seen positive when parliaments do interpret the rules of their conduct to meet their interests, as granting themselves privileges that were not granted for them, which can harm other people's interests.

In both cases, the integrity of the parliamentary function needs the interference of a specialized body outside the two powers (the legislative and executive power), such as the Constitutional Council, to ensure that the rules governing parliamentary work are not changed in a

manner that may affect rights and freedoms, fundamental rights and freedoms in particular. Hence, granting it a constitutional protection by preserving the parliamentary rules.

B- The policy of constitutional council to ensuring constitutional protection

The deficiency of constitutional protection of fundamental freedoms and rights in the Algerian system is enhanced by the lack of constitutional jurisprudence concerning these rights and freedoms, and the constitutional council is not behind it, but the main cause is not notifying it with Ordinary but numerous legislative texts which can enclose, as mentioned above, a violation. But this did not dissuade the Constitutional Council from a protect directly the fundamental rights in the few texts to which it was notified, or by guaranteeing the principle of equality, given its importance in devoting the rest of fundamental rights and freedoms. At the outset, the jurisprudence of the constitutional judiciary in the area of rights and freedoms is not absolute, since the constitutional judge takes into account the necessary controls to ensure harmony between the rights and public interest, which impose certain restrictions on them, provided that the essence of this right does not touch per se⁴⁹. The Constitutional Council must ensure that the core of the fundamental rights, be it personal, social, economic and political, as well as liberties are all maintained without sacrificing the public interest so that it has the capacity to bypass all political interferences with the given text. Its only remaining concern would be ensuring constitutional guarantees for each category of rights and the conditions for their full enjoyment⁵⁰. To exemplify this by reference to the Algerian system, the Constitutional Council intervened, throughout the years, more than once to ensure that both political and civil rights were enjoyed, in accordance with constitutional norms as fundamental rights.

Political rights encompass a range of rights that allow citizens to get involved in political life in its broadest sense. Its basic notion

focuses on the right of citizens participate in the government affairs and the public affairs of the state, since the people are the source of all power. This basic mechanism is exercised through the right to stand and vote in the elections. Participating in political life is a fundamental right guaranteed by the constitution by stating that: "The institutions seek to assure the equality of rights and duties of all citizens, by suppressing the obstacles, which obstruct the development of the human personality and impede the effective participation of all in the political, economic, social and cultural life"⁵¹ one must be of an Algerian origin, having an Algerian nationality or acquired it since at least 10 years, having a regular residence on the national territory and stipulated that the parents of the party's founder were not involved in acts against the revolution; If he was born in 1942. All these conditions were considered to violate the principle of equality by the Constitutional Council, which should not violate a personal or social circumstance, because this "prevents effective participation in political life"⁵².

To enshrine participation in political life, the Constitution also granted citizens the right to vote and stand for election, and considered them fundamental rights by stipulating that "every citizen; who meets the legal conditions, is entitled to vote and to be elected"⁵³. Any citizen, who meets the required conditions by the electoral law, has the right to run for public office or to participate in the selection of representatives of the people. This right is the most important means of participation in political life. In this regard, the legislator had regulated the right to candidature, and required the original nationality of the candidates for an electoral function in the municipal or national popular assemblies, the Constitutional Council, then, held that the provisions of Article 47 of the Constitution recognized all citizens who meet the legal conditions are eligible to vote and be elected; it also stated that legal provisions, in this area, can impose conditions on the exercise of this right, but cannot completely nullify it for a group of Algerian citizens because of their

origin. In other words, the exercise of this right cannot be the subject to mandatory complications in a democratic society, in order to protect the rights and freedoms enshrined in the Constitution and then to ensure their full effect. Based on what preceded, the Constitutional Council has declared that the requirement of an Algerian nationality and origin of the candidate for legislative elections is not in conformity with the Constitution⁵⁴.

In the light of the enjoyment of this right, the Constitution states that "the right to establish political parties is recognized and guaranteed"⁵⁵, which is another essential means for the participation of citizens in political life, which shapes the pluralistic feature of the current Algerian political system. This characteristic was absent during the one-party era which granted citizens the right to form associations only.

In this context, political parties are also considered means of participation in political life: they are permanent organizations established at the national and local levels, aimed at the possession and exercise of power, with the support of the people. In order to ensure the proper establishment and rationalization of political parties, the Constitution states that "this right may not be invoked in order to undermine the fundamental freedoms, the values and the main constituents of national identity, national unity, the security and integrity of the national territory, the independence of the country and the sovereignty of the people, as well as the democratic and republican character of the State". In respect of these provisions, political parties may not be established on a religious, linguistic, racial, sexual, professional or regional basis. And in order to protect the constitutional will to establish political parties, the Constitutional Council considered that the requirement of the legislator for not using the political party the three distinguished dimensions of Islam, Arabism and Amazigh for political purposes would add the expression "political purposes" and "for the purposes of partisan propaganda" to the requirements, which

goes against the second paragraph of Article 42 of the same Constitution.

As for the basic civil rights, the Constitutional Council has made reference to them in the process of its enactment of the law of parties, when the legislator stipulated the founding members regular residence on the national territory. The Constitutional Council considered that this condition violates the provisions of Article 44 of the Constitution, which establishes the right of every citizen enjoying his Civil and political rights "to freely choose his residence", and explained that the constitutional founder "... aims to enable the citizen to exercise one of the fundamental freedoms enshrined in the Constitution and the freedom to choose his residence within or outside the national territory..."⁵⁶.

Moreover, the legislator granted the representatives of accredited political parties, independent candidates and oversight committees, the right to access and obtains a copy of the municipal electoral list. And the constitutional council declared, in this regard, that the electoral law the subject of the referral, did not include a penal provisions to punish the use of privates information for voters to objectives other than those prescribed under this law, but he also did not regulate the conditions, the scope and the uses of the electoral lists, and therefore declared the breach of the Articles 35 and 39 (paragraph 1) of the Constitution which "... founded the principle of the inviolability of private citizen life, and approved his protection under this law"⁵⁷.

In the same context, and the constitutional council conformed the fundamental law of the judiciary to the constitution, and considered that the trade union right is recognized to all citizens unconditionally under article 56 of the constitution. and therefore has considered that the legislator « ... has restricted the freedom of the judge to exercise his trade union rights by forcing him to inform the Minister of Justice ... », and considered that this declaration would « ... prejudice the will of the

constitutional founder the guarantor for the exercise of all citizens the trade union right ... »⁵⁸.

Conclusion

The importance of fundamental rights is bestowed from the importance of human rights, as they are an instrument for the embodiment of the latter in the domestic legal system. The enshrinement of human rights is closely linked to the protection fundamental rights against all violations committed by their regulators. This task has been carried out by the constitutional justice bodies in contemporary regimes, from councils and courts that are competent to oversight the conformity of the normative production rules of the Constitution, and thus, to protect the fundamental rights endorsed therein against the prejudice of the legislator and the regulator. On this subject, the Algerian regime adopted the European model of constitutional justice with few amendments and changes inspired from the American model techniques, and by enabling individuals to activate the protection of constitutional justice for their own rights and freedoms making it a constitutional protection, both general and direct.

Despite all efforts, it is clear that this experience in Algeria is deficient for two reasons: first, the ambiguity surrounding the question of subjecting organizations to constitutional oversight, despite the evident violation of rights and freedoms. Second, the weakness of procedures to activate this protection, leaving it to the will of the owners of the notification, and for individuals just by that the exception of the unconstitutionality in front of the two highest judicial bodies. To address these problems and improve constitutional protection of fundamental rights, the following suggestions can be made:

Clarifying the ambiguity of the normative work subject to constitutional oversight, especially the regulation, is it the regulatory and executive decrees? And, what is the time the control it? These

issues can be addressed and elaborated in the articles tackling constitutional oversight.

Plus, more American Constitutional Justice Techniques can be used as a reference for the activation of the rights and freedom, for instance enabling individuals to directly appeal to the Constitutional Council, or at least to appeal to the lower courts, which in turn transfers them to the Constitutional Council without waiting until the dispute reaches the last litigation degree.

Add to that, the lower courts may be given the power to refrain from applying the legal rules they deem unconstitutional, and refer them directly to the Council for adjudication, and goes back to settle the original dispute in accordance with the decision of the Constitutional Council.

These proposals should be able to increase the protection of fundamental rights against the violation of legislation and regulation, thence really becoming general and direct constitutional protection.

¹ The legality of the competence of the legislator to regulate public rights and freedoms, comes from being a representative of the General will of the people, however, it may nevertheless expose these rights and freedoms to restriction and derogation. Especially since the parliament's legitimacy in the representation of the people is a relative issue in the modern democratic systems, for its relation with the nature of the parliamentary majority, which may not really represent the opinion of the people, and does not reflect its aspirations, and then the law will issued ignoring the will of the people and contrary to his wishes. Ordinary judge also applied the legislative texts and is not monitor to it, therefore, may contribute by this task in narrowing the confiscation of public rights and freedoms as long as he doesn't have a right of refrain from applying the law. All these criticisms proved the inability of the system of rights and public freedoms to protect the principles of human rights by law, which necessitated thinking about protecting these principles by framing the legislator itself in translation them, the idea of basic rights came to this purpose. - See for more details; Louis Favoreu et al., *Droit des libertés fondamentales [Law of Fundamental Freedom]* (2000) 76.

² Loic Philip, 'Le Développement Récent De La Jurisprudence Du Conseil Constitutionnel' [The Recent Development of the Constitutional Council Jurisprudence] (1987) *Vorträge, Reden und Berichte aus dem Europa-Institut* 5.

³ Mauro Cappelletti, 'Nécessité et légitimité de la justice constitutionnelle' [Necessity and legitimacy of constitutional justice] (1981) 33 *Revue Internationale de Droit Comparé* 628.

⁴ Sadok Belaid, *Justice Constitutionnelle Et Etat De Droit* [Constitutional Justice and Rule of Law] (1995) 101.

⁵ Marie-Joëlle Redor, 'Garantie Juridictionnelle et Droits Fondamentaux' [Jurisdictional Guarantee and Fundamental Rights] (2002) 1 *Cahiers de la recherche sur les droits fondamentaux* 92.

⁶ The German Constitutional Court, the Austrian Constitutional Court, and the Federal Court of America, as an example of constitutional courts that guarantee the protection of fundamental rights and freedoms against the work of public administrations and courts. See Redor (n 5 above) 95.

⁷ For example, the article 93 of German Basic Law establishes a special constitutional appeal in favor of individuals in front of the Federal Constitutional Court, grants them the power to defend their fundamental rights against the intervention of public authorities. The Court explained this right it is against all public administration actions and the works of the judiciary also, which infringe of the fundamental rights. The court considered this appeal a direct and exclusive right of the citizen to protect his fundamental rights and considered it a necessary mechanism to confront many manifestation of the police state. Klaus Schlaich, 'Tribunal Constitutionnel Fédéral Allemand' [Federal Constitutional Court German] (1981) 33 *Revue Internationale de Droit Comparé* 339

⁸ As above.

⁹ Schlaich (n 7 above) 93.

¹⁰ This idea was gradually formed by a number of theories, starting with Galenik's idea of "public personal rights", arguing that there are personal rights protected by the rules of public law against the public authorities themselves. This idea then developed into the theory of fundamental freedoms with the advent of constitutional justice and the transition to the rule of law. The latter has been defined as the State whose activities are subject to the law, that is, to all the rules of the legal system. This concept produces three ideas are the main pillars of the establishment of the rule of law; Recognize the limited State authority in front of the rights and freedoms of individuals established in the Constitution; And the establishment of these rights and

freedoms in the fundamental Law; Then create qualified devices to protect them. See Mouhamadou Mounirou La Protection Constitutionnelle des droits fondamentaux en Afrique – l'exemple du Sénégal [Constitutional Protection of Fundamental Rights in Africa - the example of Senegal] PhD thesis Toulouse I University, France 2005 21.

¹¹ As above.

¹² As Above.

¹³ Louis Favoreu et al. *Droit Constitutionnel [Constitutional Law]* (2014) 165.

¹⁴ The School of Natural Right is a school of a holistic nature, rooted in the depth of philosophical and legal history, reaching to the philosophy of Confucius before being influenced by both Plato and Aristotle and crystallized, later, by Cicero within the concepts of that era. Its concepts in the modern era have changed with the Dutch thinker Hugo Grotius, who developed it until natural rights became unrelated to any reference other than human rights itself. See : Jean Dabin 'La Notion du Droit et la Pensée Juridique Contemporaine' [The Notice of Law and Contemporary Legal Thought] (1928) 20 *Revue Neo-Scholastique de Philosophie* 419-21.

¹⁵ Amin Atef Saliba The Role of Constitutional Justice in Establishing the State of Law, "دور العدة الدستورية في ارساء دولة القانون" (2001) 281.

¹⁶ For this point, the jurist Luis Favauero sees that the fundamental rights are not limited on their declaration by the constitutional founder, but can be detected and derived from the traditions of daily life. Saliba (n 15 above) 283.

¹⁷ (n 15 above) 284.

¹⁸ As above.

¹⁹ (n 15 above) 285.

²⁰ Arts 63 & 64 of the Constitution of 08 September 1963 *official journal of Algeria* 64, of 10 September 1963.

²¹ Abd Allah Bouqafah, *Constitutional Law, History and Constitutions of the Algerian Republic* "القانون الدستوري، تاريخ الدساتير الجزائرية" (2008) 66.

²² The target of the coup d'état on June 19, 1965, according to the coupists, was to confront the danger of the presidential dictatorship, resulting from the dominance by the President of the Republic of all the authorities in the state and its accumulation in his hand after declaring the state of emergency, and freezing the Constitution only three weeks after its issued. It should be noted here that no matter how serious the reasons for the coup, the situation has not changed. The state has remained without a fundamental law regulating the work of the public authorities to more than nine years, and the public authorities also disappeared in the 1976 constitution and became only functions in the state., And the President of the Republic enabled, in this Constitution,

to exercise all of them, executive, legislative and judicial, and has the power to influence in its normative work, as a functions exercised in favor of revolutionary power. See : The Constitution of Republic Algerian of 22 November 197, adopted by Presidential Order no 76-97 of 22 November 1976.

²³ The 1963 Constitution provides a transitional provision in art 77 that "*extend the term of the legislative term of the members of the National Constituent Assembly elected in 20 September 1962, until 20 September 1964. The elections of the National Council shall be held before that date, for four years*". The 1963 constitution above-mentioned.

²⁴ See arts 39 -73 of the 1976 Constitution of Algeria.

²⁵ Art 148 of the same Constitution.

²⁶ Art 153 of the Constitution of Republic Algerian of 23 February 1989, adopted by Presidential Decree no 89-18 of 28 February 1989.

²⁷ Art 166 of the 1996 Constitution stipulates the right of the Speaker of the Council of Nation to notify the Constitutional Council, together with the right of the President of the Republic and the President of the National People's Assembly to do so. The amendment comes in response to the transformation of the Parliament's institution by expanding it via second Chamber, is the Council of Nation. In addition, article 123 of the same Constitution required the control of the conformity of the Organic Laws to the Constitution before their issue. These amendments increase the chances of activating the constitutional protection of fundamental rights. See Constitution of Republic Algerian of 28 November 1996 published in *official journal of Algeria* no. 76 of 8 December 1996.

²⁸ As an example of constitutions that adopts the constitutional control prior to the issuance of the law, there is the constitution of the Kingdom of Morocco, chapter 81. And the constitution of the French Republic: the amendment of 2008 that it adopted a realistic constitutional control, along with the abstract control prior to the promulgation of the law, thus enabling its citizens to presented the exception of unconstitutionality of Ordinary Laws before the ordinary judiciary, which in its turn transfers it to the Constitutional Council for adjudication. See: Marthe Fatin-Rouge Stéfanini, *Le Conseil constitutionnel dans la révision constitutionnelle du juillet 23, 2008 sur la modernisation des institutions* [The Constitutional Council in the Constitutional Revision of 23 July 2008 on the Modernization of Institutions], (2009) 78 *Revue française de droit constitutionnel* 281.

29 In this regard, Germany, Austria, Belgium, Spain and Italy established the right of the citizens to bring original constitutional cases against the statutory provisions directly before the Constitutional Court for to challenge them to unconstitutionality. As above.

³⁰ Art 186(1) of the Algerian constitutional amendment of 2016.

³¹ The Constitutional Council can intervene directly, if the consultation phase fails to produce the agreement, with interpretations that integrate the interests of the parties, so as not to exclude the legislative provision that carries the majority translation of the constitutional model, but calls on those who address the law to respect the face defended by the minority in the same text as the interpretation. See: Alexandre Viala *Les réserves d'interprétation dans la jurisprudence du Conseil Constitutionnel* [Interpretation reservations in the jurisprudence of the Constitutional Council] PhD thesis Montpellier I University L.G.D.J 1999 164-68.

³² Louis Favoreu 'Rapport Général Introductif' [Introductory General Report] (1981)

33 *Revue internationale de droit comparé* 255.

³³ For more details on the French experience in expanding the referral see Denys de Béchillon 'Élargir la saisine du Conseil constitutionnel' [Expanding the referral to the Constitutional Council] (2003) 105 *Pouvoirs*; and Henry Roussillon 'La saisine du Conseil constitutionnel. Contribution à un débat' [Referral to the Constitutional Council. Contribution to a debate] (2002)

54 *Revue Internationale de Droit Comparé* 487-90.

³⁴ Art 188 of the same constitutional amendment.

³⁵ Constitutions adopt two ways of protecting the fundamental rights and freedoms of individuals. These rights and freedoms may detailed and regulated definitively, without any opportunity to derogate from them, or their general and basic frameworks are determined leaving their regulation to the legislator. The Algerian constitutional founder worked in the two ways, he provided for two fundamental rights and freedoms in two different groups, The first organized the basic features of the constitution, where puts by the first the basic features of these rights, and did not referral to law regulation any of them, and it is not permissible to the regulation this as a matter of priority, they just must respect them during their consecration.

An example of this sect is the constitution's stipulation that 'All citizens shall be equal before the law. No pretext for discrimination on the basis of birth, race, gender, opinion or any other personal or social condition or situation shall be admissible', and "The State shall guarantee the inviolability of the human person. Any form of physical or moral violence or infringement of dignity shall be prohibited.", "Freedom of conscience and freedom of opinion shall be inviolable. Freedom of worship shall be guaranteed in compliance with the law". And also " The right to education shall be

guaranteed". For the first category see arts 32, 40, 42 and 65 of the 2016 constitutional amendment.

The second category of fundamental rights and freedoms was explicitly included in the Constitution, but their regulation has referred to the legislator, and authorized of the public authorities to limit them within the limits prescribed by law. The regulation of this category by the legislator is logical and justified in its artistry and technical nature and its permanent movement. An example of this category, the constitution states that "Freedom of investment and trading shall be acknowledged. It shall be exercised within the statutory framework", and " Every citizen meeting the legal requirements shall have the right to vote and to be elected.", " No person shall be prosecuted, arrested or detained except in the cases determined by statute and in accordance with the forms prescribed by it". See arts 43, 59 and 62 of the said constitutional amendment.

The regulation of this categories shows the inherent competence of the legislator in the field of fundamental rights and freedoms.

³⁶ Algerian Constitutional Council's Decision no 4-DL-CC-91 of 28 October 1991 *Official Journal of Algeria* no 53, issued on 30 October 1991.

³⁷ It is common practice in the democracy systems to allow the legislator to regulate the exercise of public rights and freedoms, based on the guarantees of debate and publicity provided by legislation, in addition of the generality of the legal rule, and not directed to a particular person or to specific situations. Besides, as the Parliament is elected mainly by the people to express its will, it is entitled to be the only qualified in the organization of its public rights and freedoms. This jurisdiction grants rights and freedoms dual protection in the face of the regulations and practices of public administration, by framing the application of the rules of public rights and freedoms so long as the legislator has not abolished or terminated them. It can not, therefore, be delegated this jurisdiction to regulator in any form. See : Mohamed Mounir Hassani, *Regulating of Fundamental Rights in the Algerian Constitutional System*, تنظيم الحقوق "الأساسية في النظام الدستوري الجزائري" (2016) 9 *Al-Wahat Magazine for Research and Studies* 150-160.

³⁸ André Pouille & Jean Roche, *Libertés publiques et droits de l'homme* [Public liberties and Human Rights] (2002) 18.

³⁹ See: François Luchaire «Conseil constitutionnel français» [French Constitutional Council] (1981) 33 *Revue internationale de droit compare* 285-300.

⁴⁰ Mohamed Mounir Hassani Extension of the Right to Notify the Constitutional Council of Parliamentarians to insure for the Legislative Function, 'توسعة حق إخطار' الملس الدستوري للبرلمانيين تأمين لوظيفة التشريعية *International Forum on Parliamentary Development*, (Ouargla, Algeria: Kasdi Merbah University 11. www.manifest.univ-ouargla.dz. accessed: 11 January 2013.

⁴¹ Art 60 of the Rules of Procedure of the Council of Nation states: "The President of the Council of the Nation shall be elected by secret ballot in the case of multiple candidates, and declare the winner of the absolute majority ...". In that regard, article 30 of the Rules of Procedure of the National People's Assembly mentioned above stipulates that "the President of the People's National Council shall be elected by secret ballot in the case of multiple candidates, and declare the winner of the absolute majority of deputies to be elected ...".

⁴² See in this regard: Mohamed Mounir Hassani The Impact of Constitutional Jurisprudence on the Role of the Algerian Parliament, " أثر الاجتهاد الدستوري على دور البرلمان الجزائري " Unpublished PhD thesis University of Muhammad Khaydar, Biskra, Algeria 2015 93-98. <http://univ-biskra.dz/>. Accessed 19 June 2016.

⁴³ Hassani (n 40 above) 12.

⁴⁴ Louis Favoreu 'Le Conseil Constitutionnel Et L'alternance' (1984) 34 *Revue Française De Science Politique* 1002-1029 <http://www.jstor.org/stable/43118503>. accessed 17 March 2014.

According to the previous proposal, the Constitutional Council, when monitoring the conformity of the laws, finds itself confronted by sharp political conflicts that are characterized by antagonism and contradiction, although the nature of its legal control does not qualify it to determine the necessity to establish a legal rule on basis illegal standards. Therefore, his work will be qualitative when notified, as he would try to reconcile the political forces in the same law, in order to represent the various views and political interests, and this will be possible only by the technique of interpretive reservations, rewriting and interpreting the law to aim at one time to respect the interpretation of the principle advocated by the majority, to respect the interpretation of the principle advocated by the majority, with the face that is opposes it its opposing. Then, The notification and decisions of the Constitutional Council constitute harassment of the Government and its majority in Parliament.

⁴⁵ As above.

⁴⁶ Art 125(2) of the 1996 amendment to the Constitution stipulates that "The implementation of the laws belong to the regulatory power of the Prime Minister". For more details see: Hassani (n 42 above) 261-262.

⁴⁷ Philip (n 2 above) 6.

⁴⁸ Parliament's rules of procedure are fertile ground for the development of constitutional control. Parliamentarians may take advantage of the opportunity to put their own internal system to distort the constitutional requirements of the Parliamentary rationalized, for their desire to restore the constitutional privileges they have lost over time. They may be allowed to do so, in view of the particularity of these rules, applied by its author. The Parliament's rules may contain some terms that appear to be light, but contain hidden effects are desirable, which are appear in the field embodiment. In order to avoid this danger, the Constitutional Foundations aware of it and subjected the internal regulations of houses of parliament to compulsory constitutional control before the Constitutional Council. See : Alain Delcamp 'Le Conseil Constitutionnel et le Parlement' [The Constitutional Council and Parliament] (2004) *57 Revue Française de Droit Constitutionnel* 39-40.

⁴⁹ Saliba (n 15 above) 307.

⁵⁰ As for constitutional justice, has done the public interest is justification for some of the legislator's excesses to the principle of equality. This is clearly reflected in the comparative law, particularly in the jurisprudence of the French Constitutional Council, which states that "the principle of equality does not constitute an obstacle to the legislator when he wants to override equality for reasons of public interest". But it did not grant this leave to the legislator completely, it explained in a previous decision that "the legislator has no right to resort to any public interest reasons in order to reach discrimination in the treatment, because there must be a necessary link and a logical relationship between the qualitative rule (which characterizes the treatment) and the specific public interest that the law aims at. ». Moreover, the French constitutional judge did not leave the legislature with the authority to appreciation the necessary relationship between public interest and discrimination in treatment, but it summarized it in one of the reasons for his decisions as «the public interest Is interest concerning the continuity of the General Facility.». See : Mohamed Mounir Hassani 'Constitutional Protection of the Principle of Equality in the Algerian System' (2016) *15 Journal of Political and Law Studies* 188-194.

⁵¹ Art 31 of the 1996 Constitution Amendment.

⁵² Algerian Constitutional Council Opinion no. 01 - O.O.L./CC of 6 March 1997 on the conformity of the ordinance pertaining to the organic law of political parties with the Constitution. <http://www.conseil-constitutionnel.dz/indexAng.htm>. Accessed 2 March 2016.

⁵³ Art 51 of the same Constitutional Amendment.

⁵⁴ Art 51 of the same Constitutional Amendment.

⁵⁵ Art 42 of the 1996 Constitution Amendment.

⁵⁶ Art 42 of the 1996 Constitution Amendment.

⁵⁷ Algerian Constitutional Council Opinion no. 2 - O.O.L./CC of 22 August 2004, on the conformity of the Basic Law with the Judiciary of the Constitution, Official Journal of Algeria. no. 57 <http://www.conseil-constitutionnel.dz/indexAng.htm>, accessed 8 September 2016,

⁵⁸ As above.