

THE EFFECTIVENESS OF CONSTITUTIONAL OVERSIGHT IN ENHANCING LEGISLATIVE DRAFTING FOR THE PROTECTION OF RIGHTS AND FREEDOMS

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Abstract

One of the most essential safeguards for the protection of public rights and freedoms is the notion of competent legal drafting of legal texts. It is primarily designed to methodically control principles and ideas in a legal form arranged in language that are simple, clear, and exact, are consistent with the Constitution, and do not contradict it in accordance with the principle of the Constitution's primacy. It is not in conflict with other laws, yet it is simple to read, apply, and comprehend by the law's intended recipient. Given the complexity of the principle demanding the authority's accurate functioning based on the legislative drafting process, a higher body of authority has been established.

Key words: rights, freedoms, constitution, drafting, laws ,courts.

Introduction

The institutional framework of the modern state necessitates reliance on stable legislative foundations that align with constitutional provisions and do not deviate from the general principles of the state. This can only be achieved through the establishment of a contemporary legislative system that is compatible with the characteristics, frameworks, and ideological objectives of the state, aimed at meeting its needs for legal rules that regulate its apparatus and organize its course without obstacles or hindrances that could disrupt its progress.

States base their legislative systems on fundamental principles that fall under natural rights, rules of justice, and human rights, while ensuring that they do not conflict with international agreements and charters. Therefore, the process of drafting legislation holds significant importance in fostering trust in the state's laws and enhancing legal security, particularly concerning fundamental human rights and freedoms.

This has led states to continuously strive to establish systems that ensure the quality drafting of various legislations and regulate them as much as possible with appropriate technical standards and logical principles to successfully convey their objectives to their audiences.

One of the most important principles of quality legislative drafting is the necessity for legislative texts to align with the constitution. Consequently, constitutional judiciary typically exercises its oversight over various aspects of legislation to ensure the integrity of the drafting based on the established criteria.

Based on the precision and difficulty of the work of the body responsible for the drafting process, it became necessary for other bodies to intervene to preserve the quality of legislation and contribute to ensuring its unity and coherence. Foremost among these is the Constitutional Court, which was established pursuant to the 2020 constitutional amendment as an independent institution tasked with ensuring respect for the Constitution.

In this role, it exercises supervisory jurisdiction over the legislative process at its various levels to ensure that it does not contravene the Constitution, in order to safeguard the principle of legal security stipulated in Article 34 of the 2020 constitutional amendment, which guaranteed the possibility of challenging the unconstitutionality of a legislative text drafted in an unclear manner on the grounds of its unconstitutionality and the threat this poses to public rights and freedoms. This leads us to pose the following question: To what extent does the supervisory

role of the Constitutional Court affect the improvement of legal drafting in order to protect rights and freedoms?

1/Areas of the Constitutional Court's review over drafting quality under the provisions of the 2020 constitutional amendment

Review of the constitutionality of laws is a mechanism for entrenching the principle of the supremacy of the Constitution and ensuring respect for the hierarchy of legal norms. Therefore, the Algerian constitutional amendment of 2020 allocated the supervisory competence to the Constitutional Court, which is, in origin, a natural extension and a positive development of the former Constitutional Council, by expanding its powers between supervisory and advisory. This supervisory competence over laws is essentially focused on the quality of legislative drafting.

in application of Article 34 of the 2020 constitutional amendment, which affirmed the necessity for the bodies competent for legislation in the State to adhere to the principle of clarity of legislation. By examining the constitutional texts regulating the Constitutional Court's competences in the supervisory field over laws, we find that it granted it the exercise of mandatory a priori review concerning organic laws, the internal regulations of the two chambers of Parliament, and legislative ordinances issued by the President of the Republic in the event of a vacancy in the People's National Assembly or during the parliamentary recess. The second is optional review, according to the discretionary authority of the bodies granted the power of referral, and includes constitutional review of treaties before their ratification, ordinary laws before their promulgation, and regulations within one month from the date of their publication, as well as review of the conformity of laws and regulations with ratified treaties, in addition to the plea of unconstitutionality in the event that there exists a legislative or regulatory provision on which the outcome of an existing dispute before the judiciary depends, involving an infringement of constitutionally guaranteed rights and public freedoms:

1/1/Mandatory prior review of the quality of legal drafting

Mandatory prior review consists of conformity review, which stipulates that a text submitted for review is only considered valid if it conforms to the Constitution in both letter and spirit. This type of review applies to organic laws, the internal regulations of the two chambers of Parliament, and legislative decrees issued by the President of the Republic, as stipulated in Article 190 of the 2020 constitutional amendment. This article mandates that the President of the Republic inform the Constitutional Court of the conformity of organic laws with the Constitution after their ratification by Parliament, and the Constitutional Court issues a ruling on the entire text.

The Constitutional Court also rules on the conformity of the internal regulations of each chamber of Parliament with the Constitution, following the same procedures. Furthermore, Article 142 stipulates that the President of the Republic may legislate by decree on urgent matters in the event of a vacancy in the National People's Assembly or during parliamentary recess, after consulting the Council of State. The President of the Republic is obligated to inform the Constitutional Court of the constitutionality of these decrees, which must issue a ruling within a maximum period of 10 days.¹ This is what we will study in turn:

1/1/1/Regarding organic law : These are laws of a constitutional nature related to the system of government, public authorities in the state, and the fundamental rights and freedoms of individuals. They are enacted through special procedures compared to the procedures for drafting and ratifying ordinary laws, without reaching the level of procedures for drafting or amending the constitution. As such, they are subject to mandatory prior review.² Some

constitutions call them fundamental laws, such as the Iraqi, Tunisian, and Moroccan constitutions. The current Algerian constitution stipulates in Article 140, which is considered the general framework for organic laws, a set of conditions that must be met in any organic law:

A- Regarding the subject of organic law, it is defined exclusively in the Constitution, and the most important of them are mentioned in Article 140 of the Constitution, which are: the organization and work of public authorities, the electoral system, the law relating to parties, the law relating to media, the basic law of the judiciary, the law relating to judicial organization, and the law relating to financial laws, in addition to various topics in different articles of the Constitution.

b- It must be approved by the National People's Assembly by an absolute majority and ratified by the Senat by an absolute majority as well.

C- It must be presented to the Constitutional Court after its ratification by Parliament and before its issuance by the President of the Republic, through mandatory notification.

D- The necessity of subjecting it to constitutional review by the Constitutional Court, as the latter is obligated to review the organic law in terms of form, starting from notification through the procedures of preparation, discussion and ratification, and then to review it in terms of substance from its first endorsements to its last article.³Therefore, the Constitution obligates the Constitutional Court to rule on conformity with a decision on the entire text. Thus, if the Constitutional Court issues a decision declaring an article or articles that can be separated from the rest of the text in organic laws to be non-conformist, the text can be issued without the article deemed non-conformist. However, if the article or articles that the Constitutional Court has ruled to be non-conformist with the Constitution cannot be separated from the rest of the text, the entire text is returned to Parliament for reconsideration.⁴

1/1/2/Regarding the internal regulations of the two chambers of parliament

The Constitution grants each chamber of Parliament the authority to freely establish its own internal regulations, a principle previously affirmed by the Constitutional Council. However, modern constitutions require these regulations to be submitted to the constitutional review authorities to ensure their conformity with the Constitution. Since Parliament holds legislative power, any deviation from its internal regulations constitutes an overreach of its legislative authority. The conformity of Parliament's internal regulations with the Constitution serves as a safeguard in the exercise of its legislative power, ensuring adherence to constitutional principles, particularly those related to public rights and freedoms. An example of this is the 2000 internal regulations of the Senat, which granted itself the power to amend laws passed by the People's National Assembly. However, after the regulations were reviewed by the Constitutional Council, this was deemed unconstitutional and an overreach of the Senat's powers. The Constitution does not grant the Senat any authority or right to amend laws except through a joint committee.

Therefore, the Council ruled that all articles of the internal regulations pertaining to the right of amendment and its procedures were inconsistent with the Constitution and thus unconstitutional.⁵Therefore, if the Constitutional Court rules that an article or some articles of the internal regulations do not conform to the Constitution, the chamber concerned, as the case may be, cannot act on the article that was decided not to conform to the Constitution, except after it has been amended and presented again to the Constitutional Court.

1/1/3Legislative orders of the President of the Republic:

Article 142 of the Algerian Constitution stipulates that the President of the Republic may legislate by decree on urgent matters in the event of a vacancy in the National People's

Assembly or during the parliamentary recess, after obtaining the opinion of the Council of State. The President of the Republic is obligated to notify the Constitutional Court regarding the constitutionality of these decrees, which must decide on them within a maximum period of 10 days⁶.

Thus, it becomes clear that the Constitution has subjected the legislative orders of the President of the Republic to mandatory prior review to examine their constitutionality by the Constitutional Court, which allows the latter to extend its control over the quality of the legal drafting of these orders, especially since they are taken in the Council of Ministers, and the legislator has no choice but to approve or reject them after they are presented to him by the President of the Republic. Thus, the legal drafting of these orders takes place in the Council of Ministers, and mandatory prior review of them by the Constitutional Court allows for their revision and adjustment so that they do not violate the requirements of the Constitution, even though the period of decision set at 10 days is relatively short.

However, this mandatory prior review has several advantages, the most important of which is ensuring the establishment of a constitutional judiciary that aims to ensure that laws conform to the constitution. This leads to the rationalization of legislative activity in general by limiting and regulating the legislative field and setting a specific framework within which its activity is carried out.⁷

1/2/Permissible oversight of the quality of legal drafting

Constitutional review is permissible within the cases specified by the Constitution, in which the matter is referred to the Constitutional Court through the optional notification mechanism granted to each of: the President of the Republic, the Speaker of the National People's Assembly, the Speaker of the Senat, the Prime Minister or Head of Government as the case may be, forty (40) deputies, twenty-five (25) members of the Senat.⁸The optional notification mechanism is the most prominent criterion in distinguishing this type of review from its mandatory predecessor. Thus, it is a review that may not encompass the entire text but is limited to one or more articles contained in the notification letter. Furthermore, it is limited to the substantive aspect of the text only. Permissible constitutional review is exercised as prior review if it pertains to... With regard to treaties before their ratification and ordinary laws before their issuance, and oversight of the conformity of laws and regulations with ratified treaties, and it is as a subsequent oversight if it relates to regulations within one month from the date of their publication, and in the case of a plea of unconstitutionality in the event of a legislative or regulatory provision upon which the outcome of a dispute pending before the judiciary depends, in which there is an infringement of constitutionally guaranteed public rights and freedoms, and we will study them successively:

1/2/1/Review of the constitutionality of treaties

According to Article 190 of the Constitution, the Constitutional Court may be notified regarding the constitutionality of treaties before their ratification. The treaties referred to here are only official treaties that fall within the normal activities of the executive branch. Constitutional review focuses on ensuring that international treaties are free from any conflict or contradiction with the substantive principles and provisions of the Constitution. Therefore, the Constitutional Court exercises its oversight over the quality of the treaty's legal drafting to ensure respect for the substantive limits and controls that prevent its violation of the Constitution. The most prominent of these limits and controls are:

The need to respect constitutional, political, social and economic principles such as multi-party democracy and the fair distribution of national income.

The obligation to respect the principles of Islamic law, as well as the fact that Islam is the state religion, necessitates the preservation of religion, honor, property, life, and intellect...

The obligation to respect public rights and freedoms, such as prohibiting discrimination between citizens, banning the exile or deportation of citizens from their country or preventing their return to it, or prohibiting the extradition of political refugees.⁹

It should be noted that armistice agreements and peace treaties are not subject to constitutional review by the Constitutional Court due to their nature, the circumstances they address, and the exceptional situations they may create. The President of the Republic may seek the opinion of the Constitutional Court regarding these agreements, in accordance with Article 102 of the Constitution.¹⁰ The penalty for the unconstitutionality of treaties, according to Article 198 of the Constitution, is the failure to complete the ratification procedures.

1/2/2/Judicial review of the constitutionality of ordinary laws:

Ordinary laws encompass the areas of legislation defined by the Constitution for the legislative authority in Article 139, and whose stages and procedures are specified in Article 144. Constitutional review of these laws before their promulgation is optional, depending on the discretion of the reporting authorities. Once promulgated by the President of the Republic, they become immune from constitutional review except in cases of challenge to their constitutionality, as stipulated in Article 195 of the Constitution. Constitutional review of ordinary laws may pertain to one or more articles, as specified in the notification.

The Constitutional Court's review is limited to substantive aspects only, meaning all matters related to the legal drafting style to ascertain the legislator's intent in enacting the law, while ensuring its fundamental conformity with the Constitution and respecting the legal hierarchy, which dictates that lower rules should not be deviated from higher ones.¹¹ It should also be noted that ordinary laws are also subject to the control of conformity with ratified treaties, according to the text of the Constitution in Article 190. Therefore, if the Constitutional Court decides that a law is unconstitutional, it will not be issued, according to Article 198 in its second paragraph.

1/2/3/Constitutional oversight of regulations

According to Article 190 of the Constitution, which stipulates that the Constitutional Court may be notified of the constitutionality of regulations within one month of their publication, regulations represent the set of rules issued in the form of decrees aimed at regulating areas not specified by legislation. Therefore, the Constitution does not define the scope of these regulations, except with regard to the authorities competent to exercise them, as stipulated in Article 141 of the Constitution. The regulatory authority granted to the President of the Republic and the regulatory authority granted to the Prime Minister and the Head of Government, as the case may be, is defined.

The former is considered independent of the law and not dependent upon it, while the latter is of an executive nature, linked to an independent legal or regulatory text, and its purpose is to interpret and clarify the method of implementation.¹² According to Article 190 mentioned above, all regulations, whether issued by the President of the Republic, the Prime Minister, or the Head of Government, as the case may be, are subject to constitutional review by the Constitutional Court within one month of their publication. Given that this review is discretionary and subsequent to the issuance of these regulations, it focuses on their substantive aspects and their conformity with the principles of the Constitution. This necessitates extending the review to their legal drafting to ensure compliance with the requirements of the Constitution, particularly those related to public rights and freedoms. It is also worth noting that regulations are subject to subsequent review concerning their compatibility with treaties,

also within one month of their publication. Furthermore, there is another form of subsequent review, which involves challenging the constitutionality of a regulation in the event of a legal dispute and alleging that the regulation violates one of the constitutionally guaranteed public rights or freedoms. If the Constitutional Court issues a ruling declaring the regulation unconstitutional, it ceases to have effect from the date of that ruling.¹³

1/2/4 Compliance of laws and regulations with ratified treaties:

In this case, the Constitutional Court exercises discretionary oversight according to the authority of the notification bodies, in accordance with Article 193 of the Constitution. The requirement of this oversight is to examine the extent to which ordinary laws, before their issuance, and regulations, within one month of the date of their publication, are consistent with and do not violate the content of ratified treaties, considering that the latter supersede the law, in accordance with the text of Article 154 of the Constitution, which affirmed that treaties ratified by the President of the Republic, according to the conditions stipulated in the Constitution, supersede the law, and thus they also supersede regulations. Therefore, if the Constitutional Court extends its oversight and decides that the law or regulation is in accordance with the ratified treaty, the same penalty stipulated in Article 198 of the Constitution shall apply.¹⁴

1/2/5/Censorship through the plea of unconstitutionality:

This review is subsequent to the enactment of the law or regulation whose constitutionality is to be examined. According to Article 195 of the Constitution, the Constitutional Court may be notified of a plea of unconstitutionality based on a referral from the Supreme Court or the Council of State, when a party to a trial before a judicial body claims that the legislative or regulatory provision upon which the outcome of the dispute depends violates their rights and freedoms guaranteed by the Constitution.

The first decision of the Constitutional Court in the area of review through a plea of unconstitutionality was the ruling on the constitutionality of Article 24, last paragraph, of Law 13/07 regulating the legal profession, which stipulates: "...a lawyer may not be prosecuted for their actions, statements, or writings during a debate or pleading in court..." The unconstitutionality of this article was challenged by one of the litigants before the court on the grounds that it violated their rights and freedoms guaranteed by the Constitution, particularly Articles 37 and 47. Article 37 stipulates that: "...all citizens are equal before the law and have the right to equal protection. No discrimination based on birth, race, or sex may be invoked..." Opinion, or any other personal or social condition or circumstance..." and Article 47: "...every person has the right to the protection of his private life and honor..." The Constitutional Court affirmed that if the legislature has the authority to provide the legal guarantees enshrined in the Constitution in Article 176 when a lawyer practices his profession, and if Law 13/07, which regulates the legal profession, stipulates these guarantees, then it is solely within its jurisdiction to review the constitutionality of these guarantees.

Therefore, it decided that: "...the legislature, by stipulating the legal protection of the lawyer during the practice of his profession and his pleadings in court, and the free exercise of the right to defense in Article 24, last paragraph, of Law 13/07, which regulates the legal profession, has exercised its constitutional powers and enshrined the legal guarantees contained in Article 176 of the Constitution. Consequently, the aforementioned text has not violated the rights and freedoms guaranteed by the Constitution, which necessitates declaring the last paragraph of Article 24 of the Law Regulating the Legal Profession constitutional..."¹⁵

The Constitutional Court, in its oversight of the legal drafting of the aforementioned Article 24, affirmed that it does not violate the principle of equality enshrined in the Constitution, nor

does it conflict with the right to the protection of private life and honor, which is also guaranteed by the Constitution. It is noted that the method of oversight through the plea of unconstitutionality applies to only one or some articles of the law, which allows the Constitutional Court to exercise its oversight jurisdiction over the quality of the legal drafting of the article or articles concerned only, without the rest of the law.

2/Constitutional Court oversight techniques for quality drafting based on the jurisprudence of the Constitutional Council

To ensure respect for the Constitution, the 2020 constitutional amendment stipulated in Article 185 that the Constitutional Court is an independent institution tasked with guaranteeing respect for the Constitution. It was also entrusted with the responsibility of ruling on the constitutionality of treaties, laws, and regulations by way of its decision after being notified.

Furthermore, it is obligated to issue a decision on the entire text of organic laws regarding their conformity with the Constitution after their ratification by Parliament, in addition to the conformity of the internal regulations of each of the two chambers of Parliament with the Constitution. Therefore, to ensure that laws issued by the legislative authority respect the Constitution, the Constitutional Council was previously responsible for overseeing the constitutionality of laws submitted to it.

Considering its jurisprudence in this area, a strong emphasis is evident in the quality of legislative drafting through the establishment of general principles and foundations for maintaining the integrity of legislative drafting in order to achieve the desired objectives.¹⁶The previous rulings of the Constitutional Council in this field represent a fundamental reference framework for the Constitutional Court to exercise its supervisory authority over laws in general through the techniques it adopted, which we will study in the following two sections:

2/1/Adjusting the legislative wording of the text

The Constitutional Council's jurisdiction in reviewing the constitutionality of laws necessitates monitoring the substantive conformity of legislation and regulations with the Constitution. This review thus extends to the form in which the legal rule is drafted. The focus here is on whether this drafting achieves the objectives of the constitutional framer, thereby rendering it constitutional, or whether this drafting contains room for interpretation, which reflects the will of the constitutional framer and leads to infringement or violation of public rights and freedoms.¹⁷

Thus, the Constitutional Council can declare some articles of the text before it unconstitutional, or declare them partially compliant with the Constitution and redraft them to bring them into full compliance. This approach has been criticized by some because the annulment of certain articles or the proposal of alternatives through revising the wording adopted by the legislative authority puts the Constitutional Council in direct conflict with the latter due to its intervention in the latter's jurisdiction.¹⁸ Conversely, others believe that this jurisdiction remains supervisory, even though it contributes to creating and regulating legal texts, because the goal is positive and effective correction to ensure all legal texts conform to the constitution.¹⁹

Thus, it is considered an assistant to the legislative authority in order to improve legal texts, by addressing the shortcomings in the texts due to their violation of the constitution. The Constitutional Council previously relied on the technique of reservations, which aims to preserve texts issued by the legislative authority and avoid declaring them unconstitutional. Reservations take the following forms:

2/1/1/Neutral reservations:

The Constitutional Council has repeatedly sought to avoid declaring a text unconstitutional by searching for an interpretation that conforms to the Constitution, even though it may not conform to the legislator's intent. This remains the only way to preserve the text by correcting its meaning without changing its original wording.²⁰

This approach is known as conformity with reservations, which represents a middle ground between conformity and non-conformity. In this case, the text is not prevented from entering into force, but it is subject to reservations and conditions. This approach is the least used by the Constitutional Council, as it merely removes the unconstitutional part of the text and retains the rest without altering its meaning. Therefore, the Constitutional Council's contribution with this approach is considered negative because it does not address the possibility of amending the text through addition or modification.²¹

2/1/2/Corrective reservations:

It aims to review and amend the original wording of the text under review, whether the text as a whole or in part, to make it consistent with the constitution. This is done by deleting the material elements that caused the text drafted by the legislator to be unconstitutional, thus avoiding its declaration of unconstitutionality. This is then replaced with appropriate wording, resulting in a text drafted by the Constitutional Council. Often, this type of reservation uses the phrase: "partially in conformity with the constitution, provided that it is reformulated as follows:...".

This reservation can reduce the impact of the text, and some constitutional scholars call it: the reservation that reduces the impact. It is a technique of constitutional adjudication that aims to strip the text presented to it of multiple interpretations and meanings. Related By its very structure, this reservation has been used whenever the Constitutional Council has observed that a legislative text contains several constitutional interpretations. It has thus worked to restrict and refine the legislative text to a meaning consistent with the Constitution. In this way, the positive role of the Constitutional Council in ensuring the quality and proper drafting of legislative texts has become evident.

This type of reservation is therefore the most frequently used, provided that the violation of the Constitution pertains only to the drafting and does not extend to a violation concerning the content or spirit of the text, as these reservations are ineffective in rectifying such violations.²²

Examples of corrective reservations adopted by the Algerian Constitutional Council to ensure the stability of legal positions and the quality of legal drafting through the selection of phrases and terms used in legal texts include:

A- Unifying the use of terms and phrases used within the Constitution and organic laws: Unifying legal drafting terminology facilitates and simplifies the work of the legislative authority and the individuals addressed by the law. It is a means of ensuring consistency in legislative style, as confirmed by the Constitutional Council in Opinion No. 02/17 concerning the National Assembly's review of the Constitution's internal regulations, which stated: "...considering that the National Assembly, by using the term 'ordinary legal texts' and texts of organic laws in the aforementioned article, he did not faithfully express the term 'draft laws'. Ordinary Or the organic bills used in the text of Article 138, paragraph 4 of the Constitution, and the text of Article 41 of Organic Law No. 16-12 mentioned above, which were based To them Article 80 of the internal regulations is subject Notification This is considered an oversight that must be rectified..." and also: considering the term group This gives a meaning contrary to the intended meaning of the content of this article, which states that the agenda of the parliamentary group or groups of the opposition is proposed in accordance with the provisions

of Article 114, Paragraph 2 of the Constitution. This is considered an oversight that must be rectified.²³

B- Respecting the order of legal precedents: The requirements of the text, or what is called precedents, are the legal basis for any legislative text. These are fundamental forms adopted during its enactment, and they consist of: the authority that adopted the text, the constitutional provisions related to the preparation of the text, and previous texts related to the draft text. When mentioning the adopted texts in the preamble, their titles must be given in full, and their order follows the principle of the hierarchy of legal rules, beginning with the texts of the Constitution, then organic laws, then ordinary laws and decrees. An example of this is what the Constitutional Council confirmed in Opinion 01-12 concerning the review of the conformity of the organic law relating to political parties with the Constitution, where it stated: ...considering that the legislator adopted in the order of precedents the organic law subjectNotificationThe chronological order of the issuance of laws, and considering that if the legislator may adopt the date of issuance as a method for arranging laws of the same legal category, then in his general arrangement of texts from different categories he must adopt the principle of the hierarchy of legal rules...²⁴

C- Choosing terms precisely within the legislative text: This necessitates carefully selecting terms according to their correct meaning and in their correct context. This clarity means that these phrases express the intended meaning easily and without any possibility of interpretation. Therefore, its great importance is evident through:

The ease with which those addressed by the legislation can understand its provisions, because thumbLack of clarity leads to the application of the text contrary to its intended purpose, and to the uniform application of the legislative text to those addressed by it. This reduces disagreements between the authorities responsible for applying the text due to the precision and clarity of the wording.²⁵ Because imprecise wording and ambiguous phrases lead to differing interpretations of legal texts by courts, resulting in instability and jeopardizing legal positions, and consequently violating constitutionally guaranteed rights and freedoms, thus undermining the principle of legal certainty. Therefore, precision and clarity in wording and terminology ensure the stability of legislative texts, as clearer and more precise the legislative drafting leads to its stability and longer period of validity. The Algerian Constitutional Council has established numerous rules in this regard.²⁶

D- Regulating the Style of Legal Expression: The legislative drafting process necessitates regulating the style of legal expression, as this is optimal for achieving the goals of legislation and ensuring that legal rules achieve a high degree of clarity and consistency. The Constitutional Council has emphasized this through its opinions, including Opinion No. 01 of 1989 concerning the constitutionality of the law containing the internal regulations of the National People's Assembly, which stated: "...when the drafter of the Constitution clearly indicated that some of these provisions relating to the organization and operation of the National People's Assembly fall within the domain of law, he did not intend to restrict the initiative in this regard to the deputies alone, as can be inferred from Article 186 of the text presented... to the National People's Assembly, when he stipulated these matters in this manner, he overlooked Article 113 of the Constitution, which granted the government the power to initiate laws...therefore, he violated the text of Article 119 of the Constitution."²⁷

2/1/3/Partial constitutional conformity of the text

This is a mechanism adopted by the Constitutional Council to rectify legislative texts by deleting the unconstitutional portion and retaining the constitutional portion. The decision then establishes partial constitutional conformity of the text, requiring its reformulation in a new form that omits the deleted section. An example of this is Constitutional Council Decision No.

02/89 concerning the oversight of the Basic Law for Members of Parliament, which states that Articles 17 and 33 are partially constitutional. Article 17, in its first paragraph, omits a portion of the sentence as follows: ...especially matters relating to the application of laws and regulations, the exercise of public oversight, and matters relating to the activities of various public bodies...²⁸

2/2/Principles and foundations of legislative drafting according to the rulings of the Constitutional Council

The decisions of the Constitutional Council have shown a clear interest in the quality of legislative drafting, with a focus on the phrases and terms used by the legislator in drafting the legislative text, which has led to a set of principles and rules related to its work in this regard, which are as follows:

2/2/1/ Faithfully expressing the terms prevailing in the State's legislative practice

Accordingly, the drafting must be consistent with the legal context, because the rule in legislation is that it is issued in the language and terminology of the State in which it will be applied. This also requires consistency with the rest of the other legislation in force in order to preserve the unity of terminology and to prevent any conflict or overlap. The Algerian Constitutional Council has affirmed this, stressing the necessity for the legislator to faithfully express the prevailing terms in the Constitution, such as in its Opinion No. 06/98 concerning the review of the conformity of the organic law relating to the powers of the Council of State, its organization and functioning, with the Constitution, with regard to the title and certain provisions of the organic law, where it stated that ...considering that the legislator, by using in the title of the organic law referred and in some of its provisions the terms: powers, conduct, and management, did not faithfully express the corresponding terms in Article 153 of the Constitution, namely competencies, and functioning....., therefore it ruled that the title of the organic law be redrafted using the term competencies instead of powers. Also, with regard to the term establishment, it was stated in the same Opinion of the Constitutional Council that:and considering that the constitutional founder used in Article 180 of the Constitution the term "installation" and that the legislator, when using in Article 44 of the organic law referred the term "establishment", introduced ambiguity as to the meaning intended, which requires its removal....", and the Constitutional Council also emphasized directing the legislator to the necessity of strict literal compliance in drafting the titles of laws according to the designation contained in the Constitution, such as Opinion 01/11 concerning the conformity of the organic law which defines the organization of the Supreme Court, its functioning and its competencies, with the Constitution; it considered that the title of the organic law referred contained the word competency in the singular form, which it considered an oversight that must be remedied by making the title of the law conform to the text of Article 153 of the Constitution. Which contains the term "competencies"²⁹

As a result, the Constitutional Council's interest in unifying the language of the law is evident through its oversight of the formulation of legal terms, and also in preserving the supremacy of the Constitution by relying on any term that includes a specific meaning in the Constitution, to apply that meaning in any other text in which it appears.

2/2/2/Deleting terms that are not known in the country's legislative custom:

The Constitutional Council emphasized the necessity of removing any unfamiliar or foreign terminology from Algerian legislative practice in the drafting of laws. This was confirmed in Opinion No. 02/16 concerning the conformity of the Organic Law relating to the electoral system with the Constitution, which stated: "...considering that the term 'unintentional felonies'

is not enshrined in the Constitution nor in the legislation in force, and considering that retaining this term would prejudice the constitutionally enshrined rights of litigants, and consequently considering that these provisions contained in the final paragraphs of the aforementioned articles of the Organic Law subject to notification are partially in conformity..." The constitution is to be revised and redrafted.....³⁰

2/2/3/Relying on accuracy and clarity in legislative drafting:

This necessitates using phrases and terms according to their correct meaning and in their proper place so that they easily achieve the intended purpose of the drafted law. Accordingly, the Algerian Constitutional Council has established several rules in this context through:

A- Emphasizing the need to avoid ambiguous terms and phrases: Ambiguity in legislative drafting occurs when the legislator uses terms that have more than one meaning, or uses them incorrectly in a way that does not clarify the true meaning and intent. The fundamental principle in the drafting process is to avoid using vague terms that are not clearly defined by precise interpretive boundaries, as these may be open to multiple interpretations.³¹In its opinion No. 02/17 concerning the monitoring of the conformity of the internal regulations of the Senat with the Constitution, the Constitutional Council confirmed this, stating that: "...and considering that the term enshrined in the Constitution, according to Article 138 and Organic Law No. 16/12, which defines the organization and operation of the National People's Assembly and the Senat, as well as the functional relations between them and the government, in Articles 28, 39, and 41 thereof, is: "the text voted on by the other chamber," or "the text voted on," or "the text containing..." Therefore, when the Senat used the term "text of the law" or "legal texts" in the aforementioned articles and provisions, it gave a meaning different from the intended meaning of the content of these articles and provisions, which is considered an oversight that must be rectified..."³²

B- Emphasizing the avoidance of using inappropriate expressions: The legislator's use of inappropriate expressions during the legislative drafting process leads to the issuance of a ruling contrary to the constitution, including what was stated in Opinion No. 08/99 concerning the conformity of the organic law that defines The organization and operation of the National People's Assembly and the Senat, as well as the functional relations between them and the government, are addressed in Article 20 of the Constitution, which states: "...considering that the legislator has added other conditions for the acceptance of a proposal or draft law, in addition to the conditions stipulated in Article 119 of the Constitution, as is evident from the wording adopted,...considering that Article 119 of the Constitution exhaustively stipulates the conditions for the acceptance of draft laws and proposals,...considering that it is not within the legislator's purview to add other conditions in this area unless the constitutional framers expressly authorize them to do so,...considering that, in this case, specifying the form that a draft law or proposal must take to be accepted is not, in itself, an additional condition to those stipulated in Article 119 of the Constitution, but rather constitutes one of the methods related to the application of these conditions,...considering consequently that the wording adopted by the legislator can only be the use of an inappropriate expression..."³³

C- Emphasizing the restriction of the legal term that has multiple meanings: Absolute formulation leads to ambiguity and obscurity in the legislative text, especially in the presence of imprecise terms without restrictions controlling their meanings. For this reason, the Constitutional Council stressed the need to restrict the term that has multiple meanings. An example of this is in Opinion No. 02/16 concerning the conformity of the organic law relating to the electoral system with the Constitution regarding the legislator's use of the term "seizure" in Article 05 of the organic law. The Council emphasized that the legislator's use of the term "seizure" in isolation from the judicial character has overlooked an essential procedure in order

to give legal legitimacy to the seizure, which without it is considered an infringement and violation of individual freedoms. It emphasized that what is meant by seizure is judicial seizure in accordance with the requirements of the Penal Code. Thus, the wording of the text is imprecise and ambiguous, and the Council reformulated it by adding the term “judicial” to the word “seizure”.³⁴

2/2/4/Emphasizing the prohibition on including in legislation rules that belong to the domains of other texts in the Constitution:

this stems from respecting the rules of the distribution of competences in accordance with the principles of the Constitution; therefore, the Constitutional Council has become accustomed to emphasizing this in its oversight of the legislative drafting process, in order to avoid violating the principle and to preserve the quality of legislation from any contents related to other laws. The transfer of these contents may be literal from one or more provisions from one legislation to another, and the Constitutional Council referred to this in Opinion No.: 12/01 concerning constitutional review of the law containing the basic statute of the member of Parliament, which stated: "...whereas the legislator inserted in this law provisions from the Constitution, the organic law, and the internal regulations of each of the two chambers of Parliament by transferring them literally and/or transferring their content,.....and whereas the legislator, pursuant to the constitutional principle governing the distribution of competences, is required, whenever exercising the power to legislate, to take into account the domain defined in the Constitution for the text submitted to it, so that he does not include within it provisions and contents that constitutionally belong to the domains of other texts, which requires excluding them from the scope that belongs to this law"..."³⁵.

Therefore, the council emphasized in this opinion the deletion of provisions transferred from other laws and considered that they do not fall within the scope of this law under review.

Also, in two other opinions of the Constitutional Council, the first No. 02/04, concerning the monitoring of the conformity of the organic law relating to the basic law of the judiciary with the Constitution, due to the complete verbatim transfer of Article 48 of the Constitution and its inclusion in Article 31 of the law submitted to it, and the addition of the term: “and its neutrality,” it considered that this does not constitute a legislative act and represents an overreach of the legislator’s powers. In the same way, the Constitutional Council confirmed in Opinion No. 03/04, concerning the monitoring of the conformity of the organic law relating to the formation, operation, and powers of the Supreme Judicial Council with the Constitution, where it stated that: “...and considering that when the legislator stipulated in Article 35 the consultation of the Supreme Judicial Council regarding requests, proposals, and procedures for pardon, he transferred the content of the constitutional provision contained in Article 156 of the Constitution,...and considering consequently, the implicit transfer by the legislator of a provision from the Constitution to the organic law in question does not constitute a legislative act in itself, but rather an overreach of his jurisdiction...”³⁶

Therefore, we find that the Constitutional Council emphasized that legislation should not include rules pertaining to other areas in the Constitution, whether by copying them verbatim, copying them with the addition of a term or terms to them, or copying their content. It considered this an overreach of the legislator's powers and stressed the need to delete them from the text presented to it.

Conclusion:

The Constitutional Court’s supervisory jurisdiction over the quality of legal drafting is an important and effective mechanism for protecting the Constitution and entrenching its supremacy through the mechanisms and areas of review assigned to it under the Constitution,

in a manner that supports the stability of legislation to achieve legal security and judicial security.

In this field, the Constitutional Court is considered a regulator of the quality of legislative drafting by activating its authority to annul laws and regulations that do not respect the principles of quality legislative drafting, in protection of the principle of legal security. This review is effective and efficient in the case of mandatory a priori review, according to the requirements of the Constitution that apply to organic laws, the internal rules of procedure of the two chambers of Parliament, and the orders issued by the President of the Republic, where the review is comprehensive of the entire text, which allows for the proper realisation of the text before its issuance.

The effectiveness of the Constitutional Court's supervisory role decreases in the case of optional review because it remains dependent on the discretionary power of the referral authorities specified in the Constitution, or on the existence of a dispute affecting the rights and freedoms of one of the parties in the case of raising a plea of unconstitutionality, which affects, in one way or another, the reduction of review over drafting quality in general in the case of optional review.

The Constitutional Court's review methodology regarding the quality of legal drafting is based primarily on the jurisprudence of the former Constitutional Council, which in turn relied on a broad constitutional bloc as a reference when exercising its review of the constitutionality of laws.

This has established a set of principles and foundations specific to the quality of legal drafting, which will make the Constitutional Court an effective partner in the legislative process to guarantee public rights and freedoms, as well as to achieve justice and equality.

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2- Gharbi Ahsan, "Control of the conformity of organic laws with the constitution", Academy Journal for Legal Research, Issue 01, 2019, pp. 150-178.

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4 -Jamal Rawab, "The powers of the Constitutional Court in the field of constitutional review and conformity review", Journal of the Constitutional Council, Issue 17, 2021, pp. 167-187.

5 -Mohammed Boumediene, opcit, p. 10.

6 -Article 142 of the Algerian Constitution 2020.

7 -Jamal Rawab, opcit, p. 177.

8 -Article 193 of the Constitution states: "...The Constitutional Court shall be notified by the President of the Republic, the President of the Council of the Nation, the President of the

National People's Assembly, the Prime Minister, or the Head of Government, as the case may be. It may also be notified by 40 deputies or 25 members of the Council of the Nation..."

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12 -*ibid*, p. 232.

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14 -Jamal Rawab, *opcit*, p. 168.

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²⁷27 -Ramadani Fatima Al-Zahra, *opcit*, p. 10.

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