THE INTERNATIONAL JUDICIAL FUNCTION OF THE NATIONAL JUDGE COMPARATIVE STUDY BETWEEN ALGERIA AND TUNISIA

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Abstract:
The parties will not invoke international standards, especially Tunisian and Algerian ones that relate to relations .between subjects of international law, and international legal standards that are relevant to relations between states and/or intergovernmental organizations and other international actors (individuals, private companies, and non-governmental organizations), to international law in judicial proceedings. internal, because their nationals (states and intergovernmental organizations) are legal entities that enjoy immunity from jurisdiction over acts performed in the course of public office unless they expressly acknowledge the waiver of the immunity, by virtue of Fundamental Principles of Jurisdiction Nor are states allowed to appear before the national courts of a state other. In addition, litigants cannot bring legal claims against international organizations before local judges in their member states.

We divided this study into two sections, through which we tried to get acquainted with the variables of the subject and its various aspects, using the analytical approach and the comparative approach. Based on the problematic of the study, which we consider as a basis for research, comparison and approach to reach the interaction and interaction of Tunisia and Algeria through judicial jurisprudence experiences, as well as the opinions of jurists on the subject.

***Keywords**: Algerian judge ; Tunisian judge ; the international judicial function ; the national judicial*

INTRODUCTION

In principle, the parties will not invoke international standards that apply to relations between the principal subjects of international law : states and intergovernmental organizations, and international legal standards relevant to relations between states and/or intergovernmental organizations and non-state actors (individuals, private companies, non-governmental organizations). governmental), to international law in domestic judicial proceedings, because their nationals (states and intergovernmental organizations) are legal entities that enjoy immunity from jurisdiction[1] over acts performed in the course of public office unless they expressly acknowledge the waiver of the immunity, by virtue of Fundamental Principles of Jurisdiction as States are not permitted to appear before the national courts of another country. In addition, litigants cannot bring legal claims against international organizations before local judges in their member states[2].

Chapter One : The international judicial function is a limited field for the national judge

There is an ongoing debate about the possibility of limiting the jurisdictional immunity of states and international organizations. Some domestic courts have accepted the prosecution of foreign states for acts that violate peremptory norms[3]3. In addition, national judges have resolved issues related to the interpretation and application of horizontal rules of international law, such as those prohibiting the use of force in relations International or those governing the recognition of states and governments.

The main area for the performance of an international judicial function by local judges remains the application and interpretation of types of standards, including in contemporary international law the recognition of the international legal personality of ordinary people where the traditional and customary rules of international law create direct rights and duties on individuals, and establish their access to international dispute settlement mechanisms[4].

Member states of the international community have adopted multilateral international agreements, the main objective of which is to develop uniform rules of conflict within the framework of private international law, as well as to harmonize substantive rules in many areas of transnational private relations (including civil law, family law, commercial law, legal administrative and procedural). By applying these important treaties of international law and resolving disputes between private parties that are subject to more than one national legal system, local judges often act as judges of international law[5]. Rules of international law enter the domestic legal systems of states through various forms of reception or incorporation, unless they are directly mandated or have direct applicability in national law. Procedures differ from country to country, depending on the constitutional system for receiving and integrating international law into the national legal system.

Once the rules of international law are incorporated, they become part of domestic law. From a formal point of view, when applying and interpreting those standards, national judges will resort to local rules, but from an objective point of view they will use international law to resolve certain disputes.

Domestic rules for the application of international law are considered to have formal validity based on domestic law, as the content of these rules has substantial foundations in international law, and the use of international law in settling national disputes gives local judges the right to perform an international judicial function.

The international judicial function of national judges includes a basic understanding of the judicial function as such, the settlement of disputes through the application and interpretation of legal rules by an independent and impartial judicial body. Thus, the internal or international character of the judicial function depends solely on the nature of the legal rules that domestic courts have to interpret and apply[6].

National judges have a sufficient legal basis to perform an international judicial function, but the question remains : Are they willing to do so ? There is no legal obligation on local judges to act as ordinary judges in international law. Neither domestic nor international law creates such a duty on behalf of local judicial authorities. The call for national judges to act as judges in international law is of a compelling nature and draws on the voluntarism and universality found in the positions judges. Indeed, some domestic courts, especially in bilateral legal systems, have the potential to use "avoidance techniques" to distance them from the interpretation and application of international law in domestic cases.

This study will analyze the performance of Algerian and Tunisian judges in international judicial functions. Are they ordinary judges in international law, and if so, to what extent ? What is the scope of their international judicial function ? What are the limitations on their ability and willingness to serve as judges in international law ?

In this study, we will also analyze the general legal, social and political context in which Algerian and Tunisian judges are active, and the impact of that context on their willingness and ability to perform an international judicial function. Foreign judges on the part of Algerian and Tunisian judges are essential to understanding the limitations of their judicial function
International. Such as its confinement to the application of the rights and duties of individuals (**topic** one), confining it to the interpretation and interpretation of international law (**topic** two), limiting the application of domestic legislation compatible with international law (**topic** three), and restrictions imposed on the performance of Algerian and Tunisian judges for an international judicial function (**topic** four)

First topic : the limitation of the international judicial function to the rights and duties of individuals

National judges perform an international judicial function each time they turn to international law as a legal basis for settling disputes in cases brought under their jurisdiction. But what kind of international legal rules and principles can be invoked in domestic proceedings before national courts and tribunals[7]?

There are no central legislative or executive powers in the international legal system Although international law has suffered from the absence of independent and impartial judicial bodies for more than three centuries, we live today in an era of "judicialization" of international law, at the end of the twentieth century and the beginning of the century XXI, the proliferation of international courts has radically changed the landscape of dispute settlement in international law[8].

The rules of international law have granted rights and duties to individuals, which can be invoked in local procedures before national judges. There are many areas in which international law grants direct rights and duties to individuals. Refugees, stateless persons or workers) and the human rights of all individuals. In addition, some regional human rights courts (such as the European Court of Human Rights) have considered that corporations have a limited number of human rights. Private persons can invoke their human rights before international bodies (Some UN bodies are competent to protect human rights) and before specialized regional courts and tribunals (such as the European Court of Human Rights, the Inter-American Court of Human Rights, or the African Court of Human Rights), All international human rights instruments provide for the exhaustion of domestic remedies as a condition prior to international judicial protection, and therefore the normal and primary responsibility for the protection of international human rights rests with national judges.

The courts have held that individuals can invoke human rights provisions in international treaties in proceedings for constitutional protection (constitutional protection, the courts have recognized that Algerian and Tunisian judges have jurisdiction in disputes regarding human rights violations). This is recognized not only in the Algerian and Tunisian constitutions, but also in the treaties International human rights law ratified by Algeria Algerian and Tunisian judges have also increasingly served as "ordinary judges of international human rights law" They have actively taken on a new role as "judges of international law", in an increasing number of cases Algerian and Tunisian judges have granted individuals judicial protection of human rights their own, directly granted by international treaties.

In the 2018 [9] case, the judge relied on the text of the Convention on the Elimination of All Forms of Discrimination against Women of 1979, in which Algeria undertook under the provisions of Article 02 of this Convention to impose legal protection for women’s rights on an equal basis with men and to ensure effective protection for women through courts with jurisdiction and other public institutions. In the country from any discriminatory act, the judge in this case made it clear that the victim was subjected to repeated insults and psychological violence within the framework of her marital relationship to the direct harm that befell the victim as a result of the criminal behavior of the accused, and with proof of the act that caused the damage and the causal relationship between them, compensation must be declared to the victim in accordance with the provisions of Article 02- A From the same agreement, for these reasons, the judge re-adjusted the facts attributed to the accused from the misdemeanor of beating and wounding the wife in accordance with Article 266 bis of the Penal Code, to the misdemeanor of repeated psychological violence against the wife and convicting the accused.

The Court of Constantine, Department of Misdemeanors, addressed in its ruling Table No. 11542/13, Index No. 12238/13 issued on 9/29/2013, to protect the rights of foreigners, by applying Article 3 of the International Convention relating to the Status of Refugees, as well as by interpreting Paragraph 1 of Article 31 of the same agreement, the order which fulfills the provisions of the Constitution, especially Articles 131 and 132. The facts of the case are summarized in the fact that the judicial police officers arrested a refugee who entered the Algerian and Tunisian lands legally; As a refugee was caught in a place that the Algerian and Tunisian authorities suspected of being in this place until then, he was referred to the public prosecutor, who in turn decided to charge him with the misdemeanor of working without a license according to Articles 7 and 88 of Law No. 8-11. to the law.

The court decided to declare the accused innocent, and justified this based on the interpretation of international conventions on human rights, especially the International

Convention relating to the Status of Refugees of 1951, ratified by Algeria on 07/25/1963 and published in the Official Gazette in Issue 105 of 1963.

In other cases, the judges were Algerians and Alto Regarding the recognition of individual rights as human rights in international law, other circuit courts asserted that "Algerian and Tunisian judges assume interpretation in adjudicating cases before their jurisdiction, in order to verify that domestic legislation does not conflict with the objectives of the Convention.

The Court of Constantine[10] ruled in its ruling and based on the Convention on the Rights of the Child, especially Article 3 of it, which stipulates all procedures related to children, it gives consideration to the best interests of the child, and as long as there is no interpretation of the best interests of the child, which takes precedence over case by case, which requires judicial discretion in this matter. The case, which denotes the child's right to stay according to his desire with whomever he chooses." The court here explicitly considered that the judicial interpretation of treaties falls within the jurisprudence, and that the interpretation must be according to each case and according to the discretionary power of the court.

These recent cases demonstrate the willingness of Algerian and Tunisian judges to provide judicial protection for individual human rights under international law. In almost all ongoing cases in which Algerian and Tunisian judges deal with human rights violations, they have recourse not only to a constitutional basis in domestic law but also to a basis in international treaties. Complementary or exclusive to human rights, this development greatly strengthened the protection of individual human rights in the Algerian and Tunisian legal system, and paved the way towards a growing acceptance of the performance of an international judicial function (human rights) by Algerian and Tunisian judges. Algerian and Tunisian judges can act not only as protectors of individual human rights, as granted by international law, but also as guarantors of an individual's international duties.

Individuals are active persons in international human rights law and subjects in international criminal law. According to the rules and principles of this specialized branch of international law, individuals are obligated not to commit so-called international crimes, such as genocide, war crimes, crimes against humanity, and the crime of aggression. The century has seen the development of international criminal tribunals (such as the International Criminal Court, the International Criminal Tribunal for the Former Yugoslavia or the International Criminal Tribunal for Rwanda), and the jurisdiction of domestic courts is necessary to prosecute these crimes.

Second topic : its confinement to the interpretation and interpretation of international law

We will analyze the scope of the international judicial function of Algerian and Tunisian judges, and we will focus on the methods of interpretation and application of international law used in specific decisions, in particular, it will show that Algerian and Tunisian judges perform an international judicial function when they interpret the rules and principles of international law, when they guarantee the rights and duties of individuals under international law, And when they control the compatibility of domestic law and international law to which the Algerian and Tunisian states are committed, we will examine the extent to which this international judicial function of judges is limited.

Local judges will act as judges of international law whenever they apply and interpret the rules and principles of international law in cases brought under their jurisdiction. Articles 31 to 33 of the Vienna Convention on the Law of Treaties identify the main methods of interpreting international law, and most local judges resort to these methods.

First .Algerian judges explained that the rules of international law are in the same ways. The first issue relates to the extent to which Algerian laws are compatible with the provisions of the Paris Convention for the Protection of Industrial Property. The decision of the Supreme Court[11] was first stated by the judge under the Paris Convention for the Protection of Industrial Property of 1983, which Algeria ratified, and he acknowledged the necessity Registration in order to protect the workers, because the court gave the terms of the agreement on the grounds that the applicant has protection for the mark registered abroad for a period of one year, and the workers have the right of priority in accordance with the Paris Convention on industrial property[12], where the Supreme

Court considered the interpretation and agreement on trade-related aspects of intellectual property rights that should be implemented In accordance with Articles 31 to 33 of the Vienna Convention on the Law of Treaties, however, in this case the Court did not initiate a process of detailed interpretation of the above-mentioned treaties.

Another decision in which the Supreme Court excluded the text of Article 407 of the Code of Civil Procedure related to physical coercion, because it violated the text of Article 11 of the International Covenant on Civil and Political Rights[13].

The decision came within its merits[14], "...and since it was established in the immediate case that the appellate body to which the case was referred, after cassation, re-discussed the legal point and gave a wrong interpretation of Article 11 of the International Covenant on Civil Rights and the policy that stipulates that no person may be imprisoned His inability to fulfill a contractual obligation, so I interpreted it in the contested decision by saying: "It is not permissible to imprison the debtor for not fulfilling his obligations, although this phrase has a Another reason and other legal effects resulted from it... » Here, the Algerian judge's interpretation of the text of Article 11 of the International Covenant, civil and political, appears.

The Algerian court decided that the rules of interpretation of Articles 31 and 32 of the Vienna Convention are binding on the court, but only if they do not conflict with the provisions of the Algerian and Tunisian constitutions. Article 31 methods, and these differences in language show an intention by the Algerian and Tunisian Supreme Courts to "accommodate" the Vienna Convention's methods to their own methods of interpretation, in accordance with the provisions of domestic law.

Another similar decision[15] related to an appeal in cassation against à decision involving physical coercion against a person for not paying a commercial debt. The judges of the Council based their decision on the interpretation of Article 11 of the International Covenant on Civil and Political Rights related to civil rights only, so the Supreme Court interpreted the text of Article 11 of the aforementioned International Covenant. The decision stated that : "After reviewing the provisions of Article 11 of the aforementioned agreement, which states the following : "No person may be imprisoned simply because he is unable to fulfill a contractual obligation." Accordingly, it became impermissible to sign physical coercion for the debtor's non-fulfillment of his contractual obligation[16].

Since the sources of obligations are divided into voluntary and involuntary sources, and since Algeria joined that agreement, it is not permissible to implement voluntary obligations, whether their source is a civil or commercial transaction, through physical coercion.

And since it is established in the facts of the case that the obligation to be executed stems from a commercial transaction, i.e. a commercial contract, and since Article 11 referred to above does not distinguish between a commercial and non-commercial contractual obligation, it is sufficient for there to be a contractual obligation whether the subject of this obligation is a civil or commercial transaction. Thus, the Algerian and Tunisian Supreme Courts have explicitly adhered to their jurisdiction over the interpretation of international treaties as part of the state's legal system, and this is a consecration of the independence of the judiciary[17].

The Algerian Supreme Court and the Tunisian Court of Cassation have interpreted many agreements through the systematic method derived from Article 31 of the Vienna Convention in particular, and the Supreme Court can also take into account the preparatory work for some agreements. Vienna Treaty Law There are, however, cases in which the Court has not embarked on a process of detailed interpretation of the above-mentioned treaties.

Judges were not just interpreters of international law through the use of special methods of interpretation of international law, as there are some recent cases in which Algerian and Tunisian judges developed the so-called "consistent interpretation" technique, which means linking to the text and consistent with its objectives, through this technique local judges interpret national laws in conformity with the international law obligations of their states."[18]

The obligation of "consistent interpretation" is included in the constitutions of some countries, even without an explicit obligation to do so. Many domestic judges, whether in unilateral or bilateral countries, have interpreted domestic law in line with international norms and principles[19].

Consistent interpretation associated with the provisions of the Convention can help monist regimes such as Algeria and Tunisia. Through judges' enforcement of consistent interpretation, local judges can use instruments of international law that are not incorporated or otherwise received in their domestic legal system, so as to shape the meaning of national legal rules and principles.

Judges in Algeria use the method of “consistent interpretation” more frequently when they have to apply domestic legal provisions to protect human rights. With international human rights instruments.

Algerian and Tunisian judges are not separate from this global judicial movement towards a consistent interpretation of domestic law with international human rights law. In some case law decisions, Algerian and Tunisian judges have interpreted national legal provisions in accordance with international human rights instruments.

The Algerian and Tunisian administrative judiciary worked hard to implement and interpret international treaties, especially in the decision issued by the Council of State to apply the judicial protocol between Algeria and France for the year 1962 in the dispute between the Banking Committee with a bank. That the Banking Committee refused her power of attorney due to her non-compliance with the requirements of Article 6 of Law 91/04, so the other lawyers appointed in the bank case filed an appeal to annul the decision, relying on the Algerian, Tunisian and French judicial protocol.

Third topic : limiting the application of local legislation compatible with international law

In many domestic legal systems, **contrôle de Conventionalité**, refers to the obligation of local judges to monitor the compliance of domestic legislation with international law[20]. The judicial “non-application” of the rule does not mean that it is formally invalidated, as it is the exclusive competence of national legislators, however, it allows local judges to ensure the effectiveness of EU law obligations to their countries and the protection of rights and the duties granted by EU legal rules to individuals.[21]

Assessing the compatibility of national legislation with the conventions amounts to a kind of convention monitoring, when, in fact, this is the only kind of monitoring the validity of the convention.

The duty of national judges in member states to control the conformity of domestic legislation with treaties is a new type of “monitoring the application of the Convention” that gives them a “new task” and turns them into “international judges.” This is how a developed principle of international law was discovered at the European level. Globally over the past decades[22]. Some jurisprudence has held that domestic judges must monitor compatibility between national and “supranational standards,” in order to apply not only domestic legal instruments but also international legal instruments that provide protection for individual human rights.

In a decision of the Algerian Supreme Court[23] No. 06, the date of the decision 04/26/2021, as it is legally established, according to Article 02 of Organic Law No. 16-18 of 09.02.2018, that the claim of unconstitutionality is the claim of one of the parties to the case that the legislative provision that stops The outcome of the conflict violates the rights and freedoms guaranteed by the Constitution.

As the right to complain about judicial rulings is a right enshrined in the International Covenant on Civil and Political Rights adopted by the United Nations General Assembly resolution on 12.16.1966, which was joined by Algeria by Presidential Decree No. 67/89 of 16.05.1989, according to Article 2 of which In Paragraph 3, “Each State Party to the present Covenant undertakes to guarantee to any person whose rights and freedoms recognized therein have been violated, to guarantee him an effective remedy and to ensure that the competent judicial, administrative or legislative authority decides on the rights of the person whose complaint is registered and to develop the possibilities for redress.” Judicial "And according to Article 154 of the Constitution," treaties ratified by the President of the Republic according to the conditions stipulated in the Constitution are superior to the law.

And since the principle of two-level litigation is considered one of the pillars supporting the human right to a fair trial, which in turn is considered one of the principles on which the Civil and Administrative Procedures Law is based in accordance with the provisions of Article 6 thereof, the failure to grant Article 633/1 of the Civil and Administrative Procedures Law as a legislative provision It was issued under an ordinary law and argued that it is unconstitutional. The right to appeal decisive orders in issues of execution and in applications for a stay of execution may include discrimination between litigants and restriction in exercising their right to complain in this type of judicial rulings and depriving them of the opportunity to defend their rights before a higher authority, and this would To prejudice the principle of two-degree litigation enshrined in Article 165/3 of the Constitution, as well as Article 2 of the International Covenant on Civil and Political Rights ratified by Presidential Decree No. 67/89 of 16.05.1989, and consequently is not in line with the principle of equality embodied in Articles 37 and 1/165 of the Constitution, through which citizens are guaranteed equal protection before the law and the judiciary, away from any discrimination due to any condition, and as long as the goal of the defense raised is the violation of the legislative provision argued for its unconstitutionality, the principle of litigation on two levels by taking the criterion of the subject matter of the case as a reason for depriving the person who raised it from The right to complain about the order issued against her, although the principle is that judicial rulings in other cases are subject to appeal, but it seems that there are reasons that would raise doubts about the constitutionality of the legislative ruling based on non-infiltration.
His pun, and this is what makes the raised payment serious, according to the condition stipulated in Article 3/8 of Organic Law No. 16-18.

Whereas, in addition to that, the legislative ruling argued that it is unconstitutional depends on the fate of the decision regarding the acceptance or non-acceptance of the appeal of the provocative plaintiff, and that this legislative ruling has never been declared by the Constitutional Council to be in conformity with the constitution in accordance with the two conditions stipulated in Article 8, paragraphs 1 and 2 mentioned above. In view of the fulfillment of the conditions of Article 13/2 of this same law, it is necessary to declare that the plea of unconstitutionality be referred to the Constitutional Council for adjudication in accordance with the law.

The Supreme Court affirmed that “Algerian judges presume to observe the Convention’s agreement in adjudicating cases before their jurisdiction, in order to verify that domestic legislation does not conflict with the objectives of the Convention. and/or the future application of domestic legislation that has been declared inconsistent with international human rights law.

There are a few cases in which Algerian and Tunisian judges agreed to monitor the compatibility of domestic legislation with non-human rights provisions of international law.

It has been asserted that the above-mentioned treaties have been legally incorporated into the domestic law and are therefore part of the local sources of legitimacy, the Supreme Court has shown through its jurisprudence that there is no conflict between the provisions of the local law and these agreements, and has also affirmed that both the provisions of the local law and the agreements are not Not only are they compatible, but they also complement each other[24].

Chapter Two : Restrictions Imposed on Judges' Performance of an International Judicial Function

Commitment to the international judicial function, is the commitment to international behavior, which has a specificity within the framework of our topic, Fisher defines the denial of justice as any failure to organize or practice the judicial function that involves the state's violation of its international duty towards the judicial protection of individuals, this distinct and special function is not in absolute but rather It is based on controls and restrictions, including what is stated in the constitutions of the two countries (first **topic**), and some of them are related to compliance with the executive authority in foreign affairs (second **topic**), which is evident in the applications of the national judiciary in the field of implementing the international judicial function (third **topic**).

First topic : the restrictions contained in the Algerian and Tunisian constitutions

The place of international law in the Algerian and Tunisian constitutions is a very important limitation of the scope of the international judicial function of judges. The Algerian and Tunisian constitutions include a small number of articles that deal with international law, and they are scattered in the set of basic rules, and this is evident in the preamble to the 2020 constitution, "Algeria expresses its commitment to work to prevent and combat corruption in accordance with the international conventions it has ratified." In particular, the articles deal with 29[25], 31[26], 33[27], and in general, Chapter Two, on the protection of fundamental rights, public freedoms, and duties that relate to issues related to the sources of international law, their acceptance and their integration into the Algerian and Tunisian legal system, and their place in the internal hierarchy of rules, as will become clear in the following. The position of the Algerian and Tunisian judiciary was clear.

Subjecting treaties to constitutional control is questionable from the perspective of international law. Post-treaty constitutional control contradicts the principle of contract, the law of the contracting parties and amounts to a unilateral amendment of the legal instrument "It is a universally accepted principle that treaties are not subject to constitutional control", because such control is incompatible with reciprocity and equality. Governing relations between states in international law by accepting claims of unconstitutionality against treaties, the Algerian and Tunisian constitutions and the Supreme Court in fact affirm the full supremacy of the constitution over Algeria's international law obligations.

Article 145 of the Algerian Constitution 2020 as well as Chapter 74 of the 2022 Constitution define the hierarchy of international law within the Algerian and Tunisian legal systems. The court declared the supremacy of the constitution over treaties and that treaties have a higher rank than legislation, as they are superior in the hierarchy of rules to all domestic laws, and affirmed The Supreme Court affirms this reasoning in all of its decisions on international convention law.

This constitutional design of the place of international law in the Algerian and Tunisian legal system has important implications for the scope of the international judicial function performed by the Algerian and Tunisian judiciary. As mentioned above, the constitution only includes references to treaties as a source of international law and completely ignores all other sources. Article 38 of the system lists The basis for the International Court of Justice binding on Algeria is at least two other official sources of international law[28].

Algerian and Tunisian judges have protected the private rights and duties of individuals under international law. In some cases, Algerian and Tunisian judges have built their protection into an international treaty. The most prominent example is the judicial protection of human rights. In all the cases analyzed, the dealings were with human rights granted by treaties (particularly human rights conventions). human rights, the International Covenant on Civil and Political Rights, the International Covenant on Social and Cultural Rights, the United Nations Convention on the Rights of the Child, and the United Nations Convention for the Prohibition of Torture), and the recent jurisprudence of Algerian and Tunisian judges in this field has failed to refer to other sources of international law.

First paragraph : the registration of international human rights treaties

Another possible limitation on the international judicial function of Algerian and Tunisian judges is the special place of human rights treaties in the constitutional design for the reception of international law and its incorporation into the domestic legal system, since constitutional reforms in the field of human rights elevated those treaties to a constitutional hierarchical level. This reform was of particular importance to judges. Algerian and Tunisians with regard to their willingness to apply and interpret international human rights treaties in the performance of their international judicial function.

As shown in the first part of the study, the jurisprudence of the Algerian and Tunisian courts has been devoted to the protection of individual human rights as enshrined in international treaties. In addition, the decisions examined above show that the interpretation of international law by Algerian and Tunisian judges has largely focused on human rights instruments.

The special status of international human rights treaties in the Algerian and Tunisian constitutions seems to limit the ability and willingness of Algerian and Tunisian judges to act as "ordinary judges of international human rights law." Repeated constitutional reform has dramatically changed the status of international human rights in the Algerian and Tunisian constitutions, and Algerian and Tunisian judges have become more Conscious of their international judicial function, in the specific field of human rights protection, broad parts of public international law and its specialized branches (international economic law, international criminal law, international environmental law, international maritime law, etc.) are receiving increasing attention by Algerian and Tunisian judges.

Second paragraph : under the hierarchy of international treaties

Another constitutional limitation on the ability and willingness of Algerian and Tunisian judges to serve as judges of international law is the hierarchy of international law in the domestic legal system. As explained above, the text of the constitution and the jurisprudence of the courts affirm the primacy of the Algerian and Tunisian constitution over treaties. This situation can push judges Algerians and Tunisians tend to consider international treaties and international law in general as a secondary legal system in relation to domestic (constitutional) law. Another important consideration regarding the concept of hierarchy of international law is the recognition of the status of treaties by the Algerian and Tunisian constitutions.

This vision of the supremacy of the constitution over international law has permeated the courts with regard to the limits of their international judicial function. An analysis of case law shows that Algerian and Tunisian judges have applied and interpreted the rules of international law by accepting them in domestic law. In other words, Algerian and Tunisian judges feel bound by considerations of law. in the performance of their international judicial functions.

In almost all of the cases reviewed over the course of this study, Algerian and Tunisian judges have attempted to demonstrate the applicability of international law because it conforms to the constitution and usually cite constitutional provisions followed by international treaty provisions. When they practice treaty enforcement, Algerian and Tunisian judges first have to confirm that the treaties in question have fulfilled the constitutional requirements for their incorporation into the domestic legal system, when judges interpret international treaties, they use methods of interpretation of constitutional law only when they conform to constitutional methods of interpretation and are "accommodated" in interpretive methods of domestic law.

When judges interpret domestic legislation in line with international law[29]31, they need to show its compatibility with the constitutions of the two countries. From the judges' point of view, international law seems to have a more convincing argument because it is based mainly on domestic constitutional law. So the supremacy of the constitution of the two countries over international law can explain why they retain Algerian and Tunisian judges have a "first allegiance" to domestic law and the belief that they can only apply international law through the lens of the Algerian and Tunisian constitutions[30]. The duality of the Algerian and Tunisian constitution has determined the mentalities and legal beliefs of the Algerian and Tunisian judges, where the Algerian and Tunisian judges consider themselves local judges and guardians of the Algerian and Tunisian constitution and the internal legitimacy of Algerian and Tunisian law, and are not "ordinary judges in international law." The sovereign and protective spirit of the Algerian and Tunisian constitution is the product of centuries. Through the many Algerian and Tunisian social and political histories, marked by foreign invasions, and interventions of all kinds in domestic affairs, one can easily understand why Algerian and Tunisian judges may have an innate instinct to protect and preserve the autonomy of the Algerian and Tunisian legal system in the face of foreign elements, including In international law, legal nationalism may be the most important obstacle to Algerian and Tunisian judges carrying out an international judicial function. The loss of sovereignty that may ensue is mixed with fear and rejection of the law of the other in the "new" and still fragile democracy of Algeria and Tunisia.

Third paragraph : Restricting submission to the executive authority in foreign affairs

The specific relationship between local judges and the executive can be decisive with regard to the potential of these judges to become judges of international law. From a domestic legal perspective, courts apply laws within the limits set forth in the national constitution[31]. In international law, governments are political forces that exercise sovereignty over their territory and over their citizens.

Although international law distinguishes states from their governments, states' foreign policy is adopted and implemented by government officials who decide to enter into diplomatic and consular relations with other governments, who negotiate and sign international treaties and whose wrongful actions can threaten the state's international responsibilities Thus[32], the rules of international law are primarily related to the legal regulation of government actions at the international and domestic levels.

In all countries domestic courts are independent of the executive branch. When judges control government compliance with international law, they can constrain government discretion in carrying out foreign policy goals. Judges can even adopt judicial decisions that run counter to those goals, so the general dynamics of interaction between local judges and the executive influence their ability and willingness to take on an international judicial function[33].

When the application of international rules is demanded by national courts in an effort to constrain the activities of the executive branch, local judges may be more timid and indecisive about their potential on the international stage. We see that the judicial body formally independent of the executive authority of the government may seem an ideal forum for the application and enforcement of international law in the local legal system[34].

The tendency of local judges to rule in cases of international law in favor of the executive authority was a driving force behind the establishment of various international mechanisms for the settlement of disputes. As well as their perception of themselves as ordinary judges of international law. This political constraint mainly relates to the ability of Algerian and Tunisian judges to review foreign policy actions and decisions taken by the executive authority under international law.

The development of the Algerian and Tunisian political system as a whole posed a real challenge to the ability of the judiciary to ensure respect for the rule of law. The division of power in the Algerian and Tunisian constitutions is a feature of the presidential system, but the dominance of the mono-party system and the dominant ruling parties on the political scene during the second half of the twentieth century distorted the checks and balances of the system. In favor of the executive power, for many years, the Algerian and Tunisian president has been a powerful legal and political figure. Constitution but non-existent In reality, Algerian and Tunisian judges have not been able to develop strong judicial control over government activities, and their judicial function has fallen throughout this period far from ensuring respect for the rule of law in the Algerian and Tu36nisian legal system.

Third topic : the applications of the national judiciary in the field of implementing the international judicial function

The judicial reform adopted each time was important because it tried to guarantee the independence of the Algerian and Tunisian judiciary, and this coincided with a new readiness on the part of the Algerian and Tunisian courts to deal with international law. The executive branch began to adopt a more liberal foreign policy based on a necessary change in the location of international law within the domestic legal system and a move towards a mechanism for better reception of international law within the domestic legal system.

This analysis shows how the decisions adopted by Algerian and Tunisian judges have always interpreted narrowly the articles of the Algerian and Tunisian constitutions that deal with the incorporation of international law and its hierarchy into the domestic legal system and thus reduced their ability to control the legality of the law under international law through the mechanism of pleading unconstitutionality on which it is based. On international treaties, which we discuss through the jurisprudence of the Algerian Supreme Court **(first)** and the jurisprudence of the Tunisian Court of Cassation **(second).**

First paragraph : the jurisprudence of the Algerian Supreme Court

The Supreme Court decided[35] that the plea of unconstitutionality raised by the plaintiff relates to the extent to which Article 496, point 3, of the Code of Criminal Procedure violates the principles of equality before the law and before the judiciary, the right to a fair trial, the right to resort to the judiciary, the right to grievance, and the right to defense stipulated in Articles 32, 56, 158, and 169 of the Constitution. Articles 7 and 8 of the Universal Declaration of Human Rights and Articles 2, paragraph 3, point A and B, 14 and 26 of the International Covenant on Civil and Political Rights.

As it is legally established, according to Article 8 of Organic Law No. 16-18 mentioned above, that the plea of unconstitutionality is an allegation One of the parties that the legislative provision on which the outcome of the dispute depends violates the rights and freedoms guaranteed by the constitution, and that this legislative provision has not previously been declared in conformity with the constitution by the Constitutional Council, except in the event of changing circumstances and that the face raised is serious[36]. Whereas, the argument raised by the concerned is not characterized by seriousness, because the objected Article 496 is included in its entirety within the specific provisions of the provisions and decisions that may not be appealed by cassation, and that the third point made the decisions of the Indictment Chamber supporting the order of the investigating judge that there is no basis for follow-up within these decisions and The right to appeal in cassation is restricted to the Public Prosecution only, provided that it appeals the matter and that this limitation does not contain anything that contravenes the principles of the right of defense, equality before the law and the judiciary, the right to a fair trial, or the right of grievance stipulated in the Constitution and the Universal Declaration of Human Rights. Human rights and the International Covenant on Civil and Political Rights, without any prejudice to them, because there is no indication in these texts that the cassation appeal is related to the mentioned rights and principles, which requires the judiciary not to refer it to the Constitutional Council.

In another case[37], the plaintiff blames Article 419 of the Code of Criminal Procedure for violating the constitutional principles related to equality before the law and the judiciary, the right to defense, the right to a fair trial, and equal “weapons” between the parties to the litigation stipulated in Articles 32 and 158 of the Constitution and Article 11 of the Universal Declaration of Human Rights. Article 14 of the International Covenant on Civil and Political Rights, Article 13 of the Arab Charter on Human Rights, and Article 3 of the African Charter on Human and Peoples' Rights. Where Article 419 of the Code of Criminal Procedures states the following : The Attorney General submits his appeal within a period of two months, starting from the day the verdict is pronounced. This deadline does not preclude the execution of the judgment.

And since the right to equality before the law and before the judiciary is a right enshrined in the constitution and in the international covenants ratified by Algeria, as Article 32 of the constitution stipulates that all citizens are equal before the law. No discrimination based on birth, race, sex or sex may be a pretext. Opinion or any other personal or social condition or circumstance. Article 158 of it also states that the basis of the judiciary is the principles of legitimacy, equality and all are equal before the judiciary, which is within the reach of all and embodied in respect for the law.

This principle is also stipulated in the International Covenant on Civil and Political Rights ratified by the Presidential Decree[38] in its paragraph No. 1 of Article 14 thereof, and that the principle of equality before the judiciary is one of the pillars supporting the human right to a fair trial, which in turn is considered one of the principles on which the Code of Criminal Procedure is based. This is stipulated in the amended Article 1 of this law[39].

Granting Article 419 of the Code of Criminal Procedures, the subject of the plea of unconstitutionality, to the Public Prosecutor a longer period of time to appeal than the time granted to the rest of the parties to the case, and not enabling them to have the right of subsidiary appeal in the event of an appeal by the Public Prosecutor, would prejudice the principle of equality before the law and before the judiciary stipulated in Article Articles 32 and 158 of the Constitution and Article 14 of the International Covenant on Civil and Political Rights, as well as the human right to a fair trial, and since the Constitutional Council is the only body that has the power to decide

the extent to which legislative provisions conform to the Constitution, and given that the plea raised by the plaintiff fulfills the conditions Set forth in Article 8 of Organic Law No. 18-16 mentioned above.

In that the decision on the constitutionality of the text of Article 419 of the Code of Criminal Procedures depends on the decision on the appeal in cassation filed by the plaintiff, and that the Constitutional Council has never declared the conformity of this legislative provision with the constitution, in addition to the fact that the argument is serious, given that its raising by the plaintiff does not carry It contains any purpose to obstruct the consideration of the case, which requires the judiciary to refer the payment to the Constitutional Council.

The judge stated that the plea of unconstitutionality sent by the Skikda Judicial Council [40] relates to the extent to which Article 633/1 of the Code of Civil and Administrative Procedures affects the principle of litigation on two levels.

As it is legally established, according to Article 02 of the Organic Law[41], that the plea of unconstitutionality is the claim of one of the parties to the lawsuit that the legislative provision on which the outcome of the dispute depends violates the rights and freedoms guaranteed by the Constitution.

Whereas, Article 633/1 of the Code of Civil and Administrative Procedures states that "the president of the court shall decide on a case of problematic execution or a request to stay execution, within a maximum deadline of fifteen (15) days from the date of filing the case with an order that is not subject to any appeal."

Whereas, the right to complain about judicial rulings is a right enshrined in the International Covenant on Civil and Political Rights[42], which according to Article 2 of it in Paragraph 3 "Each state party to this Covenant undertakes to any person whose rights and freedoms recognized therein have been violated to guarantee him an effective means of grievance and undertakes To ensure that the competent judicial, administrative or legislative authority decides on the rights of the person who registers the grievance and that it develops the possibilities of For a judicial grievance, and according to Article 154 of the Constitution, treaties ratified by the President of the Republic according to the conditions stipulated in the Constitution are superior to the law.

Whereas, since the principle of two-level litigation is considered one of the pillars supporting the human right to a fair trial, which in turn is considered one of the principles on which the Civil and Administrative Procedures Law is based in accordance with the provisions of Article 6 thereof, the failure to grant Article 633/1 of the Civil and Administrative Procedures Law as a legislative provision It was issued under an ordinary law and argued that it is unconstitutional. The right to appeal decisive orders in issues of execution and in applications for a stay of execution may include discrimination between litigants and restriction in exercising their right to complain in this type of judicial rulings and depriving them of the opportunity to defend their rights before a higher authority.

The matter may prejudice the principle of two-level litigation enshrined in Article 165/3 of the Constitution and Article 2 of the International Covenant on Civil and Political Rights ratified by the Presidential Decree[43]. By extension, it is not in line with the principle of equality embodied in Articles 37 and 165/1 of the Constitution, which guarantees Through them, citizens have equal protection before the law and the judiciary, away from any discrimination due to any condition, and as long as the aim of the defense raised is the violation of the legislative provision motivated by its unconstitutionality. Since the principle is the susceptibility of judicial rulings in other cases to appeal, it seems that there are reasons that would raise doubts about the constitutionality of the legislative ruling argued for its unconstitutionality, and this is what makes the argument raised serious in accordance with the condition stipulated in Article 3/8 of Organic Law No.16-18 .

In addition, the legislative ruling that is argued for its unconstitutionality depends on the fate of the decision regarding the acceptance or non-acceptance of the appeal of the provocative plaintiff, and that this legislative ruling has never been declared by the Constitutional Council to be in conformity with the constitution in accordance with the two conditions stipulated in Article 8, paragraphs 1 and 2 mentioned above, which In view of the fulfillment of the conditions of Article

13/2 of this same law, it is necessary to declare that the plea of unconstitutionality be referred to the Constitutional Council for adjudication in accordance with the law.

In Decision No. 6 dated 10/13/2022, the court recognized that it is legally established, according to Article 02 of Organic Law No. 16-18, that the plea of unconstitutionality is a claim by one of the parties to the case that the legislative provision on which the outcome of the dispute depends violates the rights and freedoms guaranteed by the constitution[44].

to Article 8 of Organic Law No. 16-18 mentioned above, that the plea for unconstitutionality is a claim by one of the parties that the legislative provision on which the outcome of the dispute depends violates the rights and freedoms guaranteed by the Constitution, and that this legislative provision has not previously been declared in conformity with the Constitution. By the Constitutional Council, except in the case of changing circumstances and that the face raised is serious.

Second paragraph : the jurisprudence of the Tunisian Court of Cassation

The Court of Cassation[45] ruled the application of Chapter 5 of the settlement agreement between Tunisia and Algeria[46], which establishes the application of the same legislation between Tunisian and Algerian citizens, especially in the acquisition of real estate ownership. Where the judge considered that the provisions of the agreement are superior to subsequent legislation, and with the issuance of Decree No. 4 of 1977 [47] exempting Tunisians from the license of the governor. As a result of all these provisions, Algerian citizens, like Tunisian citizens, were subject to the governor's license in their real estate operations, and then, after the issuance of the 1977 decree, all of them were exempted.

The Tunis Court[48] of Cassation also ruled that the carrier[49] is responsible for the damage caused when the passenger is inside the plane or during the process of boarding and disembarking from it.

Whereas it has always been proven that the person being pursued against her had an accident that represented her fall on the airport floor, after she got off the plane, and accordingly, the court of the critical judgment ruled in favor of the person being pursued against her, relying on the provisions of the commercial magazine chapters related to the transportation of persons, bypassing the appellant's adherence to the provisions of the International Convention on Air Transport You have broken the law, which exposes its ruling to veto.

In his decision, the judge of the Court of Cassation [50] relied on Chapter 22 of the Warsaw Convention to determine the liability of the air carrier for damage, defect, or delay in delivery of goods transported by air. The judge also applied the text of Chapter 25 of the same agreement.

The Court of Cassation[51] relied on Chapter 18 of the Warsaw Convention, considering that the air carrier is responsible for damages and losses sustained by the goods during air transport, as well as what was stipulated in Chapter 26 of the same agreement to hand over the goods to the consignee and transfer them as evidence of their condition.

In a decision of the Court of Cassation[52], in line with the international regulations related to the regulation of international maritime transport operations, in which the Tunisian country has ratified the United Nations International Convention on International Maritime Transport, known as the Hamburg Convention, and according to which the Tunisian state has become obligated to apply its provisions and rules that concern public order as required by Article 30 thereof. Accordingly, it is not permissible for it to abandon it whenever an element of its applicability is available and in application of the provisions of the treaty, especially Chapters 4 and 5, as well as Article 16 of the Convention.

In a decision by the Court of Cassation [53] and in a similar decision by the Court of Cassation[54] regarding the violation of the provisions of the Hamburg Convention, since the Tunisian state ratified the Maritime Transport Convention, where the appeal ruling was correct, as it was recognized in its documents that the United Nations Convention on Maritime[55] Carriage of Goods applies to the dispute of the current case.

In another important decision of the Court of Cassation[56], we can find an interpretation of the phrase “some” mentioned in the preamble to the Hamburg Convention for the Maritime Carriage of

Goods, stating that the aforementioned agreement did not include all the rules and issues related to maritime transport operations.

CONCLUSION

The refusal of the courts to recognize and consider the sources of international law outside the treaties shows the continued respect of the Supreme Court and the Court of Cassation for the executive authority in foreign affairs. Tunisians have a positive view of the sources of international law, which considers the only valid sources of international law to be those that express government approval as binding on legal rules.

This vision expresses the rejection of the possibility of setting legal limits to governmental procedures in international law against the expression of free will on behalf of the executive authority. It is generally accepted that international treaties are analogous to contracts in domestic law. It is difficult to establish state consent to other two sources of international law, as mentioned in Article 38 of the Statute of the International Court of Justice (custom and general principles of law), and thus Algerian and Tunisian judges tend to apply Treaties only in the performance of their international judicial functions, because the only such source of international law is governmental approval with regard to the imposition of legal restrictions on executive power in matters relating to foreign affairs.

The refusal of Algerian and Tunisian judges to impose the supremacy of international treaties (including human rights treaties) on the Algerian and Tunisian constitution indicates their unwillingness to control governmental power and reduce the margin of government influence outside the boundaries of the domestic constitutional order. Algerian and Tunisian judges will not interpret constitutional provisions related to the hierarchy of law. International law in the internal order in such a way as to increase their power to influence the executive's observance of international law.

The only area in which Algerian and Tunisian judges have taken their international judicial function seriously, without regard for the executive authority, is the protection of human rights, and this indicates that they have a special understanding of their role as guardians of the rule of international law. Relating to international law only when such acts constitute violations of human rights, and in all other cases, they perform their judicial review function as to the legality of the actions of the executive authority in accordance with domestic law.

BIBLIOGRAPHY LIST :

[1] The Algerian and Tunisian judge performs an international judicial function when he interprets the rules and principles of international law, when he guarantees the rights and duties of individuals under international law, and when he evaluates the compatibility of local legislation with the international law obligations of the Algerian and Tunisian states.

[2] The droit international is an excellent example d'un droit où predominent les éléments "constitutionnels". The distribution presents pouvoir ainsi que les multiples diversities traversant the society that ce droit is applicable to regir tendent à lui imprimer une direction particulière qui, ne pouvant descendre jusqu'aux réglementations trop detaillées tributaires d'un consensus plus large et d'un mecanisme de sanctions, sait s'en tenir à la proclamation de preceptes généraux. An example recently is the secret of the predilection of the Assemblée générale des Nations Unies pour des textes chargés de principes très généraux. Voir M. 3-3-VIRALLY, “Le rôle des principes dans le development du droit international”, dans: M. VIRALLY, Le droit international en devenir, Paris, 1990, p. 199ss.

[3] En vertu d'une théorie dit de l'individu-organe, les gouvernants en exercice sont confondus à leur etat. Les attributes de souveraneté et d'indépendance qui protègent de l'ingérence extérieure se traduisent en matière juridictionnelle par l'interdiction de soumettre l'État et ses biens aux tribunaux d'un autre. Les people qui travaillent au service d’un gouvernement bénéficient par conséquent de ce principe. D'après Jean Salmon, à coté de l'exercice des fonctions, le concept de représentation est le « fondement du principal de l'immunité de certains hauts personnages de l'État (chef de l'État, premier ministre, ministre des affaires etrangères) » Sependant, tandis que les

immunites de l'Etat ont connu dans l'histoire une importante limitation à certains egards, elles paraissent, en matiere de jurisdiction penale, avoir preservé leur character absolu.

[4] REUTER (P.), «The international responsibility…», op. cit., p. 66

[5] The competence of national judges to protect the rights and duties of individuals under international law is epitomized by the expression "ordinary judges of international law", first used in the legal context of the European Union. Transnational norms are another strong point of contact between domestic judges and international law.

[6] In Scell's lifetime there were no more than three active international judicial bodies, and at present, at least fifty perform an international judicial or quasi-judicial function. No lon

[7] Chercher à rendre compte de la theorie du droit international de Hans Kelsen implique d'assumer une stratégie d'analyse attentive to his son's historicisation. Approche toujours d'actualité tant on assiste encore de our days à des lectures qui se montrent peu soigneuses de reconstruire les concepts kelséniens dans leurs évolutions et tensions, ne serait-ce qu'internes. Cet article a pu compter avec les commentaires avisés de Leïla Choukroune, professeure de droit international, University of Portsmouth. Voir : le droi international selon hans kelsen criminalites, responsabilités, normativités hans kelsen and international law : criminality, responsibility, normativity ninon grangé et Frederic Ramel (dir.) la croisée des chemins

[8] The ideas of the French jurist Georges Schelle are gaining new attention in international law. In 1930, Scelle developed his theory of division of roles (théorie du dédoublement fonctionnel) in order to explain the new characteristics of society (société globale) in the post-World War I period. Functional difference theory supports the proposition that there are three basic functions in every legal system : legislative, executive, and judicial. In domestic legal systems, state bodies, or the so-called executive, legislative, and judicial authorities, perform these functions. But there is a problem that arises in the international legal system, because it lacks central executive, legislative, and judicial authorities that can act on behalf of the international community as a whole.
Scelle's response to this inherent failure of international law was to argue that national bodies and agents of the executive, legislative, and judicial powers of each state must perform a dual function : to act as agencies and agents of their own state within its own domestic legal system and at the same time as agents and agencies of international law.

[9] Case No.: 00920/17 Judgment date: 02/15/18 Guemar Court, Al-Wadi, Misdemeanor Division

[10] Issued on 9/30/2012, index 10422 1.

[11] Decision issued by the Chamber of Commerce and Maritime, file No. 621726 dated 03/06/2010

[12] Mazouzi Yassin, Assembly of Algerian and Tunisian Judicial Rulings Relating to the Application of International Conventions, p.21

[13] the Civil Chamber of the Supreme Court on 05/09/2001

[14] Issued by the Civil Chamber on 7/22/2010 in file No. 99575 2

[15] On 02/11/2002

[16] Referring to Presidential Decree 41-324 specifying the powers of the Minister of Foreign Affairs in Article 11 of it: The Minister of Foreign Affairs is concerned with “interpreting international treaties, agreements, protocols and regulations, and defends foreign interpretation, and with the Algerian and Tunisian states before foreign governments” and when necessary before international and national organizations and courts.

[17] supreme court. Civil Chamber. Decision No. 288587, dated 11/12/2002. The Judicial Journal 2003. First Issue. p. 201.

[18] Supreme Court, Civil Chamber, Decision No. 575899. 07/22/2010. The Judicial Journal, No. 2, 2010, p. 154.-

[19] A consistent interpretation, which began in the United States with the Charming Betsey case in the US Supreme Court, is the obligation of domestic justices.

[20] Declarations, reservations, objections and notices of withdrawal of reservations in relation to the United Nations Convention on the Elimination of All Forms of Discrimination against Women. CEDAW SP/2010/2

[21] Starting in the early 1990s, national courts of EU member states accepted this role and began to control the compatibility of domestic legislation with EU law

[22] Another international court recently developed the duty of domestic judges to assess the compatibility of national legislation with international human rights treaties in the case of Arellano vs. Chile, the Inter-American Court of Human Rights (IACHR) incorporated the

Simmenthal principle into the inter-American system in the following terms: “When states ratify an international treaty, such as the American Convention on Human Rights, their domestic judges, as state officials, are also subject to the treaty. ...therefore, according to the Inter-American Commission on Human Rights, local judges have a duty to avoid annulment of the provisions of the Convention. In domestic legal systems by applying local legislation contrary to its aims and purposes in the opinion of the Court, local judges have to perform a kind of traditional check between local legal norms which are cited in the concrete cases before them and the American Convention on Human Rights

[23] TRIEPEL (H.), « Les rapports entre le droit interne et le droit international », R.C.A.D.I., 1923, p. 77-118. ANZILOTTI (D.), Cours droit international, Paris, Ed. Panthéon-Assas, 1929, 534 p., spec. p. 49-65.

[24] Appellant: (the individual agricultural investor represented by its president, N.H) / Respondent: (K.M - M.A)

As the plea of unconstitutionality sent by the Skikda Judicial Council relates to the extent to which Article 633/1 of the Code of Civil and Administrative Procedures affects the principle of litigation on two levels

[25] The state works to protect the rights and interests of citizens abroad, in light of respect for international law and agreements concluded with countries of reception or countries of residence

[26] Algeria is making every effort to settle international disputes by peaceful means. Algeria can, within the framework of respecting the principles and objectives of the United Nations, the African Union and the League of Arab States, participate in peacekeeping.

[27] Algeria works to support international cooperation and develop friendly relations between countries on the basis of equality, mutual interest, and non-interference in internal affairs. It adopts the principles and objectives of the United Nations Charter

[28] Custom and general principles of law In addition, there are modern sources such as unilateral acts of the state, decisions of international organizations, international jurisprudence, soft law, etc. With the level of development of the doctrine of sources of international law common in many countries, if Algerian and Tunisian judges use the Constitution as a legal guide to apply and interpret international law in their judicial practice, they can only resort to treaties as a source of binding international law norms, customs and general principles of law, as well as sources The other possibility, absent from their case law While we take a closer look at the case law of the Algerian and Tunisian judges analyzed in the previous section, this appears to be true indeed

[29] By an interprétation « dynamic » faisant appel à la theorie des « éléments inherents in a droit », « reconstruisant » ainsi le contenu du droit à an equitable procès, the European course ajouté aux garanties procedurales stricto sensu énoncées expressé ou implicit par le text . 373. Voir : Antoine Steff, La protection de l'accès au juge judiciaire par les normes fondamentales the right of The protection of access to a judge by fundamental norms p. 233 253 https://doi.org/10.4000/add.561

[30] Some justices have expressed this clearly when defining the value of soft law, some judges argue that recognizing this value : does not mean ignoring original adherence to the national legal system, as they have insisted

Some on "the sub-nature of supranational standards, by virtue of which international human rights protection does not apply until after it has been exhausted, and with the failure of internal guarantees, during scholarly discussions on the hierarchy of international human rights treaties, some see that" recognizing the supremacy of international treaties over the constitution is selling the homeland ".

[31] RAUX (M.). La responsabilité de l'Etat sur le fondement des traités de promotion et de protection des investissements. Etude du fait internationalement illicite dans le cadre du contentieux investisseur-Etat, Thèse de doctorat, Université Panthéon Assas, p 539

[32] STRISOWER (L.), “The international responsibility of Etats à raison des dommages causés sur leur territoire à la personne ou aux biens des étrangers”, report to the Institute of international droit, Ann. I.D.I., 1927-I, vol. 33, p. 492. (personal translation)

[33] The "exhaustion of local remedies rule", which requires a party complaining of a violation of international law by a state that it has exhausted local remedies available in that state before to be able to file a complaint under international law, is of a procedural nature. Article 44 of the latest draft of the ILC Articles on State Responsibility clarifies that the exhaustion of domestic remedies rule relates to the admissibility of a claim under international law and not whether the

action resulted from a breach or disrespect of international law. See GAILLARD (E.), La jurisprudence du CIRDI, Paris, Pedone, 2004, IV-1105 p., p. 781.

[34] The content of the classification of the liability law for wrongful acts according to their duration, that is, between immediate acts and continuous acts, must be preserved. on the conduct of the State concerned, not the underlying obligation that was breached. Sometimes the violation takes place in a moment sometimes it is prolonged in time - in the manner of the general conduct of the entire state apparatus, in perceiving the status of the internationally required individuality. The usefulness of distinguishing between these different wrongful acts is important at the level of liability law because it makes it possible to define the consequences of state responsibility: the obligation to remedy coupled with the obligation to stop in case the wrongful act continues. See WYLER (E.), Quelques réflexions sur la réalisation in le temps du fait internationalement illicite, R.G.D.I.P., 1991, p. 888-889.

[35] Decision 3 on 03/28/2021

[36] Whereas, Article 496, point 3 of the Code of Criminal Procedure amended by virtue of Order No. 15-02 of July 23, 2015 stipulates that it is not permissible to appeal in cassation in the following: The decisions of the Indictment Chamber supporting the order that there is no way for follow-up except by the Public Prosecution in the event of its appeal to this order Since the disputed legislative text is related to criminal procedures, and the Constitutional Council has not previously expressed an opinion on its conformity with the constitution, and that the outcome of the dispute depends on it.

[37] Decision date 03/09/2020 : Decision No : 4

[38] No. 89-67 of 05/16/1989

[39] By Law No. 17-07 of March 27, 2017.

[40] In Resolution No. 6 of 04/26/2021

[41] No. 18-16 of 09/02/2018

[42] Adopted by the United Nations General Assembly Resolution of 16.12.1966, which was joined by Algeria by Presidential Decree No. 67/89 of 05.16.1989

[43] No. 67/89 of 05/16/1989

[44] Whereas, Article 33 of the objected Civil and Administrative Procedures Law states that “the court shall rule in the first and last degrees in cases whose value does not exceed two hundred thousand dinars (200,000 DZD) and if the value of the applications submitted by the plaintiff does not exceed two hundred thousand dinars (200,000 DZD). The court issues a ruling in the first and last instance, even if the value of the counter-claims or the judicial set-off exceeds this value, and it decides in all other cases with judgments subject to appeal

[45] Case No. 43005.2009 Dated 27/12/2010

[46] Done on 07/26/1963 ratified by Law No. 34 of 1966 dated 03/05/1966

[47] of 1977/219 approved by Law No. 64 of 1977 of 10/26/1977

[48] Case No. 62320 dated 01/07/1198 registered under No. 24040 dated 03/05/1998

[49] As required by Chapter 17 of the order dated 01/08/1933, which guarantees the ratification of the Tunisian state of the international agreement on international air transport signed in Warsaw on 10/12/1929

[50] Case No. 40557/2016 dated 02/15/2017

[51] Case No. 52222/2017 dated 04/19/2018

[52] Case No. 51267/2017 dated 03/28/2018

[53] Case No. 52665/2017 dated 14/60/2018

[54] Case No. 77937/2012 dated 5/2/2014

[55] of goods for the year 1978 by Law No. 33 of 1980 dated 05/28/1980 and published in the Official Gazette of the Republic of Tunisia by Decree No. 117 of 1981 in the Official Gazette No. 6 page 177 and entered into force on 1/11/1992

[56] Case No. 66804/2011 dated January 2, 2013