Introduction

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Mapping Constitutional Review in the Middle East and North Africa: Historic Developments and Comparative Remarks

Anja Schoeller-Schletter

1. *Introduction: Mapping constitutional review – the project*

Nine years after the Arab Spring, many parts of the region are still struggling with the consequences of armed conflict, the balance of power tilted in favour of the executive, and challenges to the rule of law. Meanwhile, several countries have undertaken significant reforms. Initiatives to improve institutional structures and procedures are abundant[1]. As news is generally dominated by civil war or refugee topics, profound developments and modernisation in the region tend to go unnoticed. Partly due to feeble links and connectivity between regional research and the international research community, structural changes and developments in the Middle East and North Africa do not enter international comparative research, although fundamental and striking[2].

Among these recent developments, is a rising awareness in the region of the importance of constitutional review as an instrument of judicial oversight[3]. While the topic of constitutional oversight was at its heights in the 80s and early 90s in Latin America following the fall of authoritarian military regimes, and in Eastern Europe, Africa, and Asia subsequent to and driven by the reform spirit after the fall of the wall, constitutional review in the Middle East and North Africa has come to rise as a political demand and prominent topic lately. In recent years, the institutions charged with constitutional review in the countries of the Middle East and North Africa – be it constitutional courts, constitutional councils, supreme

1 For recent developments in the region see Gallala-Arendt 2012; Biagi and Frosini 2014; Lombardi 2015; Bellin and Lane 2016; Sultany 2017; Elbasyouny 2020; Razai 2020. For critical voices see Ishiguro 2017 and Bedas 2020.

2 Among the few studies on the subject are Mallat 1994 and 2007; Brown 1997, 2001 and 2002; Choudhry and Glenn Bass 2014; Grote and Röder 2012 and 2014.

3 For the international debate on the role of constitutional courts see Shapiro and Stone 1994; Bryde 1999; Thomas 2002; Schoeller-Schletter 2004; Malleson and Russell 2006; Ginsburg 2008; Ginsburg and Moustafa 2008; Klug 2009; Buquicchio and Dürr 2012; Chen 2018; Saunders 2018; Ríos-Figueroa 2019.

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courts, or high tribunals – have been reformed substantially. Some have been established for the first time (e.g., Bahrain in 2002, Iraq in 2004, and Saudi Arabia in 2009), others have been attributed new competences and new procedures have been introduced (e.g., Morocco in 2011 and Tunisia in 2014).

While the number of online collections of constitutional documents has multiplied, a comprehensive survey of the constitutional courts of the region is still lacking. This publication intends to shrink this gap. It is the outcome of a research project on constitutional review in the Middle East and North Africa that I was able to conduct in my capacity as head of the regional Rule of Law Programme Middle East North Africa of the Konrad-Adenauer-Stiftung from 2017 to 2019, based in Beirut, Lebanon.

The idea was to "map", to identify, assemble and analyse information on constitutional review in the Middle East and North Africa, its institutions and procedures, models of reference, developments, and trends, in a structured way, concentrating on selected topics that seemed to be at the heart of the matter.

To this end, old networks were revived and new ones created to bring together members of constitutional courts, lawyers, and scholars in a series of thematically focussed workshops and a concluding symposium:

1. Beirut, Lebanon, October 2017: "Qualification, Nomination and Appointment Procedures of Justices to Constitutional Courts and Councils: Impact, Controversies, and Reform". Workshop held in cooperation with the Arab Association of Constitutional Law.
2. Cadenabbia, Italy, March 2018 and Beirut, Lebanon, April 2018: "Constitutional Review Procedures for the Protection of Fundamental Rights – Recent Changes, Challenges and Trends". Workshop Part I held at Villa La Collina. Workshop Part II held under the auspices of the Conseil Constitutionnel of Lebanon.
3. Cadenabbia, Italy, November 2017: "Role of Religious Law & Courts in the Constitutional Order"; Workshop held at Villa La Collina.
4. Kuwait City, Kuwait, April 2018: "Constitutional Review of Elections and Electoral Disputes in the MENA Region"; Workshop held in cooperation with the Arab Association for Constitutional Law, under the auspices of the Constitutional Court of Kuwait, at the premises of the Kuwait Bar Association.
5. Amman, Jordan, November 2018: "Role and Jurisdiction of Constitutional Courts and Councils in Relation with other High Courts"; Workshop held in cooperation with the Arab Association of Constitutional Law, under the auspices of the Jordanian Constitutional Court.

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6. Beirut, Lebanon, April 2019: "Mapping Constitutional Control in the MENA Region – Recent Developments, Challenges and Reform Trends". International Synthetic Symposium.
7. Berlin, Germany, September 2019: "Constitutional Control and the Rule of Law in the Middle East and North Africa", Presentation of research results within two panel discussions at the Allianz Forum and at Humboldt University.

The meetings brought together more than 50 constitutional law experts, members and justices of constitutional courts, scholars, and lawyers from the region, from Europe and the United States. The Arab Association for Constitutional Law (AACL) unremittingly made accessible their vast network of constitutional scholars and experts from the region. A great number of constitutional courts and councils actively participated and generously hosted meetings. Without their willingness to jointly explore and frankly discuss topics of cross-cutting interest and relevance – not among peers only, but in an exchange between research and practice – this undertaking would not have been possible.

The present publication assembles a selection of peer-reviewed papers that were presented at the meetings. The work combines contributions of constitutional scholars and practitioners on a set of fundamental topics for understanding constitutional review. These include:

- Appointment procedures and judicial independence to constitutional courts and councils,
- Procedures for the protection of fundamental rights and accessibility, control of elections and electoral law,
- Control of elections and electoral laws, and
- Role of religion and religious law in the constitutional order.

Each part of the book is dedicated to one of the topics. A comparative outline on the historic development of constitutional review, the underlying models, reform trends and challenges shall give an introductory overview.

The various country analysis and regional perspectives are complemented by perspectives beyond the region, discerning commonalities and differences within the region and linking them up to developments outside of it.

An annex assembles essential facts and figures on a number of these courts, including data on institutional design, composition, decision-making processes, case-loads, minority votes, based on research and personal interviews with members of constitutional court and council and surveys, verified by a constitutional expert from the country.

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With the selection of papers that are published here, the book presents fundamental first-hand insights into the current situation of constitutional review in the Middle East and North Africa. It does not aspire to be encompassing and complete. As a thematically focussed publication on the subject, the book gives insights into the present state and highlights reform achievements, challenges, and perspectives of constitutional control in the region. A subsequent publication should situate the regional developments in the global context and discourse on constitutional review.

Constitution-building processes and reform of constitutional courts are continuously ongoing in the Middle East. Expertise in comparative constitutional law is, therefore, needed to complement country-specific and regional scholarly knowledge. Constitutional scholars and judges worldwide increasingly take into consideration other countries' experience and practice, analysing different constitutional models, principles, designs, and their functioning. Many of the challenges currently discussed in the Middle East and North Africa have been faced in other continents in the past and are still being faced, such as control of elections, banning of extremist parties as unconstitutional, or balancing individual rights with religious freedom.

Along with the recently vibrant debates and ongoing reforms in constitutional review in the Middle East and North Africa, an immense quantity of highly interesting court decisions on constitutional matters and research publications has been published during the past years. Some countries have undertaken remarkable efforts to encourage regional or continent-wide discussions. More efforts are to be expected with regards to digitalization and accessibility as the benefits of visibility and accessibility to the international research community are becoming more and more obvious[4].

With the world becoming increasingly interconnected, countries are not limited to looking for inspiration or options in their own neighbourhood, are not bound to south-south dialogues, but are increasingly investigating the options existing globally. This publication is meant as a contribution to encourage further much-needed analysis, comparative research and interaction between researchers from the region and international fora.

4 In support of this development: Schoeller-Schletter 2020.

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2. *Overview of historic developments, legal traditions, and the models for constitutional review*

In most countries of the Middle East and North Africa, "modern" constitutions were passed in the wake of Western influence and colonization by European powers, starting with the Napoleonic expedition to Egypt (1798-1801) and continuing in the late 19th and early 20th century. Several "waves" of constitution-giving and constitutional reforms may be identified. Most have followed significant historical events, including the end of World War I (Turkey, Egypt, Lebanon, Jordan and Iraq), the end of World War II (Egypt, Lebanon, Jordan, Iraq and Tunisia), the Six-Day War of 1967, the First Gulf War, 9/11 and the Arab Spring (see Fig. 1).

2.1. *Historic ties, legal traditions and the models for constitutional review*

In the beginning, the system of constitutional review was heavily influenced by the legal tradition of the major colonial powers. Most countries under French influence adopted a *conseil constitutionnel* (constitutional council) along the lines of the French model, among them Lebanon in 1926, Tunisia in 1959, Morocco in 1962, and also Algeria in 1963, reinstated in 1989[5].

These allowed for limited *a priori* constitutional review of law projects by a constitutional council that included non-jurists, and which in composition and mandate may be described as politico-judicial. Jordan, by contrast, adopted a High Tribunal in 1952, following the British prototype.

The growing influence of the US is reflected by the introduction of institutions similar to the US Supreme Court, allowing to a certain extent for diffuse constitutional review, but foreseeing a jurisdictional last instance decision on incidental questions of constitutionality, for example in Egypt in 1969, in the United Arab Emirates in 1973, and in Yemen in 1991 (see Fig. 2). In Jordan, limited constitutional interpretation was attributed to the High Tribunal, while diffuse constitutional review was to a certain extent practiced by ordinary judges.[6]

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5 On different models of constitutional review see Bzdera 1993; Harding, Leyland and Groppi 2009; Calabressi 2016. For the French model see Belloir 2012; Mouton 2018. Regarding Algeria, see Benyettou and Biagi in this publication.

6 See Obeidat, in this publication.

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Fig. 1: Constitutions of the Middle East and North Africa.

Historic context	**1798** *Napoleonic Expedition* Modernization	**1919** *Paris Peace Conf.* Civil State	**1948** *Arab-Israeli War* Pan-Arabism	Socialism	**1967** *Six-day War*	**1979** *Islamic Revolution*	**1991** *First Gulf War*	**2001** *9/11*	**2011** *Arab Spring*
Egypt	Const. 1805, 1825, 1831, 1833, 1837, 1866, 1876 **Const. 1879**, **Const. 1882**	**Const. 1923** **Const. 1930**	Interim 1952 Interim 1953 **Const. 1956** Interim 1958	Interim 1962 Interim 1964	**Const. 1971**				**Const. 2012** **Const. 2014** Am. 2019
Tunisia	Fundamental Pact 1857 **Const. 1861**		**Const. 1959**				Am. 1999	Am. 2002	**Const. 2014**
Turkey	**Const. 1876** Am. 1908	**Const. 1921** **Const. 1924**		**Const. 1961**		**Const. 1982**		Am. 2007	Am. 2010 Am. 2017
Iran	**Const. 1906**					**Const. 1979** Am. 1989			
Iraq		**Const. 1925**	Interim 1958	Interim 1963 Interim 1964 Interim 1968	Interim 1970			**Const. 2005**	
Lebanon		**Const. 1926**				Am. 1989			
Jordan		Organic Law 1928	Const. 1947 **Const. 1952**						
Libya			**Const. 1951**		**Const. 1975**				Interim 2011
Mauretania				**Const. 1961**		Charter 1985	**Const. 1991**	Am. 2006	Am. 2017
Kuwait				**Const. 1962**					
Morocco				**Const. 1962**					Am. 2011
Algeria				**Const. 1963**	**Const. 1976**	**Const. 1989**	Am. 1996	Am. 2008	Am. 2016 Am. 2020
Syria				Interim 1964	**Const. 1973**				Am. 2012
UAE					**Const. 1971**				
Bahrain					**Const. 1973**			**Const. 2002**	
Sudan					**Const. 1973**		**Const. 1998**	Interim 2005	Const. D. 2019
Yemen							**Const. 1991**	Am. 2001	
Saudi Arabia							**Basic Law 1992**		
Oman							**Basic Statute 1996**		Am. 2011
Qatar								**Const. 2004**	

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Fig. 2: Establishment of constitutional courts, councils, and supreme courts.

	before 1970	1970-1980	1980-2000	since 2001
Egypt	Supreme Court 1969	Constitutional Court 1979		
UAE		Supreme Court 1973		
Syria		Constitutional Court 1973		
Kuwait		Constitutional Court 1973		
Libya		Constitutional Court 1975		
Tunisia			Constitutional Council 1987	Constitutional Court, pending
Yemen			Supreme Court 1991	
Mauretania			Constitutional Council 1991	
Morocco			Constitutional Council 1992	Constitutional Court 2011
Lebanon			Constitutional Council 1993	
Algeria			Constitutional Council 1996	Constitutional Court, pending
Sudan			Constitutional Court 1998	
Bahrain				Constitutional Court 2002
Iraq	Constitutional Court 1968			Supreme Court 2005
Saudi Arabia				Supreme Court 2007
Jordan	High Tribunal 1952			Constitutional Court 2012

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2.2. *The trend to concentrated a posteriori constitutional review*

By the end of the 20th century, most countries of the Middle East and North Africa had institutions charged with constitutional review, be it constitutional councils inspired by the French *Conseil constitutionnel* (e.g. Algeria, Lebanon, Mauretania, Morocco, Tunisia), be it Constitutional Courts (e.g. Egypt, Kuwait) or Supreme Courts (e.g. Iraq) or a High Tribunal (Jordan). Competences varied and the competences of Constitutional Councils were mostly limited to abstract review of laws or draft laws.

The Austrian-Kelsenian idea of a specialized and centralized judicial *a posteriori* constitutional review, that had conquered Continental Europe increasingly in the second half of the 20th century, has only gradually found favour in the Middle East and North Africa[7]. Early examples are Turkey 1961, Iraq 1968, Egypt in 1971[8] and Syria and Kuwait 1973[9]. The model has gained in influence since, "constitutional courts" were introduced in several countries, including in Sudan in 1998.

Along with constitutional reforms following the Arab Spring, and following the example of France in 2008[10], most constitutional councils of the region have been attributed incidental *a posteriori* control of norms, characteristic of concentrated judicial review institutions modelled along with the Kelsenian idea.

The vast majority of countries in the region adopted *a posteriori* constitutional review of norms, mostly by incidental/concrete review within an ongoing court case when doubts are raised about the constitutionality of a law to be applied, some countries by individual complaint procedure, and in the exceptional case of Kuwait by all of these (see Fig. 3). Many countries have thus complemented previously very limited review of legislation, frequently limited to *ex ante*, often restricted to organic laws, and/or by initiative of a selected group only.

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7 See Mallat 2007, chapter on "Constitutional Review: The Spread of Constitutional Councils and Courts." For the Kelsenian model see Cruz Villalón 1987.

8 Created by the Egyptian Constitution of 1971, it started functioning in 1980 following the promulgation of its implementation legislation, Law 48 of 1979 on the Supreme Constitutional Court of Egypt. See also Moustafa 2007, chapter on "The Establishment of the Supreme Constitutional Court", and Annex C for a translation of the law.

9 *Law No. 14 of 1973 on the Establishment of the Constitutional Court*.

10 Introduction "of the possibility of constitutional review *a posteriori* (reasoning by experience)" by the Constitutional Amendment of 2008; *Constitutional Law on the Modernisation of the Institutions of the Fifth Republic*, art. 61.

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Independent of the legal tradition under which the constitutional review institution has originally been created, notwithstanding country-specific variations and specific characteristics of constitutional review institutions in the region, the tendency to *a posteriori* incidental review of norms has, in principle, brought the various models of departure closer together over time.

Fig. 3: Procedures of constitutional review (simplified).

		Abstract a priori	Incidental/ concrete control	Individual complaint
Mauretania	Constitutional Council	Yes	No	No
Lebanon	Constitutional Council	Yes	No	No
Syria	Constitutional Court	Yes	No	No
Egypt	Constitutional Court	Yes	Yes	No
Tunisia	Constitutional Court	Yes	Yes	No
Bahrain	Constitutional Court	Yes	Yes	No
Morocco	Constitutional Court	Yes	Since 2011	No
Algeria	Constitutional Council	Yes	Since 2016	No
Saudi Arabia	Supreme Court	N/A	Yes	No
UAE	Supreme Court	No	Yes	No
Iraq	Supreme Court	No	Yes	No
Jordan	High Tribunal	No	Filtered (Cass. C)	No
Kuwait	Constitutional Court	Yes	Yes	Yes
Libya	Supreme Court	Yes	No	Yes
Sudan	Constitutional Court	No	No	Yes
Yemen	Supreme Court	No	Yes	Since 1991

3. *The rise of constitutional review as an instrument*

3.1. *The limits of abstract, a priori, non-judicial constitutional review: From constitutional councils to constitutional courts*

Recognized as institutions that may play an important stabilizing role in young and fragmented states and societies – as had been witnessed in the making of the US since *Marbury vs. Madison*, and of Europe after World War II – the idea of constitutional review as an instrument subsequently became more and more attractive also in the Middle East and North Africa.

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The region thus witnessed a continuous departure from the original French model of a *conseil constitutionnel*, the institution that was predominant in many of the countries due to (colonial) history and its repercussions, but which in its shape of 1958 has been increasingly viewed as inefficient as an institution of constitutional review. Not only did countries with constitutional review institutions that were modelled after the French *Conseil Constitutionnel*, follow the reform in France, thus introducing the procedure of *contrôle prioritaire de constitutionnalité par voie d'exception*, which gives the possibility of challenging the constitutionality of laws within an ongoing court case[11]. Several countries, by constitutional amendments, more fundamentally reformed their constitutional councils to become "constitutional courts"[12].

Thus, constitutional councils were transformed into "constitutional courts" (see Figure 4). Tunisia and Morocco are prominent examples of constitutional review institutions that are increasingly adopting traits of the Kelsenian-modelled constitutional courts, departing further from the French-inspired constitutional council model. Algeria seems to be following in that direction; in a recent referendum, it has also opted for the establishment of a constitutional court[13]. Today only Lebanon and Mauretania have not yet introduced the possibility of *ex post* incidental review of laws[14].

This trend to *a posteriori* review of laws is going along with a tendency to professionalization and "judicialization"[15] of constitutional review in organizational and procedural aspects. In most of the countries in the region, the institution charged with constitutional review has been through a process of instituting a professional body with court functions, judges and legally trained members. In most cases, eligibility criteria for candidates to the constitutional courts or councils have been introduced or tightened, requiring legal or juridical expertise.

11 Philippe and Stéfanini 2010; Mouton 2018.
12 For developments in Morocco see Biagi 2014; AlModawar 2016; Hamdon 2018.
13 International Commission of Jurists 2020: 14.
14 See Saghieh, in this publication.
15 See Biagi, in this publication.

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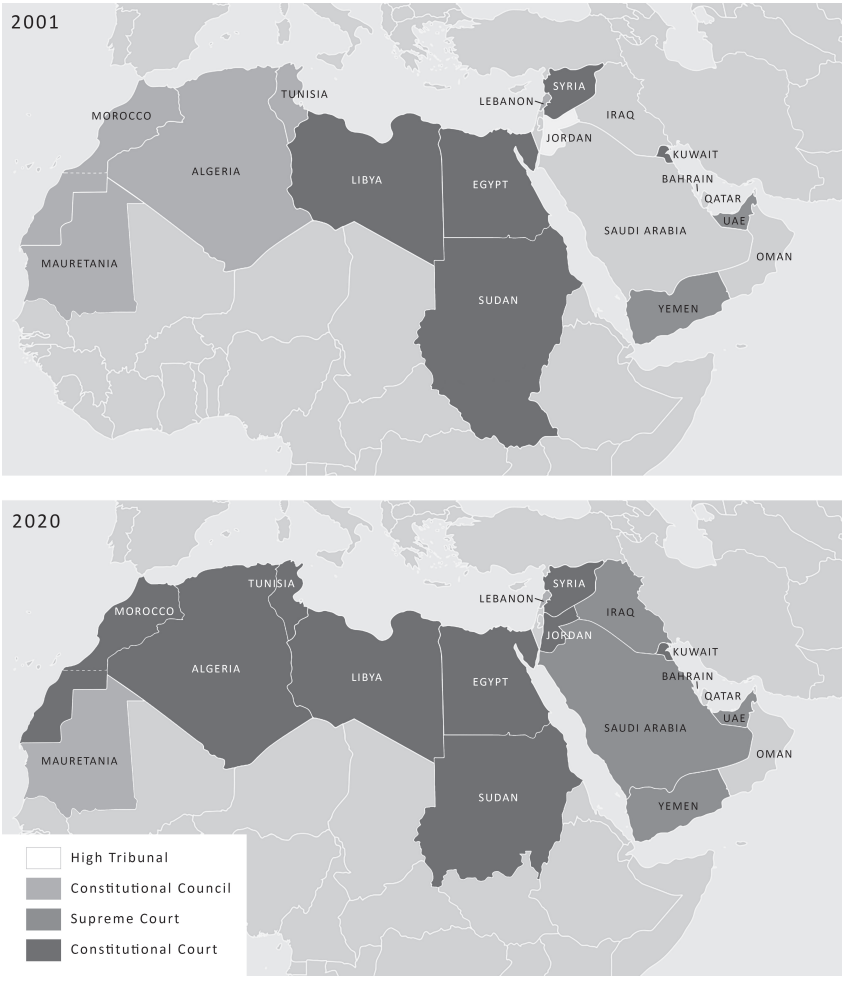
Fig. 4: Institutions of constitutional review in 2001 and 2020.



These newly demanded standards in legal and technical skills and methodological capacity for members of constitutional courts and councils are to be seen as an inherent requirement and logic consequence of the increasing "judicial" quality and function that constitutional review is gaining in the region. Similarly, along with increased competences for judicial constitutional review and increasing demands for judicial independence, nomination and appointment procedures have become subject to critical scrutiny, and in some cases, reform.

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3.2. Strong courts building tradition

Over the past two decades, developments go towards a constitutional review body, which if not always by name, but by characteristics, bears an increasing resemblance to constitutional courts of the so-called Continental European or Kelsenian model of centralized constitutional review. Here, role models and intra-regional influences play a significant role.

Of undisputed influence in this regard has been the Supreme Constitutional Court of Egypt, which in many ways has risen to the role-model of a strong court, a "lighthouse" court in the region. It looks back on a highly interesting and well-developed dogmatic history in constitutional jurisdiction, which gained its reputation in its "golden age" under Chief Justice Awad Mohammad El-Morr[16]. In the countries of the Gulf region, this role is increasingly adopted by the Constitutional Court of Kuwait, a court that is to some extent departing from its Egyptian model and is observed closely by other courts in the Gulf. In the past decade, it has increasingly faced the challenge and demonstrated its capacity for balancing fundamental rights[17] instituted in the text of the constitution, wisely taking into consideration realities of society, thus striking the balance with societal consensus.

Developments in the region have confirmed what has been the case in Europe and elsewhere: that constitutional courts staffed with legally trained members, gradually allowing for broader access and relevant caseloads, tend to become more influential. Needless to say, constitutional courts in the region, as elsewhere in the world, as "judicial" as their task is, inherently also fulfil a political and societal function, and are thus prone to be the subject of political pressure or interference.

16 On the Constitutional Court of Egypt and its development see El-Morr, Sherif and Nossier 1996; Khalil 1999; Lombardi 2009; Bernard-Maugiron 2013 and 2015; Brown 2013 and 2014; Haimerl 2014; Schoeller-Schletter 2014a and 2014b; Fadel 2018; Alkady 2019.

17 For a discussion of some of these decisions, see Fawaz Almutairi, in: Schoeller-Schletter and Poll, 2021: 13-34.

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4. Constitutional review revisited

4.1. New names, new procedures: Pending implementation

In spite of its growing importance within the constitutional state, constitutional review still faces great challenges in most countries of the Middle East and North Africa. In several cases, the institutions now carry the name "constitutional court", reflective of an institution of specialized concentrated review, thus bearing reference to the continental European based Kelsenian model. Also, most of the institutions have been given the competence to review existing legislation, which is a core competence of any institution that is meant to be exercising constitutional review. Still, much remains to be done and implementation has proven to be tedious.

In Tunisia the nomination process of members to the constitutional court is blocked by a deep political divide, leaving the country for years with a provisional constitutional court that has very limited competences and no incidental review of legislation for the time being. In Morocco, the implementation and practice of the possibility under Article 133 of the Constitution of 2011, allowing individual litigants to challenge the constitutionality of laws on which the issue of the litigation depends, is staggering. Parliament still has to pass a revised organic law following the decision of the Constitutional Court that declared the first draft law as partly unconstitutional.

Although the majority of countries have instituted "constitutional courts" by name, a corresponding scope of competences, judicialization in terms of members' professional background, working methodology, and professional support staffing, all of which are necessary to fulfil the inherent intention and task, are not completed. New procedures such as the incidental or "concrete" review of norms, for example the *contrôle prioritaire de constitutionnalité par voie d'exception* have been adopted, but remain to be put into practice; examples are Tunisia and Morocco, where recent reforms still await implementation.

4.2. More cases, more work: The challenge of filtering and accessibility

Along with the increasing influence of the Kelsenian model a general but still hesitant tendency to widen accessibility to constitutional review can be observed, allowing other groups beyond fractions of government or parliament to also initiate constitutional review procedures. Several countries have introduced the possibility of certain individual complaint

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procedures, mostly within the scope and limits of incidental review of norms.

Almost all countries have introduced new types of procedures, extending abstract *ex-ante* control to *ex-post* control in order to allow control not only of law projects prior to promulgation, but control of existing laws also, when flaws become obvious in application.

Still, in some cases, these attempts to widen review and access are stifled by lacking capacities and professional support structures that are able to cope with increasing case-loads. Also, other mechanisms may tend to restrict this idea, such as filtering organs outside these courts that may keep cases away from these courts. In Jordan, for example, cases are filtered by the Court of Cassation that decides which of the cases are handed to the Constitutional Court, similar to the filtering functions of the highest courts of the respective jurisdiction in France.[18] In Jordan, this is resulting in the fact that the very little number of referrals is pushing the Constitutional Court into a state that risks to come close to irrelevance. In Morocco, in an attempt to prevent a similar fate, the Constitutional Court has struck down the draft organic law setting out the rules governing appeals for unconstitutionality. The Court considered the procedure of incidental review of laws as partly unconstitutional, ruling out pre-filtering by the Court of Cassation as an intrusion into a competence that the constitution clearly assigned to the Constitutional Court. In Lebanon, the scope of judicial review attributed to the Constitutional Council and accessibility to constitutional review is still very limited, the need for reform is being widely acknowledged and reform projects at hand.[19]

4.3. Jurisdiction for comparative analysis

The methodology of constitutional review, as interesting as it is in comparative research, is extremely difficult to analyse in countries where it is not the norm to have decisions published. In spite of this difficulty, it is clear that some interpretative notions and principles used by constitutional courts in Europe and elsewhere have found entry into certain courts and into the scholarly debate of the region, including "unconstitutional consti-

18 For the at times difficult relations between constitutional courts and the highest courts, including the example of France, see Grote, on constitutional court jurisdiction and relation to other high courts in practice, in this publication.

19 For a detailed analysis for the complex dilemma of the Lebanese Constitutional Council, see Saghieh, in this publication.

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tutional law", "core content of fundamental rights", and the methodology of balancing between competing constitutional rights.

In the region, the latter is, for example, being increasingly applied in cases of balancing between individual rights or equality rights respectively, and the freedom to exercise religious beliefs. Many countries have opted to place references to these religious laws into the text of their constitutions, to highlight the importance of this set of laws in society and to add legitimacy to the constitutional state, mostly without implementing a clear mechanism on how these laws are to be interpreted, or which of the traditional interpretations is to be given preference. It is then mostly the highest courts, the courts charged with constitutional review in particular, that are tasked with the challenge of balancing controversial interpretations of constitutional rights enshrined in the constitution and based on culturally and historically rooted religious and secular norms. As a result, the courts are continuously defining the substance and limits of individual rights and freedoms in view of - and sometimes pushing for – a developing societal consensus.

Largely unrecognized by the international community, the constitutional courts and councils of the MENA region have met this challenge in their very own and constructive ways.[20] Along with more vibrant debates on constitutional law issues and constitutional control in the Middle East and North Africa, a large quantity of highly interesting court decisions on constitutional matters has been published during the past years.[21]

To understand constitutional review in the Middle East and North Africa, access to and comparative analysis of decisions of constitutional courts and councils is essential, not only for scholars, but also for the practicing constitutional justices themselves. I do hope – and I am sure I speak for all contributors to this project, whether their valuable contributions are published in this volume or elsewhere – that many more initiatives will foster much-needed research and contribute to the evolution of an international community of comparative constitutional law experts.

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20 Kuwait is one example, see Almutairy, on decisions of the Constitutional Court of Kuwait, in chapter 2 of this publication.

21 A comparative analysis of the jurisdictional development in three countries, Tunisia, Egypt and Kuwait, presenting milestone decisions that balance individual rights or equality rights respectively with religious law or freedom of belief, has just been published. Schoeller-Schletter and Poll, 2021.

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5. Summary and outlook

In many countries of the Middle East and North Africa, the institutions charged with constitutional review – constitutional courts and councils – have expanded their role and relevance in recent decades, mostly gaining in standing and respect. Many steps have been undertaken to strengthen constitutional review and remarkable progress achieved.

Within this introductory overview, I have tried to briefly give an overview of historical developments and typological differences in the region, identifying outside influences, their reasons and consequences. The relevance of certain models has become obvious (e.g. *conseil constitutionnel*). The success of the continental European (Kelsenian-based) model of constitutional review in Europe has undoubtedly played a role in the dynamics and results of modifying constitutional review institutions in North Africa and to some extent also in the Middle East. Some trends can be identified in general, such as the tendency towards a concentrated system of constitutional review and the adoption of ex-post review procedures, both of which seem to bring the various models of departure closer together over time.

Over the past years, "constitutional review" has gained prominence in regional debates. The guarantee of constitutional rights and freedoms is subject to constant interpretation and development as societies are evolving. With reforms of constitutional courts in the region ongoing, comparative constitutional law has become a topic on the rise. Constitutional experts and judges worldwide increasingly take into consideration the experiences and practices of other countries, analysing different constitutional models, principles, designs, and functioning. Many of the challenges currently discussed in the Middle East and North Africa have been faced in other continents in the past, and are still being faced, including the control of elections or balancing individual rights and religious freedom. Some countries have undertaken remarkable efforts to encourage regional or international discussions, allowing for a mutual exchange of expertise and inspiration. Given the unique history of the region and the very individual circumstances of each of the countries, each country is developing and shaping its own system of constitutional review over time, based on its cultural and legal heritage and hopefully inspired by what it considers best and fitting solutions based on comparative analysis. These developments need international support – and time.

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