The legislative and oversight role of the National Assembly

الدور التشريعي والرقابي لمجلس الأمة



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Abstract:

The recent constitutional amendment of 2020 is considered one of the most important transformations in the Algerian constitutional system due to its special reforms in the work of the three state authorities: legislative, executive, and judicial, by ensuring balance, cooperation, and integration between them, so that each authority can exercise its jurisdiction and function assigned to it.

To implement this, The 2020 Constitutional Amendment, in its 114th Article, vests legislative power in a Parliament with two chambers: the National People's Assembly and the National Assembly, and Articles 114 and 115 confer legislative and oversight powers on the constitutional founder (Constitutional Amendment 2020).

Keywords: *:* National Assembly, legislative authority, constitutional law.

ملخص:

يعتبر التعديل الدستوري الأخير لسنة 2020، من أهم التحولات في النظام الدستوري الجزائري لما جاء به من إصلاحات خاصة في عمل سلطات الدولة الثلاث، التشريعية والتنفيذية، والقضائية، وذلك من خلال ضمان تحقيق التوازن والتعاون والتكامل بينهما، لكي تمارس كل سلطة إختصاصتها ووظيفتها المنوطة بها.

وتطبيقا لذلك نصت المادة 114 من التعديل الدستوري 2020 ، على أن السلطة التشريعية تمارس من قبل البرلمان المتكون من غرفتين هما المجلس الشعبي الوطني ومجلس الأمة، ولقد منح المؤسس الدستوري صلاحيات تشريعية ورقابية، بموجب المادتين 114 و115 (التعديل الدستوري 2020).

كلمات مفتاحية: مجلس الأمة، السلطة التشريعية، القانون الدستوري.

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INTRODUCTION

The most recent constitutional amendment of 2020 represents one of the most significant transformations in the Algerian constitutional system, in view of the reforms it introduced concerning the functioning of the three state powers—legislative, executive, and judicial. These reforms aim to guarantee balance, cooperation, and complementarity among the three branches, so that each authority may exercise the powers and functions constitutionally entrusted to it.

In application of this approach, Article 114 of the 2020[1] Constitutional Amendment provides that legislative authority is exercised by Parliament, Article 114 of the 2020 Constitutional Amendment vests legislative authority in a bicameral Parliament, comprising the National People's Assembly and the Council of the

Nation, and Articles 114–115 confer legislative and oversight powers on the constitutional legislator (Constitutional Amendment 2020).

Nevertheless, one must emphasize that the two parliamentary chambers—the National People's Assembly and the Council of the Nation—hold different areas of authority; nevertheless, the presence of a second parliamentary chamber continues to serve a vital function, both in improving parliamentary representation and in the process of law-making and legislative oversight. This role has been reinforced by the Algerian constitutional legislator in favor of the Council of the Nation.[2]

The present study is based on the following research question: **To what extent does the Council of the Nation contribute to the legislative and oversight processes under the 2020 Constitutional Amendment?**

In order to address this question, the study adopts a descriptive-analytical methodology, based on the presentation and analysis of the relevant constitutional and legal provisions.

Accordingly, the study is structured as follows:

- The rationale behind establishing the upper chamber and determining its membership criteria;
- The Council of the Nation's functions in scrutinizing legislation and supervising executive authority.

1. Justifications for the Establishment and Composition of the Council of the Nation

The Council of the Nation serves as a legislative body

endowed with lawmaking and supervisory roles in Algeria's constitutional framework, introduced via the 28 November 1996 Constitutional Revision.[3] According to Article 114 of the 2020 Constitutional Revision, it functions as Parliament's upper and secondary house, superior to the lower or primary house, the National People's Assembly[4].

1.1. Justifications for Adopting the Bicameral System in Algeria

Considerable doctrinal debate has arisen between proponents and opponents of the existence of a second parliamentary chamber, particularly in unitary states. The principle of bicameralism historically emerged in composite states in order to serve two main functions: either as a means of representing constituent states within a federal union, or as a mechanism for distributing and dividing power among different social classes within a unitary state. In the latter case, the second chamber was often aristocratic in nature, intended to preserve the interests of that social class.

The establishment of the Council of the Nation seeks to achieve two major objectives within the broader framework of ensuring a balanced separation of powers. This is reflected in both the composition of the Council and the powers conferred upon it. In addition, it aims to improve representation within the legislative body and to promote balanced governance of public authorities.

The justifications that led Algeria to adopt a bicameral

system may be categorized as follows:

1.1.1. Political Justifications

The creation of the Council of the Nation in Algeria is closely linked to political circumstances whose roots lie in the crisis experienced by the country prior to the promulgation of the 1996 Constitution. This crisis adversely affected national security and stability, resulting in political, security, and institutional instability. These developments are chiefly manifested by the events of 5 October 1988, the annulment of the 1991 election results, and the constitutional vacuum that arose after the President's resignation coincided with the dissolution of Parliament in 1992.[5]

Accordingly, the true reasons for the establishment of the Council of the Nation are primarily political in nature, stemming from the political crisis experienced by Algeria. The main political justifications include:

- This step seeks to guarantee the state's steadiness and persistence, especially following the constitutional void resulting from President Chadli Bendjedid's 1992 resignation and Parliament's concurrent disbandment.[6]
- The Council of the Nation was created by the executive power as an essential body designed to bolster and protect the government against the National People's Assembly, the people's elected chamber.[7]
- Selecting members of the Council of the Nation via an indirect electoral process diminishes their susceptibility to electoral pressures and to contingent or interest-driven

campaign promises, which often affect members of the National People's Assembly. This is because direct universal suffrage typically renders deputies dependent on their electorate and political loyalties, notwithstanding the fact that the Algerian Constitution provides in Article 125 that the mandate of both deputies and members of Parliament is a national mandate.[8]

2.1.1. Legal Justifications

The legal justifications may be summarized as follows:

- Enhancing national representation through the representation of local authorities, while avoiding the marginalization of certain competencies.
- Remedying the legal shortcomings embodied in the 1989 Constitution.
- The Council of the Nation constitutes an instrument for achieving balance between the legislative and executive institutions.
- Improving legislative performance, as the Council of the Nation provides stronger guarantees for legislation by enhancing the work of Parliament and, consequently, avoiding legal ambiguity in statutory texts. The establishment of the Council of the Nation contributes to better drafting and greater care in legislative texts, eliminating deficiencies, ambiguities, or shortcomings that may appear in texts adopted by the National People's Assembly.

By carrying out meticulous analysis and rigorous oversight, the upper house's members guarantee that any passed laws effectively address the needs and realities of the community. This role is further reinforced by the presence of qualified and experienced members within the Council, this approach renders the institution a forum defined by equilibrium and careful judgment, thereby enhancing the quality of parliamentary output.

2.1. Membership of the Council of the Nation

According to the second clause of Article 121 in the 2020 constitutional revisions, the upper legislative house features a diverse composition. Two-thirds of its representatives are selected via a confidential, indirect electoral process from within the ranks of municipal and provincial assembly officials. Conversely, the remaining third is designated by the nation's President, drawing upon prominent national personalities and specialists spanning economic, cultural, scientific, professional, and social domains.[9]

Consequently, the Council of the Nation is constituted by a combination of indirect elections and presidential appointments, as detailed below:

2.1.2. Elected Members of the Council of the Nation

An indirect, secret ballot held among members of the municipal and wilaya popular assemblies elects two-thirds of the Council’s membership. The election is conducted according to a multiple-member ballot system and by majority vote in a single round.

The multiple-member ballot system means that voters cast their votes for more than one candidate, with victory awarded to the candidates who obtain the highest number of votes.[10]

Among the most important conditions required for candidacy to the Council of the Nation are that the candidate must be an elected member of a wilaya popular assembly or one of the municipal popular assemblies within the wilaya, must have completed a full term as an elected member of a municipal or wilaya popular assembly, must regularize his or her tax situation with the tax administration, and must not have been convicted of a criminal offense for which rehabilitation has not been granted.

Representation in the Council of the Nation is regional in nature rather than based on population density. There is equal representation for all wilayas, with each wilaya represented by two seats.

As stipulated jointly by clauses two and three of Article 122 in the 2020 constitutional revisions, alongside Article 217 of Ordinance 21-01, elected representatives in the upper house hold their positions for six-year periods. Every three years, one-half of this assembly undergoes replacement, and individuals face a limitation of serving only two terms in office, regardless of whether these terms are consecutive or interrupted.

2.2.1. Appointed Members of the Council of the Nation

The remaining portion of upper house membership is filled through appointments made directly by the President of the Republic. Authority for this process derives from the third clause

of Article 121 in the 2020 constitutional revisions, which empowers the head of state to select such individuals from distinguished national personalities and specialists in domains such as science, culture, various professions, economics, and social affairs.[11]

There are no constitutionally binding constraints on the President of the Republic in exercising this appointment power; it is exercised at his discretion, and he enjoys broad freedom in determining and assessing the criteria for appointment.

Individuals chosen for upper chamber positions are required to possess backgrounds spanning scientific, cultural, professional, economic, and social domains, or must rank among the nation's most distinguished public figures. In addition, the appointed member must satisfy the legal eligibility conditions prescribed for candidates for membership in the Council of the Nation, in order to ensure parity in the general legal requirements between appointed and elected members.

Pursuant to the second and third provisions of Article 122 within the 2020 constitutional amendments, those designated to serve in the upper legislative assembly retain their seats for six-year durations. The composition of this body is refreshed by half at three-year intervals, and such designees may serve no more than two terms in parliament, be they consecutive or separated by a break.[12]

2. The Legislative and Oversight Role of the Council of the Nation

The principle of separating state authority into distinct branches ensures that each performs its designated functions. This foundational concept receives explicit confirmation from the constitutional drafters within the 2020 revisions, According to these constitutional provisions, the legislative function is entrusted exclusively to a bicameral parliamentary system, operating through the lower house known as the National People's Assembly alongside its counterpart, the Council of the Nation.

The legislative branch performs a variety of functions, most prominently lawmaking and oversight; as the upper parliamentary chamber, the Council of the Nation has been endowed by the constitutional drafters with specific authorities to discharge these responsibilities.

2.1. The Upper Chamber's Function in Lawmaking

Creating laws stands as the fundamental and primary responsibility shared by both the National People's Assembly and the Council of the Nation.

1.1.2. he Power to Initiate Legislation

Under the first clause of Article 143 within the 2020 constitutional revisions, the capacity to put forward legislative proposals is granted to the Prime Minister (or Head of Government, as the case may be), together with representatives from the National People's Assembly and members serving in the Council of the Nation.

Consequently, although those sitting in the upper house possess the right to introduce legislative texts, this privilege

operates within constitutional boundaries and is articulated with thorough specificity—restricted exclusively to matters concerning territorial organization, regional development planning, and the delineation of administrative boundaries.

Consequently, Beyond those specific areas, the upper house lacks any authority to initiate legislation in other domains that lie under Parliament's jurisdiction—such matters being solely reserved for the lower chamber and the executive branch. As a result, there is no equal sovereignty between the two chambers of Parliament in this regard.[13]

Before any legislative text can proceed to debate, it must originate with a minimum of twenty upper chamber members and be formally submitted to the Council's administrative office. Additionally, such proposals must satisfy several clearly defined conditions before gaining eligibility for consideration. [14] .

2.1.2. The Role of the Council of the Nation in Discussing Legislative Initiatives

As mentioned earlier, the constitutional drafters have granted the Council of the Nation the power to propose bills on municipal administration, spatial development, and the nation's regional-administrative structure[15]. Lawmaking proposals in these areas are submitted to the Office of the Nation's Council.

This constitutes a deviation from standard legislative procedure, wherein bills and proposed laws typically undergo initial review within the lower chamber before being forwarded to the upper house for consideration. This mandatory sequential process finds its explicit foundation in the first clause of Article

144 within the constitutional text. According to this provision—and notwithstanding the exceptions noted earlier—all legislative bills and parliamentary proposals must undergo review first by the National People's Assembly and subsequently by the Council of the Nation in strict sequence before achieving valid enactment.

In this context, draft laws and legislative proposals are examined within the Council of the Nation in accordance with the following procedural mechanisms:

• When the matter under consideration involves either a government proposal falling within the specific domains outlined in Article 144 of the Constitution, or a legislative text already approved by the lower house regarding other matters, the debate unfolds in a structured sequence. A Government representative initiates the discussion with preliminary remarks, followed subsequently by the designated committee spokesperson who presents the committee's findings. Only after these presentations are members entitled to speak, following a predetermined sequence based on their registration requests.

• Prior to any substantive debate, a legislative proposal undergoes a preliminary phase featuring testimony from three distinct parties: a delegate speaking on behalf of those who originated the measure, an official representing the executive branch, and the committee's designated lead examiner. Subsequently, the debate is opened to speakers who have registered in advance. This procedure applies to matters falling within the scope defined by Article 144 of the Constitution and

Article 33, paragraph (2), of Organic Law No. 16-02. Prior to this stage, the legislative proposal must be transmitted to the Government at least two months beforehand, so as to allow it sufficient time to formulate and communicate its opinion.

It follows from the foregoing that the Council of the Nation has acquired a distinctive legal position with regard to its right of priority in the examination, discussion, amendment, and voting on certain legislative texts. These texts are thereafter transmitted to the National People's Assembly for deliberation and approval, without the latter being entitled to introduce any amendments thereto.

This framework restores to the Council of the Nation a significant degree of authority, enabling it to exercise a form of legislative sovereignty through the drafting, amendment, and redrafting of legal texts. Nevertheless, the National People's Assembly retains priority in the examination of laws that fall within its own constitutionally defined fields of competence.

Accordingly, the National People's Assembly examines the draft or proposed law, introduces such amendments as it deems necessary, and adopts the text before transmitting it to the Council of the Nation. The latter is not permitted to amend the text except through recourse to the Joint Parity Committee. In this respect, paragraph (5) of Article 145 of the Constitution provides that:

"Whenever consensus fails between the two parliamentary houses, the Prime Minister—or Head of Government, depending on the circumstance—initiates the formation of a bicameral

dispute resolution panel drawn equally from both chambers' membership, within a period not exceeding fifteen (15) days, in order to propose a text concerning the provisions in dispute. The committee shall conclude its deliberations within a period not exceeding fifteen (15) days."

2.2. The Oversight Role of the Council of the Nation

Parliament, via its dual chambers, performs a supervisory role regarding the Government's actions and behavior. The constitutional drafter has set up various monitoring tools, certain ones triggering the Government's political accountability, whereas others do not.[16]

The Algerian constitutional legislator has further required the Government to provide Parliament with the information and documents it requests in the exercise of its oversight functions.

As the Council of the Nation forms an integral part of Parliament as its second chamber, It holds specific supervisory authorities, key among them being these:

The constitutional text establishes that four specific authorities may seek recourse to the Constitutional Court: either the President of the Republic, the presiding officers of both parliamentary houses, or the Prime Minister (alternatively referred to as the Head of Government) as applicable.

It can also be approached by forty (40) representatives or twenty-five (25) Council of the Nation members.

This clause shows the constitutional drafter has assigned the authority to submit cases to the Constitutional Court to the

Council of the Nation's President and to twenty-five (25) of its members. This submission can address the legality of treaties before ratification and statutes before enactment. The Constitutional Court can further be approached regarding the legality of executive decrees within one month after their release.

CONCLUSION

The adoption of a second parliamentary chamber is an old concept that has been embraced by several states for various internal reasons linked to their political and institutional development. Algeria's transition to a bicameral parliamentary system occurred subsequent to the 1996 constitutional revisions, which formally established the Council of the Nation as a complement to the existing National People's Assembly. Under Article 114 of the 2020 Constitutional Revision, the Council of the Nation serves as Parliament's upper and secondary house, positioned over the lower or primary house, the National People's Assembly, in Algeria's parliamentary structure.

This research has analyzed the reasons behind creating the Council of the Nation, along with its makeup and authorities. It has shown that political considerations constituted the principal rationale behind Algeria's adoption of a bicameral parliamentary system, particularly in light of the events that marked the early 1990s, and most notably the constitutional vacuum of 1992 resulting from the simultaneous resignation of the President of the Republic and the dissolution of Parliament, in addition to other legal justifications.

The Council of the Nation is characterized by a dual composition, combining indirect election and appointment, in accordance with paragraph 2 of Article 121 of the 2020 Constitutional Amendment. The analysis has further demonstrated that the constitutional legislator has conferred upon the Council of the Nation certain legislative and oversight competences. In particular, it has been granted the right of legislative initiative, albeit within narrowly and exhaustively defined fields, namely draft laws relating to local organization, regional planning, and administrative division. This restriction renders the Council of the Nation limited and lacking full independence in the legislative sphere.

Accordingly, the study proposes the following recommendations:

- Revising the Council of the Nation's makeup by expanding opportunities for top experts, especially in law and economics.
- Providing the Council of the Nation with a broad legislative proposal authority, free from limits to particular areas.
- Endowing the Council of the Nation with more effective oversight powers vis-à-vis the executive authority.
- Empowering the Council of the Nation with greater authority to discuss and amend texts adopted by the National People’s Assembly.
- Rendering the convocation of a bicameral equal-representation panel mandatory whenever consensus fails to emerge between the upper and lower legislative houses.

- Establishing the upper chamber's autonomous authority to determine its own schedule and order of business, free from any form of executive branch involvement.

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[3] Law No. 16-01 of 6 March 2016, amending the Constitution, Official Gazette No. 14, issued on 7 March 2016.

[4] Bouloum, Mohamed El-Amine, *Parliamentary Work in Algeria between Constitutional Text and Practice*, Doctoral Dissertation, Faculty of Law and Political Science, Abou Bekr Belkaid University, Tlemcen, 2014–2015, p. 104.

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[8] Gharbi, Ahsan, *The Legislative Role of the Council of the Nation under the 2016 Constitutional Amendment*, Algerian Journal of Rights and Political Sciences, Vol. 04, No. 07, 30 June 2019, p. 48.

[9] It should be noted that the 2020 Constitutional Amendment introduced no substantive changes regarding the composition of the Council of the Nation, as paragraphs 2 and 3 of Article 121 of the 2020 amendment are almost identical to Article 118 of the 2016 Constitutional Amendment.

[10] Jaafari, Naima, *op. cit.*, p. 104.

[11] Tounsair, Ibrahim, *op. cit.*, p. 159.

[12] Jaafari, Naima, *op. cit.*, p. 104.

[13] See Articles 139 and 140 of the 2020 Constitutional Amendment.

[14] Gharbi, Ahsan, *op. cit.*, p. 58.

[15] Paragraphs 1 and 3 of Article 22 of Organic Law No. 16-12 of 25 August 2016 determining the organization and functioning of the National People's Assembly and the Council of the Nation, and their relations with the Government, Official Gazette No. 50, issued on 28 August 2016.

[16] See Articles 139 and 140 of the 2020 Constitutional Amendment.