

The power of constitutional revision in Algeria: main issues

L'instance de révision constitutionnelle en Algérie : les enjeux les plus importants

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Abstract

The Constitution is regarded as the law on which the ruling regime relies. It organizes the relation among the state's different bodies in accordance with the principle of legitimacy in the way of protecting rights and liberties, although it is not eternal, that is why every constitution provides some norms on the procedure for its revision, which must be respected when a constitutional revision is required in a state of the constitution is the expression of its supremacy over all existing standards in a given legal order. Therefore, the procedure for revising a constitution must take certain rigidity, unlike an ordinary law. In order to guarantee the validity of the constitutional revision and its objectives, which are primarily concerned with improving or rather reforming the constitution, it is also necessary to safeguard its supremacy, including its rigidity, for this reason, the power of revision must be limited in a reasonable manner, that is, any constitution must contain provisions concerning principles that must not be modified or revised, these restrictions are limits.

This research paper focuses on the main issues of the power of constitutional revision.

Key words: constitution-power-constitutional revision-procedures-limits.

Résumé

La Constitution est considérée comme la loi sur laquelle s'appuie le régime au pouvoir. Il organise la relation entre les différents organes de l'Etat en accord avec le principe de légitimité dans la manière de protéger les droits et libertés, bien qu'il ne soit pas éternel, c'est pourquoi, chaque constitution prévoit des normes sur la procédure de sa révision, lesquelles doivent être respectées quand 'on doit procéder à une révision constitutionnelle dans un Etat de droit. Cette autonomie régulatrice de la constitution est l'expression de sa suprématie sur toutes les normes existant dans un ordre juridique donné. On comprend dès lors que la procédure de révision d'une constitution doive revêtir une certaine rigidité,

contrairement à celle d'une simple loi. Pour garantir la validité de la révision constitutionnelle et ses objectifs relevant surtout d'améliorer ou plutôt reformer la constitution, il faut aussi sauvegarder sa suprématie y compris sa rigidité, pour cette raison, le pouvoir de la révision doit être limité d'une manière raisonnable, c'est-à-dire toute constitution doit contenir des dispositions concernant des principes qui doivent pas être modifiées ou révisées, ces restrictions sont des limites.

Ce papier de recherche focalise sur les principaux enjeux du pouvoir de la révision constitutionnelle.

Mots clés : constitution -pouvoir- révision constitutionnelle-procédures-limites.

Introduction

Constitution is the highest legislation in any country, therefore it has a lot of interest and authority and has its sanctity because it is the primary reference in the country, whether it is for the ruler, the authorities, or the individuals, it is the basic reference for knowing the powers and rights.

Not every constitutional procedure or constraint will stand the test of time, even if rigidity is important, however, Constitutions that lack flexibility present a risk of being violated or failing entirely when unforeseen circumstances arise. Therefore, most constitutions allow for an amendment process; which is a formal alteration in the constitutional text. The alteration can take the form of a variation to the text, a removal of text, or an addition.

Most constitutional designers take this into account by including constitutional procedures for altering the fundamental rules of the prevailed political system; all constitutions include articles that provide for partial or total change of their provisions.

Hence, the constitutional revision process is one of the most important issues, it must be guided by fundamental rules, respecting the constitutional principles, all that means, determining the context, the procedures and the limits, which can guarantee the cohesion of the constitution, also the institutions' stability and the protection and the promotion of individual's rights and freedoms, which is one of the main goals of a Constitution.

The importance of the topic is due to the stature of the constitution, it must be respected as the highest norm in a democratic state, moreover, implementing rules and principles while alteration in order to achieve reforms and much more

enhancing, without prejudice to the main values and principles enshrined in the text.

The main purpose of this research paper is to discuss the context and the limits of the power of constitutional revision, as an important matter in the constitutional law, regarding the value of the reform of the State process, dealing with the meaning and the importance of the constitutional revision, its procedures and limits.

Even if the constitution should be rigid in its main matters, it can't stand for a lifetime; it needs an adaptation, a reform, a promotion, an actualization, an alteration regarding the circumstances and the development process all over the world, so that the revision process come into play, the main problematic that arises in this topic is: **to what extend can the constitutional revision affect the constitution?** Some sub-questions can be invoked as follow:

How can a constitution be amended? Are there any limits or restrictions to maintain the constitution basic principles? Is there any stability during the constitutional revisions established in Algeria since the independence?

In order to treat the research problematic, we are going to analyze the topic, focusing on its main matters, using a descriptive and an analytic approach, dividing the study into two main parts as follow:

I- The conceptual framework of constitutional revision

I-A. Definition of constitutional revision

I-B. Concepts related to constitutional revision

II- Procedures & limits of the constitutional

II-A. Stages & Procedures of constitutional revision

II-B. Limits of constitutional revision

I- The conceptual framework of constitutional revision

The constitutional revision processes have had a decisive impact on the nature and scope of the processes of political change. The existence of a democratic procedure for constitutional revision and a broad consensus -emerging from the freely expressed will of the people, and based on the covenant and model of constitutional coexistence - all represent notable indicators for the democratization process¹. All constitutions must anticipate the need for change. Indeed, the process of altering the basic arrangements for governance may itself be salutary for citizens in a democracy, this process so called constitutional revision, so we shall deal with its definition then the concepts related to it as follow:

A-1. Definition of constitutional revision

Before the definition we can mention that some authors use sometimes the term “amendment” before the definition we are going to shed light on the distinction between “revision” & “amendment”.

Analysts distinguish between textual change of constitutions by amendment and by revision. Amendment is the alteration of an existing constitution by the addition or subtraction of material. Amendments may be used to clarify articles already in the Constitution, to give additional powers to the government, or to codify additional rights for the people². Amendments are often interwoven into the relevant sections of an existing constitution, directly altering the text. Conversely, they can be appended to the constitution as supplemental additions (codicils), thus changing the frame of government without altering the existing text of the document³.

All states constitutions permit amendments to be formally proposed by state legislatures, and most constitutional change is accomplished in this manner, that means an amendment isn't a deep alteration of the constitution, hence it can be simply proposed by Parliament on behalf of people. However, this is relative not absolute.

Revision is the "replacement of one constitution by another"⁴. It is specifically referenced in the constitutions of many states. It is likely to require the calling of a state constitutional convention, including supermajorities in the legislature, using the way of initiative, or direct approval by the electorate in a referendum, which may also be triggered in some jurisdictions by popular initiative, or even by combination of two or more different procedures⁵, which demonstrates that constitutional revision, is about deep alteration, otherwise, it doesn't mean a total change or replacement of constitution as mentioned above.

Main definitions of constitutional revision are as follow:

Georges Vedel means by constitutional revision: “the amendment of a constitution, that is to say the abrogation of some of its rules (or their set) and their replacement by other rules”⁶.

Gérard Cornu, from a finalist perspective, defines in his Legal Vocabulary the revision, like the constitutional revision, as a “review of a body of rules with a view to its improvement”⁷.

Olivier Beaud, for his part, defines constitutional revision in two aspects: “Formally, the revision of the constitution is a legal technique by which the public authorities expressly modify the text of the constitution (according to various modalities), after having followed a special procedure called the revision procedure. Physically defined, the revision of the constitution is the result of this procedure in so far as it describes the object of the amendment of the constitution”⁸.

From all definitions postulated above, we consider that constitutional revision is a process of partial or total amendment of the constitution, for the purposes of amelioration, altering some or many of the constitution's dispositions, to keep abreast of developments or partial or total change in the governance system and the constitutional institutions of the State in the interest of individuals.

I.B. Concepts related to constitutional revision

There are many concepts related to the constitutional revision that are considered essential to grasp the topic, which will be discussed in detail as follows:

I.B.1. Formal Constitution and Material Constitution

A constitution is more than a text. A constitution is above all a system of norms and institutions, the constitutional text, as important as it may be, is only part of the overall constitution, along with other important legal norms, interpretations, settled practices, and constitutional customs or conventions that are developed during the life of the constitution through a variety of formal and informal means⁹.

The Constitution in the formal sense covers all standards formally those which have specific legal force, especially when it comes to a rigid Constitution. In the material sense, this is the status of the State; it is defined by reason of the object, the matter and not due to its legal force or form; this is the set of principles relating to constitutional norms. A Constitution takes the form of articles, but it is defined above all by principles. A revision presupposes respect for the fundamental principles of this Constitution. Otherwise, it will not be a revision, but a constitutional transition¹⁰.

According to *Hans Kelsen*, the distinction between the formal and the material constitution is that the constitution in the material sense contains norms that confer and delimit the powers of the highest organs – of the legislator, of the executive and of apex courts, it contains provisions that concern the relation of the state to its subjects, in particular fundamental rights that delimit the power of the state over the individual, however, the notion of a formal constitution arises once material constitutional law is explicitly codified, the constitution in the formal sense, then, can be said to exist wherever there is a special rule of amendment, and it comprises all the norms that are protected by it¹¹.

I.B.2. Flexible constitution and rigid constitution

Many constitutional authors have suggested that the classification of the constitution should be based on the amendment method to the constitution and its relation to the ordinary or statutory law. Under this scheme there are two types of constitution: flexible and rigid.

Constitutions may be rigid or flexible; this categorization refers to how easily a constitution can be amended and how easily the constitutional landscape and framework can change. A constitution is said to be rigid when it is hard to amend or alter. It is said to be flexible when it is more easily amended. The advantages of a rigid constitution include the establishment of a stable and reliable legal landscape, the heightened protection of constitutional rights and values, and perhaps increasingly consistent enforceability of constitutional structures and provisions¹².

Flexible constitutions, is when the constitution can be amended, repealed or altered by the same procedure as that of ordinary law. This tends to place the constitutional law and ordinary law on the same level in the sense that both are enacted in the same way and proceed from the

same source, that is there is no specific procedure to bring changes in the constitution¹³, it is based on the sound assumption of some sociopolitical change and premise that there cannot be a perfect constitution for all times, to tackle the socio-political changes; it can also easily adopt the needs of people with the change of time because of its elasticity, when the demands of people are fulfilled by the constitution there is hardly any chance of revolution¹⁴.

Whereas, a rigid constitution possesses higher sanctity and special status; it tends to stand above the ordinary law and there is a procedural difference in bringing about changes in the constitution and ordinary law¹⁵. The powers of the legislature are limited by the constitution itself wherever a statutory law doesn't conform to the constitutional law it becomes *ultra vires* and doesn't become operative¹⁶, rigid constitution possesses the qualities of stability and performance.

A rigid constitution is essentially a written constitution which is the creation of experienced and learned people. Thus it is the symbol of national efficiency. People regard it as a sacred document and they are ready to work according to its provisions, it also protects the rights of minority. Minorities cannot be expected to agree to their rights being endangered by a majority action. If the majority ventures it, the judges perform their function of guardianship¹⁷.

I.B.3.Constituent power and constituted power

The term constituent power originally refers to the legitimate collective creative power inherent in human beings, the capacity to originate, design, and shape something new without having to derive it from or subject it to something that already exists, it was considered the omnipotent and expansive source that produces the constitutional norms of all juridical order, which however is also subjected to that production¹⁸.

Sieyès was the first who formulated the theory of constituent power by distinguishing between constituent power and constituted power. He notes, "...In each of its parts a constitution is not the work of a constituted power but of a constituent power. No type of delegated power can modify the conditions of its delegations. It is in this sense and in no other that constitutional laws are fundamental"¹⁹.

This distinction is essential because it highlights the fundamental difference between establishing a new Constitution and revising a Constitution²⁰. While the former is a manifestation of an original power, the latter is an expression of a derived power from the former. The power of revision, envisaged as a constituted power, is therefore subject to the respect of the constituent power²¹, which leads us to demonstrate that the constituent power is that which makes or creates the Constitution, it is the original power, *O. Pfersmann* considers that the constituent power is not a legal concept because it means something which is not a body whose competences would be delimited by an already legal norm²². Hence, the power of revision is never a constituent power, talking about a derived constituent power is therefore an aporia, a contradiction *in terminus*²³.

II- Procedures & limits of the constitutional

The constitutional revision is the result of an inclusive process that has brought together all the actors, in order to gather opinions, to enrich the elaboration work entrusted to a commission of constitutionalists, thus, it is very important process, every constitution provides a procedural method for its amendment, also the power of revision should be limited in certain matters and circumstances, we are going to discuss the constitutional revision procedures then its limits as follow:

II-A. Procedures of constitutional revision

Most constitutions stipulate amendment or revision procedures, often involving multiple actors, institutions, or other bodies. Others have hybrid amendment rules that combine a mix of rigid and flexible procedures for the amendment of different provisions. The involvement of multiple stakeholders protects against self-serving amendments. Some amendment procedures require a referendum to change the constitution; other constitutions require the support of two legislative sessions with an election in between sessions, anyway constitutional revision to be effective should pass by stages and follow some procedures, we are going to deal with stages first, then the procedures in Algeria as follow:

A.1. Stages of constitutional revision:

Constitutions requires a set of stages to amend, depends on the different systems of government in which these constitutions prevail, and on this basis we will address the most important stages of constitutional amendment, which are respectively: the proposal of the amendment, the approval of the amendment and the issuance and promulgation of the amendment.

A.1.a. The proposal for constitutional amendment

The process of proposing the constitutional amendment was confined to kings and emperors; however, constitutional developments in the world since a long time ago have expanded the scope of the constitutional amendment initiative to include different actors who they may be individual (The King, The Emperor, the President, the Prime Minister..etc.) or collective (the Government, the Parliament, citizens totaling at least five percent of the electoral rolls, etc.) in nature²⁴, their involvement become necessary to the constitutional revision process.

It seems through States' constitutions that there are many diverse solutions, and they can be shared. The right to propose or initiate an amendment is granted to several bodies or authorities, without any monopolization by anybody, this may hamper a very important constitutional process²⁵.

It may be decided to propose the constitutional amendment for Government, Parliament, or both; it may also be granted to the people. When the imitative is granted to the Government, it is the only entitled to propose the amendment; this is generally achieved in the constitutions that strengthen the executive power above others. Examples of such constitutions include Algeria's Constitution of 1976, which empowered this competence to the President of the Republic, who

was the General Secretary of the National Liberation Front Party, whose constitutional status - as a party Leader – monopolizing the power upon his opponents²⁶.

In order to set cooperation and harmony between powers, the initiative of constitutional amendment can be granted to each of them, that's the predominant method in most constitutions, in France, after a long term dominance of the initiative by the National Assembly under the Fourth Republic' Constitution, the French constituent, in the Constitution of the Fifth Republic of 1958, sought to ensure equilibrium between the legislative and executive powers in matter of initiative, as the Article 89 al-1 stipulates that: "The President of the Republic, on the recommendation of the Prime Minister, and Members of Parliament alike shall have the right to initiate amendments to the Constitution.." ²⁷.

The procedure provided for in Article 89 has the characteristic of requiring the existence of a consensus within the executive and the agreement of both assemblies. The opposition of the President of the Republic, the Prime Minister or one of the two assemblies would suffice to prevent the revision from succeeding²⁸.

Some constitutions grant the people the right to initiate constitutional amendment, where the petition is submitted by voters with a quorum of signatures required by the Constitution, the Councils must examine the draft constitutional amendment, and then submit it to referendum, such as the Constitution of Switzerland and the United States of America²⁹.

A.1.b.The adoption of the constitutional amendment

Adoption of the amendment means consent to the amendment in principle without discussing its details or formulation, or more precisely decide whether it is necessary to amend the Constitution or not. Most Constitutions grant the Parliament the right to decide if the constitution needs an amendment, because Parliament is the people's representative, qualified to take action preliminary decision in this regard or a special assembly or people by referendum, the adoption of the amendment pass throw the approval of the amendment principle, then the final approval of the amendment:

A.1.b.1. Approval of the amendment principle

It is intended in principle to approve the proposed or draft of constitution amendment without dealing with details, this stage constitutes an affirmation of the constitutional amendment procedure, the power to approve the amendment principle is entrusted to the parliament in the majority of constitutions, on the basis of representing the will of the nation, other constitutions; stipulate the election of specific organ whose task is exclusively to elaborate the amendment proposal, as enshrined in the French Constitution of 1793 and 1848, the Argentine Constitution of 1833, and the constitutions of some states of the American and Swiss Federation³⁰, this method undoubtedly makes the constitutional amendment modalities more rigid and complex.

A.1.b.2. Final approval of the amendment

Most constitutions grant the power to approve the final constitutional amendment to the parliament, or the people by referendum, as follows:

- **The final approval of the amendment by the parliament:** some constitutions grant the parliament the right to approve the final constitutional amendment according to special procedures³¹, and a certain voting quorum differs from the adoption of ordinary laws.

Other constitutions consider the parliamentary approval as the last stage in the process of the constitutional amendment, as it is in force and meets all conditions without issuance or promulgation. This is stipulated in the Algerian Constitutions of 1976, 1989 and 1996; so that if the Constitutional Council considered that the draft amendment was totally without prejudice to the general principles governing Algerian society, human rights and citizens' freedoms, and the basic equilibriums of constitutional powers and institutions, the President of the Republic could issue the constitutional amendment when three quarters of the members of the National People's Assembly votes (the 1989' Constitution) and three quarters of the of members of the Parliament both houses(the1966' Constitution) were obtained³².

In the 2008's constitutional amendment, which was about extending the presidential term fixed by five years renewable once, stipulated in the 1966' constitution, the President of the Republic promulgated the amendment passing through the parliamentary majority, excluding the people's referendum, which was a great infringement³³.

- **Final approval of the amendment by people (referendum)**

The final approval of the constitutional amendment is often passed by popular referendum, Some constitutions may grant the power of the amendment final adoption to the people by referendum, as in the case of the 1963 Algerian Constitution, which adopted the popular referendum³⁴, the Constitutional Council considered that the draft amendment doesn't prejudice the principles and provisions stipulated in article 164 of the Constitution of 1989 and article 176 of the Constitution of 1996, and justified its opinion, the referendum could be optional or permissible for the President of the Republic.

In the reverse case of both preceding articles dispositions, it becomes compulsory for the President of the Republic to submit the draft amendment to referendum³⁵, the constitutional amendment of 2020 was approved through a popular referendum.

It can be for the president to resort to a referendum in all issues of national importance, and as long as the Constitutional amendment is one of the most prominent issues of national importance, it is possible to resort directly to the people as the owner of sovereignty without referring to the Parliament³⁶.

A.1.c. The issuance & promulgation of the constitutional revision

Many constitutions go on to require the publication of the constitutional amendment as the last stage of the amendment, so putting the proposals and projects of the constitutional

amendment into effect after their approval by the parliament or the people needs an executive process of issuing and publishing the constitutional amendment³⁷.

Constitutions differ in determining who is authorized to issue & promulgate the constitutional amendment depending on the nature of the constitutional and political systems; it may be the President of the Republic in the republican systems, the Prince in the princely system, or the King in the monarchies.

A.2.Procedures of constitutional revision in Algeria

Under the Algerian Constitution, two powers may initiate the constitutional revision. It is the executive power, more precisely the President of the Republic and the legislative power, or Parliament.

In the first case, the President of the Republic must submit the draft revision to the People's Assembly and the Council of the Nation for a vote. In order to be admissible and adopted, projects must be approved by $\frac{3}{4}$ of the parliament (both houses). In the second hypothesis, when the Parliament (at least $\frac{3}{4}$ of the members) is at the origin of the proposal for constitutional revision, the latter must submit it to the President of the Republic, that means a formal initiative for the Parliament and a full initiative for the president of the Republic, we are going to study first the initiative of the President then the initiative of Parliament as follow:

A.2.a.The initiative of the President of the Republic

As stipulated at the Algerian constitution, the constitutional amendment shall be decided by the initiative of the President of the Republic, It shall be voted in identical terms by the People's National Assembly and the Council of the Nation in the same conditions as a legislative text³⁸.

Thus, the Algerian constituent enshrined the President of the Republic as the only eligible to initiate the constitutional amendment even if this right is given to the Parliament, but the latter's initiative is formal and doesn't produce an immediate effect, as is the President of the Republic's, because the Parliament amendment draft is conditioned to be presented to the President of the Republic who "may" submit it to a referendum, as stipulated by the constitution³⁹, the term "may" mentioned above means he "may not", it is a discretionary power, this demonstrate the President of the Republic' strength as the most powerful organ in matter of the constitutional amendment.

In case of the project is approved by Parliament without resorting to a referendum, there is no constitutional disposition which oblige the President to submit the amendment to people' referendum, the text issuance remains constrained by the will of the President, who can enact the text directly without resorting to a referendum⁴⁰.

On January 8, 2020, in the occasion of the constitutional amendment of 2020, the President of the Republic established a 17-member commission of experts, including a majority of constitutional law professors, to make proposals for a new Constitution. This commission is

headed by *Ahmed Laraba*⁴¹, the draft revision of the Constitution is published on May 7th, 2020. Other amendment proposals can then be proposed to the committee until June 20th. Then, the draft will be examined in Parliament before the convening of the referendum; this option can also be done without the examination of parliamentarians⁴².

On July 4, 2020, the President *Tebboune* announced a referendum for September or October 2020. The date, announced on 24 August, is November 1st, the anniversary of the beginning of the war of independence of Algeria. The draft was adopted on September 6th at the Council of Ministers, then on September 10th in the National People's Assembly and on September 12th in the Council of the Nation. The electorate is convened on September 15th.

B.1.b.The initiative of the Parliament

In some countries whose parliaments are bicameral, to ensure the equality of the assemblies in terms of constitutional revision, the constitution provides for the adoption of the revision proposal in identical terms⁴³.

The Algerian constituent has also entitled the Parliament with the initiative of the amendment draft, but with certain conditions:

- First, the quorum of $\frac{3}{4}$ of members of both houses of Parliament meeting in joint session may propose a constitutional amendment⁴⁴, which is not a reasonable quorum hard to achieve.
- Second, they present it to the President of the Republic who may submit it to a referendum⁴⁵, which means the Parliament members, could present it neither to people nor to promulgation.
- Third, the President of the Republic "may" submit the draft to referendum, as he "may not", he is not obliged to approve the Parliament' draft, If its approval is obtained, it shall be promulgated⁴⁶.

Parliament has no right to discuss or to amend the amendment proposal, but must treat the text as treating orders, which means that it is subject to a vote in identical terms, either by yes or no, in order to preserve the unity of the project and its cohesion; hence, the parliamentary initiative is not full as the President's, which proves its formality it is not even a power, these conditions mentioned above demonstrate the preeminence of the President of the Republic who monopolizes the power of the constitutional revision.

B.1.c.The interference of the Constitutional Court

As stipulated by the Constitution, the President of the Republic may directly promulgate the constitutional amendment law without submitting it to referendum, if it has been approved by three-quarters (3/4) of the votes of the members of both houses of Parliament, if according to the reasoned opinion of the Constitutional Court the draft constitutional amendment in no way infringes upon the general principles governing the Algerian society, the human and citizen's rights and freedoms, and does not alter in any manner the fundamental balance of the powers and the institutions⁴⁷.

II.B. The limits of the constitutional revision

The constitutional revision power is our topic. It was possible to examine the various aspects of this power: its legal nature, its relationship with other powers, its holders, its forms, its limits, etc. Although we briefly touched on all these aspects in the first title, we have been particularly focused on examining this power limits.

Indeed, we believe that the most important issue raised by the constitutional revision power is whether there are limits to its exercise. But in order for there to be such limits, we must first show that the power of constitutional revision is a power that can be limited. For, if there is not a power that can be limited, it would be vain by even hypothesis to seek its limits⁴⁸; hence, we are going to study the concept of those limits, then their categorization as follow:

B.1. The concept of the power of constitutional revision limits

The phrase “limits to the power of constitutional revision” is a pleonasm, if we refer to the conceptual definition of the limit: the power of constitutional revision, as a legal competence, is therefore legally limited. These limits correspond to the procedure for revising the constitution⁴⁹, they also ensure equality and democratic legitimacy and protect against corruption, oppression, discrimination, and abuse of power⁵⁰.

In reality, when we talk about limits to constitutional revision, we are not talking about the very concept of limits, but about a certain notion of limits, that is, a certain application of the concept to a particular object: constitutional revision. The definition of this concept is both empirical and teleological: on the one hand, it is based on the finding of the existence of constitutional provisions of a particular type and on the necessity and interest of defining that particular category of constitutional provisions, in order to determine precisely the purpose of an analysis wishing to understand them⁵¹.

The limits bring the prohibition of constitutional revision (usually partial, and in rare cases full revision) in several ways, and they are set in the following ways⁵²:

- In some cases, the limit in the revising process is set as permanent and without time-limit.
- In some other cases, the constitutional revision is allowed after a predetermined period of time after the entry into force of the constitution.
- There are also cases, in which the limit is set as a prohibition to revise the constitution certain periods of time, especially delicate ones in the “life of the state”.

For better understand the constitutional revision limits we are going to deal with their categorization, introducing some examples over different experiences, at the next title.

B.2. Categorization of limits:

If we examine the constitutional texts, we find several provisions that regulate the constitutional revision. Part of these provisions organizes the constitutional revision body; other parties determine the procedure by which this body may pass a constitutional law. Finally, another part of these provisions impose limits on their revisions during a constitutional certain

time or point. Therefore there are mainly two types of limits to constitutional revision in constitutional texts: Substantive and temporal limits.

B.2.a. Substantive limits

Substantive limits are limits to the content of the revised standards. They correspond to respect for the fundamental principles of the Constitution⁵³. They are the clauses of insusceptible revision eternity⁵⁴.

Provisions that prohibit amending certain subjects are referred to as ‘immutable’, ‘unchangeable’, ‘unalterable’, ‘irrevocable’, ‘perpetual’, the most frequent term is “unamendable”⁵⁵. Unamendable provisions are subject to changes introduced by extra-constitutional forces. Moreover, their content can also ‘change’ through judicial interpretation, their function as a ‘barrier of change’; they reflect the idea that certain constitutional subjects ought to be protected from alteration.

Unamendable provisions are meant to provide ‘hermetic protection’ and block even the constitutional amendment process, thereby preventing violations of certain basic constitutive principles via the majoritarian procedure⁵⁶. Thus they reflect the idea that a nation’s identity and constitutive narrative should not be subjugated to the majority’s caprices.

If we examine the texts, we contest that some constitutions prohibit the revision of some provisions. These prohibitions are referred to substantive limits or limits relating to the subject matter of the revision. In other words, some constitutions contain intangible provisions⁵⁷. By this we mean constitutional provisions that cannot be revised by the constitutional revision process. Thus, if the constitution provides for such intangibility, the revision of the constitution cannot concern all matters.

The Substantive limit most encountered is that of the prohibition of revising the republican form of government. In France since the law of August 14th, 1884, the Constitutions forbid to revise the republican form of the State⁵⁸. The same prohibition also appears in the Italian Constitutions (art.139)⁵⁹. The intangibility of the republican form of government is also found in African countries like Algeria & Tunisia⁶⁰.

With the same concern, but in the opposite direction, certain monarchical constitutions declare the monarchical form of the state intangible⁶¹. Thus in Morocco and Kuwait are the constitutional provisions relating to the monarchical regime which cannot be revised. Similarly in the past, the Iranian Constitutions of 1906 and the Greek Constitutions of 1952 forbade revision of the monarchical form of the state⁶².

B.2.b. Temporal limits

Constitutions sometimes limit the power of constitutional revision in time. In other words, some constitutions prohibit their revision for a certain period of time. In such cases, we are talking about constitutional revision power.

These limits appear in two ways: before a certain period of time has elapsed from the date on which it comes into force, or excludes its revision in certain circumstances:

***- The prohibition of constitutional revising before a certain period has elapsed from its entry into force:**

In this case, the question of the constitution l revision may be raised for the first time only sometime after it comes into force. In other words, the possibility of revision is allowed only after a certain delay. For this purpose, either the constitutions prohibit their revision until a specific date, or they determine a certain period from its entry into force⁶³.

Finally, another kind of limitation of the power of constitutional revision in time is to provide for two successive deliberations separated by a time interval for the adoption of constitutional laws.

The purpose of time limitations is to allow the newly instituted regime to be established and strengthened. Delaying the time for a constitutional revision is an attempt to provide some stability to the newly created institutions⁶⁴. This means, the purpose of time is to enable a new constitution to be consolidated.

***-Prohibition of constitutional review in certain circumstances**

In some countries, no constitutional revision can be in particular situations such as the state of siege, the state of emergency; it is about “constitutional exceptions” in which Parliament is not competent to conduct a constitutional revision. The revision presupposes a freedom of decision of the State in relation to other States and of the competent organ in relation to other organs⁶⁵.

Regarding the limits prohibiting explicit revision of the constitution in particularly sensitive periods of the state’s live, they are known in literature as the limitations of “circumstances”. They include limitations that impose the prohibition of the constitution review during the regency period or during the partial or total occupation of the territory⁶⁶.

Thus, the constitution is able to be revised before the afore-mentioned critical period and, on the contrary, after it begins, it prohibits any act to revise the constitution, as long as the situation remains in question⁶⁷.

B.3. The limits of the constitutional revision in Algeria

The Algerian constitution as all the democratic states’ constitution stipulates the power of constitutional revision limits, as we have treated above the main limits on constitutional revision, it is important to mention that the main limits in the constitutional provisions focus on substantive ones, which will be detailed as follow:

In order to ensure the rigidity of the constitution, the latter must contain some restrictions or limits about provisions concerning the main principles of the State or the prevailed political system, the Algerian constituent over all the constitutional revisions from the independence has enshrined many substantive limits in all the constitutional texts, we are going to deal with them chronologically as follow:

In the 1963 Algerian constitution, there was no substantive limit; we think the reason is that was the first constitution in the history of the independent Algeria, moreover, this constitution was suspended just few months after it became in force⁶⁸.

Concerning 1976 Constitution, some limits and restrictions have been enshrined in the chapter VI under the heading of institutional function, the constitution stipulates that no draft constitutional revision may prejudice⁶⁹:

- To the republican form of government: Algeria is a Republic, democratic and popular State, this disposition is unamendable;
- To the State's religion: Islam is the official religion of Algeria;
- To the socialist option: after the independence, Algeria has chosen the socialist principle in reason of struggle against colonialism, also to maintain the revolution's gains.
- To the fundamental freedoms of man and the citizen: as Algeria became an international community member, it is compulsory to recognize and promote rights and freedoms.
- To the principle of universal, direct and secret suffrage: election is the main democratic means to practice power.
- To the integrity of the national territory: in a unitary system, this principle is unamendable; it concerns the unity of the State.

The 1989 Constitution, unlike the previous one, was free of any provision for substantive limits. The Algerian Constituent granted the right to initiate the constitutional revision to a single authority, the President of The Republic, voted by the National People's Assembly, submitted by referendum to the approval of the people and promulgated by the President of the Republic, so that he could exercise his power without any restrictions, considering the political situation which prevailed that time which demonstrate his statutory role as an executive power⁷⁰,

Concerning the Constitutional revision of 1996, some substantive limits stipulated in the Constitution as follow: No constitutional amendment shall prejudice:

- The republican character of the State;
- The democratic order, based on multiparty system: which was a new disposition introduced after the declining of the single party system.
- Islam as the religion of the state;
- Arabic as a national and official language;
- Fundamental freedoms, human and citizen rights;
- The integrity and unity of the national territory.

So, the only one limit was about the multiparty system, maintaining most of the 1976' Constitution limits, which there weren't introduced in the previous constitution of 1989.

The 2008 was a partial amendment concerning two main dispositions: the first is about changing the label from "Head of the Government" to the label "Prime Minister", the second one was about the President of the Republic term, which was determined in the 1996' Constitution by one five years' term renewable once⁷¹, then it became "eternal", which means five year term renewable without any restriction⁷².

The 2016' constitution has enshrined also some limits, it stated that: "No constitutional revision shall be prejudicial to⁷³:

- The republican character of the State;
- The democratic order, based on multiparty;
- Islam, as the religion of the State;
- Arabic as a national and official language;
- Fundamental freedoms, human and citizen rights;
- The integrity and unity of the national territory;
- The national emblem and the national anthem as symbols of the Revolution and the Republic;
- The re-eligibility of the President of the Republic only once.

The text maintained most of the substantive limits of the previous revisions, but it added some others: the first is about the national emblem and the national anthem as symbols of the revolution and the Republic, that means unamendable, the second is about the important disposition of the President of the Republic term, amended by the 2008's amendment, it became again five years term renewable once⁷⁴, it is an important substantive limit, which guarantees the peaceful circulation of power.

As of the last & recent constitutional revision, the Constitution also states some substantive limits, it stipulates that:

No constitutional amendment shall undermine⁷⁵:

- The Republican character of the State;
- The democratic order based on a multi-party system;
- Islam as the religion of the State;
- Arabic as the national and official language;
- Tamazight as a national and official language;
- The fundamental freedoms and the human and citizens' rights;
- The integrity and unity of the national territory;
- The national emblem and the national anthem as symbols of the Revolution and the Republic;

- The prohibition against holding more than two consecutive or discontinuous presidential terms of five years each.

The text maintained most of previously mentioned substantive limits, but it added some new ones, the first is about “Tamazight” as an official language beside Arabic, after the formal establishment in a very partial amendment in 2002, reasoned by the Barber movement in 2001, the second is about reinforcing the limit about the President of the Republic term, by stipulation of the prohibition to hold more than two consecutive or discontinuous presidential terms of five years each, which is considered as a consolidation of the democratic process.

Conclusion

As much as we tried to show the way to this very important research, we were careful to draw attention to the need to the constitutional amendment in the democratic process, and that the constitutional amendment could constitute a step forward and, a step backwards sometimes.

We have noted that any constitutional or legal reform, whatever its form or content, does not have the desired effect unless and until any State proceeds to the constitutional amendment process, which guarantee the political system stability on one hand, and the necessity of adaptation with the development process on the other hand, all that without prejudice the main principles and values enshrined in the constitution.

The constitutional revision procedures and stages varied from a country to another, depending on the constitutional rules and principles, we can summarize them in: proposal, approval, final adoption and promulgation, otherwise, most of constitutions provide the methods which are mainly stipulated as constitutional provisions that demonstrate the importance of the constitutional revision.

In order to guarantee the rigidity, the supremacy and the stature of the constitution, every constitution contains some restrictions and limits prohibit the revision of certain provisions, which are substantive limits (mainly) or temporal or circumstantial, those limits set on the revision process of a constitution aiming to identify and guarantee, represent, among other things, the characterizing elements of a constitution, which serves to ensure greater sustainability to the potential continuity of the legal order which were created by it.

About the Algerian experience in matter of constitutional revision, the process through many constitutional revisions from the independence was a complex, regarding the monopolization of the revision initiative by the President of the Republic, who plays the major role, while, a formal involvement of the legislator as an entitled body, whose initiative conditioned by the President's approval.

On another side, the people's role in the process is ambiguous, which means people don't have a full authority to proceed the constitutional revision, but only the referendum vote without discussion, although, people are sovereign, the President doesn't need it when he could pass the

constitutional revision using the parliamentary majority without submitting the project to referendum, which demonstrate the powerful stature of the President.

Concerning the limits, after the above examination, we could say that the Algerian constituent has enshrined many substantive logical limits, concerning the main society principles, individual rights and freedoms, the democratic process..etc., noting the absence of temporal limits, the substantive limits an always consolidate the stability of the political system as the State.

Recommendations:

As a result of our analysis we can suggest some recommendations as follow:

- Granting a decent stature to Parliament representing people including the right to initiate a constitutional revision.
- Clarifying the role of parliament precisely in the constitutional revision process in terms of the possibility to debate and amend the proposal.
- Establishing a presumed and simple required majority in matter of the amendment initiative.
- Clarify the fate of the proposal submitted by the members of Parliament carefully.
- Restricting the President of the Republic' absolute power to initiate the amendment as the obligation to the recourse to the referendum without using the parliamentary majority.

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