

The Exclusive Legislative Power of the Head of State by Ordinances in Normal Circumstances According to Article 142 of the 2020 Constitutional Revision

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Abstract:

The authority originally competent for legislation is the legislative authority, and essentially, the executive authority has no role in legislation. However, through the Algerian Constitution, particularly the 2020 revision, and within the limits it stipulates, the right of the executive authority to intervene in the legislative domain of Parliament has been granted. This appears in the Head of State, who is constitutionally authorized under Article 142 to legislate by ordinances in normal circumstances and in cases specified exclusively.

Keywords: Head of State; 2020 Constitutional Revision; Legislation by Ordinances; Executive Authority; Parliament; Normal Circumstances.

Introduction:

According to the principle of separation of powers, the legislative authority—Parliament—originally and exclusively holds legislative power, while the executive authority—the Presidency and the Government—implements the law and judicial rulings. However, due to the expansion of the state's activities and for many reasons rooted in necessity and practical considerations under modern constitutional theory, which is reflected in what is called presidential legislation, the Head of State is no longer confined to the scope of regulatory authority alone. Rather, he has become a dominant legislator in the field of law through what is known as ordinances. This institution now exercises legislative power through specific means and under precise and defined controls set by the Constitution.

Legal thought regarding the functions of the state has demonstrated the manifestations of constitutional intervention by the executive authority in legislative work, which now shares the legislative function with Parliament in certain cases according to the Constitution. It is useful to clarify the scope of this intervention in terms of the most important legislative powers granted to the Head of State, in order to emphasize the rejection of the modern constitutional theory that Parliament alone has

legislative authority, and to draw attention to the issue of legislative initiative by the Head of State in normal circumstances through ordinances. What concerns us in this study is to clarify what the constitutional founder has granted exclusively to the Head of State in the field of law through ordinances, based on the establishment of the rule that reflects "the general principle of presidential legislation"¹.

In this context, this article may deserve to raise the following problematic: What is the scope of the Head of State's authority to legislate by ordinances in normal circumstances, and to what extent can these ordinances be subjected to oversight according to Article 142 of the 2020 constitutional revision?

The answer to this will appear through an analytical study in which we will first address "The Scope of Legislative Contribution by Ordinances of the Head of State in Normal Circumstances" (First Section), then clarify "The Legal Nature of Legislation by Ordinances and Oversight Thereof" (Second Section).

1. The Scope of Legislative Contribution by Ordinances of the Head of State in Normal Circumstances

The Head of State in Algeria has come to enjoy a distinguished position in the legal field. In confirmation of this, the constitutional recognition of the principle of executive legislation is nothing but a clear expression of subjecting the general principle to presidential legislation². Perhaps the most significant illustration of this idea is the executive contribution to legislation through the mechanism of ordinances by the Head of State, through his central role in the legislative domain, thanks to the 2020 constitutional revision³. In this regard, the constitutional founder enabled him to participate in legislative work by granting him considerable powers under specific cases outlined in Article 142 of the same revision, such that the President's authority has intruded into the legislative field and even intervened in all areas⁴.

It should be noted that legislative authority has come to be based on the sharing of the legislative function with Parliament, through which the Head of State shares legislation by ordinances with Parliament, as one of the features of the parliamentary system. This authority originally derives from the 2020 constitutional revision and the rules it contains⁵.

To avoid any serious overreach outside the framework of the Constitution due to the assignment of certain legislative powers to the Head of State by means of ordinances

¹- Abdallah Boukefah, *Methods of Exercising Power in the Algerian Political System: A Comparative Study*, Houma Publishing, Printing and Distribution House, Algeria, 2009, p. 193.

²- Abdallah Boukefah, *Constitutional Law and Political Institutions, Methods of Exercising Power in the Algerian Political System (A Comparative Study)*, Houma Publishing, Printing and Distribution House - Algeria, 2009, p. 193.

³- Presidential Decree No. 20-442 dated December 30, 2020, concerning the issuance of the constitutional amendment approved in the referendum of November 1, 2020, Official Gazette No. 82, issued on December 30, 2020.

⁴- Abdallah Boukefah, *The Algerian Constitution: Origin – Jurisprudence – Legislation, Constitutional Law of the Republic*, Third Edition, Al-Huda Publishing House, Ain M'lila, Algeria, 2005, p. 57.

⁵- Ahsan Gharbi, "Legislation by Orders under the 2020 Constitutional Amendment," *Comprehensive Journal of Law*, September 2021, p. 67.

in some matters that could be exercised arbitrarily¹, the same article has restricted these powers with certain conditions and has not permitted their exercise in an absolute manner.

1.1. Defining the Cases of Legislative Contribution According to Article 142

The 2020 constitutional revision affirms the necessity of legislative intervention by the Head of State² through ordinances in normal circumstances, pursuant to Article 142/1 thereof, and in certain cases, as it states: "The Head of State may legislate by ordinances in urgent matters in the event of the vacancy of the People's National Assembly or during the parliamentary recess, after consulting the Council of State."

We observe, according to the text of this article, the constitutional founder's reinforcement of the position of the Head of State in exercising legislative function under clearly defined normal circumstances. It explicitly includes two exclusive cases in which the President legislates by ordinance: the vacancy of the People's National Assembly and during parliamentary recesses. We will clarify this, explaining the conditions underlying each of these cases.

1.1.1. Legislation by Ordinances in the Event of the Vacancy of the People's National Assembly

The Head of State has had the right to legislate by ordinances since the beginning of Algeria's constitutional experience. The only exception in this area was found in the 1989 Constitution, which withdrew this power from the Head of State, as it aimed to establish the principles of the rule of law, primarily rejecting ordinance-based legislation due to its inconsistency with such principles.

The 1996 Constitution established the Head of State's authority to legislate by ordinances. However, this was constitutionally restricted to specific cases. The first case is the vacancy of the People's National Assembly, which represents a new situation not present under the 1976 Constitution but introduced through the 1996 Constitution³, and also under the most recent constitutional revision of 2020, which included changes affecting the President's authority to legislate by ordinances.

The term "vacancy of the People's National Assembly" refers to the termination of the Assembly's legislative term before the constitutionally determined time limit, usually as a result of mandatory dissolution by law due to the Assembly's failure to approve the government's action plan a second time⁴. This is known as automatic or

¹- Raddada Nour El-Din, *Legislation by Ordinances and Its Impact on the Legislative Authority under the 1996 Constitution*, Master's Thesis, Mentouri Brothers University, Constantine, Faculty of Law, 2005–2006, Algeria, p. 17.

²- For clarification, the right of the President of the Republic to participate in the legislative process by ordinances constitutes a departure from the principle of separation of powers, which requires that the executive authority not interfere in the competencies of the legislative authority, the latter being the original holder of legislative power. This right was granted to him by the Algerian constitutional founder in the 1996 Constitution, whereas the 1989 Constitution did not include such a provision.

³- Article 124, paragraph 1 of the 1996 Constitution before the latest amendment states: "The President of the Republic may legislate by ordinances in case of vacancy of the National People's Assembly or between the sessions of Parliament."

⁴- Article 82, paragraph 1 of the Algerian Constitution of 1996 (the same text appears in Article 108/1 of Decree 20/442 containing the latest constitutional amendment of 2020), Op. Cit..

presidential dissolution, authorized to the Head of State along with the decision to hold legislative elections for a new Parliament. It is also referred to as voluntary or obligatory dissolution, according to Article 151 of the 2020 constitutional revision, which states: "The Head of State may decide to dissolve the People's National Assembly or to hold early legislative elections, after consulting the President of the Council of the Nation, the Speaker of the People's National Assembly, the President of the Constitutional Court, and the Prime Minister or Head of Government, as the case may be.

These elections shall be held in either case within a maximum period of three (03) months. If it is impossible to organize them within this period for any reason, this deadline may be extended for a maximum of three (3) months after consulting the Constitutional Court." The presidential dissolution may also occur when the government's request for a vote of confidence on its "general policy statement" is rejected, according to Article 111. In such a case, the President may either accept the government's resignation or dissolve the People's National Assembly¹, or act at his own discretion.

Accordingly, the Head of State is the authority competent to decide on the dissolution of the People's National Assembly or to bring forward the date of legislative elections. This authority cannot be delegated to the Prime Minister or the Head of Government, as the case may be, pursuant to Article 83 of the Constitution, paragraph three, which states: "He may not delegate his authority to resort to a referendum, dissolve the People's National Assembly, or decide on holding early legislative elections."

Additionally, the Acting Head of State during the incapacity of the President or the Head of State during the vacancy of the presidency may not decide to dissolve the People's National Assembly or hold early legislative elections, according to Article 81 of the Constitution. This prohibition also extends to an outgoing President whose term was extended due to the death of a candidate in the second round or due to a legal impediment, in accordance with Article 87 of the Constitution².

We note that the constitutional founder, in all these situations, emphasized respect for certain conditions, among them the time limit within which the Head of State may legislate by ordinances in the case of the vacancy of the People's National Assembly. According to Article 108, paragraph two, and Article 151, paragraph three, this period may not exceed three (03) months, which is the time limit within which legislative elections must be held³. The President must also issue ordinances in the Council of Ministers, just like other draft laws, and must consult the Council of State on the matter.

¹ - Kheloufi Khadouja, "Legislation by Ordinances under the 2016 Amendment of the Algerian Constitution," *Journal of Law and Political Sciences*, Abbas Laghrour University, Khenchela, Algeria, Issue No. 06 / June 2016, p. 140.

² - Ahsan Gharbi, Op. Cit., p. 68.

³ - Khalaf Fateh and Chebri Aziza, "Powers of the President of the Republic under Normal Circumstances According to the 2016 Constitutional Amendment," *Journal of Legal and Political Research*, Biskra University, Algeria, 2016, Issue (02), p. 111.

As for the Council of Ministers, which the Head of State chairs, it is not difficult for him to fulfill this condition, as he can override the opinions of its members since this body operates under his authority¹. As for consulting the Council of State, it is a mandatory procedure, but its opinion is not binding.

It should be noted that the Head of State's authority to legislate by ordinances, before the 2020 constitutional revision, did not extend to subjects falling within the domain of organic laws, due to the special procedures for enacting such laws, particularly the requirement for constitutional conformity review by the Constitutional Court². However, after the recent constitutional revision, the Head of State may now legislate even in areas reserved for organic laws, since they are subject to prior constitutional review before their enactment. This was practically demonstrated through the issuance of the recent electoral law by ordinance. Nevertheless, he may not use his authority to legislate by ordinances within the scope of his regulatory powers, which he exercises pursuant to Article 141, paragraph one, of the Constitution³.

1.1.2. Legislation by Ordinances During Parliamentary Recess

Parliamentary recess means that Parliament does not convene throughout the entire year but only during a specific period⁴. Under the 1996 Constitution⁵, Parliament held two regular sessions each year. However, under the latest constitutional revision of 2020, according to Article 138, Parliament now meets in only one regular session per year, lasting a minimum of ten (10) months. This session runs from the end of the previous legislative period, also lasting ten months, until the start of a new legislative period. This means that the remaining time during which the Head of State may legislate by ordinance is reduced to a maximum of two months, a period known as the parliamentary recess.

The reduction of parliamentary sessions to just one per year, along with extending its duration to ten months, is a positive development that adds a notable characteristic to the 2016 constitutional revision, as it was the first to introduce this change. This remained unchanged in the 2020 constitutional revision. It reflects the embodiment of the principle of restricting the scope of ordinance-based legislation and limiting the duration of its application. It also contributes to the structuring of the executive authority's legislative function, according to the opinion of the former Constitutional

¹ - Kherbache Akila, *The Functional Relationship Between Government and Parliament*, Al-Khaldounia Publishing House, Algeria, 2007, p. 55.

² - Hamli Mohamed, *The Dominance of the Executive Authority over the Legislative Authority in the Algerian Constitutional System (A Comparative Study with the Egyptian and French Constitutional Systems)*, New University Publishing House, Alexandria, 2014, p. 24.

³ - Barakat Ahmed, *The Legislative Powers of the President of the Republic in the Algerian Constitutional System*, Master's thesis in Public Law, Faculty of Law, University of Abou Bekr Belkaid, Tlemcen, Algeria, 2008, p. 18.

⁴ - Saadna Maimouna, *The Legal Nature of Legislation by Ordinances*, Master's thesis in Local Administration Law, specialization in Public Law, University of Abou Bekr Belkaid, Tlemcen, Faculty of Law and Political Science, 2010–2011, p. 63.

⁵ - Article 118, paragraph one, before the 2016 amendment states: "Parliament meets in two ordinary sessions each year, and the duration of each session is at least four (04) months."

Council and the current Constitutional Court¹. Moreover, this reduction indicates the constitutional founder's intent to minimize the use of this legislative method and to reaffirm the role of the primary authority responsible for legislation².

1.2.Constraints on the Head of State's Exercise of Legislative Power by Ordinances

Ordinances are considered an original form of legislation issued by the Head of State. The Algerian constitutional founder has been keen to grant the power to legislate by ordinances to the President within provisions derived from the Constitution³. Since the power to legislate by ordinance is exclusively held by the Head of State as head of the executive branch, it may not be exercised by any other party, either originally or through delegation. This is confirmed by Article 93/3 of the 2020 constitutional revision⁴.

Also, given the gravity of legislating by ordinances in relation to the principle of popular sovereignty—which is based on granting legislative authority solely to the people's representatives—the constitutional founder, through Article 142, placed a set of restrictions. The Head of State must adhere to these restrictions when legislating by ordinances to ensure that his role does not evolve into a primary legislative authority⁵. These constraints can be summarized as follows:

1.2.1.Legislation by Ordinances in Urgent Matters

Based on Article 142 of the 2020 revision, the Head of State holds the power to legislate by ordinance in urgent matters. What is noteworthy in this revision and in the text of the same article is that the President is now restricted to legislating by ordinances only in urgent matters that cannot be delayed⁶. This means that there must be a pressing necessity requiring immediate measures to address unforeseen situations⁷. Conversely, if the conditions requiring such legislation can wait until Parliament returns from recess and can be dealt with through ordinary laws—that is, if they are not of significant gravity—then there is no need for the President to exercise his ordinance power⁸.

However, the issue of determining urgency remains unclear—whether it is Parliament that assesses the urgency when the ordinances are presented to it, or whether

¹ - Opinion No. 01/16 R.T D/M issued by the Constitutional Council, dated 18 Rabi' al-Thani 1437 corresponding to 28 January 2016, regarding the draft law containing the constitutional amendment, p. 20.

² - Kheloufi Khadouja, Op. Cit., p. 14.

³ - Raddada Nour Eddine, Op. Cit., p. 55.

⁴ - Article 93/3 of Decree 20/442 containing the constitutional amendment states: "He may not delegate his authority in resorting to a referendum, dissolving the National People's Assembly, deciding on holding early legislative elections, or applying the provisions stipulated in Articles 91, 92, from 97 to 100, 102, 142, 148, 149, and 150 of the Constitution."

⁵ - Hamli Mohamed, Op. Cit., p. 19.

⁶ - Khalaf Fateh and Bechri Aziza, Op. Cit., p. 113.

⁷ - Rabehi Ahsan, *The Principle of the Hierarchy of Legal Norms in the Algerian Legal System*, Doctoral dissertation in Law, Faculty of Law, University of Algiers, p. 362.

⁸ - Cheriet Walid, *The Legislative Authority through the Constitutional Development of Algeria*, Doctoral dissertation in Public Law, Faculty of Law and Political Science, University of Abou Bekr Belkaid, Tlemcen, Algeria, 2011–2012, p. 300.

the discretion lies solely with the President. It is worth noting that the political context does not suggest that Parliament would oppose the President's will¹.

1.2.2. Issuance of Legislative Ordinances by the Head of State

By examining Article 142 of the constitutional revision, it is evident that the power to legislate by ordinances is confined to the Head of State, as he is the supreme head of the executive authority. This is confirmed by the third paragraph of Article 93, which prohibits the President from delegating his authority in the exercise of the provisions outlined in Article 142. Similarly, the fourth paragraph of Article 96 prohibits the exercise of legislative power by ordinance, in the absence of Parliament, by whoever assumes the presidency in the event of an impediment to the Head of State (such as resignation, death, etc.)².

1.2.3. Necessity of Issuing Ordinances in the Council of Ministers

In light of Algeria's constitutional system, successive constitutions have consistently required that legislative ordinances be issued in the Council of Ministers³, with the exception of the 1976 Constitution. This requirement was reaffirmed in the 2020 constitutional revision, within Article 142 itself, as one of the constitutional constraints stipulating the necessity of adopting ordinances in the Council of Ministers. Since the Council of Ministers is chaired by the Head of State, he faces no difficulty in meeting this requirement⁴. In fact, he may even override the opinions of the council members, given that the constitutional founder's purpose in imposing this requirement was to allow these members to express their views and enrich the content of the ordinances. Moreover, the Council of Ministers is the most suitable body to discuss essential matters of state, and it operates under the constitutional authority of the Head of State⁵.

The essence of this requirement lies, firstly, in ensuring that the government is informed and that coordination is achieved, which in turn facilitates the implementation

¹- Rahmouni Mohamed, Yama Ibrahim, "Conditions for Resorting to Legislation by Ordinances and Evaluating Parliamentary Oversight Thereof," *The Research Professor Journal for Legal and Political Studies*, Vol. 04, No. 01, 2019, p. 108.

²- Tighiwart Farid, *The President of the Republic Exercising Legislative Authority in the Law-Making Process in Algeria*, Master's thesis in Law, Faculty of Law, University of Mohamed Khider, Biskra, Algeria, 2015/2016, p. 148.

³- Under the 1996 Constitution, which established a dual executive system—namely the President of the Republic and the Prime Minister who manages the government—and given the important role of the Council of Ministers in coordination and joint work, this Council, chaired by the President, became a significant body. For a detailed review of this point, see: Cheriet Walid, *The Legislative Authority through the Constitutional Development of Algeria*, Doctoral dissertation in Public Law, Faculty of Law and Political Science, University of Abou Bekr Belkaid, Tlemcen, Algeria, 2011–2012, p. 290.

⁴- Khalaf Fateh and Bechri Aziza, *Op. Cit.*, p. 112.

⁵- Kherbache Aqila, *The Functional Relationship Between the Government and Parliament After the Constitutional Amendment of November 28, 1996*, El-Khaldounia Publishing and Distribution, Algeria, 2007, p. 55.

of these ordinances¹. Secondly, since Article 142 does not specify whether the council's opinion is binding, the President has the option to disregard it².

1.2.4.Obligation to Present Ordinances to Parliament

While the Algerian legislator has carefully delineated the scope of the President's ordinance power, restricting it exclusively to him as head of the executive branch, it has also ensured that ordinances must be presented to Parliament at the beginning of its session. This measure helps prevent any power conflict with the legislative body³. It is also essential because issuing ordinances infringes upon the Parliament's authority to draft and vote on laws. When Parliament reviews the ordinance, it regains part of its legislative sovereignty.

According to the explicit wording of Article 142/3: *"The Head of State shall present the ordinances he has issued to each chamber of Parliament at the beginning of its session for approval."* It is clear that the constitutional founder made this requirement a necessary formal procedure, considering Parliament's original legislative authority. Parliament must approve the ordinances without discussion or revision. Practically speaking, it is unlikely that Parliament would oppose the President's will, given the constitutional tools he holds to counter Parliament, such as the right to dissolve it or call a referendum⁴.

Furthermore, the constitutional founder required that these ordinances be presented at the first session following their issuance. This timing serves to prevent the President from neglecting to submit the ordinances to the legislative body, which is the original holder of legislative power⁵. It also reflects an effort to restore Parliament's authority as soon as it reconvenes.

1.2.5.Requirement for Council of State's Opinion Before Issuing Ordinances

Article 142/1 of the 2020 constitutional revision indicates that the consultative jurisdiction of the Council of State extends to draft ordinances issued by the President in ordinary circumstances, in accordance with the procedures outlined in Organic Law 11/13⁶. This procedure serves as an important safeguard for protecting Algeria's legal framework, and it is mandatory to respect this process so that the Council of State can provide its opinion on the ordinances⁷.

2.The Legal Nature of Legislative Decrees and the Supervision of Them

¹- Barakat Ahmed, Op. Cit., p. 19.

²- Tighiwart Farid, Op. Cit., p. 149.

³- Cheriet Walid, Op. Cit., p. 292.

⁴- Meziani Hamid, *The Reality of Legislative Dualism and Legislative Action in the Algerian and Egyptian Constitutional Systems: A Comparative Study*, Master's thesis in Law, University of Mouloud Mammeri, Tizi Ouzou, Algeria, 2011, p. 77.

⁵- Mohamed Leddin Siddiqi, "Manifestations of Executive Intervention in the Legislative Authority According to the 2020 Algerian Constitutional Amendment," *Journal of Law and Local Development*, Vol. 4, No. 1, Year 2022, p. 12.

⁶- See Article 8 of Organic Law No. 11/13 dated July 26, 2011, Official Gazette No. 43 issued on August 3, 2011, amending Organic Law No. 98/01 dated May 30, 1998, related to the jurisdiction, organization, and functioning of the Council of State, Official Gazette No. 37 issued on June 1, 1998.

⁷- Tighiwart, Op. Cit., p. 152.

We decided to explore the legal nature of legislative decrees first, then clarify the supervision to which these decrees are subjected, because the scope of the application of the supervisory system in this context is determined by clarifying the legal nature of legislative decrees.

The importance of studying the legal nature of legislative decrees arises from the fact that they are issued by the Head of State, who is considered the head of the executive branch. This issue, by its nature, has raised a difference of opinions regarding whether they are administrative decisions issued by the central administration or whether they are legislative acts. Thus, this raised the question of the type of supervision that applies to them. This is what we will address in two consecutive sections by first determining the legal nature of the decrees issued by the Head of State, and then the type of supervision that applies to them.

2.1.Determining the Legal Nature of Decrees Issued by the Head of State

It seems clear that the Head of State's authority to legislate through decrees is an acknowledgment by the constitutional maker, according to Article 142, under specific conditions and regulations. No one can deny that these decrees possess legal force as long as they can amend or annul an existing law.

The importance of determining the legal nature of legislative decrees is significant in the state's legal system, as it leads to understanding their position in the hierarchy of legal rules and the system of supervision to which they are subject¹. To clarify this idea, some scholars have relied on the organic criterion, meaning that legislative decrees have an administrative nature because they are issued by an administrative authority. Others, influenced by the subjective criterion, consider that decrees issued by the Head of State fall within the scope of legislative acts. However, the prevailing opinion calls for distinguishing between the stage before the decrees are presented to Parliament and the stage after they are presented².

2.1.1.The Stage Before Decrees Are Presented to Parliament

Legislative decrees during this stage are considered mere administrative acts issued by the central authority represented by the Head of State, based on the organic criterion, which relies on the nature of the source of these acts, the Head of State. These acts are treated as administrative decisions since they are issued by a central administrative authority, and as such, they are subject to administrative court review³.

2.1.2.The Stage After Legislative Decrees Are Presented to Parliament

The majority of scholars consider that once the decrees are presented to Parliament and approved, they become akin to laws, i.e., they acquire the legal nature of legislative acts. Consequently, they enjoy the same legal force as ordinary laws in terms of their characteristics and properties, and are subject to rules for revision and repeal⁴. However,

¹ - Barakat Ahmed, Op. Cit., p. 19.

² - Kherbache Aqila, *The Functional Relationship Between the Government and Parliament*, Op. Cit., p. 57.

³ - Barakat Ahmed, Op. Cit., p. 20.

⁴ - Ammar Aouabdi, *The Theory of General Administrative Decisions Between Public Administration Science and Administrative Law*, Houma Publishing, Algeria, 2005, p. 148.

if Parliament does not approve these decrees, they lose their legal force, and their effects are nullified from the date of non-approval, as stated in Article 142/4: "Decrees not approved by Parliament are considered void." Here, a problem arises regarding whether the annulment applies only to the future or has retroactive effects.

Between one opinion and another, and in the absence of constitutional clarification on this effect, the prevailing opinion holds that the annulment applies only to the future and not retroactively¹. However, the French Constitutional Council, according to Article 38 of the 1958 Constitution, ruled that decrees become void if the draft law for their approval is not presented to Parliament before the end of the time period specified in the authorization law. This solution leads to the stability of the legal positions of individuals who have acquired rights as a result of the annulled decrees².

2.2. Supervision of Legislative Decrees

Given the position of the Head of State in the Algerian political system and the constitutional recognition of their power to legislate through decrees, and in order to ensure that legislative decrees do not violate the principle of constitutional sovereignty in its general meaning, the legislator has subjected them to legal supervision. This supervision can be clarified in two types: parliamentary supervision and constitutional and judicial supervision.

2.2.1. Parliamentary Supervision of Legislative Decrees

Parliamentary supervision is considered one of the pivotal concepts in any democratic political system, and it can be defined as: "The power of parliament to scrutinize the actions of the executive authority in order to ensure the proper application of the law, identify mistakes, and hold accountable those responsible." This is achieved through a set of means organized by the constitution³. Since presidential decrees are legislative tools that intervene in the domain of parliament, the latter can exercise special supervision over the decrees issued by the Head of State. This is what led the constitutional maker to require that these decrees be presented to parliament within the specified period, with this supervision ending either with approval or rejection.

- Presentation of Decrees to Parliament for Approval

Parliament retains full sovereignty over the approval of decrees, as it is the authority with general legislative jurisdiction, as some argue⁴. According to Article 142/03: "The Head of State shall present the decrees he has issued to each chamber of parliament at the beginning of the next session for their approval." This textual phrase imposes the requirement of presenting the decrees issued by the President to the chambers of parliament for their approval. It is clear from the wording of the paragraph that parliamentary approval is required.

¹ - Kheloufi Khedoudja, Op. Cit., p. 147.

² - Hamli Mohamed, Op. Cit., p. 35.

³ - Nadia Khelfa, Habiba Louhani, "Parliamentary Oversight of Government Actions Under the 2016 Constitutional Amendment," *Al-Baheth Journal for Academic Studies*, Issue 12, January 2018, p. 63.

⁴ - Habchi Lazraq, *The Impact of Legislative Authority on Public Freedoms and Their Guarantees*, Doctoral dissertation in Public Law, Faculty of Law, University of Abou Bekr Belkaid, Tlemcen, Algeria, 2012–2013, p. 186.

If these decrees are approved, they become official laws, acquiring legislative force not from the date of approval, but from the date of their issuance. It is worth noting that the parliamentary approval of decrees, under the constitutional revision of 2020, occurs through a vote with a 2/3 majority, i.e., a relative majority for ordinary laws and an absolute majority of 3/4 for organic laws.

While parliamentary supervision is not explicitly defined, it is essential because it is a mandatory form of supervision imposed by the constitution, even if no direct provision addresses it¹.

- Rejection of Decrees by Parliament

Parliament has the right to reject the decrees issued by the Head of State, and in such a case, the decrees are annulled². However, they retain their administrative nature with all the resulting consequences as long as they are considered administrative acts and not legislative acts³. In this context, parliamentary opposition to legislative decrees is almost non-existent, as this would, in practice, mean opposing the will of the Head of State through the actions of the government implementing his program⁴.

Under the 2020 constitutional revision, the condition of presenting the decrees for parliamentary approval is an obligatory one, and the constitutional maker took care to define the period within which the decrees should be presented, which is during the first subsequent parliamentary session. This requirement prevents any intentional delay by the Head of State. It can also be understood from Article 142/3 of the constitution that parliament has the ability to reject these decrees, in which case they are considered null and void, and their legal force is immediately rescinded, even though the constitutional maker did not address this matter. However, practical application confirms that the annulment does not extend to the effects and legal positions established by the decrees before parliament rejected and annulled them.

It is also important to note that Article 142 does not grant the right to review or assess the decrees; rather, parliament must approve or reject them without making any revisions to the decrees⁵. Additionally, the text does not clarify the fate of decrees that were not approved by parliament. It does not specify whether their annulment is retroactive or applies only to the present and future, nor does it address other important issues, such as parliament's silence on taking a stance regarding the decrees or the situation where the president violates his obligation to present the decrees to parliament. In such cases, we must rely on the views of legal scholars regarding these circumstances.

2.2.2. Constitutional and Judicial Supervision of Legislative Decrees

¹ - Nadia Khelfa, Habiba Louhani, Op. Cit., p. 65.

² - Article 142, paragraph 3 of Law 16/01 containing the constitutional amendment, Op. Cit..

³ - Reddada Nour El-Din, *Legislation by Ordinances and Its Impact on the Legislative Authority under the 1996 Constitution*, a dissertation submitted for a Master's degree in Public Law, University of Frères Mentouri, Constantine, Faculty of Law, Algeria, 2005–2006, p. 117.

⁴ - Tebghiouart Farid, Op. Cit., p. 157.

⁵ - Ahsan Rabhi, *Legislative Activity of the Executive Authority*, Dar Al-Kitab Al-Hadith, Algeria, 2013, p. 73.

Constitutional supervision refers to that carried out by the Constitutional Court in Algeria, while judicial supervision refers to the oversight carried out by the administrative judiciary in Algeria. Their scope is defined by the constitutional texts related to them.

- Constitutional Supervision of Legislative Decrees

Before the 2020 constitutional revision, once the parliament approved the decrees, they became ordinary laws. In this context, they remained subject to the supervision of the Constitutional Council (now the Constitutional Court), as the latter is responsible for ruling on the constitutionality of treaties, laws, and regulations according to Article 186 of the 2016 constitutional revision.

Therefore, the council could exercise its oversight on legislative decrees after being notified by the Head of State, the President of the National People's Assembly, the President of the Council of the Nation, or the Prime Minister. It could also be notified by fifty (50) deputies or thirty (30) members of the Council of the Nation, as stated in Article 187 of the same revision¹.

Article 191 of the constitution also affirms this oversight by stating: "If the Constitutional Council finds that a legislative or regulatory text is unconstitutional, this text loses its effect, starting from the day specified by the decision of the Constitutional Council." This implies that the type of supervision in this case is optional and follows the issuance of the decrees.

However, following the 2020 constitutional revision, constitutional oversight of decrees is now prior to their issuance, as stipulated in Article 142/2.

The constitutional maker has required that the Head of State notify the Constitutional Court regarding the constitutionality of decrees before they are issued, but no later than 10 days from the date of notification. This revision, which imposes mandatory constitutional oversight before the issuance of decrees, is a very important step and an effective measure to somewhat limit the President's power in exercising this authority.

The stability of the provisions granting this authority exclusively to the Head of State leads to the conclusion that the constitutional maker entrusted the Constitutional Council (now the Constitutional Court) with the authority to oversee decrees, examining their legitimacy and their conformity with constitutional norms. A prominent example of this is the Constitutional Council's oversight in the decision regarding the constitutionality of Decree No. 97-15², where it issued a decision declaring it

¹- Before the 2016 amendment, Article 166 of the Constitution restricted the right to refer cases to the Constitutional Council to the President of the Republic, the President of the National People's Assembly, and the President of the Council of the Nation. However, under Article 187 of the 2016 Constitution, this right was expanded to include the Prime Minister, fifty (50) deputies, or thirty (30) members of the Council of the Nation, thus enhancing the effectiveness of constitutional oversight. After the most recent constitutional amendment of 2020, it includes the Prime Minister (or Head of Government, as applicable), while the number of deputies was reduced to 40 and the number of members to 25, according to Article 193 of the 2020 amendment.

²- Ordinance No. 97-15 dated May 31, 1997, defining the special basic law for the Wilaya of Greater Algiers, Official Gazette No. 38.

unconstitutional on February 27, 2000¹. It is also noteworthy that the 2020 constitutional revision includes various provisions that clarify constitutional supervision over decrees and enhance the role of the Constitutional Court in protecting the constitution².

- Judicial Supervision of Legislative Decrees

In light of the above, legislative decrees are considered administrative decisions before they are approved by parliament, according to the formal criterion. As such, they are subject to judicial oversight before the administrative judiciary through annulment actions filed at the Court of Appeal in Algiers, following the 2020 revision, which enshrined the principle of two-level judicial proceedings constitutionally and reorganized administrative judiciary bodies, including the creation of courts of appeal, as per the general rules of administrative law that govern this³.

In this context, after parliament's approval, these decrees immediately acquire legal immunity, meaning they cannot be challenged before the administrative judiciary.

It appears that judicial oversight of decrees within the Algerian political system does not apply, even in light of the 2020 constitutional revision, as the decrees are considered legislative acts upon issuance. The Head of State's legislative authority is clearly stated⁴, as evidenced by the term "legislate" used by the legislator in Article 142 of the 2020 constitutional revision. Furthermore, the purpose of presenting the decrees to parliament for approval is to grant them the status of legislative texts, thus protecting them from judicial challenges. They remain subject only to prior and mandatory constitutional oversight before their issuance.

Conclusion:

We have clarified how the constitutional legislator entrusted the Head of State, through his government, with legislative participation, which he gained under the constitutional provisions for issuing legislative decrees in normal circumstances. The role played by the Head of State is of great importance and is clearly noticeable, particularly with the adoption of the 1996 Constitution, which strengthened his position in exercising the legislative function in the event of a vacancy in the National People's Assembly or during parliamentary recesses.

Some of the key results we have derived from this study, especially under the 2020 Algerian constitutional revision, include:

- The 2020 constitutional revision enabled the Head of State with legislative powers, granting him an effective position and significant authority alongside the

¹ - Decision of the Constitutional Council issued on February 27, 2000, regarding the constitutionality of the above Ordinance No. 97-15, published in the Official Gazette, Issue 07 dated February 28, 2000.

² - Clarification: Perhaps the most significant safeguard established by the constitutional founder appears in the expansion of the categories entitled to refer cases to the Constitutional Council, as provided in Article 166 of the 2016 constitutional amendment.

³ - Article 168 of the 2020 constitutional amendment states the following: "The judiciary shall consider appeals against decisions of administrative authorities."

⁴ - Tebghiouart Farid, Op. Cit., p. 160.

parliament, as well as participation in the legislative institution through issuing decrees.

- The constitutional revision explicitly affirmed the right to use decrees without the need for delegation from the legislative body, unlike what was stated in Article 58 of the 1963 Constitution.
- The constitutional maker granted the Head of State broad powers in dealing with the legislative authority through the mechanism of legislative decrees, but at the same time regulated this intervention and did not make it absolute; it was limited to specific cases according to Article 142 of the 2020 constitutional revision.
- An interesting point is the Algerian constitutional maker's effort to improve the legislative work by reducing the number of parliamentary sessions from two to one and implementing parliamentary recess periods.

Among the suggestions that can be made are:

- The need to clarify the consequences of the Head of State's failure to present legislative decrees to both chambers of parliament in the next session.
- The constitutional maker should reconsider the issue of "approving decrees" and explicitly affirm in a clear text that decrees should be submitted to parliament for approval.
- The subject of the study requires further examination of some issues and clarification of certain regulations regarding the Head of State's exercise of legislative power through decrees, particularly those related to the necessity of consulting the State Council and judicial oversight by the administrative judiciary.

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5. *Opinion No. 01/16 R.T D/M* issued by the Constitutional Council, January 28, 2016, regarding the draft law containing the constitutional amendment, p. 20.

5. Constitutional Texts and Interpretative References

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- 2020 Amendment: “The judiciary shall consider appeals against decisions of administrative authorities.”
- *Decree 20/442*: “He may not delegate his authority in resorting to a referendum, dissolving the National People's Assembly, deciding on holding early legislative elections, or applying the provisions stipulated in Articles 91, 92, from 97 to 100, 102, 142, 148, 149, and 150 of the Constitution.