

THE PERSISTENCY OF PRESIDENTIAL PREEMINENCE OVER THE CONSTITUTIONAL AMENDMENT PROCESS IN THE 2020 CONSTITUTIONAL AMENDMENT



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Abstract: Constitutional amendment is a natural response to political, economical and social changes. This constitutional mechanism has its own particularity in Algerian constitutional regime, because, on the one side, only the president of the republic has the right to initiate the constitutional amendment, on the other side, the president has the fully power to opt the method of amendment, whether it is long or short, so he gets to opt his partners in this process. Furthermore, a special and unique relationship was established by the constitution between the president and the people source of sovereignty in matters of the constitutional amendment. That is why it was expected that a reform of the constitutional amendment process would be adopted during the 2020 constitutional amendment, what did not happen as the presidential preeminence still persist.

Key Words:: constitution - president of the republic - parliament - people - amendment – the new republic .

استمرار هيمنة رئيس الجمهورية على عملية التعديل الدستوري في التعديل الدستوري لسنة 2020

المخلص: التعديل الدستوري استجابة طبيعية للتغيرات السياسية، الاقتصادية والاجتماعية. هذه الآلية الدستورية لها خصوصيتها في النظام الدستوري الجزائري، لأنه من جهة رئيس الجمهورية هو من له فقط حق المبادرة بالتعديل، ومن جهة أخرى لرئيس الجمهورية له كامل السلطة في اختيار طريقة التعديل سواء كانت طويلة أو مختصرة، وذلك ما يمكنه من اختيار شريكه في عملية التعديل الدستوري، كما أن الدستور يؤسس لعلاقة خاصة بين الرئيس وبين الشعب صاحب السيادة فيما يتعلق بالتعديل الدستوري. لذا كان من المتوقع اصلاح عملية التعديل الدستوري في ظل التعديل الدستوري لسنة 2020، وهو ما لم يحدث بالنظر الى استمرار الهيمنة الرئاسية.

الكلمات المفتاحية: الدستور، رئيس الجمهورية، البرلمان، الشعب، التعديل، الجمهورية الجديدة.

La persistance de la prééminence présidentielle sur l'opération de l'amendement constitutionnel dans la révision constitutionnelle de 2020

Résumé: La révision constitutionnelle est une réponse naturelle aux changements politiques, économiques et sociaux. Ce mécanisme constitutionnel a sa particularité dans le régime constitutionnel algérien, car d'un côté seul le président de la république a le droit d'initier l'amendement constitutionnel, de l'autre côté le président a le plein pouvoir de choisir la méthode de revision qu'elle soit longue ou courte, c'est donc lui qui choisit ses partenaires dans ce processus, aussi une relation particulière et unique a été instaurée par la constitution entre le président et le peuple source de souveraineté en matière de révision constitutionnelle. C'est pourquoi on



s'attendait à une réforme de l'opération de la révision constitutionnelle dans la révision constitutionnelle de 2020, ce qui n'a pas eu lieu car la préminence présidentielle persiste toujours.

Mots Clés: constitution, président de la république, parlement, peuple, amendement, la nouvelle république.



Introduction:

In fact, the Algerian constitutional system, like other comparative systems, adopts this constitutional mechanism, and the successive Algerian constitutions from independence to the present day have taken care of framing the constitutional amendment process, although its procedures differed from one constitution to another, but it is noticeable that professors and researchers of law and political sciences in particular have always differed on the question of whether a constitutional amendment is considered a new constitution that establishes a new republic or just a constitutional amendment to a previous constitution, and the criteria on which both parties are based differs in terms of whether they are formal criteria related to the method of amending the constitution or material related to the content of the constitutional amendment itself and the extent of addition or change brought so that it is considered a new constitution that establishes a new republic.

Accordingly, we wonder about the evolution of the constitutional amendment system through the Algerian various constitutions, and about the effectiveness of this system in establishing a new republic.

To answer this question, we used the historical method many times in order to return each time to the constitutional amendment system in the various successive Algerian constitutions, and we have relied on the analytical and comparative approach when reviewing the various stages, conditions and methods of constitutional amendment and the extent of their effectiveness in establishing a new system or what is called the new republic.

For this purpose, we divided this study into two parts: the first concerns the right to initiate constitutional amendment and the related restrictions, and the second focuses on the authority of the President of the Republic to opt the method of constitutional amendment.

First topic: The right to initiate the constitutional amendment and the related restrictions

Usually the authority to amend the constitution is granted to the executive authority and the parliament alike on the grounds that each of them is an elected representative of the people.

However, the strange thing is that the Algerian constitutions preferred to exclude Parliament from the right to initiate constitutional amendment, either explicitly or implicitly, so that the initiative for constitutional amendment became the preserve of the president of the republic, but in light of respect for a number of restrictions.

First requirement: The right to initiate constitutional amendment: The will of the constitutional founder in Algeria tended to make the right to initiate constitutional amendment an exclusive right in the hands of the president of the republic elected by public and direct election by the people, and the 1963 constitution is the only exception to this rule when it gave this right for both the President of the Republic



and Parliament (then the National Assembly) alike 1, but starting from the 1976 constitution, the parliament was excluded from the right to initiate a constitutional amendment, the constitutional trend towards making the right to initiate constitutional amendment an exclusive presidential right is constant of all Algerian constitutions from 1976 to the present day 2.

Article 222 of the 2020 constitutional amendment, which corresponds to Article 211 of the 2016 constitution and Article 177 of the 1996 constitution, has tended to grant members of Parliament in its two chambers meeting together the right to initiate constitutional amendment just like the president of the republic, but the matter in this case is just a possibility and not a right, and considering that the constitutional founder's uses of the expression "Three quarters of the two chambers of parliament meeting together can initiate" when talking about the parliamentary initiative, while the expression "the president of the republic has the right to initiate" is used when talking about the president, the difference in the wording is so significant, because the parliamentary initiative to propose a constitutional amendment is presented first to the president of the republic, which he can (as stated in the article 222 of the current constitution) submit it to the popular referendum, so this is another indication that the matter does not go beyond a possibility that the president of the republic has full power in its discretion, and what also supports our hypothesis is the fact that the parliament convened in a special form in order to initiate the proposal to amend the constitution, must wait for the presidential decree that includes his meeting because it cannot meet, for example, by a summons from the presidents of its two chambers, in accordance with the text of Article 99 of the Institutional Law 12/16.

Perhaps the special kind of electoral legitimacy that distinguishes Parliament is what prevented the constitution from giving him this right, because if the legitimacy of the President of the Republic is unblemished on the grounds that he is directly

1Article 71 of the 1963 constitution under Title Seven "Amending the Constitution" states the following:

"The initiative to amend the constitution goes back to

The president of the republic and the absolute majority of the members of the National Assembly together

2Article 191 of the 1976 constitution under Chapter VI entitled "The Constitutive Authority" states:

"The President of the Republic shall have the right to initiate a proposal to amend the constitution within the provisions contained in this chapter."

As stated in Article 163 of the 1989 Constitution under Chapter Four entitled "Constitutional Amendment":

"The President of the Republic has the right to initiate a constitutional amendment after it is approved by the National People's Assembly and submitted to a people's referendum for approval, then the President of the Republic issues it."

As stated in Article 174 of the 1996 Constitution under Chapter Four entitled "Constitutional Amendment":

"The President of the Republic has the right to initiate a constitutional amendment ..."

It is the same as Article 208 of the 2016 Constitution under Chapter Four entitled "Constitutional Amendment."



and publicly elected, the legitimacy of Parliament is distinguished by many defects : first because it is fragmented, and secondly because two thirds The members of the Nationa Assembly (so iscalled the second assembly in Algeria) are elected indirectly from among and by the members of the local councils , as for the other third, it is appointed by the President of the Republic , perhaps this special kind of electoral legitimacy for Parliament is what prevented the constitutional founder from treating both the President of the Republic and Parliament equal treatment with regard to a subject of initiating a constitutional amendment, provided that the constitutional founder could have granted the right to initiate a constitutional amendment to the representatives of the first chamber (the National People's Assembly) with the stipulation of a prescribed quorum and majority for that , so that the people's representatives are not deprived of a vital right which is the right of amending the constitution .

We point out that despite the fact that the parliamentary initiative to propose a constitutional amendment is only a possibility and not a right, it is nonetheless a remarkable progress that the 1996 Constitution, and after it, the Constitution of 2016 and the Constitution of 2020, in comparison to their previous constitutions, namely the 1976 Constitution and the 1989 Constitution, which completely prohibited members of Parliament from right of initiating a constitutional amendment proposal , and it remains for us to affirm within the framework of this part, that the right to initiate a constitutional amendment is an exclusive and personal presidential right, meaning that it is linked to the person of the President of the Republic alone and not to anyone else that he does not share with anyone not even with the Prime Minister, unlike in the case in France, as the President of the Republic cannot initiate the constitutional amendment project without the presence of the signature of the prime minister next to his , and perhaps this is what was expected to be amended according to the 2020 constitutional amendment, which suggested a move towards adopting a semi-presidential system, and accordingly, the prime minister was expected to participate in initiating the constitutional amendment, especially if he was from a parliamentary majority hostile to the presidential majority (called in this case the head of the goverment) .

Second requirement: The restrictions on initiating the constitutional amendment: The constitution did not completely release the hand of the president of the republic regarding the right to initiate the constitutional amendment, but rather imposed on him a number of objective and temporalrestrictions that change with the change of philosophy and principles of each constitution.

First section : The absolute objective prohibition in 2020 amendement

The absolute objective prohibition means the restrictions that the derived constituent power cannot violate, as it is observed in the majority of constitutions to impart the characteristic of absolute immobility to some of their texts and it is absolutely forbidden to amend them , because they are related to the essence of the existing



political system in the state, and these issues often differ from one country to another according to its concept of adopting a specific political system and its philosophy in this regard, or because it is related to basic rights and freedoms that cannot be dispensed with in any period, or when it comes to some civilizational achievements and social gains, and these issues may be explicitly stipulated in the texts of the constitution and may be used in an implicit way through the constitutional texts.

The Algerian constitution adopted the principle of absolute objective prohibition, so each of the 1976 constitution up to the current constitution of 2020 that stipulated a list of topics that a constitutional amendment is forbidden to infringe upon, as Article 223 of the 2020 constitutional amendment mentioned it in the form of a list as follows:

- 1- The republican character of the state
- 2- The democratic system based on a multi-party system
- 3- The social character of the state
- 4- Islam as the state religion
- 5- Arabic as the national and official language
- 6- Tamazight as a national and official language
- 7- Fundamental freedoms and human and citizen rights
- 8- The integrity and unity of the national territory
- 9- The national flag and the national anthem, as they are symbols of the Glorious November Revolution, the Republic and the Nation
- 10- The inability to assume more than two consecutive or separate presidential terms, each term of five (5) years.

It is thus noticed that the list of prohibitions is variable and reflects the political, social and economic circumstances of the country in a given period, the best example is article 195 of the 1976 Constitution¹, while the 1963 constitution the first constitution of the Algerian Republic did not contain in Chapter VI, any mention of the list of subjects whose amendment is absolutely forbidden, and the strange thing in the matter is the rupture that the 1989 constitution defined in this area, which in turn did not include any text on it and perhaps the explanation is that the 1989 constitution is a constitution of crisis par excellence, as it itself was built on the ruins of article 195 of the 1976 Constitution when it violated the provisions of the third paragraph of

¹Which came in it as follows:

No amendment to the constitution can affect:

- 1- With the republican character of government
- 2- The state religion
- 3- By socialist selection
- 4- The basic freedoms of the human being and the citizen
- 5- With the principle of voting by direct and secret universal suffrage
- 6- The safety of the national territory



it related to socialist choice when it established economic liberalism side by side with political liberalism within the framework of the openness policy that President Chadli Bendjedid led at the time ,that is why he opted for not to restrict himself as long as the political and economic experience is still young , and he opted for addressing the people directly in 1989, which leads us to talk about another observation namely when can a constitutional amendment be considered a new constitution, and a break with the previous constitution not just a constitutional amendment to the previous constitution , many professors and reaserchers of law and politics sciences have disagreed about the 1996 constitution and then the 2016 constitution in terms of whether they are new constitutions or merely successive constitutional amendments to one constitution which is the 1989 constitution, which according to them is the only one that can be considered a new constitution on one hand because it made a break with its predecessor on the other hand because of the exceptional way it twas amended (outside the provisions of Chapter VI of the 1976 Constitution under the title of the Constituent Power) , when the President of the Republic at the time addressed the people directly and called him a referendum on constitution , especially since the fourteenth paragraph of Article 111 of the 1976 constitution grants him the right to “refer the people in all issues of national importance” , while both the 1996 and 2016 constitution are considered in terms of material criteria and not formal criteria merely amendments to the 1989 constitution, while the 2020 constitutional amendment no matter how much we disagree about the 2020 constitutional amendment, it certainly amended the 2016 constitution through the people’s referendum and after the parliament’s approval of the constitutional amendment project, and it also came with many changes that affected how the powers are organized and the relationships between them, especially the reorganization of the executive power , and the establishment of a constitutional court , it also strengthened the independence of the judiciary power and of the judge .

Second section: The temporal prohibition in 2020 amendement

What is meant by the time restriction is “the prohibition of amending the constitution during a specific period following its entry into force, with the aim of enabling the institutions established by the constitution to prove their effectiveness and interaction with reality to achieve political institutional stability in the state, which is what is often the case in the constitutions that establish systems for a new policy that still needs more time for it to settle in the conscience of the group .

However, this trend of prohibiting the amendment of the constitution during a certain period after the amendment became the exception, whereby it retreated in favor of another type of temporary prohibition during some special circumstances that affect the essence of the state's legal existence, or in cases of external aggression, or in exceptional circumstances or crises. the country is going through, such as the circumstances of the declaration of a state of emergency, what is certain is that the



Algerian constitutional text has adopted such theories, these restrictions are either explicitly stipulated in the body of the constitution, or they are implicitly deduced from the constitutional texts, as we find that it came in article 96 of the 2020 constitutional amendment and precisely the third paragraph of it. :

“In the two periods stipulated in Articles 94 and 95 above, the provisions stipulated in Paragraphs 8 and 9 of Article 91, and Articles 104, 142, 151, 162, 219, 221 and 222 of the Constitution cannot be applied.”

Knowing that Articles 219, 221 and 222 are the articles on constitutional amendment, and that both articles 94 and 95 of the constitution speak of vacancies in the presidency of the republic.

Therefore, the two periods stipulated in Article 96 of the Constitution during which it is prohibited to amend the constitution are:

The ninety-day period, which is the period of the President of the National Assembly (or the President of the Constitutional Council in the event of an impediment to him) as the head of state, in the case of the mandatory resignation of the President of the Republic after the continuation of the impediment or in the case of voluntary resignation or in the case of the death of the President of the Republic ¹.

The sixty-day period, which is the period of extension of the presidential term as soon as it ends due to the death of one of the presidential candidates during the second round or the occurrence of an obstacle to him, in this case the president of the republic (or whoever assumes the duties of the state presidency) continues a period of sixty days during which new presidential elections are organized ².

¹ Article 94 of the constitution states:

... and in the event that the impediment continues after the lapse of forty-five days, the vacancy is declared by resignation, according to the procedure stipulated in the two previous paragraphs and in accordance with the provisions of the following paragraphs of this article.

In the event of the resignation or death of the President of the Republic, the Constitutional Court meets and establishes the final vacancy of the Presidency of the Republic.

It immediately communicates the final vacancy declaration certificate to Parliament, which meets

The president of the National Assembly assumes the duties of the head of state for a period of up to ninety days, during which presidential elections are organized

² While it is stated in Article 95 of the Constitution:

..... In the event that one of the candidates for the second round dies or is exposed to a legal impediment, the Constitutional Court declares that all electoral processes must be carried out again, and in this case the delay in organizing new elections is for a maximum period of sixty days.

Upon the implementation of the provisions of this article, the current president of the republic or whoever assumes the position of head of state shall remain in his position until the president of the republic takes the oath



During these two periods, the head of state in the first case, or the president of the republic or his representative in the second case, cannot amend the constitution, in both cases the constitutional amendment remains forbidden during these two periods until the elected president of the republic takes the constitutional oath, because as we have already referred to it, it is an exclusive and personal presidential right, that is, it is related to the person of the President of the Republic who is alone and directly elected by the people.

Outside of these two cases: the vacancy of the position of the President of the Republic and the state of people's rejection of the constitutional amendment project, we did not find in the constitution which prohibits amending the constitution during specific periods except for what may be implicitly inferred from cases in which the stability of the state and its institutions are threatened, such as the state of emergency, the state of siege, and the exceptional state¹.

As for the state of war, the matter is less ambiguous, considering that during it the constitution is suspended, so it is not possible to imagine amending the constitution during it as long as the president of the republic in all cases suspends the constitution and assumes all the authorities.

Second topic: The right of the President of the Republic to opt the method of constitutional amendment

In addition to the particularity that the constitutional founder has made the constitutional amendment initiative an exclusive right in the hands of the elected president, we also found another particularity, as the constitution gives the president of the republic the authority to choose the method of amending the constitution and thus his partner in the process.

First requirement: Ordinary method of amending the constitution: Articles 219 and 221 of the current constitution predicts two different methods of amending the constitution, the first is long and formal and mentioned in Article 219 and the second is simplified and brief as mentioned in Article 221 of the constitution, and it is clear to what extent the Algerian founder was affected by the French constitutional founder of the year of 1958, which in turn predicted two ways to amend the constitution, the first is long and the second is short².

¹Knowing that President Chadli Bendjedid had previously amended the constitution in 1989 despite the state of crisis that the country was experiencing at the time, and President Yamin Zeroual amended the constitution in 1996 despite the state of emergency that the country was witnessing at the time

²Article 89 of the French Constitution of 1958 states the following:

“The initiative to revise the constitution belongs concurrently to the President of the Republic on the proposal of the Prime Minister and to members of Parliament.



It is also noticed, through reading both articles 219 and 221 of the current constitution, that the President of the Republic has been given the discretion in choosing the method of amendment, and it is understood from the two articles that if the President of the Republic decides that the constitutional amendment that he initiated is not a fundamental constitutional amendment or as stated in Article 221 of the constitution : « It does not in any way affect the general principles governing the Algerian society, the rights and freedoms of citizen, and it does not affect in any way the basic balances of authorities and institutions Constitutionalism » in this case, he could pass the constitutional amendment project directly to Parliament, if a majority of three-quarters of the votes of the members of the two chambers of Parliament was expressed, and from there he promulgates it and publishes it in the Official journal , that is, without going through the most difficult stage, which is the stage of the popular constitutional referendum.

However, the difference between the French constitutional text and the Algerian is that the second one, did not completely release the hand of the President of the Republic in choosing the method of amendment, but rather restricted it to the need to obtain the opinion corresponding to the Constitutional Court and the reasoning in which the latter shows that it is indeed the constitutional amendment initiated by the President of the Republic does not affect the general principles that govern Algerian society, the rights and freedoms of citizens , and it does not affect in any way the basic balances of the powers and constitutional institutions, in other words it is not a fundamental amendment, while the the French constitution completely released the hand of the President of the Republic in choosing the method of amendment with the exception of the only condition that is compulsory to obtain the approval of the Prime Minister , and perhaps the only explanation that we could find to explain this difference in procedures is that the French Constitutional Council, unlike the Constitutional Court in Algeria, has the right to self-notification, that is, the advantage of moving on its own without the need for notification from any party, if it notices any breach of the provisions of the Constitution .

Returning to the topic of the two amendment methods mentioned in Chapter VI on constitutional amendment, we find that each of the two methods raises many observations.

The project or the proposal of revision must be voted on by the two assemblies in identical terms.

The revision is final after having been approved by referendum.

However, the project of revision is not presented to referendum when the President of the Republic decides to submit it to the parliament convened in congress; in this case, the project of revision is only approved if it obtains a majority of three-fifths of the votes cast.

The congress office is that of the national assembly "



- The long method : Its stages can be summarized as follows:
 - The presidential initiative stage of the presidential amendment
 - The Parliamentary vote stage
 - The referendum stage
 - The stage of promulgation and publication in the Official journal of the Republic by the President

This long way of amending the constitution raises many observations, which we summarize in the following points:

- That initiating of a constitutional amendment is the exclusive right of the President of the Republic alone as we have shown above, but in light of respecting what is stated in Article 223 of the Constitution regarding the list of issues that are forbidden to Constitutional amendment .
- That the parliament, in its two chambers, approves the constitutional amendment project in the same way and according to the same conditions that apply to a legislative text, and perhaps the matter was a degree of simplicity and clarity before the 2016 constitutional amendment, since the parliamentary ratification procedures were in turn simple, in one way that is the National People's Assembly and then the National Assembly Considering that the first chamber had the right of precedence. that is, the right to the first reading, and when the first chamber alone, not the second, it had also the right to amend the text, but when members of the second chamber acquired the right of precedence and the right of initiating and amendement when it comes to the legal texts that fall under Article 137 of the 2016 Constitution (currently Article 144 of the 2020 constitutional amendment) related to "local organization, territorial planning and territorial division", add to that Another drastic change the legislative process has known after 2016 , which is the "abandonment of the majority $\frac{3}{4}$ necessary for approval at of the Nationa Assembly " so that it became a simple majority like the majority required for approval at the National People's Assembly.

Does this mean that when the constitutional amendment affects the list of topics mentioned in Article 144 of the Constitution, the legislative procedures mentioned in Article 145 of the Constitution must be respected, that is to give the right of precedence in the first reading of the second chamber of Parliament while granting it the right of amendement .

Certainly, the legal texts are not clear in this area, neither is the institutional law 12/16 that defines the organization of the National People's Assembly and the



National Assembly, as well as the functional relations between them and the government, nor does the internal rule of the Nation Assembly .

If we assume that the constitutional amendment initiated by the President of the Republic was approved by both chambers of Parliament, but substantial amendments were introduced to it to the point of distorting the original text initiated by the President of the Republic, is it possible in this case that the President of the Republic withdraw a the constitutional amendment that he initiated, that is, to stop the process of constitutional amendment and to instead present the original text directly to the people , in fact nothing prevents the President of the Republic from that, as long as he is the owner of the initiative, just as nothing prevents the President of the Republic from going to popular arbitration by presenting the constitutional amendment in its original form to the people who possesses the original constitutional power, especially if he guarantees popular support for him .

The short method : It is shortened because it shortens the stage of the constitutional referendum so it becomes limited to the stage of presidential initiative and parliamentary approval, and then the stage of presidential promulgation and publication of the constitutional amendment in the Official journal of the republic , but the matter is not that easy as a number of conditions must be met in order to choose this brief way of constitutional amendment.

The truth is that this method appeared for the first time in the 1989 Constitution ¹, and then it was transmitted by each of the 1996, 2016 ², and 2020 constitutional amendments, as that the Algerian constitutional founder was influenced by French constitutional text of 1958, and as the practice in the French system has shown that the constitutional amendment by the shortened method has become the principle and constitutional amendment in the long way has become the exception, and that it only resorted to it once, on the occasion of the 2011 constitutional amendment.

The initial comparison between Article 89 of the French Constitution of 1958 and Article 221 of the current Algerian constitution, shows that the first one did not place any restrictions on this shortcut method for constitutional amendment, as the president of the republic has the discretionary power to choose it, as long as he was

¹ As stated in Article 164 of the 1989 Constitution:

"If the Constitutional Council sees a project of any constitutional amendment that does not in any way affect the general principles governing Algerian society, human rights and citizens' rights and freedoms, and does not affect anything the basic balances of the constitutional authorities and institutions and justify its opinion, the President of the Republic can issue the law that includes the constitutional amendment directly without submitting it to the popular referendum, when has three-quarters of the votes of the members of the National People's Assembly achieved

²Through Article 178 of the 1996 Constitution and Article 210 of the 2016 Constitution



able to gather the parliamentary majority described in Article 89 of the Constitution and estimated at 5/3 the voices of the members of Parliament expressed, and that the matter in France does not revolve around the fact that the presidential initiative to amend the constitution includes a fundamental amendment to the constitution or not, and we point out that this shortcut method for constitutional amendment concerns only the constitutional amendment initiated by the President of the Republic and the Prime Minister without regard to the constitutional amendment issued by members of the French Parliament.

Returning to the text of article 221 of the Constitution, we note that this article implies that when it comes to a constitutional amendment initiated by the President of the Republic, and which its content is not essential, in this case, the president of the republic can dispense with the constitutional referendum, that is to promulgate it directly whenever three-quarters of the votes of the members of the two chambers of parliament meeting together have been achieved, but the matter depends on a procedural condition prior to the parliamentary ratification phase and following the initiation phase of the constitutional amendment, which is the need to obtain an opinion of the Constitutional Court, which must be justified on legal arguments, according to which this constitutional amendment is indeed not essential or as expressed in article 221 of the Constitution.

Some professors have asked about the value of this opinion, whether it is an opinion that is binding on the president of the republic, that is to say restricted to his will, because the matter is related to a very serious issue, which is the amendment of the constitutional text¹, but instead of asking about the legal value of the opinion of the Constitutional Court, they should wonder about the independence of the members of this institution when they express for their opinion on the constitutional amendment, and it is certain that publishing the opinion of the Constitutional Court in the official journal is in itself a guarantee in this regard.

As soon as the Constitutional Court expresses its opinion on the possibility of proceeding with the amendment of the constitution according to the shortened method, the President of the Republic summons the Parliament convened in a special form, that is, in its two chambers meeting together according to a presidential decree², then the members of Parliament at the beginning of the session vote on the internal rules of procedure for this special session³.

¹Benabbou Fatiha, Droit parlementaire algerien, OPU, Algeria, 2009, part 2, p 146

²Article 99 of the institutional Law 16/12

³Article 101 of the institutional Law 16/12



Some professors believe that a special session calls for a special system for parliamentary approval of the constitutional amendment, meaning that if Article 219 expressly declares that the parliamentary approval of the constitutional amendment takes place "according to the same conditions that apply to a legislative text," then it is understood that when it comes to constitutional amendment according to Article 221 of the Constitution, that is, in the shortened way, it does not take place "with the same conditions that apply to a legislative text, meaning that parliamentary approval is done without discussion and without amendment, and their proof in that is that "the Constitutional Council is gone to the inclusion of a reservation upon reading Article 100 of the Institutional Law 99/02 in his opinion N° 8 dated 21/02/1999 by saying : « Given that Parliament has the authority to clarify the rules of its operation when it is meeting in its two chambers together in a text other than the two texts mentioned in the third paragraph of Article 115 of the Constitution. then it should not include in this text when preparing topics within the jurisdiction of institutional law », and thus it is the Constitutional Council back then who closed the door to any explanation that calls for discussion and amendment of the constitutional amendment that is presented to the Constitutional Council and then Parliament meeting in its two chambers together, and this was the same direction that the French system took, the introduction of the parliamentary ratification system without the right to amend when it comes to amendment according to the short method mentioned in Article 89 of the French Constitution, as excluded in this case, the right to amendment for the members of Parliament, and the matter is limited to the mere right of approval or rejection.

The President of the Republic also has the right to summon Parliament in its own form with specifying its agenda, and it also has the discretionary power to choose the date of the summoning, and we point out that Parliament convened in its own form for Approval of the constitutional amendment, according to what is stated in Article 221 of the Constitution, which will be held under the chairmanship of the president of the Nation Assembly according to the text of Article 100 of Institutional Law 12/16, the first paragraph.

In the same context, it is noticed that the constitutional founder did not specify a quorum for parliamentary approval of the constitutional amendment, while he specified the majority required for parliamentary approval of votes of members of the two chambers of Parliament, which is the same direction that the French constitutional founder took through Article 89, which in turn, did not specify a legal quorum for the parliament session who meets in its two chambers together in order to approve the constitutional amendment initiated by the President of the Republic, while the majority needed to approve it was estimated at 3/5 of the voices of



parliament members, noting that a majority of three-quarters is stronger than a majority of three-fifths.

The shorten or the abbreviated method in the constitutional amendment represents several possibilities even if they are hypothesis, they remain possibilities that may occur, we tried to summarize it in the following points:

The first hypothesis: and if we assume that the constitutional amendment initiated by the President of the Republic did not obtain the approval of Parliament, meaning it did not win the majority of the votes of its members, in this case is it possible to imagine the President of the Republic resorting to the people directly, after he had chosen in the first place to avoid it?

In fact, this hypothesis is possible, since nothing in the text of the constitution prevents that, on the contrary the constitutional text, as we will see later, establishes a special kind of relationship between the president of the republic and the people, and in this case the people the original constituent authority turns into an arbitration institution between two elected powers: both the President of the Republic and Parliament¹.

The second hypothesis: and if we assume that the President of the Republic and after Parliament approved the constitutional amendment, he chooses to withdraw his own initiative, for any reason, can he do so? Some professors see the possibility of this, because in reality the matter concerns two derivative constitutional powers, which are each of the President of the Republic and Parliament, It must also be noted that the President of the Republic is the party initiating the constitutional amendment, and if it becomes clear to him for any reason that the reasons for constitutional amendment have disappeared, he can do so, while we can not imagine the President of the Republic withdrawing the constitutional amendment that preceded the people approval, that is, according to the long method of constitutional amendment, because the President of the Republic is obligated to promulgate the constitutional amendment in compliance with the will of the sovereign people, as the constitutional text alludes to the difference between the two versions, as it speaks of “the President of the Republic promulgating the constitutional amendment approved by the people” when we are about the article 219 of the Constitution, while the wording changes when we are in the process of article 221 of the Constitution to become “The President of the Republic could promulgate a law that includes the constitutional amendment.”

¹Benabbou Fatiha, op cit, p 148



Second requirement: the extraordinary method to amend the constitution: Outside of Chapter Six of the Constitutional Amendment, and given the President of the Republic the right to interpret the Constitution, the President of the Republic has always been able to bypass the provisions of Chapter Six of the Constitution, that is, bypassing his partner in the constitutional amendment process the Parliament, and confining himself to one partner who is the sovereign, the original constituent power : the People .

The constitutional text itself encourages the president of the republic to this choice of the exceptional way in amending the constitution, by numerous provisions of the texts of successive Algerian constitutions, which established a special kind of direct relationship between the president of the republic elected and the people ¹ , among them is what is stated in the articles of the current constitution , as it is stated in article 84 that:

- "He (the President of the Republic) can address the nation directly."

And before it what is stated in article 8 of the Constitution that:

- "The constituent power belongs to the people
- The people exercises his sovereignty through the constitutional institutions he chooses
- The people also exercises this sovereignty by referendum through his elected representatives.

President of the Republic may resort to the will of the people directly "

¹The tendency of the Algerian constitutional founder to create this direct relationship between the people and the president of the republic is a consistent and continuous position known to all Algerian constitutions, as the 1976 constitution contained articles confirming this:

Article 5: "National sovereignty belongs to the people, which he exercises through a referendum or through their elected representatives."

Article 111, its fourteenth paragraph: "He (the President of the Republic) can take a referendum of the people on issues of national importance."

As stated in the 1989 constitution:

Article 7 of it: "The people shall exercise this sovereignty through a referendum

The President of the Republic has the right to resort to the will of the people

Article 67 of it: "He (the President of the Republic) may address the nation directly."

Article 74, paragraph 9 of it: "He may consult the people on every issue of national importance through a referendum."

And in the 1996 Constitution, Article 7 thereof, states: "The constituent power belongs to the people.

The people exercise this sovereignty through referendum and through their elected representatives.

Article 70: He (the President of the Republic) may address the nation directly. "

Article 77, its tenth paragraph: "He may consult the people on every issue of national importance through a referendum."



And what is stated in article 91, paragraph 8 of it, that:

"He (the President of the Republic) can consult the people on every issue of national importance through a referendum."

All these constitutional provisions affirm the existence of that special relationship and that unique link between the people and the president of the republic elected by him in a general and direct election, this special relationship is justified by that electoral legitimacy that no constitutional institution other than the President of the Republic enjoys, not even the Parliament whose electoral legitimacy raises many observations about it.

This exceptional method of amending the constitution was known for the first time by the French system during the term of President De Gaulle, who was then elected by Parliament, but the crisis that France experienced due to the Algerian war of liberation was what pushed President De Gaulle to initiate a constitutional amendment whose first goal is to bring about a revolution in the way of the election of the French President of the Republic, through his general and direct election, instead of his indirect election by Parliament.

However, President De Gaulle at the time fearing that Parliament would oppose the amendment that he initiated, preferred to go directly to the people in order to consult him on this issue as long as there is nothing in the constitution that prohibits it, indeed the French people approved the initiative of President De Gaulle, thus transforming the French system from a classic parliamentary system to a contemporary parliamentary system or what is known as the semi-presidential system.

This exceptional way to amend the constitution has also been known to the Algerian regime twice, the first in 1989 when President Chadli Bendjedid introduced the amendment of the constitution, and the second in 1996 when President Yamin Zeroual amended the constitution in the same way, that is, by addressing the people directly through the constitutional referendum.

The first time when President Chadli Bendjedid opted for the exceptional way to amend the 1976 constitution at the time, that is, outside the provisions of Chapter Six, in order to avoid confronting the deputies of the National People's Assembly and precisely the conservative wing of it, who would have rejected the reforms brought by President Chadli Bendjedid, which was highlighted by the abandonment on the partisan and abandonment of the socialist choice¹, bearing in mind that the president

¹Boussoumah Mohamed, L'opération constituante, OPU, Algeria, p 6.



at the time had violated the provisions of Article 195 of the 1976 Constitution, and precisely the third paragraph thereof, according to which :

« No draft amendment to the constitution can affect: ...

3- By Socialist Choice

As for President Yamin Zeroual, the matter is somewhat different due to the different circumstances, although both amendments came to confront a crisis that Algeria experienced at one stage, and by going back to the method of amending the constitution in 1996, Algeria knew before that the suspension of the electoral process in 1991 and after that the dissolution of the National People's Assembly and immediately after, President Chadli Bendjedid resigned from his post, thus Algeria entered a transitional phase on the security and political level, even after the election of President Yamin Zeroual on November 16, 1995 after he have been president of the Supreme Council of the State, and despite the opposition of many political parties at the time to the method of amending the constitution, which was carried out by presenting the constitutional amendment directly to the popular referendum.

The parties at the time wanted to wait until the end of a new legislative elections in order to amend the constitution in accordance with the provisions of the constitutional text and precisely Chapter Four of the 1989 Constitution related to constitutional amendment, but President Zeroual due to many factors, but most important due to the deterioration of security conditions , was able to impose his presidential position that he amended the 1989 constitution , directly through the popular referendum, and his argument in that is that the National Transitional Council at that time was an unelected transitional institution and that the « ground for national reconciliation » document was silent regarding the participation of the National Transitional Council in the constitutional amendment process on on the other hand, and mainly because nothing in the constitutional text prevents that 1.

¹Boussoumah Mohamed, op cit , p 6 .



Conclusion:

constitutional amendment mechanism, like many other constitutional mechanisms, includes many particularities added by the Algerian constitutional founder when they made the president of the republic the only institution qualified to initiate the constitutional amendment process, and they also granted him the discretionary power to opt the method of amendment whether it is long and formal that involves both Parliament and the people or short provided that a number of constitutional restrictions must be respected, and before that the constitutional founder, from independence until the present day, has created a special and unique relationship between the President of the Republic and the sovereign people, when the former was granted the right to address the latter directly and to referendums on the constitutional amendment completely excluding the parliament .

Therefore we conclude that:

Formal stages, conditions and methods of constitutional amendment cannot be considered the only criterion for judging the depth of the constitutional amendment , indeed, these formal rules are substantial but they must be accompanied by other objective criteria, on top of which is the content of this amendment and its impact on the various balances and relations between the constitutional authorities and between the authority and the citizen, in other words, is it really a fundamental amendment that can establish a new constitutional regime and a new republic , these formal and objective standards combined remain incomplete if equal opportunities are not observed between the President of the Republic and Parliament on the one hand, and on the other hand the existence of a fully independent ruling authority between them that protects the principle of separation of powers and protects the rights and freedoms of the citizen guaranteed by the Constitution, and accordingly we propose the following:

Granting the right to initiate a constitutional amendment to Parliament, especially to the deputies of the first chamber National People's Assembly, the same as the President of the Republic, as long as each enjoys the same degree and quality of electoral legitimacy.

Even if the second chamber, the Nation Assembly, raises many doubts about the legitimacy of its representation , we believe that the right to initiate constitutional amendment should be granted to members of the Nationa Assembly in areas that would promote local life and regional groups.

Describing the Constitutional Court currently the institution charged with protecting the provisions of the constitution, protecting the principle of separation of powers and



protecting the rights and freedoms of the citizen, we consider it necessary to strengthen the independence of this institution and the independence of its members from any influence, especially since the Constitutional Court is the institution who decides about the seriousness of the constitutional amendment and Consequently the need to involve the People in the process .

Finally, we stress the importance of spreading the constitutional culture with the citizen so that the citizen can decide with full awareness of the fate of the constitutional amendment

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