

The new constitution of 2020 between gains and deficiencies

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Abstract :

Peaceful protest is a healthy phenomenon for individuals to express their demands for change and for the establishment of the state of law and the separation of powers, for this reason the November 2020 constitution came as a natural response to those popular demands, according to which the constitutional founder tried to consolidate the features of the new republic that adopted a new constitutional system that simulates the French semi-presidential system, despite giants steps realized in the field of separation between powers and because the constitutional experience is still young, the analysis of the articles of the constitution related to the issue of reorganizing powers showed some deficiencies that still exist, especially with regard to the relationship of the president of the republic with the parliament and his relationship with the head of government.

Keywords: new republic, separation between powers , new constitution, executive dualism, semi-presidential system.

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1. INTRODUCTION

The peaceful movement that Algeria knew starting from February 2019, dazzled the world with the civilized demonstrators and the wisdom of the civil and military authorities in dealing with it and containing him by seeking to respond to his demands, as the movement was able to maintain its peaceful character until the elected President of the Republic Abdelmajid Tebboune assumed power on December 2020 .

The volition of the elected president of the republic appeared to establish a new republic that can respond to the aspirations of citizens, among them is the promotion and protection of rights by establishing a state of law in which the principle of separation of powers and division of power is enshrined and respected by authorities and guaranteed by the constitutional court, which Algeria did not know until the year of 2020, this body became the guardian of the constitution and the protector of rights and freedoms .

It was also evident through the restructuring of the chapters of the November 2020 constitution, the constitutional founder's tendency towards reorganizing the relationship between the executive and the legislative powers, in addition to reorganizing the executive power itself by establishing duality in the executive power, the title of "Legislative power" has also changed into the title of "Parliament", suggesting that the constitutional founder of the year 2020 embraced a new constitutional regime that simulates the French semi-presidential system.

So the political volition to reform and move towards the new republic is present and is reflected in the constitutional text for the year 2020, but this did not prevent the observation of some deficiencies that still specifically defects the issue of separation of powers, particularly the relationship of the President of the Republic with Parliament (first maintitle), and the issue of how to adopt the principle of executive duality or the matter of reorganizing the executive power (second maintitle).

2. Evaluating reforms in the part of separation of powers

Functional relations between the executive power and the parliament in Algeria have always been characterized by the dominance of the executive power over the parliament, therefore one of the most important goals of the new republic, which was established under the November 2020 constitution, was to protect rights and freedoms and to strengthen the separation of powers so that the power stops the other power, as expressed by Montesquieu. The 2020 constitution aims to strengthen the power of parliament in the face of the executive power and at the same time to divide the power within the executive power itself, especially in the case of political coexistence, but these reforms, despite their importance, are not without legal and practical deficiencies.

2.1. Regarding the presidential decrees system

The presidential decrees are considered as a phenomenon that explains the parliament's inability to cope with the tremendous need for new legal rules, so it had to delegate part of its legislative power on a specific subject and for a specific period in favor of the executive power¹. Beginning from the constitution of the year of 1976, the Algerian constitutional founder conferred to the President of the Republic and until this day the status of a legislator, so that he will proceed in the fields belonging to Parliament through presidential decrees in urgent matters and in the event of the vacancy of the National People's Assembly or between parliamentary sessions after taking the opinion of the State Council, however what distinguishes the presidential decrees system in the Algerian system is that they are a constitutional prerogative in the hand of the President of the Republic, that is, they do not need any parliamentary delegation, and at the same time they are acts of a legislative nature and not administrative nature even before Parliament approves them.

- Presidential decrees are still a presidential competence that does not require a parliamentary delegation, therefore among the reforms that were expected to be taken under the 2020 constitutional amendment is the reform of the presidential decrees system to be in line with the nature of the new constitutional regime, a system that is intended to approach the semi-presidential system and its French model, where presidential decrees are considered special and exceptional competence for the government resorted to in order to take legal rules of a legislative

nature, after obtaining a license from Parliament on a specific subject and within a specific period of time as it is stated in the article 38 of the French constitution of the year 1958 , however, the constitutional founder for the year 2020 took a firm position regarding the legal system of presidential decrees , keeping them a constitutional competence in the hand of the president of the republic, that do not need a parliamentary license in order to legislate in fields belonging to the parliament, while the French constitution enabled Parliament to delegate some of its legislative power to the executive power (the government) on a specific subject and for a specific period of time, according to a law known as Parliamentary habilitation Law that enables the government to legislate in the field of law returning to Parliament , noting that the new constitutional algerian amendment through the Article 142 of it , obliges the President of the Republic to notify the Constitutional Court compulsorily about the presidential decrees he has taken , and this would become a guarantee that would restore the balance between the President of the Republic and the Parliament .

- Presidential decrees are still of a legislative nature , as it is agreed upon in France that the presidential decrees taken by the government according to the Parliamentary habilitativion Law remain merely administrative decisions of an executive nature whose legitimacy may be contested before the French Council of State until the Parliament approves them , on sight of the following arguments :

- The Article 38 of the French Constitution , came under the title « Relations between the Government and Parliament » and not under the title of the « Parliament »
- That presidential decrees in France are only an exception and that a parliamentary license is required, meaning that it is not an original competence in the hands of the government
- The content of the habilitativion law, which determines the purpose and object of these presidential decrees , the time period required for that, and the date on which the presidential decrees are to be presented to Parliament for approval.
- The possibility of Parliament revoking its parliamentary licence by completely abolishing the Parliamentary habilitation law or partially amending it whenever desired.

While presidential decrees in Algeria assume the legislative nature immediately after they are issued by the President of the Republic and before the approval of Parliament, many arguments and indicators support that :

- The Article 142 of the Constitution, which came under the title "Parliament" and not under "The President of the Republic."
- The President of the Republic does not need a parliamentary license in order to take presidential decrees .
- The constitutional founder's use of the phrase "legislate" to denote that presidential decrees are a legislative mean in the hands of the president, which gives them a legislative nature rather than administrative nature, in contrast to what is in place in France.
- The constitutional founder's reliance on a parliamentary approval without the right of amendement procedure instead of parliamentary vote, according to the text of Article 142 of the 2020 Constitution .

Finally, we point out that Article 142 of the Constitution took care to determine the fate of presidential decrees that are not approved by Parliament and which become null, while it did not take care to determine the fate of the presidential decrees that the President of the Republic did not present to Parliament as soon as it is in session, can Parliament in this case notify the Constitutional Court in conformity with what is stated in Article 192 of the Constitution :

« The Constitutional Court may be referred by the bodies specified in Article 193 below, regarding disputes that occur between the constitutional authorities.

These bodies may refer the Constitutional Court about the interpretation of one or several constitutional rulings, and the Constitutional Court gives an opinion on them »

2.2 Regarding the second deliberation request system

The second deliberation system, in turn, remained the same except that Article 145 of the 2016 Constitution and its predecessors of 1963, 1976, 1989, and 1996 used the phrase “ the second deliberation request ” while Article 149 of the 2020 Constitution used the phrase “second reading request”.

Is this shift in terminology an indication of the transformation of the legal system of the second deliberation request ?

It is clear that the constitutional founder of the year 2020 abandoned the term used by the French constitutional founder of 1958, which is the request for the second deliberation

- The comparison between the request for the second reading in Algeria and the request for the second deliberation in France shows that If the transient reading of Articles 149 of the 2020 Constitution and Article 10 of the French Constitution shows similarities between them, yet the careful examination the two articles shows many fundamental differences between them, we summarize them as follows:

- In terms of location: Article 10 of the French constitution is mentioned under the title "Relations between the government and parliament" and precisely under the title "The President of the Republic", while Article 149 of the 2020 Algerian Constitution is mentioned under the title "Parliament", this difference in the location of the two articles is indicative of the nature of each of the two procedures.

In terms of the condition of the described majority: Article 10 of the French constitution does not require any described majority in order to re-approve the legal text subject to the request for the second deliberation, it means that the same simple majority that first voted on the text of the law can vote on it again, and in this case the competence of the French president turns into a restricted one, meaning that he must promulgate the law approved by Parliament again ², the French parliament can also reject the presidential request for second deliberation, while Article 149 of the Algerian constitution stipulates that a majority estimated at two-thirds of the representatives of the National People's Assembly and members of the National Assembly, must re-approve the text in order to override the presidential objection, this fundamental difference is what represents the difference between the two measures in terms of the nature and the purpose.

In terms of nature: it is clear that the request for the second deliberation in the French sense is an act of an executive nature and cannot in any way be considered a legislative act through which the President of the Republic participates in the legislative process, because the President's

intervention through the request for the second deliberation is an act outside the process of establishing the law ³, and the evidence for this is the location of Article 10 of the French Constitution and the requirement for any majority described in order to re-approve the law, it can be concluded that the request for a second reading in the Algerian sense is a procedure of a purely legislative, as well as an integral part of the legislature process through which the President of the Republic participates in the law-making process through the so-called the right of objection.

In terms of purpose: the second deliberation in France has a technical and a symbolic political purpose, the first is to request the correction of a material error that occurred in Parliament, and on this basis it is considered as a remedy for distorting the text of the law ⁴, as for the symbolic political role, its purpose is to request a second reading, that is, an additional reading and additional examination of the text that the President of the Republic believes that Parliament voted on in a hasty manner ⁵, so Parliament may change its position, in the Algerian system, it has a different purpose from the French system because it turns into a right of objection in the hand of the elected president

- While the comparison between the request for the second deliberation in Algeria and the American presidential veto reveals that the importance of the presidential veto mentioned in Article 1 of the American Constitution appears as a presidential objection, and if we consider the history of the National Assembly, we find that Congress, since its inception, was able to pass the presidential veto by only 6%, and the similarity between the request for the second deliberation in Algeria and the presidential veto is evident but is only a technical similarity due to the difference in the context between them and the different nature of each of the two systems, and because the similarity appears in terms of the location of each of the two articles, as each of them is mentioned under the title Parliament and Congress, and the similarity in terms of the requirement of a described majority estimated by "two-thirds" in order to bypass this presidential objection, as well as the similarity in terms of the purpose of each of them, which is to object to the process of drawing up a law by the legislative power (Parliament, Congress) on the grounds that the president is elected by sovereign people, therefore, it was expected that the last amendment would affect the system of requesting the second reading (previously the request for the second deliberation) in order to conform to the new nature of the Algerian constitutional system that simulates the French semi-presidential system.

2.3 Regarding the system of crisis states

It is necessary in the beginning to address the gains made by the constitutional founder for the year 2020 in this regard, as the latter has assigned an independent title to crisis states under Chapter One entitled "The President of the Republic" in Chapter Three Entitled "Organization of Powers and Separation of them", this new classification suggests in principle that the declaration of crisis states is a presidential competence par excellence, but that it is not carried out completely isolated from Parliament, as is the case state of war, which is organized completely separately from it.

A- The exceptional state

If previous constitutions, including the 2016 constitution, made the exceptional state , which is the most dangerous state of exceptional legitimacy after the state of war, organized completely independently of the volition of Parliament, as it was declared by the President of the Republic in a completely independent manner and for the period he deems appropriate according to a number of formal and material conditions stipulated in Article 98 of the 2016 Constitution then , which is the same as Article 93 of the 1996 Constitution , however, Article 98 of the current Constitution of the year 2020 has made a remarkable progress on the issue of "the exceptional state " when it included an addition in the first paragraph of it that this state is declared by the President of the Republic "... for a maximum period of sixty days " , It also stipulated the approval of the majority of the members of the two chambers of Parliament meeting together to extend the period of exceptional state, it even went beyond through its last paragraph when it obligated the President of the Republic, after the expiration of the period of the exceptional state, to present the presidential decrees he issued during that time to the Constitutional Court to express an opinion on them because it is known that one of the results of the declaration of the exceptional state is that the President of the Republic becomes the sole legislator as stated in the article 142 of the current constitution , and this is the new approach that the 2020 constitution brought.

However, the conditions for the emergence of the exceptional situation and its effects are still unclear, taking in account that in the absence of implementation texts showing the measures that can be taken in every state of crisis, we do not see exactly what is the difference between the exceptional state and the state of emergency and Siege, if the matter concerning reducing public freedoms and basic rights, the state of emergency and siege allow reaching this goal, and therefore there does not seem to be a need to a third degree of seriousness, and it is certain that the ambiguity and overlap between the objective conditions for the establishment of each of the states crisis , is intended to release the hand of the President The Republic, for he alone has the discretionary power to determine the extent of its seriousness and thus to adapt it .

B- The state of emergency or siege:

Article 97 of the 2020 constitution states that : “The President of the Republic shall decide, if urgent necessity, a state of emergency or siege for a period of up to thirty days, after the meeting of the Supreme Security Council and consultation of”

Then it added: "It is not possible to extend the state of emergency or the siege, except after the approval of Parliament in its two chambers meeting together. Institutional law determines the regulation of the state of emergency and the state of siege "

It is immediately noticed that Article 97 of the 2020 constitution is concerned with determining the duration of both the state of emergency and the state of siege, which was estimated at thirty days only , it can be extended after approval by Parliament in its two chambers meeting together, because the non determinina the duration of each of the state of emergency and the state of siege

before the year 2020, made of these two cases completely separate from Parliament, and the evidence for that is the state of emergency that the country has lived for twenty full years , but the determination of the duration of these two cases and the determination of thirty days shall make the parliament the protector and guarantor of these rights in the face of the arbitrariness of the executive authority.

We recall that the new organization for both states of emergency and siege is not without many shortcomings, which we summarize in the following :

- Article 97 of the current constitution, like its predecessors, still treats both states of emergency and siege in identical constitutional treatment, as it is not possible to differentiate between the objective conditions for the establishment of each of them, and it also matches the formal conditions for each of them to hold meetings and consultations, despite the theoretical difference between the objective conditions for the establishment of each of them, and consequently the difference in the results of each of them, because in light of the state of siege, the military authority replaces the civil authority in assuming powers, with the expansion of the powers of the military courts in a way that allows it to look at the violations committed by civilians, and what increased confusion between them is the absence of the institutional law regulating each of them, which was mentioned in Article 97 of the current constitution, which has not seen the light until this day.

That Article 97 of the Constitution, and the same as Article 98 of the Constitution, should have made Parliament convene in its two chambers meeting together in order to approve the extension of the three crisis states, convened by the force of law and not convened by the President of the Republic under a presidential decree, because the meeting is in this way requires the personal summons from the President of the Republic (Article 99 of Institutional Law N° 16/18 of 08/25/2016 defines the organization and functioning of the National People's Assembly and the National Assembly, as well as the functional relations between them and the government official journal of the republic No. 50 dated 28/08/2016 .

- It is noticed also that the Constitutional Court is completely removed from the constitutional organization of exceptional state except with regard to its consultation by the President of the Republic before its declaration, and when it expresses its opinion on the decisions taken by the President of the Republic during this period , while the French constitutional founder, through Article 16 of it, went much further with regard to the involvement of the Constitutional Council in the regulation of special states when it stated in its last paragraph that :

"After thirty days of exercise of exceptional powers, the Constitutional Council may be referred to by the president of the national assembly, the president of the senate, sixty deputies or sixty senators, for the purpose of examining whether the conditions announced in the first paragraph remain . It decides as quickly as possible by means of a public notice. It carries out this examination as of right and decides under the same conditions at the end of sixty days of exercise of exceptional powers and at any time beyond this duration "

2.4 Regarding the international treaty system

The Algerian constitution has settled the issue of leading the nation's foreign policy by making it a presidential power par excellence as Article 91 of the current constitution states that:

3- He determines and directs the foreign policy of the nation

12- He conclude and ratify international treaties.

However, the question of how is received this type of foreign rules and its value has always been a marriage between the executive power and the legislative power, which was confirmed by the Vienna Convention of May 23, 1969 on the law of treaties, and confirmed by successive Algerian constitutions when they took a constant and continuous position also consecrated by Article 115 of the new 2020 constitution, that is, the constitutional founder stipulated the prior and explicit parliamentary approval of the treaties mentioned in Article 153 of the Constitution, and even went further when it was declared through Article 154 (which is the same as Article 150 of the 2016 Constitution, and before it Article 132 of the 1996 Constitution) that: « Treaties ratified by the President of the Republic, according to Conditions stipulated in the constitution are superior to the law »

It is clear that the competence of Parliament in the field of approving international treaties concluded by the President of the Republic is a constitutionally limited competence in the text of Article 153 of the Constitution, and it is the constant orientation of the Algerian constitutional founder, but it is surprising that the constitutional founder's fixed position on the issue of legal value with regard to the treaties concluded by the President of the Republic that transcend the law, and how many researchers have understood this article by linking it each time to Article 153 of the Constitution, concluding from it that only the treaties concluded by the President of the Republic and approved by Parliament are superior to the law while the text of Article 154 of the Constitution was clear when it stated that all the treaties concluded by the President of the Republic in accordance with the provisions of the constitution and not only those approved by Parliament are superior to the law, an approach that was defended by a few number of researchers and professors ⁶.

It is also noticed that in addition to the constitutional limits imposed on the competence of Parliament in the area of approval of international treaties concluded by the President of the Republic and mentioned in Article 153 of the Constitution, we find other practical limits imposed by executive practice, and it was expected under the new constitution of the year 2020, which intends to establish a new constitutional system under which another type of separation of powers is devoted, especially with regard to the relationship of the President of the Republic with Parliament, so it was expected to reform these practices by amending the provisions of the previous constitution in the field of international treaties, however, previous practices remained, which we can summarize as follows:

- That the issue of adapting treaties that fall under Article 153 of the Constitution is an executive competence, and that even in the event that Parliament examines an international treaty that falls under Article 153 of the Constitution and should be presented to Parliament for its express and prior approval, it cannot in this case take any measure, such as submitting a proposal of a law that

includes approval of the treaty, is it possible in this case to appeal to the Constitutional Court and to activate the provisions of Article 192 of the Constitution?

because the executive practice ordinarily enshrined that parliament must wait for the bill that includes approval of the international treaty to be presented to it, which is initiated by the Prime Minister (or the head of government, depending on the case) although the constitution was and remains silent on this issue, but the the French Constitutional Council in the past, denied to Parliament in the decision N° 70/39 dated 19/06/1970 the right to initiate a bill that includes approval of an international treaty that falls under the provisions of Article 53 of the French Constitution.

- That the constitutional text did not specify any constitutional deadline for the presentation of the international treaty bill for approval by Parliament, nor did specify any penalty for the government's delay or failure to present the international treaty, which encouraged the phenomenon of delay in its presentation so that we find a long time difference between the date of presidential ratification of it and the date of parliamentary approval on it.

- Article 154 of the Constitution made the President of the Republic a legislator by means of international treaties, or what is known as : conventionnel legislator, meaning that the President of the Republic is entitled, according to the text of the constitution, to amending or canceling a previous legislative provision issued by Parliament, on the grounds that the international treaties concluded by the President of the Republic are superior to the law, while the French Constitutional Council denied this to the government (Article 53), and so did the Federal Court of the United States of America, which confirmed that in any case, no provision of an international treaty would violate the provisions of a previous legislative text without the approval of the Congress, therefore, it was expected that the provisions of Article 150 of the 2016 Constitution would be amended under Article 154 of the 2020 Constitution to state clearly and precisely that “international treaties ratified by the President of the Republic and approved by Parliament, prior and explicit approval, transcend the law.”, meaning that not all treaties ratified by the President of the Republic according to the provisions of the Constitution are superior to the law, but only those approved by Parliament under provisions of Article 153 of the Constitution.

- That the current constitution, like its predecessors, took a firm position on the issue of the fact that the law containing parliamentary approval of international treaties is a law according to the formal standard and not the material standard, as it is limited to only two articles: the first states that Parliament has approved the content of the treaty concluded by the President of the Republic and the second, according to which the law will be published in the official journal of the republic, so it does not include the parliamentary initiative, neither the original nor the derivative, because it comes in the form of a bill and because no amendment may be made to the original text of the treaty so it is approved in general and without any amendment, although the constitutional text is silent in this regard, but parliamentary practice consecrated that, so it was expected that Article 153 of the 2020 Constitution would come clear in this regard so that members of Parliament can amend the provisions of the treaty either by deleting, adding or

changing the same like their colleagues in the French Parliament, who managed after a long struggle with the government to amend the provisions of Article 128 of the internal law of the National Assembly on May 14, 2008 ⁷ .

- Likewise, regarding the issue of mandatory publication of international treaties in the Official journal of the republic, the new constitution, like its predecessors, did not pay attention to this issue, as it was expected that the new constitution would fix this defect, especially since this same constitution stipulated that the judge must apply international treaties according to what was stipulated in the article 171 of it , so we wonder how a judge can apply an international treaty if its full provisions are not published in the Official journal , not just the law containing its approval, which as we have previously referred contains only two articles, while the French constitution, through Article 55 of it, stipulates the obligation to publish international treaties in the official journal .

- That the French judge, as a source of legitimacy and thanks to the jurisprudence of the French Council of State, is exercising control over how the international treaty is received in the internal legal system and the extent to which the procedures and conditions stipulated in Articles 53 and 55 of the French Constitution are respected , however, this control can not be done. the content of the treaty will develop and affect, otherwise the legal supervision of the judge will turn into a constitutional control which is the prerogative of the French Constitutional Council.

The new constitution took care to oblige the judge to apply the international treaties ratified through Article 173 thereof, but it did not indicate what are the limits of this jurisdiction, or to what extent the judge's authority could reach in the field of international treaties it was concluded by the president and approved by Parliament, and from there if it was published in the Official journal of the republic .

2.5 Regarding the system of the second chamber "The nation Assembly "

After the constitutional founder of 1996 adopted the second chamber in the Algerian constitutional system for the first time, relying on the justification for ensuring continuity in the parliamentary institution on the ground that the second chamber cannot be dissolved by the president of the republic unlike the first chamber, and in order to ensure continuity in the presidential institution given that the president of the second chamber the Nationa Assembly is the second person in the state, however , this chamber has for twenty years, been bound by the presidential objection due to the appointed presidential third by the President of the Republic among the members of the Nationa Assembly , and because of the described majority which was necessary before the 2016 constitutional amendment for approval in the second chamber, which transformed the Nationa Assembly due to this specificity in its legal system into a monitoring body on the first chamber the People's National Assembly, that's why the constitutional amendment of 2016 year came with a serie of reforms that affected the legal system of the Nationa Assembly and even removed the capacity of objection from it by abandoning the majority which was necessary for approval in the second chamber and replaced it with a simple majority , the 2016 constitutional amendment also tried to strengthen the legislative powers of the second chamber after the constitutional founder of 1996 adopted an unequal parliamentary duality and given that the only role assigned to the second chamber at the time was the role of

guardianship on the first chamber through the power to object to legal texts transferred by it, however and starting from the year of 2016 the members of the National Assembly will have the right to initiative, the right of first reading, and the right to amend the legal texts, just like their colleagues in the National People's Assembly, but in specific areas stated in Article 136 of the 2016 Constitution at the time, which are areas of interest to regional groups, represented in "local organization, territorial division and territory development" so that the second chamber has become a real representative of local life at the central level.

However, the position of the constitutional founder for the year 2016 remained constant with regard to the specific composition that plagues the second chamber in Algeria, which is the appointment of a third of its members by the President of the Republic from among the national competencies in various fields, so it was expected that the new constitution of 2020 will either give up completely for the second chamber or to stick to it but on the condition that it will bring new horizons for it by reforming its legal system in line with the new role assigned to it, which is to promote local life by representing it at the central level, but the 2020 constitution did not bring anything new mentioned in this part.

- A fixed position regarding the appointed presidential third at the Nation's Assembly because a regime's need for the second chamber in the parliament may be due to historical reasons rooted in its history, as is the case for the House of Lords in the English system, or in response to a special system known by these systems, which is the federal system, where the second chamber allows equal representation of the states that form the federation, as is the case in the Senate in The United States of America, or the second chamber may be a response to a natural need for some regimes for stability and parliamentary rationality provided by the second chamber through experience, wisdom and objectivity, as is the case with the Senate in the French system that came on the ruins of the Fourth Republic, but contemporary systems, especially the European ones, have become skeptical about the legitimacy of representation in the second chamber, that is, the restricted and indirect election of its members compared to the general and direct election of deputies of the first chamber, and the example is the severe criticism directed at the House of Lords in the English Parliament despite its roots in the history of the Kingdom, as many English people consider it an authoritarian style as long as membership in it is hereditary and as long as the royal appointment is the main feature in it⁸, and some considered the second chamber in Algeria a constitutional defect due to the presidential third appointed, however the last constitutional amendment of 2020 insisted on retaining the second chamber and the presidential third appointed on its level, so the second chamber in Algeria today is facing the challenge of proving the importance of its existence and the need for it as the voice of reason in the face of the representative demagoguery and as a representative of local life, especially since the presidential objection by procuracy has finally been removed from it.

- Insufficient reforms that do not rise to the level of the new role of the Nation Assembly are also observed although the constitutional amendment of 2016 came with a set of reforms that affected the legal system of the second chamber, especially with regard to the legislative aspect, so that the members of the Nation Assembly acquired the right to initiative, the right to first

reading, and the right to amend in the areas mentioned by Article 137 of the 2016 Constitution related to: local organization , territorial division and territory development (actually Article 144 of the 2020 Constitution) , and these reforms were accompanied by the most important reform, namely the abandonment of the described strict majority $\frac{3}{4}$, which was necessary for approval at the level of the second chamber, thus eliminating the capacity of the presidential objection and the character of a chamber against a chamber, but these reforms plunged the second chamber into another dilemma which is a chamber identical to the other chamber , consequently the question arose about its importance and the need for two consecutive readings of the same legal text , therefore, the new constitution for the year 2020 was expected to give a new legal system befitting the new role intended for the second chamber, which is to improve and rationalize the level of legislative production, however, the constitutional founder of the year 2020 preserved the same legal system for the second chamber the Nation Assembly that the 2016 constitution brought before and as an example, in the area of approving new powers for the Nation Assembly, the Algerian constitutional founder should have followed the example of his French founder, who gave the French Senate the right to initiate laws in all areas reserved to Parliament just like the first chamber The National Assembly , he also gave the senate the right to first reading in the event that it is the party initiating the proposal of the law, or if it has been granted the right of first reading by the government, and it is also was entitled to make any amendments to the texts referred to it by the National Assembly after voting on it .

- 2020 constitutional founder has also opted for the joint committee mechanism instead of the round-trip system , considering that the Algerian constitutional founder of the year 1996 adopted from the beginning the joint committee system instead of the round trip system, or what is known as " Le système de la navette " , as the mechanism adopted in the system for resolving disputes between the two chambers of Parliament over the provisions of a legal text instead of the round trip system at least in its limited or proportional form, as the French founder did through Article 45 of the Constitution, which does not resort to the joint committee except as an exception after the two chambers of Parliament fail to reach an agreement on an identical text after two consecutive readings, or if the government decides urgency .

In addition to was previously mentioned , the system for resolving disputes by the joint committee in the current form, raises many observations that the constitutional amendment of the year 2020 was expected to take into consideration, summarized as follows:

- Setting a deadline of fifteen days only in the hands of the committee in order to reach an agreement on the provisions in dispute between the two chambers , would not disrupt the legislative work of Parliament , instead a deadline of thirty days is more practical and suitable in case of disagreement between the two chambers .
- The possibility of giving the last word by the prime minister or the head of the government , depending on the situation, to the first chamber, is merely a possibility and is evaluated according to the parliamentary majority and its political position, while it would have been more appropriate to give the last word to the second chamber in the areas mentioned in Article 144 of the 2020 constitution related to local life .

- Finally, the text subject to disagreement between the two chambers of Parliament is withdrawn if the government does not refer it to the National People's Assembly because giving the last word relates to a possibility only, meaning that the entire text may be simply buried by the government .

All these observations were expected to be taken in account by the constitutional amendment of 2020 so the joint committee would not turn into a tool to bury a text that does not satisfy the government politically .

3. Regarding the reorganization of the executive power

What distinguishes the semi-presidential system, or what is known as the contemporary parliamentary system, is that it differs from the rest of the old classical systems represented by both English parliamentary system and American presidential system , by its dynamism because this hybrid system oscillates between the two well-known classical systems the English and the American, depending on the political situation defined by the relationship within the executive power between president of the republic elected by general and direct elections and the prime minister or the head of the government , depending on the situation , if the parliamentary majority agrees with the presidential majority, the semi-presidential system approaches the presidential system because the powers of the president of the republic are expanding at the expense of the powers of the prime minister, but in the case of the political coexistence when a different parliamentary majority, or as some express it, a hostile majority to the presidential majority arrives to the parliament , in this case the semi-presidential system approaches the traditional classical parliamentary system, where the president's powers diminish in favor of the prime minister (or head of the government as called in some systems) appointed from the parliamentary majority, who in this case turns into the prime minister who leads public policy and implements the political program for the parliamentary majority he represents while the role of the President of the Republic becomes a symbol of continuity in the institutions of the republic and an arbitrary between other political institutions and precisely the parliament and the government, as the French governments have oscillated between this or that situation over the years during which it has known many political crises between the President of the Republic and the Prime Minister in the case of political coexistence due to the ambiguity that characterizes the French semi-presidential system in terms of the balance of power and responsibility in it, especially that the constitutional system is characterized by many constitutional imbalances , the most important of which is the non liability politically of the president of the republic and the dual political responsibility of the prime minister before both the president of the republic and the parliament .

The new organization of powers in light of the new Algerian constitution for the year 2020 suggests a new reorganization of the powers, especially the executive power, as Chapter three of the constitution has come to be titled "Organization and Separation of Powers," after Chapter two under previous constitutions was titled "Organization of Powers," and it included three headings: the first chapter entitled The Executive power , the Second Chapter entitled, The Legislative power and the Third Chapter titled The Judicial power, while the Third Chapter is currently

divided under the title “The Organization of Powers and the Separation between them” into four chapters: Chapter One entitled The President of the Republic, Chapter two entitled The Government, Chapter Three entitled Parliament, and finally Chapter Four entitled Judiciary, this new division of the year 2020 suggests the adoption of a new system that differs from the previous one, which has been described for years by many professors and researchers of the presidentialist system, the new system simulates the contemporary parliamentary system, or semi-presidential system, exactly in its French model of the fifth French republic.

A- The case of political consensus between the parliamentary majority and the presidential majority:

If the issue is clear when the parliamentary majority coincides with the presidential majority, or as expressed in Article 103 of the Constitution, in the first paragraph of it:

"The government is led by a Prime Minister in the event that the legislative elections result in a presidential majority."

But it would be more correct for Article 103 of the Constitution to express in its first paragraph explicitly that in the event that the presidential and parliamentary majority agree, the government leadership reverts to the president of the republic and not to the prime minister as long as the latter is organically and functionally subordinate to him and all members of the government and as long as the prime minister is active in a frame the government's plan of action which is a projection of the presidential program of the President of the Republic, and in fact, the trend towards protecting the presidential fonction is not a new matter for the Algerian constitutional founder, who, beginning from 1988, tended towards protecting the presidential fonction by establishing the position of Prime Minister politically responsible before Parliament in exchange for the non responsibility politically of the president of the republic, which is the current trend to the present day, that is, when the parliamentary majority agrees with the presidential majority and since the prime minister is from the same presidential political party, the latter turns into a mere assistant to the president and coordinator of government work and the government's plan of action aimed at implementing the presidential political program, which won him the victory in the presidential elections.

B- The case of political coexistence between the presidential majority and the parliamentary majority:

The ambiguity in the architecture of the French semi-presidential system increases more in the case of political coexistence, that is, the arrival to the parliament of a different or hostile parliamentary majority to the presidential majority, as stated in the same Article 103 of the 2020 Constitution, the second paragraph of it :

« The government is led by a head of government, in case the legislative elections result in a parliamentary majority. »

And as stated in Article 110 of the Constitution, the first paragraph of it:

« If the legislative elections result in a parliamentary majority other than the presidential majority, the President of the Republic shall appoint the Head of Government from the

parliamentary majority and assign him to form a government and prepare the program of the parliamentary majority »

Clearly then, the new constitutional trend towards imposing respect by the President of the Republic for the parliamentary majority that is different from him by appointing the Head of Government from it , which is a remarkable progress in the field of dividing and separating powers between them and that even the French constitution did not explicitly enshrine in its articles but rather established a practice for years until it became a constitutional norm , so under the new algerian constitution of November 2020, the president of the republic must respect the Head of Government's choices for members and for his government program, which is the same as the political program of the parliamentary majority that guaranteed them victory in the legislative elections, but the problem arises more about the issue of the distribution of powers between the President of the Republic and the Head of Government especially the authority of appointment to positions , the regulatory authority and the authority to run the public administration , as long as the constitutional articles related to the powers of the President of the Republic mentioned in Chapter One under the title “The President of the Republic” remain constant and do not change in both cases meaning that they are not changing according to the political situation : will the presidency the republic share his powers with the head of government appointed from among the parliamentary majority opposing him? Do we imagine the requirement of the signature of the Head of Government on the actions of the President of the Republic next to his ?

Such a situation of ambiguity in the distribution of powers between the two heads of the executive power would create many political crises between the elected president of the republic and the Head of Government appointed from among the elected parliamentary majority in turn, each invoking his electoral legitimacy and what the constitution explicitly authorized him to do , this situation reminds us of the many crises that occurred previously between the president of the republic, Chadli Bendjedid, and the Head of Government at the time Qasdi Marbah under the 1989 constitution, an between president Abdelaziz Bouteflika, and the Head of Government Ahmed Benbitour at the time under the 1996 constitution .

Is it possible in this case to envisage the application of the President of the Republic and the Head of Government of both Articles 185 and 192 relating to the Constitutional Court , in order to clarify how the powers are divided between these two constitutional institutions and the boundaries between them, especially since the new constitution of 2020 assigned the Constitutional Court a new pivotal role in the field of separation of the powers with its jurisprudence in interpreting the provisions of the constitution that may be marred by some ambiguity .

3. CONCLUSION

In the end of this paper , we have tried as much as possible to reveal some aspects of this issue, which is the gains brought by the November 2020 constitution and the deficiencies that still exist in the issue of separation of powers , who tried to get rid of the concentration of power in the hands of one person by reorganizing the relationship between the elected president of the

republic and the elected parliament, and reorganizing the executive power by establishing the executive dualism or what is known as the contemporary dual parliamentary system, where the constitutional text attempted to consecrate the withdrawal of the presidential majority for the parliamentary majority by assigning a number of powers of the elected president of the republic to the head of government to limit his role in mainly arbitration and to ensuring continuity in the state institutions, even if it is not explicitly stipulated in the constitutional text of 2020.

Despite the deficiencies that still exist in this new organization of the powers and the relation between them maybe because the experience is still young , we note that this initiative for constitutional amendment is considered a giant step in establishing the new republic , and perhaps the coming days will reveal an attempt to remedy these deficiencies and reform them with future partial constitutional amendments, and perhaps these observations in this academic research will contribute even with a small part to the upcoming reforms within the framework of completing the building of the new Algerian republic .

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⁴ Avril Pierre et Jean Eric Gicquel, op-cit , p226 .

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⁶ Tabet, J. op-cit , p 55 -56 .

⁷ Avril Pierre et Jean Eric Gicquel , op-cit , 267-268 .

⁸ Ardant, P. constitutionnel. France: Delta LGDJ , p 231 .