



The Legal Framework for Parliamentary Inquiry in Algeria - A Study on the Constitutional Amendment of 2020

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Abstract:

THE PARLIAMENTARY INTERROGATION OF THE GOVERNMENT IS CONSIDERED MORE SEVERE AND POWERFUL THAN PARLIAMENTARY QUESTIONS BECAUSE IT INCLUDES A QUESTION ACCOMPANIED BY AN ACCUSATION AND CRITICISM OF THE GOVERNMENT, AS WELL AS ACCOUNTABILITY FOR ITS ACTIONS REGARDING A CURRENT ISSUE. THEREFORE, IN THIS SECTION, WE WILL ADDRESS ITS CONTENT, THE PROCEDURES FOR SUBMITTING IT, THE PROCEDURES FOR RESPONDING TO IT, AND THE IMPLICATIONS THAT ARISE FROM IT.

Keywords: Parliamentary interrogation, minister, discussion

Introduction:

The relationship between the legislative and executive branches in contemporary systems has evolved. Initially, this relationship was based on the premise that the parliament legislates while the government implements. However, it has now shifted to a model where the government anticipates and directs, and the parliament oversees. This new understanding of the relationship between the two branches has led to an expansion of the parliamentary oversight powers and the establishment of procedures and guarantees that ensure their continuity and effectiveness.

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The role of the parliament is no longer limited to enacting laws; it has taken on a fundamental responsibility to monitor the government's actions and hold it accountable for all its activities. Through this oversight, the parliament can gain insight into the functioning of the governmental apparatus.

Parliamentary oversight of government actions has become a fundamental topic that constitutions emphasize. The practice of parliamentary oversight has demonstrated its advantages, making it a necessary and urgent means of monitoring the actions and conduct of public administration. The legislative authority represents the voters and expresses their needs and desires, which necessitates the monitoring of all administrative actions within the state to assess their success in achieving their objectives efficiently and effectively.

This organized means of oversight is essential to ensure that the administration does not deviate from its duties and operates in accordance with the state's general political objectives. All of this has established parliamentary oversight as a fundamental principle enshrined in constitutions, with procedures and legal conditions organized in a way that guarantees the achievement of its goal, which is the public good.

The means of oversight in Algeria vary according to their impact and the extent to which each council enjoys them. There are oversight mechanisms exclusive to the National People's Assembly that entail the political accountability of the government, as well as oversight mechanisms shared by both the National People's Assembly and the Council of the Nation that do not result in government accountability. Thus, it is considered a regulatory means for gathering information only.

Through this research paper, we will address parliamentary questioning by clarifying its concept, significance, and the legal conditions necessary for its validity to ensure the achievement of its objectives, as well as outlining the legal procedures established by the legislator for its submission.

THE FIRST TOPIC : Subject of Interrogation



To understand the subject of interrogation, we must define its nature and conditions.

FIRST REQUIREMENT: Nature of Interrogation

Interrogation is a right of a member of parliament in relation to the government; it is not merely a request for clarification or inquiry about a specific issue, but rather it is a means of holding the ministry or one of the ministers accountable for their public actions. It is a request for clarification that includes accusations or criticism of any public action taken by the government.¹

Interrogation involves holding the government accountable, in addition to initiating political responsibility through a vote of no confidence, as the element of interrogation is a fundamental condition for such a vote.²

Thus, the goal of interrogation is to hold a minister accountable for criticized actions within the scope of their ministry, which should not pertain to personal actions outside the realm of ministerial work. It is essential that the actions in question fall within the oversight jurisdiction of parliament and are part of the ministerial duties of that government.³

Interrogation can be defined as an inquiry that involves an accusation made by a member of parliament to the Prime Minister, one of his deputies, or ministers, or their deputies, with the intent of holding them accountable and directing criticism towards them. Some have summarized it by stating that it is an accusation directed at the minister in question.⁴

It has also been defined as "the action formally assigned to a member of parliament to clarify the government's public policy or to elucidate a specific point."

Firstly: Conditions for Questioning.

1-Formal Conditions:

The request for questioning must be in writing and signed by its submitters, indicating their responsibility for the facts included in the questioning. The



questioning should generally specify its subject, as it is assumed that the questioning addresses a specific matter to reach a particular conclusion. The submitter of the questioning must explain the reasons upon which it is based and also gather relevant documents that support the questioning⁵.

It is also required that the subject of the questioning relates to one of the current issues. However, what raises controversy is the criterion for considering a subject as a current issue. The term "current issues" encompasses all matters and developments on the national and international scene.

Additionally, the text of the questioning must be signed by thirty (30) deputies of the National People's Assembly or thirty (30) members of the Council of the Nation.⁶

2- Objective Conditions:

It is required that the interrogation does not include matters that violate the constitution or regulations, which is a natural condition. The parliament exercises its legislative or oversight powers in accordance with constitutional texts, and it must not contravene them. In fact, the interrogation is essentially an accusation against the government or one of its members of violating the constitution or the law, which ultimately means that it serves as a monitoring tool aimed at upholding the provisions of the law.

The president of the council has the right to reject any interrogation that includes violations of the constitution and regulations, as he is responsible for ensuring that the council's actions comply with their provisions. If he sees such a violation, he must inform the submitter in writing and clarify the nature of the violation, allowing the member to rectify it in this case.

However, some believe that this condition is exaggerated, as an interrogation may inherently involve issues that include violations of the constitution or law. Applying this condition as stated could lead to the rejection of any interrogation.

It is also required that the interrogation be free of inappropriate language, so that it does not transform from a tool for oversight into a method of attack and personal criticism. The interrogation should be limited to stating its subject matter



and should not extend to insults or slander. If it does include such elements, the council has the right to exclude it. The submitter of the interrogation must adhere to the etiquette of interrogation when explaining and discussing it, ensuring that the subject matter relates to issues within the jurisdiction of the addressed party. Thus, parliamentary actions, judicial rulings, or matters related to the professional affairs of judges and public prosecutors are excluded from this scope.

The subject must fall within the jurisdiction of the executive authority, as holding it accountable, whether in its entirety or against one of its members for a specific action, is fundamentally linked to its jurisdiction. Therefore, it is not permissible to interrogate the government or one of its ministers regarding a jurisdiction exercised solely by the head of state, in which the government does not participate. Additionally, the person initiating the interrogation must name the targeted minister or direct it to the prime minister if it pertains to the government's general policy.

Furthermore, the new government cannot be questioned about the actions of the previous government, nor can an interrogation be presented against a minister who retained their ministerial position in the new government for actions attributed to them in the previous ministry. This is because, although the new government may include some members of the previous government, each government has its own work plan. Additionally, the actions of the previous government cannot be subject to political oversight by Parliament after its resignation or dismissal, as it remains for the competent authorities to pursue these actions.

SECOND REQUIREMENT: Procedural System of the Inquiry and Its Effects

The inquiry undergoes several procedures at the level of the National People's Assembly and at the level of the Senate, resulting in various effects.

Firstly: Procedural System for Interrogation.

After the interrogation is submitted according to its conditions, to the Office of the National People's Assembly or the Council of the Nation as applicable, it is distributed to the members of the relevant council, with the obligation for the



president of the relevant council to inform the Prime Minister within forty-eight (48) hours following the acceptance of the interrogation.⁷

Parliamentary traditions dictate that a session to determine an appropriate time for the discussion of the interrogation should precede the discussion itself. This is done in consultation between the office of the relevant chamber and the government. Often, those who submit the interrogation request a swift discussion, while the minister being interrogated may request a postponement. The roles may reverse, with the interrogated minister asking for urgency, while the submitter insists that the discussion occurs at the previously determined time.

The interrogation session is held within a maximum of thirty days following the date of notification of the interrogation, with the possibility for the representatives of the interrogators to withdraw the interrogation before it is presented in the designated session for this purpose. The president of the relevant chamber informs the government of this.

Undoubtedly, the government or the minister being interrogated has the right to request a postponement, as long as there are justifiable reasons, such as the subject being related to a matter under judicial review, or the need to complete necessary data to respond, or if the submitter needs to study the information related to the interrogation that they received from the relevant ministry at their request, or if the minister being interrogated is ill or has a compelling excuse preventing their attendance at the discussion session, as determined by the council. However, in all cases, the council must approve the postponement, as it cannot occur solely at the will of either party or based on the desire of one of them; the council's acceptance is required.

During the interrogation session, the representative of the interrogators explains the interrogation. This is the opening procedure for the discussion, where they explain the relevant facts attributed to the minister and the evidence on which they relied, emphasizing that the evidence must be present at the time of presenting the inquiry. They cannot rely on evidence that emerges during the discussion, nor can they present their inquiry empty-handed, nor can they claim that the ministry



related to the inquired individual refused to allow them access to or obtain the evidence.⁸

Afterward, the inquired individual responds to the inquiry, based on their right to defend themselves and refute the evidence of the accusations surrounding them. Therefore, they must be allotted enough time to address all the charges contained in the inquiry, in a manner they deem suitable to convince the council that the inquiry is unwarranted.

The specificity of responsibility for the facts attributed to the inquired individual, and the implications of failing to refute them, makes it difficult to assert that another can represent them in responding to the inquiry. Just as the responsibility for the accusations is personal, the response must also be personal. It is inappropriate to claim that the government shares in the responsibility; this can only be accepted when the inquired individual is the Prime Minister. In this case, they may delegate one of their ministers to respond on their behalf, bearing both personal and governmental responsibility for that minister's failure to defend them.

Secondly: The Consequences of Interpellation

Legal texts do not indicate any consequences arising from interpellation, as the role of the government remains to respond to governmental inquiries, unlike various constitutional systems that differentiate between questions and interpellations and associate political responsibility with interpellation.

In the event that the interpellation concludes, the president of the council considers whether members have submitted specific proposals or not. If it becomes clear that there are no proposals, he announces the end of the discussion and moves on to the agenda. However, if members have submitted proposals to the president of the council, the decision here is linked to these proposals. If the proposal supports the government, reinforcing confidence in it, in this case, the council expresses its gratitude. Conversely, if council members take a neutral position that neither withdraws confidence nor supports it, the council's decision would be to move to the agenda and recommend actions for the government to undertake.



If these proposals are directed towards condemning the minister or the government, this raises the issue of confidence withdrawal or accountability, and necessary procedures will be taken to invoke the political responsibility of the minister or the government.

- The Reality of Interpellation in the Algerian Parliamentary Experience.

In Algeria, interpellation does not establish the political responsibility of the government, whether individually or collectively. Members of the National People's Assembly can establish investigative committees if they are not satisfied with the minister's response.

Through parliamentary practice, we observe a weak utilization of this mechanism; the Council of the Nation has not exercised it thus far, while the National People's Assembly has employed it very modestly, due to the lack of binding effect, as it is merely a means to request information, unlike systems that do not consider interpellation as just a means to request information but may follow up with discussions following the interrogation.⁹

There is no doubt that the use of interrogation in parliamentary life often imposes a burden on both the executive and legislative branches, which calls for deputies to refrain from using this right for trivial or secondary matters, especially since the exercise of this right may sometimes lead to a type of tension between the two authorities.

The government's publication of complete, unabridged, and unaltered information, presented in a manner that is easy to understand and engage with, is one of the most important foundations for interaction between the legislative and executive branches. Among the key entities that must ensure disclosure and transparency are those related to investment institutions and major financial institutions, as such information facilitates the deputies' oversight role without the need to resort to interrogation.

It is extremely important for both branches to work on increasing mutual trust. Undoubtedly, the greater burden in this regard falls on the executive authority, as it is responsible for implementing the council's decisions on one hand



and the government's decisions and promises on the other, which enhances mutual trust between the authorities.

Conclusion:

Interrogation is one of the mechanisms for oversight over government actions, as the constitution grants the right to members of parliament in both chambers to exercise this right, provided they adhere to the required regulations and conditions.

It is evident from the experience in Algeria that members of parliament do not utilize interrogation in contrast to questions, which may be due to the difficult conditions stipulated by law.

To enhance the use of interrogation, we propose reducing the number of parliament members required to propose a parliamentary interrogation and increasing the capacity of parliament members in utilizing parliamentary interrogation.

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1-Ken Coghill & Alan Hunt, Reforming Question Time, 12 LEGIS. STUD. 2, 36 (1998)

2 - Shane Martin. Using Parliamentary Questions to Measure Constituency Focus: An Application to the Irish Case, 59 POLIT. STUD. 2, 472 (2011).

3 - Federico Russo & Matti Wiberg, Parliamentary Questioning in 17 European Parliaments: Some Steps towards Comparison, 16 J. LEGIS. STUD. 2, 215 (2010).

4 - Rob Salmond, Bureaucrats in the Headlights: Question Times and Delegation to Bureaucrats, 17 J. LEGIS. STUD. 3, 368 (2011).

5-Presidential Decree 20-442 dated December 30, 2020, relates to the issuance of the constitutional amendment approved in the referendum of



November 1, 2020, published in the Official Gazette of the People's Democratic Republic of Algeria, Issue 82, dated December 30, 2020.

6-Organic Law 16-12 dated August 25, 2016, defines the organization and functioning of the National People's Assembly and the Council of the Nation, as well as the functional relationships between them and the government, as amended and supplemented by Organic Law 23-06 dated May 18, 2023.

¹-Ken Coghill & Alan Hunt, Reforming Question Time, 12 LEGIS. STUD. 2, 36 (1998)

²-Shane Martin. Using Parliamentary Questions to Measure Constituency Focus: An Application to the Irish Case, 59 POLIT. STUD. 2, 472 (2011).

³-Federico Russo & Matti Wiberg, Parliamentary Questioning in 17 European Parliaments: Some Steps towards Comparison, 16 J. LEGIS. STUD. 2, 215 (2010).

⁴-Rob Salmond, Bureaucrats in the Headlights: Question Times and Delegation to Bureaucrats, 17 J. LEGIS. STUD. 3, 368 (2011).

⁵- Article 66 of Organic Law 16-12 states: "Members of Parliament may question the government on any matter of national importance and on the implementation of laws, except for matters related to national defense and state secrets in foreign relations. The President of the Council of the Nation or the President of the National People's Assembly shall transmit the text of the question, signed by at least thirty (30) deputies or thirty (30) members of the Council of the Nation, to the Prime Minister or the Head of Government, as the case may be, within forty-eight (48) hours following its acceptance."

6- Article 160 of the 2020 Constitutional Amendment: "Members of Parliament may question the government on any matter of national importance as well as regarding the implementation of laws. The response must be provided within a maximum period of thirty (30) days."

⁷Article 67 of Organic Law 16-12: "The Bureau of the National People's Assembly or the Bureau of the Council of the Nation, in consultation with the government, shall determine the session for the questioning. This session shall be held within thirty (30) days at most following the date of notification of the questioning. The representative of the questioners may withdraw the questioning before it is presented in the session designated for this purpose, and the president of the relevant chamber shall inform the government accordingly."

⁸Article 68 of Organic Law 16-12: "The representative of the questioners shall present a report addressing the subject of the questioning during the session of the National People's Assembly or the Council of the Nation designated for this purpose, and the government shall respond to it."

⁹- Interrogations presented by members of the National People's Assembly:

- The inquiry related to the contract between Sonatrach and the American company El Paso, for which an investigation committee was established due to the dissatisfaction of the deputies with the minister's response, but no investigation results were presented.

- The inquiry regarding the maintenance of security and the application of the law dated 14-10-1990.

- The inquiry concerning the violations that occurred during the local elections of 1997, directed at the government of Ahmed Ouyahia, which responded in a public session on 23-11-1997. The deputies



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were not convinced by the government's response and established an investigation committee, which did not yield any results.

- The inquiry related to parliamentary immunity and assaults on deputies, addressed to the government of Ahmed Ouyahia, which was answered in the session dated 24-11-1977. An investigation committee was established, but no results were produced.

During the legislative period from 2002 to 2006, 9 inquiries were directed by members of the National People's Assembly, which are as follows:

1. Violation of Law No. 91-05 concerning the generalization of the use of the Arabic language and Order 96-30 amending and supplementing it.
2. The damages caused by French nuclear tests in the Reggane region.
3. Violation of parliamentary immunity during the peaceful march of the Movement for a Peaceful Society on 27-02-2003.
4. The consequences of the earthquake on May 21, 2003.
5. Violation of Presidential Order 76-35 concerning the educational system (education and training).
6. The strike of secondary school teachers.
7. The victims of the May 21, 2003 earthquake.
8. The assaults faced by supporters of the national team in Tunisia.
9. The commentary in French on television for the African Cup of Nations matches.

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