

The Constitutional Powers of the Acting Head of State in Algeria

الصلاحيات الدستورية لرئيس الدولة بالنيابة في الجزائر

Bouguerne Toufik 1*

Faculty of Law and Political Science, University of Setif 2

t.bouguerne@univ-setif2.dz

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Abstract:

According to the Constitution the nation must face particular legal consequences when the presidential office becomes vacant. These rules establish the procedures which govern the period between the departure of a head of state and the arrival of their replacement. The constitutional legislator stressed the need to choose a qualified person to temporarily take over as president. The individual holds certain constitutional authorities although they lack access to all constitutional powers. The plan exists to protect the state from crisis while preserving presidential operations because the office demands continuous operation.

Keywords: Head of State; Constitutional Powers; Vacancy; Exceptional Circumstances.

* *Corresponding author*

Introduction

The Algerian political system bases its entire structure on the presidency of the republic which stands as its most critical institution. The president who gets elected stands as a direct representation of public choice and embodies national unity while safeguarding the Constitution. The Algerian constitutional legislator has given the President of the Republic (PR) a special status by giving him a lot of power in the areas of defense, diplomacy, legislation, and the executive branch. The president becomes unavailable to perform duties because of this situation which severely jeopardizes the state's capability to maintain its operations.

The Constitution has set up specific ways to deal with situations where the president can't do his job, either for a short time or for good. In these situations, certain people are given the job of temporarily leading the state under strict rules and conditions. The main goal of these rules is to make sure that constitutional institutions work normally and to keep any gaps at the top of power from happening.

Still, when an acting head of state uses presidential powers, it raises a basic question about the nature and limits of that power:

Does the acting president have all of the President of the Republic's (PR) powers, or do the temporary nature of his position mean that some powers are limited?

To deal with this issue, the analytical-descriptive method will be used to study and analyze the relevant constitutional texts in order to find the specific features of the Algerian case. We will also look at the practical side by looking at how these rules have been used in the past in the country. The goal is to see how well this system works to keep state institutions going and protect constitutional legitimacy.

To examine this issue, the following structure will be adopted:

- Firstly: Assumption of the Presidency on an Interim Basis.
- Secondly: Powers of the Interim Head of State.
- Thirdly: Limits of the Powers of the Interim Head of State.

Firstly: Assumption of the Presidency on an Interim Basis

The constitutional legislator gave the President of the Council (PC) of the Nation the job of taking over as head of state. The PR of the Nation is only in charge of the office temporarily. If the PR of the Nation can't do this job or if there is an opening in his position, the President of the Constitutional Court takes over as interim head of state.

1. President of the Council (PC) of the Nation as Interim Head of State

The PR of the Nation is the second most important person after the President of the Republic (PR). This is because the Constitution says that he can act as head of state if the PR is sick, resigns, or dies. Once the impediment is confirmed and the vacancy is officially declared, the PR's powers are temporarily transferred to the PR of the Nation for a period not exceeding ninety days, during which presidential elections must be organized. But he can't run for this job.¹

Article 94 of the 2020 constitutional amendment, especially paragraphs five and six, clearly states this. Still, it is not clear how the PR of the Nation will carry out his temporary duties. Article 94 does not make it clear if this power comes from a formal declaration from Parliament or just from confirming the vacancy.²

2. The Acting Presidency of the State by the President of the Constitutional Court

If the PR is unable to do their job, the Constitutional Court must meet with at least three-quarters ($\frac{3}{4}$) of its members in order to suggest to Parliament that the incapacity be officially declared. Parliament then meets and agrees that the person is unable to do their job. If the incapacity lasts for forty-five (45) days, the office of the PR is considered permanently vacant, and the law says that the President must resign. In this case, the PR of the Nation becomes the Acting Head of State³.

The Council of the Nation's internal rules do not give much detail about what to do in these situations, but this incapacity has been defined as being caused by death, resignation, disability, or incompatibility. Because of this, a new PR of the Nation must be chosen⁴.

Article 94 governs this situation. It says that the Constitutional Court must meet and announce both the permanent vacancy of the presidency and the PR of the Nation's inability to do their job, with three-quarters of its members voting in favor.

The legal issue that comes up with this provision is when both the presidency and the presidency of the Council of the Nation are empty at the same time, or when the PR of the Nation becomes unable to do his or her job before the PR. In these instances, it is uncertain who will take on the role of Acting Head of State, as the Constitution does not address this situation⁵.

This constitutional deadlock happened when both the Presidency of the Republic and the Presidency of the Council of the Nation became vacant at the same time. This happened after President Chadli Bendjedid resigned after dissolving the National People's Assembly.

In this situation, the Constitutional Court is very important because its President takes on the powers of the Head of State if there is a vacancy, which protects the stability and proper functioning of state institutions. The constitutional legislator did not give the acting Head of State full power, though. Article 96 of the 2020 constitutional amendment limited these powers⁶.

Algeria has had other interim presidents besides Chadli Bendjedid, such as when President Houari Boumediene died and President Abdelaziz Bouteflika resigned. The death of Houari Boumediene was the first time this kind of succession happened in Algeria's constitutional history. On December 12, 1978, he died, and on December 13, 1978, the National People's Assembly officially declared the permanent vacancy. They gave Rabah Bitat, who was then the President of the Assembly, the job of acting president of the state for a period of no more than forty-five days, as stated in Article 117, paragraph 5, of the 1976 Constitution.⁷

The other case is about President Abdelaziz Bouteflika's resignation, which was forced by public pressure shown through peaceful protests against his candidacy for a fifth term. This led to his announcement of his resignation on April 2, 2019.

According to Article 102 of the Constitution, Abdelkader Bensalah, the PR of the Nation, was named Acting Head of State for 45 days. But Bensalah kept acting as President for more than seven months, which was against the rules set out in the constitution. The official results of the presidential elections were made public on December 17, 2019. They showed that Abdelmadjid Tebboune had won and would become the PR.⁸

Secondly: Powers of the Acting Head of State

The acting president can be either the PR of the Nation or the President of the Constitutional Court. The Constitution gives him a set of powers to fill the vacancy of the presidency. But these powers aren't unlimited; they are limited by the Constitution.

1. Legislative Powers

1.1 The Power of Legislative Initiative

The power of legislative initiative is the first step in the process of making laws. Article 36 of the Algerian Constitution of 1963 says that the PR and the deputies have the power to propose the enactment of laws. Article 148 of the 1976 Constitution also said, "The PR and members of the People's National Assembly both have the right to suggest new laws".

The 1989 Constitution, on the other hand, gave people other than the PR the right to start new laws⁹.

Article The Council of Ministers must see draft laws after the Council of State has given its opinion on them. This provision gives the Acting Head of State and the PR the power to start new laws¹⁰.

Article 143 of the 2020 Constitution also says, "The Prime Minister or Head of Government, along with the deputies and members of the Council of the Nation, shall possess the authority to propose legislation."¹¹

2. The Authority to Promulgate Laws

The PR signing a law is the official "birth certificate" of a new law. A law cannot go into effect without such a publication, even if it has been debated and passed by Parliament. So, promulgation is the most important step that makes laws valid and makes them enforceable when they are published in the Official Gazette, making everyone who is subject to them bound by them.¹²

3. The Taking of the Constitutional Oath

Some constitutions have rules that must be followed to make the rule of law work. The constitutional oath is one of these. It is a serious promise made by the head of state, members of the government, and members of the legislative authority before they start their jobs. This requirement may come from a clear provision in the constitution or from a long-standing constitutional practice.

Article 90 prescribes the wording of the oath as follows¹³:

"In the name of God, the Most Gracious, the Most Merciful

I pledge my oath to God while affirming my dedication to Islam and the Constitution alongside my commitment to preserve State continuity through functional institutions. I dedicate my service to the memory of our national heroes who sacrificed their lives during the November Revolution. I will dedicate myself to strengthening democratic processes while protecting both the Republic and its legal framework and the right of people to participate. I will safeguard the safety and territorial unity of the nation as well as the rights and liberties of its citizens. I will dedicate myself to public service through which I will help citizens thrive and generate meaningful change for justice and freedom and peace in the world.¹⁴"

4. Chairmanship of the Council of Ministers

According to the Constitution the Acting Head of State receives authority to direct the Council of Ministers during government transition periods. The state grants this right to protect its institutions from any potential danger. The Acting Head of State acquires complete nationwide knowledge by performing this duty.¹⁵

5. Chairmanship of the High Council of the Judiciary

The Acting Head of State holds the authority to direct the High Council of the Judiciary. The Constitution writers granted him absolute authority to use this power according to his judgment because they believed this power would safeguard judicial independence. The document explains how the Acting Head of State can assume control over the High Council of the Judiciary.¹⁶

6. Convening of Parliament

The Acting Head of State receives authority to summon a joint Parliament session according to Article 99 of Organic Law No. 16-Usually, Parliament can only meet once a year for a regular session. Article 138 of the 2020 Constitution says that the PR or the Acting Head of State can also call an extraordinary session of the Assembly.

Thirdly: Limitation and Restriction of the Powers of the Acting Head of State

The Acting Head of State's powers are not limitless; some actions are either banned or put on hold when certain conditions make it impossible for them to be carried out. Article 96 of the 2020 Constitution makes these limits very clear.

1. Functions Prohibited to the Acting Head of State

The Acting Head of State cannot use some powers that are only available to the PR. These include making laws by ordinance, starting changes to the Constitution, calling a popular vote, dissolving Parliament, and choosing or firing the government.

1.1 Functions Related to the Legislative Authority

1.1.1 Legislation by Ordinance

Legislation by ordinance is an unusual way to speed up the passage of laws, so it can only be used for urgent matters. Article 142 of the 2020 Constitution reaffirms this principle. The constitutional legislator outlines the specific conditions under which the PR is authorized to legislate by ordinance. The President does not have this power in any other situations.¹⁷

1.1.2 Initiation of Constitutional Amendments

The Algerian constitution says that the PR has the power to make changes to the constitution. The President proposes these changes and makes them law after they are approved by a popular vote. Parliament also has this right, because both institutions get their power from the people's trust and are therefore credible in using it. The Acting Head of State, on the other hand, cannot use this power because he was not elected by the people. Also, changing the Constitution is seen as one of the President's most important powers. Allowing an interim authority to use it would be very dangerous, especially if the goal was to take advantage of temporary or permanent vacancies to further goals that are bad for the state¹⁸.

The PR can also start a change to the Constitution without putting it to a vote by the people. In this situation, the law that includes the constitutional amendment is passed by a (¾) majority vote in both houses of Parliament. This is only possible if the amendment does not change the basic rules that govern Algerian society or weaken the balance of powers and constitutional institutions.

The PR may also put a constitutional amendment to a popular vote if three-fourths of the members of both parliamentary chambers meeting together have started the amendment. After the referendum approves the amendment, it is made public. The constitutional legislator has made it clear, though, that the final decision on any constitutional amendment still depends on the PR's approval.¹⁹

1.1.3 Popular Referendum

The referendum is a way for the PR to find out what the people want on a certain issue, either to approve or reject it. This privilege belongs only to the elected President. An acting head of state cannot use it because they are appointed, not elected.

Article 71 of the 1963 Constitution said that only the PR and Parliament could start a referendum. The 1976 Constitution said that the referendum was a way for the people to have a say in government, giving the PR the power to ask the people about any issue of national importance, while Parliament only had the power to approve it. The 1989 Constitution once more limited the PR's power to start and run referenda, especially when it came to changes to the Constitution.

The 1996 Constitution gave the PR the sole power to call for referenda on all issues of national importance, as long as he used his own judgment. No institution could question this right. Article 93, paragraph 3, also said, "The PR cannot give up his power to call a referendum".

The 2020 Constitution confirmed this power by saying, "He can ask the people about any important national issue through a referendum."²⁰

1.2 Functions Relating to the Executive Authority

1.2.1 Dissolution of Parliament

Parliament is an elected body that represents the people's will by making laws and keeping an eye on the government. An interim head of state who has not been elected directly by the people cannot dissolve Parliament. If this measure were allowed, it could lead to a political crisis by making the presidency vacant at the same time as Parliament is dissolved, leaving both branches of power empty.²¹

1.2.2 Appointment and Dismissal of Members of Government

The Algerian constitutional legislator gave the interim head of state the power to choose the Prime Minister, but not the rest of the government. Article 104 of the 2020 constitutional amendment says, "The Prime Minister or Head of Government suggests people to the PR to be members of the government." This confirms this idea.

Article 105 says the same thing: "If the PR wins the most votes in the legislative elections, he or she will choose a Prime Minister." The Prime Minister's job is to suggest who should be in the government and how to carry out the President's plan. The Prime Minister will then present this plan to the Council of Ministers²².

Also, Article 110 says that if the results of legislative elections give the parliamentary majority a different majority than the presidential majority, the PR must choose a Head of Government from among the parliamentary majority and give him the job of forming his government.

Article 96 of the constitutional amendment also makes it clear that the interim head of state cannot fire or hire members of the government. He is also not allowed to come up with a new plan for government action or present it to the Council of Ministers. This rule is meant to keep the current government and its plans in place until a new PR is elected. This will help keep the country's political stability.²³

1.2.3 Prohibition of Candidacy for the Presidency of the Republic

There have been two transitional periods in Algeria's constitutional history: the first was from 1965 to 1976, and the second was from 1992 to 1995. Even though the 1989 Constitution said that these two men could not run for president, they both did anyway during these times. This caused a lot of debate, with people on both sides having strong opinions²⁴.

The Acting Head of State is not allowed to run for president because of the Constitution. Article 94 of the 2020 constitutional amendment says, "The Head of State chosen this way will not be able to run for PR." This principle was reaffirmed.²⁵

1.3 Duties Relating to the Judiciary

1.3.1 Granting Pardons and Reducing Sentences

According to Article 91 of the 2020 Constitution, the PR has the power to grant pardons and reduce or change sentences. It says, "He has the right to issue pardons, to reduce sentences, or to substitute them".

As a result, the constitutional framers gave this power only to the PR, which limited the Acting Head of State's power in this area. The reason is that a person who has not been chosen by the people cannot change or cancel court decisions made in the name of the people.²⁶ The PR, on the other hand, gets his or her power from the will of the people and uses it through executive authority, such as presidential decrees that give pardons to cancel original sentences, lower them, or replace them with other measures.²⁷

2. Powers of the Acting Head of State Subject to Conditions

The constitutional legislator has given the Acting Head of State a set of conditional powers that can only be used in rare situations, on top of the regular

powers he already has. Some of these conditional powers are the ability to declare a state of emergency, a state of siege, special circumstances, and general mobilization.

2.1 State of Siege or State of Emergency

According to Article 97 of the Constitution, the PR alone holds the authority to declare a state of emergency or a state of siege. The provision states: *"If the need arises, the President of the Republic can declare a state of emergency or a state of siege for up to thirty (30) days. To do this, they must meet with the High Security Council and the President of the Council (PC) of the Nation, the President of the National People's Assembly, the Prime Minister or Head of Government, and the President of the Constitutional Court. He will do everything he can to bring back order."* An extension of such measures may only occur with the approval of Parliament sitting in both chambers.²⁸

The state of emergency is an extraordinary measure used to protect the country from threats, and it limits people's rights and freedoms whenever public safety is at risk. The state of siege, on the other hand, is a more serious situation that usually happens when there is a rebellion or insurrection. During this time, the military takes over.

Article 97 of the 2020 Constitution talks about both the state of emergency and the state of siege. This is the same as Article 105 of the 2016 Constitution, but it doesn't make a clear distinction between the two, even though they are very different.

Article 96 of the Constitution limits the Acting Head of State's power even more: he can only declare a state of emergency or a state of siege with the approval of both chambers of Parliament, after talking to the High Security Council and the Constitutional Court. An elected PR, on the other hand, does not need parliamentary approval to declare either measure.²⁹

2.2 The State of Exception

The PR has the power to declare a state of exception. Article 98 of the 2020 constitutional amendment makes this very clear: "The PR can declare a state of exception for up to sixty (60) days if the country is in imminent danger that could affect its constitutional institutions, their functioning, or the integrity of its territory." This provision explains why a state of exception can be declared, what the rules and procedures are for doing so, what happens as a result, and what the ultimate goal is.

The PR receives authority which operates as both declarative power and decisional power. The acting head of state loses authority to declare a state of exception when the president becomes unavailable or absent from office. The Parliament needs to conduct a joint session according to Article 96 of the Constitution when it requires approval for this kind of declaration. The Constitutional Court together with the High Council for Security need to give their opinions. The PR can declare a state of exception without needing authorization or consultation.³⁰

2.3 State of War

War is defined as "an armed conflict between two states, the purpose of which is the defense of the rights or interests of the belligerent state."³¹

The PR holds the power to declare war according to Article 100 of the 2020 constitutional amendment when the nation faces an actual attack or an imminent attack threat according to United Nations Charter provisions. The PR needs to arrange a Council of Ministers meeting before declaring war while seeking advice from the High Security Council and obtaining input from the PR of the Nation and the President of the National People's Assembly and the President of the Constitutional Court.³²

But Article 96 of the Constitution says that the interim head of state can also declare war, as long as both chambers of Parliament agree. Article 101 also lays out more steps, saying, "The Constitution will be put on hold during the state of war, and the PR will have all the power." If the PR's term ends while the country is at war, it will automatically be extended until the war is over".

If the PR resigns, dies, or is declared legally incapable, the PR of the Nation will take over as interim head of state and have all the powers that the PR has in a state of war. If both the presidency and the presidency of the Council of the Nation become vacant at the same time, the President of the Constitutional Court will take over as head of state under the same conditions as above.³³

2.4 General Mobilization

General mobilization is when the national armed forces are turned into a state of war or near-war, and the state's economy, institutions, capabilities, material and human resources, and legal framework are all changed to meet the needs of a long-term conflict and achieve its goals, especially the idea of concentrating force³⁴.

The PR has the power to call for general mobilization. This was confirmed again in Article 99 of the 2020 constitutional amendment, which says, "After talking to the High Security Council and following the advice of the PR of the Nation and the President of the People's National Assembly, the PR calls for general mobilization in the Council of Ministers."³⁵

Article 96 of the Constitution says that the Acting Head of State can only call for general mobilization if Parliament meets in a joint session of both chambers and the Constitutional Court and the High Security Council agree.

Conclusion

The powers of the Acting Head of State in the Algerian constitutional system represent a crucial safeguard for state continuity during extraordinary circumstances that may lead to the vacancy of the presidency. The people who wrote the Constitution wanted to find a delicate balance between keeping institutions running normally and protecting popular legitimacy, which can only be done through presidential elections. The appointment of an Acting Head of State aligns with the principle of hierarchical order within the constitutional framework; however, it constitutes a temporary measure that cannot replace the will of the populace. This shows how important it is to look at the Acting President's powers, their limits, and how well they work in practice.

Following study and analysis, the main findings are as follows:

- The Acting Head of State's powers are temporary and unusual, meant to keep things going rather than replace the legitimacy of elections.
 - The Constitution limits the Acting President's power by not letting him change the Constitution, dissolve Parliament, or call for a referendum.
 - Exercising presidential duties in an acting capacity exposes a deficiency in popular legitimacy, notwithstanding compliance with constitutional legitimacy.
 - The Algerian model tries to find a middle ground between institutional stability and limits on power to stop possible abuses.
- To enhance the constitutional governance of the Acting Presidency in Algeria, the following suggestions are put forth:
- Be more clear about the constitutional rules that limit the Acting President's powers.
 - Give the Constitutional Court more power to watch over what the Acting President does.
 - Set up ways for the government to talk directly to the people to make up for the lack of electoral legitimacy.
 - Promote awareness of the Constitution to make it clear that the Acting Presidency is only a temporary solution and not a permanent replacement for elections.

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