



## THE EXPANSION OF EXECUTIVE POWERS AT THE EXPENSE OF THE LEGISLATIVE BRANCH UNDER THE 2020 CONSTITUTIONAL AMENDMENT

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### Abstract:

The 2020 constitutional amendment is distinguished by its recognition of the most fundamental principles found in various constitutions around the world. The constitutional framers underscored the importance of the separation of powers and the maintenance of a balanced relationship between. To this end, they incorporated the phrase "separation among them" into the chapter on the organization of powers. This amendment has the potential to establish a balance between the executive and legislative branches by reaffirming the principle of equilibrium between them.

**Keywords:** Executive authority; legislation by ordinances; Parliament; regulation; President of the Republic.

### Introduction:

Parliament is generally regarded as the original institution with the inherent authority to draft and enact laws. However, political developments and modern constitutional norms governing the relationship between the executive and legislative branches have demonstrated the opposite, by involving the executive branch alongside Parliament in the legislative process.

Yet practical reality has revealed a certain imbalance in this authority in favor of the executive branch, a phenomenon termed "dominance." This has led to a decline in Parliament's legislative role, its inadequacy, and its inability to address certain crises through the drafting of legislative texts.

This reflects the executive branch's dominance or encroachment on the legislative sphere, which has extended to the initiative to amend

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the Constitution. For this reason, we have chosen to pose the following question: How did the 2020 constitutional amendment contribute to expanding the regulatory powers of the executive branch at the expense of legislation as an inherent prerogative of Parliament? To answer this question, we have divided this study into the following sections:

## **1- The Dominance of the Executive Branch in the Legislative Process**

The Constitutional legislator has established a hierarchical structure of powers. Within this structure, the President of the Republic has been granted a significant position, both in terms of his ranking as the highest authority and through his broad powers.

These powers include those exercised by the President within the executive branch as a whole, such as the power to appoint the Prime Minister or the Head of Government. The President of the Republic possesses additional powers that extend beyond the scope of the executive branch. These include the ability to exercise authority in the legislative sphere through the issuance of decrees.

These decrees serve as a constitutional mechanism through which the President of the Republic competes with Parliament in the legislative sphere, first subsection. The government, led by a prime minister (Faqr , 2012) or head of government, is the second-highest authority in the hierarchy. It has been entrusted with powers that allow it to intervene in Parliament's legislative jurisdiction. Among the powers of the Assembly is the initiative to propose laws. Additionally, they empower the government to take precedence over parliament in this regard, as outlined in the second subsection.

### **1.1- Legislation by Decree as a Mechanism for Encroaching Upon Parliament's Legislative Competence:**

Legislation by decree, also known as exceptional legislative authorization, is an extraordinary system necessitated by crises and circumstances faced by various countries, including Algeria. Which it has experienced distinct phases due to the crises and political events witnessed from independence to the present day.

Recent crises and events have expanded the President's legislative role and reduced Parliament's influence. The President is authorized to

enact legislation by decree under normal and exceptional circumstances, in accordance with the provisions of the Constitution

### **1.1.1- Legislation by Ordinances under Normal Circumstances as an Encroachment upon Parliament's Legislative Authority:**

Legislation by decree is considered one of the most significant mechanisms available to the President of the Republic to influence Parliament during specific periods defined in the Constitution. A review of Algerian constitutions indicates that the constitutional legislator has granted the Republic's President the right to legislate by decree.

This right was first granted in the 1976 ( Kharbashi, 1996, p. 59) Constitution and was later abandoned in the 1989 Constitution. The purpose was to create a balance between the executive and legislative branches. However, this right was reinstated in the 1996 (Faquir , 2012, p. 67) Constitution and reaffirmed in the amended Constitution of 2016 (Presidential Decree No. 442-20, Issue 2020, p. 82)and the latest amendment of 2020.

This indicates that most Algerian constitutions have included this right, whether in the event of a vacancy in the National People's Assembly, during a parliamentary recess, or on the occasion of the Finance Act. Additionally, Parliament exercises its legislative function in accordance with the Constitution during the specified period. Its function ends automatically upon the expiration of its term. This may also occur due to its dissolution by the President of the Republic, as deemed appropriate.

Therefore, the absence of Parliament, whether due to parliamentary recess or its dissolution by the President of the Republic, does not mean that legislative work in the state ceases. Instead, it is a continuation of the authority granted by the Constitution to the President of the Republic to legislate by decree on urgent matters in the event of a vacancy in the National People's Assembly or during parliamentary recesses.

Before addressing the cases in which the President of the Republic legislates by decree, it is necessary to ask : What are the criteria by which the President of the Republic determines that a situation is urgent?



In light of the developments and crises unfolding across various political, social, and economic spheres, and to avoid any institutional vacuum within the state, the constitutional legislator introduced a new procedure. This procedure was explicitly included in the 2020 amendment and was subsequently retained in the most recent constitutional amendment. It is imperative to notify the Constitutional Court of the constitutionality of these decrees.

According to Article 142, the President of the Republic is authorized to issue decrees on urgent matters... This expansion of the President's legislative authority enables him to respond promptly to emergency and urgent situations.

However, this provision will inevitably affect Parliament, leading to an imbalance in the legislative sphere between the President of the Republic and Parliament. It is worth noting that upon reviewing the first paragraph of Article 142 of the aforementioned recent amendment, it became clear that the text lacks the conditions upon which the President of the Republic assesses a situation of an urgent nature. Nor does it specify the body responsible for monitoring the fulfillment of the conditions of urgency under which the President of the Republic may legislate by decree. Consequently, the absence of these two points has granted the President of the Republic the discretion to determine what constitutes an urgent matter whenever he deems it appropriate, thereby allowing him to legislate by decree whenever he wishes and to bypass Parliament in doing so, in accordance with the text of Article 142, which establishes that the President of the Republic has the authority to:

#### **A- Legislating by ordinances in the event of a vacancy in the National People's Assembly**

The President of the Republic is only able to issue decrees on urgent matters if the National People's Assembly has been dissolved. Otherwise, his intervention would be considered unlawful. The dissolution of the National People's Assembly is initiated by the President of the Republic, which is followed by the organization of early legislative elections to establish a new National People's Assembly. It is important to note that there are other circumstances leading to the dissolution of the National People's Assembly. These include mandatory dissolution due to the National People's

Assembly's failure to approve the Government's action plan after it has been presented for a second time.

Dissolution may also be voluntary, at the discretion of the President of the Republic, or automatic. However, while the recent amendment has granted the Council of the Nation the authority to initiate legislation, the Constitution does not authorize it to exercise legislation by decree in the absence of the National People's Assembly, which is subject to dissolution.

Therefore, the purpose of the Council of the Nation is called into question, especially since its establishment was intended to address an institutional vacuum (The President of the Republic may issue ordinances).

### **B- Legislation by ordinances during parliamentary recess :**

Parliament convened for two regular sessions each year, and the President of the Republic could legislate by ordinance between them. According to the latest amendment of 2020, Parliament now convenes for a single session each year, lasting ten months. This session begins on the second working day of September and ends on the last working day of June. Consequently, the parliamentary recess each year does not exceed two months. During this period, the President of the Republic is authorized to legislate by ordinance. However, some have interpreted this reduction as a restoration of Parliament's standing, on the one hand, and as a limitation and curtailment of the President's authority to legislate by ordinance, on the other. In our view, however, this interpretation is merely formal, even though it is constitutional. The reason for this is the status enjoyed by the President of the Republic and the broad discretionary authority he holds to adapt to circumstances.

However, the question that must be raised is: whether the interruption of the parliamentary session amounts to the convening of a new session or not?

The Algerian Parliament has encountered this situation on several occasions. In December 1998, the Council of the Nation expressed its objection to the consideration of the Organic Law governing Members of Parliaments, which had been approved by the National People's Assembly.



A similar situation arose in November 2015. Following the approval of the 2016 Finance Act, the National People's Assembly decided to suspend its sessions before the end of the fall session, scheduled for February 2, 2016. This was in preparation for an extraordinary parliamentary session to approve the draft constitutional amendment (Ben Souna , 2019–2020, p. 285).

### **C- Legislation by ordinance in the Financial Matters**

In a modern state, public finance is the lifeblood that enables the state to acquire resources to cover its public expenditures by levying taxes on citizens. Given its critical importance, most constitutional systems have entrusted Parliament, as the body that expresses the will of the people, with the task of drafting the law governing public finance. Consequently, Parliament establishes the legal framework for public finance and oversees how public funds are spent. However, this right does not grant Parliament unbridled authority to approve the Finance Act at its discretion. Instead, it is subject to specific temporal constraints.

Should this period be exceeded, the President of the Republic will intervene to issue the Finance Act by ordinance ( Kharbashi, 1996, p. 63).

According to the provisions of the latest amendment of 2020, Article 146 grants Parliament a maximum period of 75 days from the date of submission to the Bureau of the National People's Assembly. If the Finance Act is not approved within this period, the President of the Republic will intervene to issue the Government's draft by ordinance.

After reviewing Article 44 of Organic Law No. 16-12, it has been determined that the period designated for the approval of the Finance Act is to be divided between the two chambers. The National People's Assembly has been allotted forty-seven days to vote on the draft Finance Act, with the vote to be conducted starting from the date of its submission to its Bureau. The Council of the Nation has been allotted twenty days to vote on the draft Finance Act.

In the event of a disagreement between the two chambers, a joint committee of equal members is given eight days to resolve the matter.

If the bill is not approved within the specified timeframe, the President of the Republic may issue the draft Finance Bill submitted by the Government by ordinance, which shall have the force of law.

This approach aligns with the precedent established by the French constitutional framers. In this regard, Article 47 stipulates that Parliament, in its capacity as the representative of the people, has the right to debate and vote on the Finance Bill. However, this right is subject to a specific timeframe within which the bill must be voted on.

The bill must be voted on within seventy days, with the National Assembly having forty days and the Senate fifteen days. Furthermore, the two chambers have a fifteen-day period for processing referrals.

If the specified timeframe elapses without Parliament holding a vote on the law, the Government may enact it through a legislative ordinance. ( Loushan, 2011–2012, p. 87)

This provision was amended in 1971 by an Organic Law. The period was reduced to forty days for the National People's Assembly, twenty days for the Council of the Nation, and ten days for referrals between the two chambers. However, the total time limit remained unchanged. ( Loushan, 2011–2012, p. 87)

It is important to note that before the President of the Republic issues ordinances, he must go through a series of stages, or a set of procedural requirements. These requirements begin with submitting the ordinances to the Council of State for its opinion.

This authority is derived from the first paragraph of Article 142 of the 2020 Amendment, which states that: In the event of a vacancy in the National People's Assembly or during parliamentary recesses, the President of the Republic is authorized to issue ordinances on urgent matters, following the opinion of the Council of State. It should be noted that the President of the Republic is not bound by the opinion of the Council of State. Therefore, the Council of State's opinion does not serve as a prior oversight mechanism for the ordinances issued by the President of the Republic. The ordinances are then submitted to the Council of Ministers.

As stated in the sixth paragraph of the aforementioned text, "ordinances shall be adopted by the Council of Ministers." This clearly indicates the Council's significant role in deliberating matters of paramount importance to the nation. Therefore, the constitutional legislator required the President of the Republic to submit legislative ordinances to the Council of Ministers.



This requirement underscores the constitutional framers' intention to engage the government, specifically ministers and the President of the Republic, in the drafting process of legislative ordinances for discussion and refinement, if necessary.

A comparison between Article 124 of the 1996 Constitution and the sixth paragraph of Article 142 of the latest amendment of 2020 clearly indicates that the legislative ordinances submitted to the Council of Ministers pertain solely to exceptional circumstances.

This principle is clearly articulated in Article 124 of the 1996 Constitution, which states that the President of the Republic is authorized to issue ordinances in the exceptional circumstances outlined in Article 93 of the Constitution. The fifth and sixth paragraphs of Article 142 of the latest amendment of 2020 also confirm this principle.

It has come to light that the legislative ordinances submitted by the President of the Republic to the Council of Ministers are not limited to exceptional cases, but also include ordinary cases. Therefore, the requirement for the Council of Ministers to approve these ordinances may be considered a procedural formality that the President of the Republic must observe when issuing ordinances in all cases.

On the one hand, the submission of ordinances by the President of the Republic to the Council of Ministers may be regarded as a procedural matter. The primary objective of the opinion is to ensure the Council's approval, thereby conferring legal validity on the ordinances through its advisory opinion. Therefore, it is not conceivable that the Council of Ministers would reject the ordinances submitted to it by the President of the Republic, especially since he appoints its members. Consequently, the Council of Ministers' role in adopting ordinances is not independent of the President's opinion and decision.

The Council of Ministers lacks the authority to enforce its own agenda. It also lacks the authority to refer the matter to the Constitutional Court. This further expands the President's authority in issuing ordinances.

After reviewing the content of the latest amendment of 2020, it is noted that this amendment introduced new procedures not addressed

in previous constitutions. Specifically, the President of the Republic is now obligated to inform the Constitutional Court of the alignment of ordinances with the Constitution. The Constitutional Court is a supervisory institution established under the latest constitutional amendment of 2020. The court's mission is to ensure respect for the Constitution and to rule on the constitutionality of laws, treaties, and regulations.

As stated in the second paragraph of Article 142, the constitutional legislator has mandated that the President of the Republic adhere to this procedure by submitting the ordinances to the Constitutional Court.

However, the question that must be asked is: What is the status of legislative decrees, and to what extent are they constitutional if the President of the Republic fails to notify the Constitutional Court, given that he appoints its president and three of its members—that is, one-third of its membership?

He is then required to submit the measures he has adopted to each chamber of Parliament at the beginning of the next session for approval. However, the constitutional framers did not specify the nature of this session, whether ordinary or extraordinary. However, according to Article 138, the Constitution stipulates a single ordinary session lasting ten months. It begins on the second working day of September and ends on the last working day of June.

The Prime Minister or the Head of Government, as applicable, may request an extension of the ordinary session for a limited number of days to complete consideration of an item on the agenda. Parliament may also convene in an extraordinary session at the call of the President of the Republic, upon the request of the Prime Minister or the Head of Government, as applicable, or upon the request of two-thirds of the members of the National People's Assembly.

However, the article does not specify the type of session in which the President of the Republic submits ordinances. This point requires further clarification in the future. ( Loushan, 2011–2012, p. 89)

As for the penalty resulting from the President of the Republic's delay or failure to submit the ordinances, this remains a formal procedure in the absence of an explicit provision holding the President



of the Republic liable for delaying or refusing to submit the ordinances he has issued to each chamber of Parliament.

In light of the foregoing and after reviewing the third paragraph of Article 142 of the recent amendment, the following question arises : Do the ordinances submitted by the President of the Republic to Parliament fall within the domains reserved for Parliament ? In other words, may the President of the Republic issue ordinances concerning ordinary laws and the internal regulations of Parliament ?

It is important to note that the constitutional legislator has delineated the areas in which Parliament exercises its legislative authority. In practice, former President of the Republic Abdelaziz Bouteflika issued ordinances in areas reserved for Parliament, amending the Nationality Law and the Family Law.

While this intervention is constitutional, it places Parliament in an awkward position and diminishes its constitutional standing. It is illogical for the President of the Republic to issue ordinances in areas reserved for Parliament. Such actions reflect the President's status and the extent of his dominance over Parliament.( Cheriet, 2012, p. 291)

As stated in the fourth paragraph of Article 142, "ordinances not approved by Parliament shall be deemed null and void." There are a number of potential scenarios that should be taken into consideration with respect to Parliament's position on this particular provision.

If Parliament approves the ordinances, they will become law. However, if Parliament explicitly refuses to approve them, they are deemed null and void.

The question that arises is: Whether the nullified ordinances apply retroactively or only prospectively? In our view, ordinances not approved by Parliament do not apply retroactively. This is due to the absence of an explicit provision and their possible impact on certain legal rights. For instance, it seems highly improbable that the new Parliament will not approve the ordinance on the organization of elections issued in 2021, especially since its composition includes a majority of parties with presidential leanings. Consequently, if the ordinance is not approved, it is considered null and void.

If the ordinance were to be repealed retroactively, it would invalidate the very ordinance that formed the basis for the new Parliament's formation. However, this possibility is unlikely due to

Parliament's weakness in the face of the status enjoyed by the President of the Republic and the broad powers granted to him, including his ability to assume legislative authority through ordinances under exceptional circumstances.

We therefore hope that the constitutional framers will rectify this issue and clarify, through an explicit provision, whether this effect applies retroactively or only prospectively.

### **1.1.2- The President of the Republic's Authority to Legislate by Ordinance Under i Exceptional Circumstances**

Although the President of the Republic holds legislative authority in the event of a vacancy in the National People's Assembly or during parliamentary recess, the constitutional framers have also granted him the power to legislate by ordinance under exceptional circumstances.

In such instances, the President's authority exceeds that exercised under typical conditions. This enables him to exercise control over the powers of constitutional bodies, including Parliament, which plays an advisory role in certain cases, such as the state of emergency. Wich is defined as the codified exceptional regime to which the state resorts when a threat to its security and stability arises.

Accordingly, we will address two key issues: the declaration of a state of Exception by the President of the Republic, and the legal aspects of legislating by ordinance under exceptional circumstances ( Cheriet, 2012, p. 292) .

#### **A- Declaration of a State of Exception**

According to the latest amendment of 2020, the constitutional legislator regulated exceptional circumstances by ranking them from the least serious to the most serious. The list commences with a state of siege, then a state of emergency, and concludes with a state of war. However, the common factor among these situations is that the assessment of the circumstances requiring their invocation is subject solely to the will of the President of the Republic. No other authority shares in the decision to declare such a state.

This is based on the principle of necessity, which grants him broad powers not typically held during ordinary times. These powers enable him to eliminate threats endangering the safety of the people and constitutional institutions ( Boukfa, 2011, p. 145).



It is clear from Articles 97, 98, and 99 of the latest amendment that the President of the Republic has the authority to determine whether exceptional circumstances warrant the declaration of a state of emergency.

This authority is not subject to restrictions, since the President's decision to declare a state of emergency is an act of sovereignty. It therefore cannot be overturned or reviewed by the judiciary or any other oversight body.

Nevertheless, the constitutional legislator has required the President of the Republic to consult certain constitutional bodies before declaring such a state. From a constitutional perspective, noncompliance with this procedure constitutes a violation of the constitutional procedures governing the declaration of a state of emergency.

However, the advisory role of these institutions is not binding on the President of the Republic from a substantive standpoint. This means that the President of the Republic is not obligated to follow the opinions submitted to him. This suggests that the President of the Republic may exercise sole authority in decision-making without being bound by the advisory institutions surrounding him.

This is further confirmed by the third paragraph of Article 93 of the latest amendment, which states that: "He is not authorized to delegate his authority to call a referendum, dissolve the National People's Assembly, decide to hold legislative elections ahead of schedule, or apply the provisions of Articles 91, 92, and 142."

Accordingly, the President of the Republic exercises sole legislative authority through ordinances, without delegating this authority to any specific entity, even if such entity supports him.

However, although the President of the Republic has sole authority to declare exceptional circumstances, the constitutional legislator has sought to narrow their scope by establishing specific grounds and conditions for their application. These issues will be addressed in the following section.

### **B- Legal Controls over Legislation by Ordinance in Exceptional Circumstances**

In exceptional circumstances, the President of the Republic may exercise legislative powers under the Constitution by issuing ordinances. These powers are subject to the substantive and

procedural conditions outlined in Article 98 of the most recent constitutional amendment.

In this regard, the first paragraph of Article 98 establishes the substantive conditions, the most important of which is the existence of imminent danger. This concept refers to any situation that endangers a vital interest and threatens its continuity. Legal doctrine defines grave danger as a serious threat that goes beyond ordinary and familiar risks. However, this condition remains unclear because the constitutional legislator did not define the nature, degree, source, or characteristics of the danger ( ben Sariya, 2010, p. 55) This ambiguity could have been avoided if grave danger had been defined as an immediate and grave threat, as it is in Article 16 of the French Constitution of 1958. In this case, "grave" means that the danger would disrupt the normal functioning of constitutional institutions (Amendment.).

The absence of these conditions in Article 98 expands the president's legislative authority, especially in exceptional circumstances. This creates an imbalance between presidential and parliamentary powers since the constitutional legislator granted the president broad discretion to define and declare a state of emergency.

Therefore, the source of the threat must be clearly determined, whether it is internal or external. Threats to national security may arise from within the country, as they did during the Black Decade, or from external factors, including global crises such as the ongoing pandemic caused by COVID-19 pandemic that spread in 2019.( Dahou, 2015-2016, p. 46)

The authority to legislate by ordinance is not limited to grave danger. It also extends to threats that affect the state's constitutional institutions, independence, or territorial integrity.

This is evident in the wording of Article 98, which refers to a danger that is "about to affect its constitutional institutions." However, this phrase is ambiguous because it does not define the nature or extent of the threat.

This raises the question of : whether the threat must cause complete paralysis of state institutions or merely disrupt their normal functioning? Most French legal scholars interpret Article 16 of the French Constitution as applicable when public authorities are unable to function properly.



This indicates that their operation is impeded, but not completely paralyzed or rendered entirely incapable (ben Ahmad, 2019–2020, p. 265). This approach aligns with the fourth paragraph of Article 98 of the latest amendment, which requires Parliament to convene. This demonstrates its capacity to fulfill its responsibilities.

However, an issue arises when public authorities cease to function and the National People's Assembly dissolves. In that case, the question becomes : how is Parliament required to convene ?

The 1996 Constitution did not specify the legal period for declaring exceptional circumstances. It merely states that the President of the Republic may declare a state of exception when the country is threatened by grave danger to its constitutional institutions, independence, or territorial integrity after the required consultations.

The 2016 constitutional amendment maintained the president's authority to declare a state of emergency or a state of siege. However, it did not specify the duration of either measure. Instead, it provided that in cases of urgent necessity, the president may declare a state of emergency or siege for a specified period.

The 2020 constitutional amendment introduced a maximum period of sixty days for the declaration of exceptional circumstances. Before issuing such a declaration, the President must consult the Speaker of the Council of the Nation, the Speaker of the National People's Assembly, the President of the Constitutional Court, the High Security Council, and the Council of Ministers.

Nevertheless, the Constitution does not require the Republic's president to follow these consultative bodies' recommendations. Consequently, disregarding their recommendations does not have any legal consequences. Nevertheless, consultation remains a mandatory constitutional procedure preceding the declaration of exceptional circumstances. (ben Ahmad, 2019–2020, p. 266)

In light of the preceding discussion on legislation by ordinance issued by the President of the Republic under both ordinary and exceptional circumstances, it is necessary to clarify the technical applications of legislation by ordinance in successive constitutions.

## **1.2- Governmental Preeminence in Introducing Bills**

As indicated in the 2020 constitutional amendment and Organic Law No. 16-12, the government was granted significant authority to initiate

draft laws. ( Boukafa, 2002, pp. 34–35) This is due to its role in translating people's aspirations and demands into legal frameworks. Consequently, the government has taken the lead in initiating draft laws. Conversely, the same law restricts the right of members of Parliament to initiate legislative proposals.

### **1.2.1- The Government's Priority in Initiating Bills**

The authority to propose legislation is an inherent prerogative of the legislative authority. However, the Constitution has also granted this right to the government. Practical experience has demonstrated a clear disparity in favor of the latter, which enjoys broad authority to initiate draft laws, while Parliament's right to initiate legislation remains restricted. The 2020 amendment to Article 143 details the procedural steps for initiating draft laws, as outlined below :

#### **A- Preparation of the bill at the level of the initiating minister**

The Constitution explicitly states that the Prime Minister or the Head of Government, as applicable, has the right to introduce bills. However, in practice, this initiative is not taken by either of them, but by ministers within their respective sectors. Accordingly, their responsibilities are limited to submitting these bills to the Bureau of the National People's Assembly or the Council of the Nation.

Therefore, it would have been more appropriate for the legislature to grant this right to deputies, members, and ministers, while limiting the role of the Prime Minister or Head of Government to submitting draft laws to the National People's Assembly or the Council of the Nation.

The minister introduces the bill based on the shortcomings identified within his sector. Before drafting, it is essential that he takes into account the objective the Government seeks to achieve through this legislative text. He must also identify the regulatory or financial tools needed to achieve this objective.

Furthermore, the minister must evaluate the potential positive or negative effects of implementing the text, as well as the mechanisms required for its implementation. Finally, he must consider the financial impact or direct costs that the sector may incur by adopting the available options.

The minister must also ensure that the bill's provisions can be implemented without obstacles( Masrati, 2014, p. 50). Once the preliminary draft of the law meets all necessary conditions, the



relevant minister consults and coordinates with various ministries to ensure consistency in legislative and regulatory arrangements and to translate the minister's initiative into clear provisions.

This preliminary draft must also be continuously reviewed so that the relevant ministerial sector can familiarize itself with all its details (chevrier, 2008, p. 102)

### **B- The pivotal role of the General Secretariat of the Government in coordinating among bodies related to the draft bill**

The General Secretariat of the Government is a permanent body within the Presidency of the Republic. The primary responsibility of the office is to coordinate the government's legislative activity and to organize the state's legislative work ( Abbas, 2014, p. 26). Its role in lawmaking is evident in its responsibility for reviewing draft bills.

Accordingly, once the preliminary draft law is received from the initiating minister, the General Secretariat of the Government will forward it to the relevant directorates for review. These directorates will assess the law's legal drafting and formal aspects. This approach ensures that the draft aligns with the Constitution and remains consistent with other legislative texts.

The draft is subsequently circulated to all government members, who are requested to submit their opinions and comments within fifteen days. In urgent cases, this period may be reduced to eight days. After receiving the comments and opinions, the General Secretariat of the Government will prepare a memorandum recording them and the related conclusions, which is then transmitted to the sponsoring minister, the Prime Minister, and the Secretary-General of the Presidency for their review.

In the event of a discrepancy between the comments and opinions submitted, the General Secretariat of the Government organizes working meetings with the sponsoring minister and his staff, in coordination with the relevant authorities. The General Secretariat of the Government supervises these meetings, which are held to review and finalize the draft bill. Once this stage is complete, the final draft is added to the Cabinet meeting agenda.

Following approval, the Secretary-General of the Government sends a copy to the Council of State for an advisory opinion. However, the Constitution does not require the President of the Republic to act on

this opinion. Following a thorough review of the draft law by the Council of State, the Secretary- General of the Government will present the text to the Prime Minister and the President of the Republic. The Council of Ministers will then determine whether the draft law will be included on its agenda. Once approved, the Secretary-General of Government submits the draft law on behalf of the government to the Bureau of the Council of the Nation or the National People's Assembly. ( Abbas, 2014, p. 26)

### **C- Referral of Draft Bills to the Council of State**

Once the draft law has been finalized at the ministry level, the Secretary-General of the Government will submit it to the Council of State for its opinion, as outlined in Article 41 of Organic Law No. 18-02, which amends and supplements Organic Law No. 98-01. This provision stipulates that every draft law approved by the Council of Ministers must be conveyed to the Secretariat of the Council of State through the Secretary-General of the Government. Each draft law must be accompanied by a dossier containing all required documents in at least two copies.

Accordingly, the law gives the Secretary-General of the Government an important role in coordinating between the ministry responsible for drafting the law and the Council of State.

This differs from the French system, in which the Council of State is notified by the minister only if the text is a draft ministerial decree ( Masrati, 2014, p. 56). If the text is a draft law, however, the Council of State is notified by the General Secretariat of the Government. A bill proposed by deputies is notified by the President of the National Assembly, and a bill proposed by senators is notified by the President of the Senate.

This prompts the following inquiry : On what basis does the Council of State formulate its opinion on draft laws?

In this regard, the Council of State expressed its opinions in two phases. The first phase was governed by Organic Law No. 98-01, which distinguished between ordinary consultations, reviewed by the General Assembly, and urgent consultations, examined by the Standing Committee(ben Ahmad, 2019–2020, p. 298).



The second phase was introduced by Organic Law No. 18-02, which gave the Advisory Committee the responsibility of examining draft laws and ordinances in both ordinary and urgent cases. The Advisory Committee is composed of the President of the Council of State as chair, the State Commissioner, the presidents of the chambers, and three State Councillors appointed by the President of the Council of State. ( Article 114, 2020.)

The aforementioned elements are theoretical procedures that do not, in and of themselves, demonstrate the government's superiority in this area. It is therefore necessary to highlight the importance of this issue through its practical implications.

Regarding the introduction of bills during the legislative periods from 1997 to the present, parliamentary participation has remained limited, despite being a fundamental prerogative of Parliament. Indeed, this participation is almost nonexistent. Parliament's decision not to implement this procedure has allowed the government to take the initiative in proposing draft legislation.

### **1.2.2-The Limited Role of Parliament in Initiating Legislation**

According to the second paragraph of Article 114 of the 2020 constitutional amendment, which states that "each chamber of Parliament has the authority to draft and vote on laws," we believe that, upon careful consideration, the reader may conclude that each chamber has broad authority in lawmaking. This is reflected in the phrase "has the authority."

However, the constitutional legislator has restricted this right through the duties entrusted to members of Parliament in drafting legal texts by initiating bills. These restrictions impact members in the exercise of this right. The constitutional restrictions imposed on members of both chambers of Parliament are as follows:

#### **A- Narrowing the scope of law and broadening the scope of regulation**

With regard to ordinary law, the 1963 Constitution granted members of the National Assembly broad freedom to exercise legislative functions. This is derived from the first paragraph of Article 2, which states that "national sovereignty belongs to the people, who exercise it

through their representatives in the National Assembly, elected for a term of five years..."

However, the constitutional legislator opted for a different approach in the 1976 Constitution, defining the scope of legislation and limiting it to twenty-six areas. While the scope was defined, there was still room to add or remove certain elements. Consequently, the constitutional legislator transferred several domains previously within Parliament's purview under the 1976 Constitution.

Based on the 1989 Constitution, the 1996 Constitution introduced several significant updates. For instance, it removed elections from the scope of organic laws. It also expanded the scope of ordinary law to include fundamental guarantees for employees, the basic law of public service, the real estate system, national defense, the use of armed forces by civilian authorities, and the transfer of property from public to private ownership.

The areas specified in the 1996 Constitution were retained in the constitutional amendment. The only exception was the approval of the national plan, which was transferred to the regulatory sphere, since all matters not reserved for legislation fall within the regulatory authority of the President of the Republic. The constitutional legislator also maintained the same areas reserved for legislation in the 2020 amendment, with the addition of general rules on public contracts.

As demonstrated above, there is flexibility at the legislative level. Changes, whether by expansion or reduction, have had a significant impact on the nature of legislative texts. Some matters regulated by legislation under the 1976 Constitution fell within the regulatory sphere under the 1989 Constitution, then returned to the legislative sphere under the 1996 Constitution. As for organic laws, they were stipulated in Article 123 of the 1996 Constitution. Regarding organic laws, they are outlined in Article 123 of the 1996 Constitution, which corresponds to Article 140 of the 2020 amendment. Article 140 states : "In addition to the areas designated for organic laws under the Constitution, Parliament shall enact organic laws in areas previously addressed."

A preliminary review of the article indicates that the constitutional legislator has restricted the scope of organic laws to six specific areas. However, a thorough review, especially of the phrase "in addition to



the areas designated for organic laws under the Constitution," reveals that these areas are not exhaustive. It should be noted that other matters may also fall within the scope of organic laws. Consequently, the scope of organic laws in the constitutional document appears limited and broad at the same time. (140 of the latest amendment of 2020.)

However, when comparing the regulatory scope reserved for the President of the Republic with the scope of organic laws assigned to Parliament, the latter's true exclusivity becomes clear, despite its breadth. The 1976 Constitution was the first to define the scope of legislation and regulation, a distinction that was maintained under the 2020 constitutional amendment.

In this regard, the first paragraph of Article 141 states that the President of the Republic exercises regulatory authority in matters not reserved for the legislature. This paragraph underscores the pivotal role of the President, particularly in establishing legal frameworks in areas where the legislature sets only general principles. It also grants him significant autonomy in determining fundamental principles and detailed regulations (140 of the latest amendment of 2020.)

### **B-Legislative Initiative to Introduce is a shared prerogative of the Prime Minister's Office and Members of Parliament**

The 2020 amendment granted the right to initiate legislation to the Prime Minister or Head of Government, as well as to deputies of the National People's Assembly and members of the Council of the Nation. This suggests that Parliament does not have exclusive authority in this matter, despite being the primary holder of legislative power. Instead, this power is shared with the government, represented by the Prime Minister or Head of Government, as applicable. This shift in focus away from Parliament as the primary legislative body allows the government to take the lead in draft legislation.

### **C-Attaching a statement of reasons to legislative proposals drafted in the form of articles**

According to Article 19 of Organic Law No. 16-12, "In addition to the conditions set forth in Articles 143 and 144 of the 2020 constitutional amendment, every bill or legislative proposal must be accompanied by an explanatory memorandum and drafted in the form of articles."

## **D-Government Dominance of the Finance Act**

The government's authority over the Finance Act is clearly outlined in Article 146 of the recent amendment, which stipulates that Parliament must approve the Finance Act within 75 days of its submission. If the bill is not approved within this period, the President of the Republic issues the government's draft by ordinance.

It is evident from this provision that Parliament's role in financial matters is limited to approving the Finance Act within the constitutional timeframe. Its inability to take action in this area is regarded as a drawback and an infringement on its authority. In this regard, Article 44 of Organic Law No. 16-12 establishes the allocation of timeframes between the two chambers of Parliament for approving the Finance Act.

## **E- Quorum Requirement for Admissibility of parliamentary Initiatives**

The 2020 amendment did not specify the quorum required for legislative initiatives. This matter is expected to be addressed in the upcoming organic law regulating the work of the National People's Assembly and the Council of the Nation, their operations, and their functional relations with the government.

However, the constitutional legislator had previously specified the quorum required for the admissibility of legislative initiatives in the second paragraph of Article 136. According to this provision, bills may be considered for debate if submitted by twenty deputies or twenty members of the Council of the Nation. Article 22 of Organic Law No. 16-12 confirms this requirement, stipulating that a bill must be signed by at least twenty deputies or twenty members and cannot be debated unless this constitutional condition is met.

## **F- Legal Restrictions**

The Constitution has imposed a substantive restriction on parliamentary initiative by stipulating that the subject matter of a bill must not reduce public resources or increase public expenditure. This condition imposes a limitation on the actions of deputies, mandating that their proposed bills not adversely impact the public financial balance. Deputies lack the authority to propose financial measures, thereby limiting Members of Parliament's capacity to engage in the formulation of financial legislation.



## **2.The Executive Branch's Dominance over Constitutional Amendment Initiatives**

To strengthen the Constitution, it is essential to uphold its principles and establish safeguards that ensure its preservation and constitutional legitimacy. Therefore, most constitutions specify the authority empowered to amend the Constitution. This aims to create balance within state institutions and prevent amendment from becoming a means to satisfy the political majority.

Most constitutional systems, including Algeria's, involve both the executive branch, represented by the President of the Republic, who is constitutionally empowered to initiate constitutional amendments, and the legislative branch, which may propose them. ( Abbas, 2014, p. 28)

### **2.1-The President of the Republic's Control over the Initiative to Amend the Constitution**

According to the Algerian Constitution, the President of the Republic holds a prominent position. This is evidenced by the broad powers granted to him by the constitutional legislator, including the authority to amend the Constitution.

A constitutional amendment is a partial alteration of the Constitution's texts and provisions, whether by repealing, adding, or modifying them( Masrati, 2014, p. 56).

It is important to note that constitutions can be classified, based on their amendment procedures, as either flexible or rigid. A constitution is regarded as flexible if it can be amended through the same procedures used by Parliament to enact and amend ordinary laws. Consequently, flexible constitutions are accorded the same standing as ordinary laws.

A constitution is regarded as rigid if its amendment procedures differ, even slightly, from those used for ordinary laws. Given the rigidity of all Algerian constitutions, their amendment is subject to specific procedures characterized by complexity and strictness. The objective is to ensure institutional stability and preserve the principles and balances that often result from difficult compromises among political forces.

A noteworthy element of the Algerian constitutional framework is the significant role played by the President of the Republic in amending most constitutions. He occupied a prominent position in the initial

stage of constitutional amendment. This will be illustrated, first, through the various constitutional stages, and second, through his role in the final approval of the amendment process.

### **2.1.1. The President of the Republic's Initiative for Constitutional Amendment in Algerian Constitutions**

According to the Algerian Constitution, the President of the Republic holds a prominent position. As he is directly elected by the people, he holds a special and lasting status, with broad powers, including the authority to initiate constitutional amendments. These will be addressed as follows :

**A-The 1963 Constitution :** he approval of an absolute majority of the members of the National Assembly was required. This constituted a constraint on the President's authority and prevented him from acting alone in this process. The purpose was to allow time for the features and scope of the amendment to become clear, in order to ensure the stability and continuity of constitutional institutions.

Consequently, the 1963 Constitution is regarded as a rigid constitution in terms of its amendment procedures, which were known for their strictness. This is demonstrated by the participation of both National Assembly members and the President of the Republic in the constitutional amendment debate.

The constitutional framers adopted this provision for several reasons, including the need to ensure the stability of the state and its institutions for national construction and development, and to compensate the people for what they endured during the colonial period. This objective can be achieved through constitutional stability and by seeking, as far as possible, national consensus on issues concerning the national community, including constitutional amendment. This would strengthen the country's unity and its social and political cohesion. The success of this initiative depended on cooperation between the President of the Republic and the National Assembly, both affiliated with the National Liberation Front during that period (ben Ahmad, 2019–2020, p. 298)

**B- The 1976 Constitution :** The 1976 Constitution is widely regarded as one of the most enduring Algerian constitutions, having remained in force for over twelve years. It was promulgated by Decree



No. 76-97 of November 22, 1976, which contained the Constitution of the Algerian Republic.

The Constitution was submitted to a popular referendum on November 19, 1976, and approved by an absolute majority. It remained in effect until February 23, 1989, and underwent three amendments. According to Article 191, the President of the Republic is authorized to propose amendments to the Constitution, provided that such proposals are consistent with the provisions outlined in this chapter.

In contrast to the 1963 Constitution, the 1976 Constitution eliminated the restrictions imposed on the President of the Republic, such as accountability before the National Assembly and the authority of the Speaker of the Assembly to enact laws if the President of the Republic declined to do so.

Chapter Six of the Constitution, titled "The Constituent Function," outlines the provisions relating to constitutional amendments in Articles 211 and 212. It is important to note that these provisions do not require parliamentary approval for a constitutional amendment initiated by the President of the Republic. The President of the Republic is the authority vested with the right of initiative, as provided in the Constitution. He is also the sole authority that submits the draft amendment to the National People's Assembly for final approval.

In addition to the provisions relating to constitutional amendments, the Constitution granted the President of the Republic the authority to submit all issues of national importance to a referendum. This mechanism demonstrates the scope of the President's authority over various institutions. This is reflected in Article 111/14, which formed the basis for the third amendment to this Constitution through the referendum of November 3, 1988, which established the dual executive system (Masrati, 2014, p. 56)

According to the 1976 Constitution, the constitutional legislator excluded the National People's Assembly from participating with the President of the Republic in the initiative to amend the Constitution. Instead, the National People's Assembly was granted authority over ratification and final approval.

This enabled the President of the Republic to consolidate power and exercise sole authority over the single party and state institutions.

Chapter Six of the Constitution, titled "The Constituent Function," includes articles (211 and 212) that address constitutional amendments. However, these provisions do not require parliamentary approval for a constitutional amendment proposed by the President of the Republic. The authority to initiate such amendments rests solely with the President of the Republic, in contrast to the 1963 Constitution. The President of the Republic hereby submits the draft amendment to the National People's Assembly for its final approval. Furthermore, the Constitution grants the President of the Republic the authority to refer matters to the people by referendum on all issues of national importance. This mechanism illustrates the extent of his authority over various institutions, as reflected in Article 111/14, which served as the basis for the third amendment to this Constitution through the referendum of November 3, 1988, establishing the dual executive system ( Boukafa, 2002, p. 67)

**C- The 1989 Constitution:** Upon reviewing the provisions of Title four, which covers constitutional amendments through Articles 163 through 167, it becomes clear that the constitutional legislator maintained the President of the Republic's exclusive right to initiate constitutional amendments and granted the National People's Assembly only the authority to approve the President's initiative for a constitutional amendment once it secures 3/4 of the votes of the members of the National People's Assembly, in addition to requiring the Constitutional Council to issue its opinion on the draft constitutional amendment for deliberation after confirming that this amendment does not infringe upon the general principles governing Algerian society, human rights, or the rights and freedoms of citizens, and does not affect any of the fundamental balances of constitutional powers and institutions. He argued that the President of the Republic should have the right to issue the law containing the constitutional amendment without submitting it to a referendum. We conclude from these facts that the process of initiating constitutional amendments has become the exclusive prerogative of the President of the Republic, and no other authority can resort to it.

Based on the foregoing, we can note that Parliament has been granted greater significance under this Constitution compared to the past, as it has been given the opportunity to participate actively in amending the



Constitution—provided that the President of the Republic does not submit the proposed amendment to the sovereign (the people) for a referendum and their opinion.

**D- The 1996 Constitution, amended in November 2008 :** This The Constitution retained the President's right to initiate constitutional amendments, while linking this authority to Parliament's approval of the draft amendment through a final vote by a majority of the members of both chambers, namely the National People's Assembly and the Council of the Nation. This was also enshrined in Article 208 of the 2016 constitutional amendment, corresponding to Article 219 of the 2020 amendment, which required the opinion of the Constitutional Court on the draft constitutional amendment.

After examining the extent of the President of the Republic's autonomy in initiating constitutional amendments under these constitutions, it becomes clear that he has historically monopolized this process. In contrast, Parliament was granted the authority to propose constitutional amendments only twice : under the 1963 Constitution and the 1996 Constitution.

A simple comparison between the 1963 Constitution, which required an absolute majority of the National Assembly members to initiate a constitutional amendment, and Article 177 of the 1996 Constitution, corresponding to Article 222 of the 2020 amendment, shows a clear difference. Under the 2020 amendment, the required majority is three-fourths of the members of both chambers of Parliament combined. This is a difficult majority to achieve and constitutes a practical barrier that may exclude or marginalize the people's representatives from participating in the constituent power.

Even if this strict majority is achieved, it merely allows the amendment proposal to be submitted to the President of the Republic. He retains full authority to decide whether or not to submit it to a public vote. Therefore, Parliament's initiative to amend the Constitution remains subject to the will of the President of the Republic.

To illustrate the extent of the President's dominance and control over the process of initiating constitutional amendments ( Abbas, 2014, p. 26) .

### 2.1.2. Referendum as a Prerogative Reserved for the President of the Republic in Constitutional Amendments

The matter did not stop at the President's dominance and control over the process of initiating constitutional amendments ; rather, this dominance extended to the final approval of constitutional amendments, a path made clear through his resort to a direct referendum, which finds its basis in the theory of the sovereignty of the nation and the sovereignty of the people, upon which constitutional jurisprudence is founded. and this indirect referendum will be explained at . ( Masrati, 2014, p. 55)

**A - Direct Referendum:** Given the status of the President of the Republic within the Algerian system, the Constitution grants him various and broad powers, as the embodiment of national unity, the guardian of the Constitution, and the guardian of the stability of constitutional institutions. Furthermore, it grants him the authority to appeal directly to the people for a referendum on matters of national importance, This is in accordance with the fourth paragraph of Article 8 of the latest amendment of 2020, which states that **“the President of the Republic may appeal directly to the will of the people,”** as well as the ninth paragraph of Article 91, which states that **“The President of the Republic may consult the people on any matter of national importance through a referendum.”** It is evident from these two paragraphs that the constitutional legislator has granted the President of the Republic the authority to appeal directly to the people for their opinion on any matter of national importance. Among these matters is his appeal to the people when he wishes to amend the Constitution, This is to avoid any objection from Parliament or to prevent it from interfering in the amendment of the Constitution whenever it becomes clear to the President that the latter will be amended through revision, even though paragraph 9 of the aforementioned Article 91 does not impose any restrictions or conditions on the President of the Republic in exercising this right, in addition to conferring popular legitimacy(Article 219 of the 2020 Constitutional Amendment).

Given this, the question of the constitutionality of a constitutional amendment initiated by the President of the Republic through a referendum arises. In this regard, some constitutional scholars argue that this procedure is unconstitutional, contending that the



Constitution has specified the methods and procedures for constitutional amendment; thus, it violates and deviates from the constitutional framework for amendment. However, from a legal perspective, another school of thought holds that the President's resort to this method is a constitutional prerogative under the aforementioned Article 91/9, provided it is incorporated into matters pertaining to constitutional amendment. ( Abbas, 2014, p. 26)

Professor Said Boualchier argues, based on the practice of direct referendums, that the constitutional amendments carried out through direct popular referendums in 1988 and 1989 are unconstitutional in terms of procedure and the limitation of the method of amendment to Chapter Six of the 1976 Constitution, specifically Articles 191, 93, 196, a chapter in which we find no reference whatsoever in paragraph 14 of Article 111, which stipulates the possibility for the President of the Republic to resort to a popular referendum on any matter of national importance, meaning that it pertains to other areas such as the National Charter. ( Masrati, 2014, p. 55)

**B. Indirect Referendum:** It is clear that when the will of the people is constitutionally empowered to grant final approval to a proposed amendment submitted by the President of the Republic, such approval constitutes definitive proof requiring the President of the Republic to enact the constitutional amendment and implement it, which states that **"... The amendment shall be submitted to a popular referendum within fifty days following its approval, after which the President of the Republic shall issue the constitutional amendment ratified by the people."** Furthermore, if the amendment is not approved by the will of the people, it is self-evident that it must be nullified, and it is unreasonable for the people to reconsider an issue on which they have previously voted to reject. This is the essence of Article 220, which states : **"A law containing a draft constitutional amendment shall become null and void if rejected by the people, and may not be resubmitted to the people during the same legislative term."** The article clarifies that a draft constitutional amendment may not be resubmitted to a popular referendum unless a new Parliament has been installed. In contrast, the constitutional legislator did not require the President of the Republic to submit a draft constitutional amendment to the people in

all cases. The President of the Republic is exempted from doing so when he obtains the approval of both chambers of Parliament sitting jointly by a three-fourths majority.

This exemption will apply once the Constitutional Court rules that the draft constitutional amendment does not infringe upon the general principles governing Algerian society or upon human and civil rights and freedoms... ( Abbas, 2014, p. 28)

The President of the Republic is not required to submit a constitutional amendment initiative to a popular referendum. This exemption is granted upon consultation with the Constitutional Court and approval by a three-fourths majority of the members of both chambers of Parliament.(Article 91 of the 2020 Constitutional Amendment.) This could potentially disrupt the political system by marginalizing the role of the people, which contradicts Articles 6 and 7 of the Constitution. According to Article 220, a draft constitutional amendment that has been rejected by the people may be resubmitted to a popular referendum, as outlined in the second paragraph of the article.

However, Articles 6 and 7 clearly state that the people are the source of all authority, that national sovereignty belongs to the people, and that constituent power belongs to the people, who exercise it through a popular referendum.

As Article 220 is among the detailed provisions, its status and force are weaker than those of Articles 6 and 7. Therefore, it is necessary to repeal the second paragraph of Article 220. (Article 111 of the 2020 Constitutional Amendment)

## **2.2. The Practical Absence of Parliamentary Initiative in Constitutional Amendments**

The Constitution is regarded as the paramount law of the state, yet it remains subject to amendment. Given its significance, the Algerian constitutional legislator involved both Parliament and the President of the Republic in the constitutional amendment process by allowing them to share constituent power.

However, in practice, Parliament's limited role in the constitutional amendment process has become evident due to the constraints and restrictions imposed on it. As a result, Parliament has been unable to compete with the President of the Republic in the realm of



constitutional amendment. This has been demonstrated by constitutional experience, in addition to the restrictions imposed by the constitutional legislator, which have led to its incapacity and the absence of its role in initiating constitutional amendments.

### **2.2.1. The Limitations of Parliamentary Initiative in Constitutional Amendment**

The limited and inadequate role of Parliament in proposing constitutional amendments effectively gives the President of the Republic an opportunity to take control of this process. However, the question that must be asked is : **To what extent has the Algerian constitutional legislator struck a balance between Parliament and the President of the Republic in the area of constitutional amendments ? Or is there an excessive imbalance between them ?** To answer this question, we must examine the status of parliamentary initiatives to amend the constitution in successive constitutions. (Article 119 of the Constitutional Amendment.)

#### **A-The Status of Parliamentary Initiative in the Constitutional Amendment Under Successive Constitutions**

Prior to the 1996 Constitution, Algeria had three major constitutions : the 1963 Constitution, the 1976 Constitution, and the 1989 Constitution. These constitutional systems were adapted to suit the unique circumstances faced by Algeria at the time.

The 1963 Constitution is widely regarded as the first Constitution adopted in the immediate aftermath of independence (For example, in the State of Qatar, whose 1970 Constitution granted the Emir the right to amend the Constitution at any stage, the Jordanian Constitution, in turn, granted the Emir the right to amend it during the two years following its entry into force,). The 1963 Constitution was also the first Constitution to grant the National Assembly the right to initiate constitutional amendments and to involve the President of the Republic in this process. This was outlined in Article 71, which stipulated that the initiative to amend the Constitution was shared by the President of the Republic and an absolute majority of the members of the National Assembly.

The procedure for amending the Constitution involved two readings, followed by a vote by an absolute majority of the members of the National Assembly.

The inclusion of the National Assembly alongside the President of the Republic in the initiative to amend the Constitution has given the 1963 Constitution a positive character and a distinguished status compared to the constitutions that followed. Subsequent constitutions exhibited a pattern of weakness and limitations regarding this authority.

While the constitutional legislator granted the National Assembly the same initiative as the President of the Republic in amending the Constitution, a close reading of the aforementioned Article 71 reveals an imbalance in the amendment process. We find that the President of the Republic possesses broad authority, whereas the National Assembly's initiative is restricted and contingent upon the presence of an absolute majority of its members. Conversely, the President of the Republic's power to propose constitutional amendments is contingent upon the consent of the National Assembly, namely its approval of the proposed amendment.

Despite the status of the National Assembly, this consent remains a mere formality. In practice, the National Assembly does not have full autonomy in carrying out its duties, particularly when it comes to constitutional amendments.

**B- The Absence of Parliamentary Initiative in Constitutional Amendment:** Under the 1976 and 1989 Constitutions, Parliament did not have the authority to initiate constitutional amendments. This authority was reserved exclusively for the President of the Republic, without the involvement of Parliament.

According to the 1976 Constitution, Article 91 stipulates that "the President of the Republic is authorized to propose amendments to the Constitution, provided that such proposals comply with the provisions outlined in this chapter" ( Kharbashi, 1996, p. 56), Therefore, this authority is not subject to any restrictions. However, when proposing constitutional amendments, the President of the Republic must ensure that they do not infringe upon the republican nature of the government, the state religion, the socialist choice, the fundamental freedoms of the individual and the citizen, the principle of voting by direct, secret, and universal suffrage, or the integrity of the national territory.

In certain countries, the initiative to amend the Constitution is reserved exclusively for the head of state. For instance, in Algeria and



Qatar, the 1970 Constitution of Qatar granted the Emir the prerogative to introduce constitutional amendments at any stage. Similarly, Article 70 of the 1928 Jordanian Constitution permitted the Emir to amend the Constitution within two years of its entry into force (Articles 192 and 193 of the 2020 Constitutional Amendment). As these examples demonstrate, the majority of constitutions have entrusted the President of the Republic with the power to propose amendments, thereby reflecting his authority.

This is particularly evident in Algeria, where the 1976 Constitution excluded the people, who are considered the holders of constituent power, from the process of initiating constitutional amendments. Although the initial proposal was intended to be presented to a public vote, the President of the Republic instead referred the constitutional amendment to the party's Secretary-General, where it was endorsed by deputies affiliated with the party before promulgating the draft amendment, which then entered into force (Article 222 of the 2020 Constitutional Amendment).

The Algerian constitutional legislator has entrusted the National People's Assembly with the authority to approve the President of the Republic's initiative for constitutional amendment. As outlined in Article 192, the National People's Assembly is required to approve the draft amendment by a two-thirds majority of its members.

Accordingly, the role of the National People's Assembly was limited to approving the draft amendment by the required majority, as provided in Articles 192 and 193. This explains its limited involvement in the process of amending the Constitution.

Similarly, the National People's Assembly was unable to introduce changes to the draft law submitted by the President of the Republic concerning the constitutional amendment. This limitation is confirmed by past practice, which shows the absence of a specific legal basis allowing such changes. (ben Ahmad, 2019–2020, p. 298)

The 1989 Constitution introduced significant changes to the legislative branch compared to the 1963 and 1976 Constitutions. It granted Parliament broader powers in the areas of oversight and legislation.

However, despite this expansion, the constitutional legislator adopted the same principle as the 1976 Constitution. The President of the Republic had the authority to propose amendments to the Constitution,

while Parliament's role was confined to approving these amendments. This shift has led to a reduction in Parliament's influence in the constitutional amendment process.

Despite the innovations introduced by the 1989 Constitution, such as submitting the draft amendment to a referendum after its approval by the National People's Assembly and adopting the multi-party system, the role of Parliament remained limited. The multi-party system enhanced the National People's Assembly's functionality by diversifying its membership and expanding its areas of jurisdiction. However, the initiative to amend the Constitution remained exclusively with the President of the Republic.

### **C-Parliamentary Initiative Under the 1996 Constitution and Subsequent Constitutional Amendments :**

Legislative authority under the 1996 Constitution underwent a notable development compared to previous constitutions through the adoption of a bicameral legislature for the first time. This objective was realized through the establishment of a second chamber alongside the National People's Assembly, known as the Council of the Nation.

Article 98 formally endorsed this bicameral system, stipulating that: "Legislative power is exercised by a Parliament consisting of two chambers, namely the National People's Assembly and the Council of the Nation. Parliament possesses the authority to draft and vote on laws." In accordance with Title Four of this Constitution, entitled "Constitutional Amendment," the 1996 Constitution, in line with previous constitutions, recognizes the President of the Republic's right to initiate amendments to the Constitution.

However, if the proposed amendment complies with constitutional requirements and is approved by at least three-quarters (3/4) of the members of both chambers of Parliament, the President of the Republic is not required to submit it to a popular referendum. According to Article 177 of the 1996 Constitution, corresponding to Article 211 of the 2016 constitutional amendment and Article 222 of the 2020 constitutional amendment, "three-quarters of the members of both chambers of Parliament, meeting jointly, may propose a constitutional amendment to the President of the Republic, who may submit it to a popular referendum."



This provision indicates that Parliament's right to initiate constitutional amendments has been reinstated, marking a significant return to its role in the constitutional process after a hiatus of nearly thirty years since the suspension of the 1963 Constitution. However, this initiative and the article's wording also reveal restrictions imposed on Parliament, which may diminish its standing in the process of proposing constitutional amendments.

It is evident that the constitutional legislator sought to establish a balance between the two chambers during the process of amending the Constitution. This was achieved by requiring a three-quarters (3/4) majority of the members of both chambers of Parliament. This requirement contributes to institutional balance as a whole.

Accordingly, it is difficult to conceive of this three-quarters (3/4) majority being achieved if one chamber acts independently of the other in initiating a constitutional amendment, as this would contradict the wording of Article 222. As outlined in Article 222, a parliamentary initiative to amend the Constitution can be initiated only if it is proposed by a three-quarters (3/4) majority of the members of both chambers of Parliament, meeting jointly, and then submitted to the President of the Republic, who may refer it to a popular referendum.

However, this initiative cannot be achieved without the support of a three-quarters (3/4) majority of the members of both chambers of Parliament and the consent of the President of the Republic.

It should be noted that this option remains procedurally unclear, as the Constitution does not specify which chamber has priority in proposing a constitutional amendment, nor does it clarify how the three-quarters (3/4) majority is to be achieved. However, achieving a three-quarters (3/4) majority of the members of both chambers of Parliament, meeting jointly, remains challenging, given the presence of the presidential third appointed by the President of the Republic.

Additionally, Parliament's authority is restricted and reduced to a mere formality, since the constitutional amendment must be proposed by three-quarters of the members of both chambers to the President of the Republic, who may then submit it to a popular referendum and enact it if approved.

Therefore, the use of the term "may" indicates that the President of the Republic retains discretionary authority over the proposed amendment. As the final decision-maker, he has the authority to approve or reject its submission.

If he concurs with Parliament's position, he will submit the proposed amendment to a popular referendum and, if approved by the people, he will promulgate it. If the people reject it, he cannot promulgate it, as previously mentioned, since it is regarded as if it had never existed.

This suggests that Parliament's intended role in initiating constitutional amendments is not fully operational, despite being stipulated in the Constitution. In practice, the initiative to amend the Constitution remains dependent on the President of the Republic, while Parliament's role is limited to approving the amendment.

A similar situation applies to the promulgation of the Constitution. Parliament cannot promulgate it, as this authority is reserved exclusively for the President of the Republic, who declares the entry into force of the new constitutional text after all required conditions have been met.

### **2.2.2. Restrictions on the Procedures for Parliamentary Initiatives to Amend the Constitution**

The Algerian constitutional legislator has addressed the shortcomings of the 1963 and 1989 Constitutions, as previously mentioned, regarding Parliament's lack of authority to propose constitutional amendments, with the exception of the 1996 Constitution, which explicitly codified this right in Article 177, corresponding to Article 222 of the latest constitutional amendment of 2020 (Article 222 of the 2020 Amendment.). However, despite the constitutional legislator's attention to Parliament in this area, after it had been barred from doing so for over thirty years, Parliament members' exercise of this authority has not been straightforward. This is due to the procedural restrictions imposed by the constitutional legislator, which have made it difficult for them to exercise the right to initiate constitutional amendments (Masrati, 2014, p. 56), if not impossible. These restrictions are as follows:

#### **A-Requirement for meeting the legal quorum**

The constitutional legislator stipulated that members of both chambers of Parliament, meeting jointly, may only initiate a constitutional



amendment if a fundamental condition is met : a quorum of three-quarters (3/4). This quorum is necessary for proposing a constitutional amendment.

This quorum poses a substantial challenge, as it hinders the execution of parliamentary initiatives. The challenge in accessing this data stems from the fact that it is based on the total membership of both chambers of Parliament combined, not solely on the votes cast. The National People's Assembly is comprised of various political parties, the majority of which are pro-government. Additionally, one-third of the Council of the Nation is appointed by the President of the Republic, and these appointees are expected to align with the President's policies.

These factors are likely to hinder the initiative that members of Parliament intend to pursue, thereby impeding Parliament's ability to function effectively . (Article 222 of the 2020 Constitutional Amendment)

### **B-The President's Control Over the Referral of Parliament's Initiative for a Popular Referendum :**

According to Article 222 of the latest amendment, once members of Parliament have secured the required quorum for the initiative to propose a constitutional amendment, they must present the proposed amendment to the President of the Republic as a preliminary step before submitting it to a popular referendum.

This requirement has introduced complexity to the matter, creating challenges for members of Parliament. The reason is that they are unable to submit their initiative directly to the people by referendum, as this right is reserved exclusively for the President of the Republic.

This right allows the President of the Republic to block the initiative by refusing to submit it directly to the people, or by delaying its submission. The term "may" in Article 222 indicates that the constitutional legislator has granted the President of the Republic broad discretionary authority, enabling him to determine the progression of the amendment procedures.

He reserves the right to put it to a referendum, namely the parliamentary initiative to amend the Constitution, or not. There is no provision that would require him to justify his position if he refuses to consult the people.

From this perspective, it can be concluded that the right of members of Parliament to initiate a constitutional amendment is a formal right that remains purely theoretical. This has been demonstrated in practice by their inability to bring such an initiative to fruition.

### **C- Ambiguity in the Procedures for Proposing Amendments :**

Paragraph 3 of Article 99 of the aforementioned Organic Law No. 16-12 stipulates that Parliament may convene upon the call of the Speaker of the National Assembly in the circumstances provided for in Article 222 of the latest amendment of 2020.

As stated in this paragraph, the entity responsible for convening both chambers of Parliament to propose a constitutional amendment has been identified. According to Article 100 of the same law, the Speaker of the People's National Assembly is authorized to preside over Parliament when it meets in joint session, as stipulated by the Constitution. For further clarification on this matter, reference may be made to Article 222 of the latest constitutional amendment.

This provision is the source of ambiguity and raises several questions. It is imperative to clarify whether the convening of both chambers of Parliament is contingent upon reaching a quorum of three-quarters (3/4) of the proposed members, or whether this quorum is established after the convening.

These questions require clarification. Therefore, the legislature should have clarified the procedures governing parliamentary initiatives regarding constitutional amendments.

### **Conclusion**

The Constitution acknowledges the clear disparity in the structure of the executive and legislative branches of government. This disparity is evident in the composition of the executive and legislative branches, their exclusive powers, and the areas where their powers overlap.

Ultimately, we can conclude that the entrenched imbalance between the executive and legislative branches stems from the constitutional provisions included by the legislature in each constitution. These provisions grant the president and prime minister powers that prevent parliament from performing its duties.

This imbalance is evident at the organizational and functional levels of both branches. In order to restore the legislative branch's standing,



interference by the president or government in legislative powers must be eliminated or minimized.

The most important findings and recommendations are :

-The constitutional enshrinement of the separation of powers principle was intended to strengthen the state authorities and the constitutional system within the framework of strengthening the President of the Republic's position. This expansion of powers is in accordance with the 2020 constitutional amendment.

-The expansion of the President of the Republic's powers undermines the flexible separation of powers and places the President at the apex of the state's political and executive hierarchy.

-The 2020 constitutional amendment represents a qualitative leap that granted the president broader regulatory powers, thereby restricting the legislative branch's inherent jurisdiction.

-To effectively implement the separation of powers, it is essential to foster cooperation and communication among the branches of government to ensure complementarity and prevent the overlap of powers among constitutional institutions.

-To ensure such cooperation, it is essential to involve the branches of government in all areas, including sensitive ones, since the branches represent the people, the source of all authority in the state.

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