

THE LEGISLATIVE AUTHORITY OF THE EXECUTIVE POWER UNDER NORMAL CIRCUMSTANCES
ACCORDING TO THE 2020 CONSTITUTIONAL AMENDMENT

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Abstract:

Legislation in Algeria falls under the jurisdiction of Parliament. However, the President holds exceptional legislative authority in certain circumstances necessitated by the need to ensure the continuity and proper functioning of state institutions. The Constitution grants this power to the President as the head of the executive authority and the primary official responsible for managing the country's affairs. Nonetheless, the exercise of this power remains subject to legal and supervisory constraints.

This authority allows the President to issue legislative texts with the force of law. However, the President is granted this power only in specific cases stipulated by the Constitution. Consequently, the President's legislative authority is considered an exception rather than a rule, as it is exercised solely when necessary. It is also emphasized that any legislative text issued by the President must conform to constitutional principles and must not violate the principle of separation of powers.

Keywords: President of the Republic, Executive Authority, Legislation, Parliament, Normal Circumstances.

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Introduction:

The principle of separation of powers is one of the fundamental pillars of the rule of law. It is a constitutional principle enshrined in the highest legal document of the state. Countries have adopted different approaches to this principle; some systems have implemented absolute separation between powers, while others have opted for relative separation.

This principle aims to prevent any authority from interfering in the functions and competencies of another authority, necessitating the distribution of functions among state powers while establishing a mechanism for mutual oversight to ensure balance and prevent any abuse of power. Additionally, this principle contributes to strengthening constitutional oversight, which is undertaken by the Constitutional Court, to protect rights and freedoms. Furthermore, the principle of separation of powers reinforces the rule of law by preventing the concentration of legislative, executive, and oversight powers in a single entity.

The Algerian constitutional legislator has adopted the principle of relative separation of powers, as reflected in the provisions of the 2020 Constitutional reform. This approach has enabled the activation of mutual oversight mechanisms between the different branches of government within a framework of cooperation and coordination to ensure the continuity of state institutions. The Constitutional reform also introduced provisions that recognize exceptions to this principle, allowing one authority to intervene in the competencies of another under constitutionally defined conditions and procedures, while providing necessary safeguards to prevent any abuse of these powers.

Among the exceptions stipulated in the Constitution is the possibility of executive intervention in the legislative function, despite the fact that legislation is primarily the responsibility of the legislative authority. This intervention grants the executive branch the authority to establish general and abstract rules with the same legal force as legislative texts. Furthermore, this role has been expanded at the expense of parliamentary powers, giving the executive a broader margin in the legislative process. This intervention is also evident in other competencies, such as participation in the drafting stages of laws, their promulgation, and the request for a second deliberation, thereby reinforcing the executive's influence on the legislative process.

Although Parliament holds the primary authority to enact laws, and considering the principle of separation of powers as a fundamental pillar of Algeria's constitutional system, the constitutional legislator has nonetheless granted extensive legislative powers to the President of the Republic. This raises the following main research question:

What are the limits governing the participation of the executive authority in the legislative process under the 2020 Constitutional reform?

This central question gives rise to the following sub-questions:

- What are the legislative powers granted to the executive authority under normal circumstances?
- Can the executive authority activate its legislative role even in the presence of the legislative authority, or does this occur only in its absence?

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The nature of the study necessitated the adoption of a descriptive analytical methodology, focusing on analyzing the constitutional provisions introduced by the 2020 amendment, as well as examining, deconstructing, and simplifying ideas presented in relevant sources and references.

The study is divided into three main Topics. The first Topic discusses the President's authority to legislate by executive orders. The second Topic examines the role of the executive authority as a participant in the legislative process. The third Topic explores the exercise of independent regulatory authority.

THE FIRST TOPIC: THE PRESIDENT'S AUTHORITY TO LEGISLATE BY EXECUTIVE ORDERS

Article 142 of the 2020 Constitutional reform grants the President the power to legislate by executive orders to fill any legal vacuum that may affect the proper functioning of state institutions in the absence of Parliament under normal circumstances¹.

This power serves as a mechanism enabling the President to exercise legislative functions by issuing executive orders that carry the same legal force as laws. However, such authority is limited to specific situations outlined by the Constitution².

FIRST REQUIREMENT: CASES OF LEGISLATION BY EXECUTIVE ORDERS

Article 142 of the 2020 Constitutional reform explicitly outlines the cases in which the President may intervene through executive legislation, stating³: *"The President may legislate by executive orders in urgent matters in the event of the vacancy of the National People's Assembly or during parliamentary recesses..."*

From this provision, it is evident that the constitutional legislator has linked the power to legislate by executive orders to the necessity of urgency⁴.

Firstly: Legislation by Executive Orders in the Event of a Vacancy in the National People's Assembly

According to the 2020 Constitutional reform in article 114, the legislative authority holds sovereignty in drafting laws. However, the constitutional legislator has provided, in Articles 108 and 151 of the same amendment, a mechanism for dissolving the National People's Assembly, which inevitably leads to its vacancy and absence from the legal scene.

The vacancy of the National People's Assembly can thus be defined as a situation that results in the termination of the Assembly's continuity before the expiration of its constitutionally prescribed five-year term⁵, as explicitly stated in Article 122 of the 2020

1- Marah Ahmed, The Authority of the President to Legislate by Presidential Ordinances within the Framework of the Algerian Constitutional Amendment of 2020, The Academic Journal of Legal and Political Research, Amar Telidji University, Vol. 6, No. 2, 2020, p. 1196.

2- Abdelwahab Mourad; Ben Haffaf Ismail, Legislation by Ordinances According to the 2020 Constitutional Amendment, Afaq Journal of Sciences, Djelfa University, Vol. 7, No. 4, 2022, p. 574.

3- Article 142 of Presidential Decree No. 20-442, including the constitutional amendment, dated 30-12-2020, Official Gazette, No. 82.

4- Boujana Mohamed; Miftah Mekhtaria, The Legislative Competence of the President in the 2020 Constitutional Amendment, Journal of Legal and Social Sciences, Ziane Achour University, Vol. 6, No. 3, 2021, p. 249.

5- Laqoun Afaf, The Authority of the President to Legislate by Ordinances According to the 2020 Constitutional Amendment, Journal of Legal and Social Sciences, Ziane Achour University, Vol. 6, No. 4, 2021, p. 1156.

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Constitutional reform¹. This occurs when circumstances justify such an action. In clearer terms, the vacancy arises when the Assembly ceases to exercise its original and customary powers, leading to the absence of a legislative body capable of issuing legal texts. To address this legal gap, the constitutional legislator logically granted the executive branch the power to legislate by executive orders².

By analyzing Articles 108 and 151 of the 2020 Constitutional reform, it is evident that the dissolution of the National People's Assembly can take two forms:

1- Mandatory Dissolution

Article 108 of the 2020 Constitutional reform states: *"If the National People's Assembly fails to approve the government's action plan a second time, it shall be dissolved mandatorily..."* This type of dissolution is activated if the Assembly rejects the First Minister's action plan or the government's program for a second time³. In such cases, the President can intervene directly and unilaterally to dissolve the Assembly without consultation. The outgoing government continues to handle routine affairs until new parliamentary elections are held within a maximum period of three months⁴.

2- Voluntary Dissolution

Based on Article 151 of the 2020 Constitutional reform, which states: *"The President may decide to dissolve the National People's Assembly or call for early legislative elections..."* In this case, the President has the discretionary authority to dissolve the Assembly without external intervention whenever deemed necessary⁵.

Secondly: Legislation by Executive Orders During Parliamentary Recess

According to Article 138 of the 2020 Constitutional reform: *"Parliament convenes in one regular session each year, lasting ten months..."* This means that Parliament holds a single annual session lasting ten months, beginning on the second working day of September and continuing until the last working day of June⁶. This session may be extended at the request of the the First Minister or the Head of Government, depending on the case, to finalize the discussion of a pending agenda item. Additionally, Parliament may convene for an extraordinary session either at the initiative of the President or by a presidential decree issued upon the request of the First Minister, the Head of Government, or two-thirds of the members of the National People's Assembly⁷.

Thirdly: Legislation in Financial Matters

1- Article 122 of the 2020 Constitutional Amendment: "The People's National Assembly is elected for a term of five (5) years."

2- Abdelwahab Mourad; Ben Haffaf Ismail, Op. Cit., p. 575.

3- Channah Mohamed, The Effectiveness of Constitutional Constraints in Limiting the Scope of Legislation by Ordinances, Journal of Legal and Political Thought, Faculty of Law and Political Science, Amar Telidji University, Vol. 7, No. 1, 2023, p. 365.

4- Ahsan Gharbi, The Dissolution of the People's National Assembly in Light of the 2020 Constitutional Amendment, The Comprehensive Journal of Law, 2020, p. 96.

5- Tebbina Hakim, The Authority to Dissolve the People's National Assembly in Light of the 2020 Constitutional Amendment, Journal of Legal Studies and Research, Vol. 8, No. 2, 2023, p. 155.

6- Marah Ahmed, Op. Cit., p. 1197.

7- Laqoun Afaf, Op. Cit., p. 1158.

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The state budget receives significant attention from the constitutional legislator due to the necessity of financial legislation for the functioning of the state and its institutions. The Finance Law is a crucial annual law issued by the legislative authority, which is primarily responsible for its enactment¹.

However, anticipating the possibility of failing to pass the Finance Law within the prescribed timeframe, the constitutional legislator provided an appropriate solution in Article 146 of the 2020 Constitutional reform: *"Parliament must approve the Law of Finance within a maximum period of 75 days from the date of its submission. If it is not approved within this period, the President shall issue the government's draft Finance Law by executive order."* Thus, the President has the authority to intervene and issue the Finance Law by executive order if Parliament fails to approve it within the designated period².

**SECOND REQUIREMENT: RESTRICTIONS ON THE AUTHORITY TO LEGISLATE
BY EXECUTIVE ORDERS**

The authority to legislate by executive orders has sparked debate in legal circles, prompting the constitutional legislator to reduce ambiguity by imposing restrictions. These restrictions serve as conditions, some of which are mandatory while others are merely procedural. This approach reflects the constitutional legislator's efforts to safeguard the status and primary role of the legislative authority while preventing any infringement upon its prerogatives.

Thus, although this power is granted to the President of the Republic, it remains an exceptional competence rather than an inherent one. It must, therefore, be confined within a set of restrictions to prevent potential abuse. Given their significance, these conditions have been explicitly outlined in the same article that grants the President the authority to legislate by executive orders. These restrictions include:

- Obtaining the Opinion of the Council of the Nation
- Issuing Executive Orders within the Council of Ministers³
- Presenting Executive Orders to Parliament in Its Next Session
- Subjecting Executive Orders to Constitutional Court Oversight⁴

**SECOND TOPIC: THE EXECUTIVE AUTHORITY AS A PARTY IN
THE LEGISLATIVE PROCESS**

The intervention of the executive authority in the work of Parliament occurs through legislation by executive orders in the absence of the National Assembly from the legal scene. However, upon further examination, it becomes evident that the executive authority also intervenes even in the presence of the competent legislative authority. This intervention may come from either the President or the First Minister.

FIRST REQUIREMENT: ENACTMENT AND OBJECTION TO LAWS

1- Channah Mohamed, Op. Cit., p. 367.

2- Abdelwahab Mourad; Ben Haffaf Ismail, Op. Cit., p. 576.

3- Marah Ahmed, Op. Cit., p. 1198.

4- Channah Mohamed, Op. Cit., p. 369.

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The President is the guardian of the Constitution and the primary figure responsible for ensuring its respect. The constitutional legislator has granted him the authority to participate in the legislative process alongside the legislative authority by enacting and objecting to laws¹.

Firstly: The Authority of the President to Enact Laws

The Constitution explicitly grants the legislative authority, represented by both chambers of Parliament, the power to draft laws, as it holds the original jurisdiction in law-making through a series of procedural steps.

Among these steps is the crucial and fundamental authority of enacting laws, which, however, has been stripped from the legislative authority and granted exclusively to the President of the Republic, as he is the guardian of the Constitution². Thus, enactment is an indispensable phase of the legislative process, a prerogative exercised solely by the President of the Republic. Without enactment, a law cannot be conceived as valid, as it is the President who grants it enforceability, making it legally binding³. This underscores the President's role as a key participant in the law-making process, serving as a form of oversight over legislative actions.

It is also worth noting that enactment is an exclusive power of the President that cannot be delegated. Furthermore, no other body is authorized to assume this function if its deadline expires.

According to Article 148 of the 2020 Constitutional reform, the constitutional legislator granted the President the authority to enact a law passed by Parliament within a period of 30 days⁴. However, what is striking about this provision is that it does not address the situation in which the President refrains from enacting laws beyond the explicitly specified deadlines. The Constitution does not impose any penalties for such a refusal, nor can any other entity compel the President to proceed with enactment. In contrast, this issue was covered in Article 51 of the 1963 Constitution⁵.

Secondly: The Authority of the President to Request a Second Deliberation

The 2020 Constitutional reform granted the President the right to request a second deliberation on a law passed by Parliament within 30 days following its approval, as stipulated in Article 149. Additionally, the second paragraph of this article states that any law shall be annulled if it fails to secure the approval of two-thirds (2/3) of the members of the National Assembly and the Council of the Nation.

It is important to note that this authority has been granted to the President without any oversight or restrictions from any entity, making it an absolute discretionary power⁶. This differs

1- Boujana Mohamed; Miftah Mekhtaria, Op. Cit., p. 254.

2- Al-Arabi Maddah, The Problem of Law Issuance in the Algerian Constitution, Algerian Journal of Law and Political Science, Tissemsilt University, Vol. 8, No. 2, p. 523.

3- Dhrif Nadia, The Superiority of the President in the Legislative Field through Issuance and Requesting a Second Deliberation, Sawt Al-Qanun Journal, Vol. 7, No. 1, 2020, p. 124.

4- Article 148 of the 2020 Constitutional Amendment states: "The President shall issue the law within a period of thirty (30) days from the date of its receipt..."

5- Article 51 of the 1963 Constitution states: "If the President does not issue [the law] within the deadlines, the National Assembly shall issue it..."

6- Mohamed Othmani, The Authority of the President to Object to Laws in the Algerian Constitutional System, Journal of Legal Studies, Yahia Fares University, Médéa, Vol. 3, No. 2, 2017, p. 313.

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differs from Article 50 of the 1963 Algerian Constitution, which stated: *"The President may request, by means of a reasoned message, within the time limit set for the enactment of the law, that the National Assembly reconsider the matter in a second deliberation. This request cannot be rejected."*

Interpreting the provisions of this article, the 1963 Constitution required the President to justify his objection to the legislation in a written message to the National Assembly. However, the President's authority to request a second deliberation reinforces his superior position over the legislative authority, allowing him to exercise oversight over parliamentary actions by objecting to and reconsidering laws passed by Parliament. Additionally, the President's power to dissolve Parliament serves as a means of exerting pressure to deter any opposition from the legislature.

**SECOND REQUIREMENT: CASES OF INTERVENTION BY THE FIRST MINISTER
OR HEAD OF GOVERNMENT IN THE LEGISLATIVE PROCESS**

As a member of the executive authority, the First Minister is also granted the power to intervene in the legislative process alongside¹ the President of the Republic. Despite the constitutional principle of parliamentary sovereignty in enacting and voting on laws, as enshrined in Article 112 of the Constitution, the executive branch has been practically favored over the legislative branch in most stages of the legislative process².

Previously, the power to initiate legislation was exclusively granted to the President under the 1963 and 1976 Constitutions. However, with the adoption of the 1989 Constitution and subsequent amendments, including the 2020 constitutional revision, this power was transferred to the First Minister. According to this framework, draft laws must first be submitted to the Council of Ministers, chaired by the President of the Republic, after obtaining the opinion of the Council of State to ensure their compliance with the existing legal framework. Following this step, the First Minister or Head of Government, as applicable, presents the draft law to the Bureau of the National Assembly or the Council of the Nation. The draft law is then reviewed by a specialized committee, which meets under the chairmanship of its president or a designated representative. The committee may invite experts for consultation during deliberations, which conclude with the preparation of a report to be presented to Parliament. This process is outlined in Article 143 of the 2020 Constitutional reform.

Thus, the legislative initiative can be defined as the legal procedures that result in the formulation of a legislative text once completed³. It serves as the foundation of the legislative process and is indispensable⁴. Legislative initiatives can originate from the First Minister or Head of Government, depending on the constitutional framework, or from members of Parliament. When proposed by the executive authority, the initiative is termed a "draft law," whereas a parliamentary initiative is referred to as a "bill proposal."

1- Abdel-Sedique Sheikh; Abba Hamani, The Superiority of the Executive Authority in the Legislative Initiative Process, *Al-Oustadh Al-Bahith Journal for Legal and Political Studies*, Vol. 5, No. 1, 2020, p. 453.

2- Ahsan Gharbi, The Principle of Parliamentary Sovereignty in Drafting and Voting on Laws in Algerian Law, *Academic Researcher Journal in Legal and Political Sciences*, Aflou University Center, Laghouat, No. 5, p. 167.

3- Souad Hafidi, Op. Cit., p. 149.

4- Mohsen Abbas Mohsen, The Proposal of Laws between Parliamentary Legislative Initiative and Governmental Initiative: A Review of Constitutional Texts and Decisions of the Iraqi Federal Judiciary, *The Academic Journal of Social and Human Studies*, No. 1, 2014, p. 69.

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It is noteworthy that legislative initiatives led by the executive authority, represented by the First Minister or Head of Government, hold greater influence than those introduced by Parliament. This superiority is justified by the fact that the executive branch possesses deeper insight into the needs and demands of citizens through its various administrative bodies and local governmental entities, particularly in financial and economic matters¹.

Firstly: Convening the Joint Committee by the First Minister or Head of Government

The Algerian constitutional legislator has adopted the system of a parliamentary joint committee with equal representation to resolve disputes between the two chambers of Parliament² arising from differing perspectives on a draft or proposed law during the voting process³. In principle, such a resolution should be purely parliamentary, in line with the doctrine of separation of powers. However, the constitutional legislator granted this authority to the executive branch, represented by the First Minister or Head of Government, based on the rationale that the government is primarily responsible for managing public affairs and ensuring security and stability by overseeing the smooth enactment of laws without obstruction⁴.

According to Article 145, paragraph 5, of the 2020 Constitutional reform, the constitutional legislator vested the First Minister or Head of Government with the authority to resolve any dispute between the two chambers of Parliament by requesting the convening of the Joint Committee. This committee comprises members from both chambers and must convene within 15 days to propose an alternative text addressing the disputed provisions. Subsequently, the government submits this text to both chambers of Parliament for approval, with no modifications permitted unless approved by the government. In practice, the First Minister or Head of Government generally calls for the Joint Committee's convening in cases of minor disagreements, whereas in the case of fundamental disputes, the government tends to disregard the procedure⁵.

Article 89 of Organic Law 16-12 stipulates that the committee consists of an equal number of members from both chambers of Parliament⁶, with each chamber appointing ten representatives. The Council of the Nation designates ten members, along with five substitute members from the specialized committee, while the National Assembly also appoints ten

1- Abdel-Seddiq Sheikh; Abba Hamani, Op. Cit., p. 453.

2- Charit Walid, The Legislative Authority through Algerian Constitutional Development, Doctoral Thesis in Public Law, Abou Bekr Belkaid University of Tlemcen, Faculty of Law and Political Science, Academic Year 2011-2012, p. 188.

3- Ben Sheikh Nawal; Ben Mohamed Mohamed, The Authority to Convene the Equal-Member Committee as a Mechanism to Resolve Legislative Disputes between the Two Houses of Parliament in Algeria, Cahiers de Politique et de Droit, Faculty of Law and Political Science, Kasdi Merbah University, Ouargla, No. 16, January 2017, p. 98.

4- El-Gharbi Iman, Areas of Functional Relationship between Parliament and the Executive Authority in Light of the 2008 Constitutional Amendment, Master's Thesis in Public Law, State and Public Institutions Branch, University of Algiers 1, Faculty of Law – Ben Aknoun, Academic Year 2010-2011, p. 45.

5- Salmi Abdel-Salam, The Effectiveness of the Equal-Member Committee in Resolving Disputes between the Two Chambers in the Algerian Constitutional System, Al-Haqiqa Journal for Human and Social Sciences, University of Adrar, Vol. 8, No. 2, p. 246.

6- Article 89 of Organic Law No. 16-12, dated August 25, 2016, defining the organization, functioning, and functional relationship of the National People's Assembly and the Council of the Nation with the government, amended and supplemented by Organic Law No. 23-06, dated May 18, 2023.

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representatives, at least five of whom must be members of the specialized committee, including its chairperson, along with five substitutes in case of absence¹.

The Joint Committee alternates its meetings between the headquarters of the National Assembly and the Council of the Nation. Its first meeting is convened by the eldest member. The committee follows the procedural framework of the standing committees of the chamber where the meeting is held. It then proposes a text addressing the disputed provisions, which the First Minister or Head of Government submits to both chambers for approval. If the disagreement persists and the proposed text is rejected, the government may request that the National Assembly make the final decision on the matter².

**THIRD TOPIC: THE EXERCISE OF INDEPENDENT REGULATORY
AUTHORITY**

The regulatory authority, also referred to by some jurists as "parallel legislation," grants both the President and the First Minister, depending on the case, the power to establish general rules in areas beyond the jurisdiction of the legislative authority. This has led the executive branch to share, and even compete with, the legislative authority in its domain. Given that the executive branch is closer to citizens through its regional administrative bodies, it is more aware of their needs and demands. This authority has thus enabled the executive to exercise legislative powers alongside the legislature, but only outside the domains explicitly assigned to Parliament. The constitutional legislator has limited these domains to 30 fields, as stipulated in Article 139 of the 2020 Constitutional reform.

Accordingly, the regulatory authority can be defined as a constitutional power granted to the President of the Republic, allowing him to issue presidential decrees in matters beyond the legislative scope³. These decrees, which take the form of presidential regulations, are issued independently of any legislative act and are not subject to any conditions or restrictions, provided they adhere to constitutional principles⁴.

**FIRST REQUIREMENT: THE REGULATORY AUTHORITY OF THE PRESIDENT
OF THE REPUBLIC**

One of the most significant characteristics of regulatory authority is that it is a presidential power, as highlighted in Article 141 of the 2020 Constitutional reform. This authority is an exclusive prerogative of the President of the Republic, with no interference from any other entity. This exclusivity elevates regulatory authority to the level of parallel legislation alongside the laws enacted by Parliament⁵. The rationale behind this lies in the fact that the executive branch possesses the necessary tools to respond swiftly to emerging events, whereas parliamentary procedures require a considerable amount of time⁶.

1- Charit Walid, Op. Cit., p. 191.

2- See Articles 90 to 97 of Organic Law No. 16-12.

3- Miftah Mekhtaria; Boujana Mohamed, Op. Cit., p. 258.

4- Yaich Tamam Chawki, The Regulatory Power of the President in Light of the Algerian Constitutional Amendment of 2008, Journal of Human Sciences, Mohamed Khider University, Biskra, No. 41, p. 41.

5- Miftah Mekhtaria; Boujana Mohamed, Op. Cit., p. 258.

6- Yaich Tamam Chawki, Op. Cit., pp. 44-45.

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The constitutional legislator strictly prohibits any delegation or transfer of this power, as stated in Article 93, paragraph 3, of the 2020 amendment. This makes it a fundamental strength of the President of the Republic, deriving directly from the highest legal document in the state, without any conditions or restrictions.

It is noteworthy that the primary focus of independent regulatory authority revolves around the organization of public services. The President issues regulations to establish and manage these services, ensuring their proper functioning and safeguarding public interests and administrative institutions. Given that the President is the principal authority responsible for maintaining order in the state, this also falls within his regulatory powers through administrative oversight. This allows him to impose restrictions on individual rights and freedoms in a manner that ensures public order¹.

**SECOND REQUIREMENT: THE REGULATORY DOMAIN OF THE FIRST
MINISTER OR HEAD OF GOVERNMENT, DEPENDING ON THE CASE**

The mere enactment and issuance of laws is insufficient for their implementation; the intervention of the First Minister or Head of Government, depending on the case, is essential. As the official responsible for overseeing the proper functioning of state institutions and public services, he plays a crucial role in the regulatory domain assigned to him by the Constitution².

The regulatory authority of the First Minister is purely executive in nature. It clarifies the mechanisms for implementing laws issued by Parliament, unlike the independent regulatory authority of the President of the Republic, which operates independently of parliamentary legislation³. The First Minister's role is to issue executive decrees that contain detailed or supplementary provisions for the implementation of legislative texts⁴. However, he must remain within his constitutionally defined jurisdiction and adhere to the provisions of these laws; otherwise, his executive decrees would be deemed unlawful⁵.

Different constitutional systems have varied in defining the entity responsible for enforcing laws. However, the Algerian constitutional legislator has consistently assigned this responsibility to the First Minister or Head of Government, as stipulated in Article 141 of the 2020 Constitutional reform. This authority is an inherent power that he exercises automatically. However, upon reviewing the 2020 amendment, there is no explicit mention of whether this power can be delegated, unlike the regulatory authority of the President of the Republic. Nevertheless, based on the principle of the legal hierarchy, the President or Parliament can intervene to issue the necessary decrees for enforcing laws and regulations⁶.

1- Abbad Rzika; Jamal Ben Salem, The Regulatory Power in Light of the 2020 Constitutional Amendment, Afaq Journal of Sciences, Vol. 7, No. 3, 2022, p. 770.

2- Ibid., p. 771.

3- Yaich Tamam Chawki, Op. Cit., p. 42.

4- Bouakkaz Saida, The Regulatory Power of the President and the Prime Minister in Light of the 2016 Constitutional Amendment, Al-Oustadh Al-Bahith Journal for Legal and Political Studies, Mohamed Boudiaf University, M'sila, Vol. 6, No. 1, June 2021, p. 1375.

5- Dhouwadi Adel, The Regulatory Power of the President of the Republic, Master's Thesis in Legal Sciences, Constitutional Law Specialization, Larbi Ben M'hidi University – Batna, Faculty of Law and Political Science, Academic Year 2012-2013, p. 31.

6- Abbad Rzika; Jamal Ben Salem, Op. Cit., p. 772.

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It is important to emphasize that the regulatory power of the First Minister or Head of Government remains intrinsically linked to the legislative authority. This means that it is contingent upon the prior existence of a law, as it serves to detail and implement its provisions. Consequently, this authority cannot be exercised in the absence of legislation. Furthermore, it is confined within the boundaries set by the law it seeks to regulate, without exceeding its scope¹.

Conclusion:

On the surface, legislative authority has been granted to the legislature, represented by Parliament in its two chambers. Initially composed of a single chamber, the Council of the Nation was introduced through the 1996 Constitution to strengthen the legislative process and expand parliamentary powers. However, despite these efforts to enhance the role of this authority, in reality, when examining the 2020 Constitutional reform, we find the emergence of powers confirming the intervention of the executive authority in the legislative process.

The constitutional legislator has worked to impose the status of the President in the state as an institution in itself, with political weight both internally and externally. This appears alongside his original powers, as the executive authority is no longer merely responsible for implementing laws but has become involved in the legal production process. Despite the explicit constitutional text affirming that Parliament holds the original competence to enact laws, the constitutional legislator allows the President to intervene in the legislative process, starting with his exclusive authority to issue laws and including his ability to object to laws if the text is flawed.

Additionally, this study has demonstrated the legislative superiority of the executive authority over the legislative authority by granting the President the power to legislate by ordinances in the absence of the original competent authority, in addition to granting the First Minister the legislative initiative within the framework of proposed laws. Accordingly, we reached a set of proposals:

- The need to define the scope of legislation by ordinances, by establishing clearer and more precise criteria determining the cases in which the President can legislate by ordinances, to ensure that this power is not expanded beyond actual necessity.
- Strengthening the role of Parliament in monitoring the legislative ordinances issued by the President by granting an advisory role to the Council of the Nation in the ordinances legislated by the President, as it cannot be dissolved.
- The recourse to legislation by ordinances should remain an exceptional case that does not affect the fundamental role of Parliament in legislation, to achieve an actual separation of powers.
- Reducing the executive authority's monopoly on legislative initiative and strengthening the legislative authority with specialists and competent individuals to enable it to exercise its legislative role in proposing laws.
- Defining the major areas in which the President exercises independent regulatory authority to ensure that it does not become a means to marginalize Parliament in its legislative competencies.

1- Dhouwadi Adel, Op. Cit., p. 32.

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