

Constitutional Regulation of the President's Exceptional Powers in the 2020 Amendment: Between Legal Text and Constitutional Oversight

التنظيم الدستوري لصلاحيات الرئيس الاستثنائية في تعديل 2020: بين النص القانوني والرقابة الدستورية

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• Abstract:

The 2020 constitutional amendment in Algeria marked a substantive institutional shift. It departed from rigid classical patterns of power separation by introducing a layered approach to constitutional control—one judicial, exercised by the Constitutional Court, and the other political, entrusted to the President in emergency situations. This duality forms the core of the present inquiry. The study aims to clarify the decisive role of the constitutional judge in reviewing the constitutionality of measures taken under crisis conditions, positioning this judicial function as a key regulatory mechanism over presidential powers. The analysis concludes that constitutional regulation does not abolish presidential authority under abnormal conditions. Rather, it conditions its use within the boundaries of legal texts and necessity. The reform thus lays the foundation for a philosophy of functional interdependence among state powers within a constitutional logic—preserving legitimacy and reinforcing constitutional security.

Keywords:

2020 constitutional amendment, constitutional regulation, presidential powers, Constitutional Court, exceptional circumstances.

ملخص: شكّل التعديل الدستوري لعام 2020 في الجزائر تحولاً مؤسسياً جوهرياً. فقد ابتعد عن الأنماط التقليدية الجامدة لفصل السلطات، مقدّماً نهجاً متعدد الطبقات للرقابة الدستورية – رقابة قضائية تمارسها المحكمة الدستورية، وأخرى سياسية تُعهد بها إلى الرئيس في حالات الطوارئ. تُشكّل هذه الثنائية جوهر هذا البحث. تهدف الدراسة إلى توضيح الدور الحاسم للقاضي الدستوري في مراجعة دستورية التدابير المتخذة في ظل ظروف الأزمة، مُعتبرةً هذه الوظيفة القضائية آلية تنظيمية رئيسية تُنظّم الصلاحيات الرئاسية. ويخلص التحليل إلى أن التنظيم الدستوري لا يُلغي السلطة الرئاسية في ظل ظروف استثنائية، بل يُقيّد استخدامها ضمن حدود النصوص القانونية والضرورة. وهكذا، يُرسي هذا الإصلاح الأساس لفلسفة الترابط الوظيفي بين سلطات الدولة ضمن منطق دستوري، يُحافظ على الشرعية ويُعزز الأمن الدستوري. الكلمات المفتاحية: التعديل الدستوري لعام 2020، التنظيم الدستوري، الصلاحيات الرئاسية، المحكمة الدستورية، الظروف الاستثنائية.

• Introduction

Establishing an ideology of institutional balance and coordination as a substitute for the classical model of separation between the legislative, executive, and judicial branches has become not only an alternative, but a necessary evolution. The traditional doctrine—rigid and heavily criticized in legal scholarship—proved difficult to implement in practice. Many constitutional systems struggled with its application due to political and institutional realities, exposing its functional limits. In response, legal theory gradually shifted toward a deeper philosophy: one that rethinks separation as structured equilibrium. What secures this balance, in practice, is a written constitution—supreme in authority, explicit in design. It enshrines rights and freedoms, delimits powers, assigns jurisdiction, and defines the scope of institutional action¹.

This shift is observable in the Algerian context. Subsequent to a period of political turmoil in early 2019, the state embarked on an extensive constitutional reform; the President initiated the process by formally commissioning a committee of legal experts. Their mandate was to review and revise the constitutional document. The result was a set of seven foundational pillars, forming the core of the 2020 constitutional amendment². Among its central objectives was the reorganization of state authority—not only to preserve the formal separation of powers, but to recast it through balance and coordination. The idea was to achieve a functional equilibrium among the three branches of government.

At the heart of this reconfiguration lies a twofold concern: to distance the state from past unconstitutional practices, and to shield the Algerian system from the risks of unilateral executive dominance. The new constitutional balance sought, in part, to reinforce the legislature's institutional position and strengthen its legislative and oversight prerogatives. At the same time, it preserved the extensive powers of the President, both under ordinary and extraordinary conditions. In abnormal circumstances—those involving national emergencies or institutional threats—presidential authority not only expands, it becomes more autonomous, grounded in the President's central role within Algeria's constitutional framework. This dual logic—executive continuity and legal constraint—frames the present study.

The focus here is precise: exceptional presidential powers in times of crisis. These powers are intended to protect the state from collapse without dismantling the rule of law. However, such a framework cannot rely solely on discretion. It requires binding procedures, legal thresholds, and institutional safeguards—what constitutional theory calls *constitutional regulation*. This mechanism operates not to block the exercise of authority, but to structure and delimit it.

¹ Boukra Idris, *General Principles of Constitutional Law and Political Systems*, University Press Office of Ben Aknoun, Algiers, 2016, p. 135.

² In line with the demands of the popular movement and as a fulfillment of the 54 commitments made by President Abdelmadjid Tebboune during his electoral campaign to build a “New Algeria,” one of which was constitutional reform, a specialized committee of legal experts was established.

For more, see: Presidential Decree No. 20-03 of 11 January 2020, establishing the Committee of Experts tasked with drafting constitutional revision proposals, *Official Gazette of the People's Democratic Republic of Algeria*, No. 02, January 2020.

Therefore, the importance of examining how constitutional regulation governs the President's extraordinary prerogatives in the Algerian system lies in its capacity to clarify how law anticipates and frames moments of constitutional exception. The framers of the 2020 amendment foresaw such scenarios and limited them to specific, escalating cases—each defined by its legal, political, and security implications. These scenarios require special measures and exceptional powers, entrusted to the President, yet placed under the judicial review of the Constitutional Court. That oversight is a key component of the amendment's regulatory function.

The central research question is thus the following:

To what extent has the Algerian constitutional legislator succeeded in regulating the exceptional powers of the President under extraordinary conditions within an institutional framework of constitutional oversight, as introduced in the 2020 amendment?

To answer this, the study adopts a dual methodological strategy. It combines an analytical approach, focusing on the legal texts that govern presidential authority, with a descriptive lens, aimed at identifying and characterizing specific exceptional scenarios and the normative constraints surrounding them. This combined method allows for both precision and contextual understanding in evaluating the regulatory scope of the 2020 constitutional reform.

1. A Constitutional Approach to the Regulation of Exceptional Presidential Powers in the 2020 Amendment

With the ongoing evolution of constitutional theory and comparative systems research, this section turns to the notion of *constitutional regulation* as applied to the exceptional powers of the President of the Republic under Algeria's 2020 constitutional revision. The approach here is strictly constitutional—focused on legal provisions as framed in the text, read through doctrinal analysis, and supported where relevant by jurisprudence and academic commentary. The goal is not to summarize but to construct a precise analytical framework. Accordingly, this part unfolds in two directions: first, the conceptual and doctrinal foundation of constitutional regulation; second, the delineation of presidential prerogatives under exceptional circumstances.

1.1. Doctrinal Grounding and Conceptual Dimensions of Constitutional Regulation

The absence of explanatory notes or preparatory documents³ for constitutional texts often leads to interpretive uncertainty. Without clear intent or supporting context, the application of legal provisions may diverge from their constitutional logic. This applies to the concept of *constitutional regulation*, which—though structurally central—remains loosely defined in Algerian doctrine. The term itself poses difficulties: its novelty, its technical nature, and the scarcity of focused literature around it complicate attempts to fix a comprehensive definition.

³ Preparatory works, as a term, refers to all materials related to legislation across its various stages—supporting documents, draft texts, and legislative records.

For more, see: Khaled Wazzani, *Methods of Interpreting Texts Between Scholars of Sharia and Legal Jurists*, New University Publishing House, Egypt, 2028, p. 714.

1.1.1. Toward a Working Definition

The term *constitutional regulation* combines two distinct elements: regulation and constitution. Linguistically, *regulation* implies control, enforcement, discipline, and the correction of deviation⁴. In French usage, *régulation* is context-sensitive and applied across disciplines—social regulation⁵, economic regulation, administrative control, and so forth. Despite the variance, the common thread remains: the regulating actor is the state; the framework is legal.

In the 2020 amendment, the idea of regulation appeared explicitly.⁶ Article 185 introduced a core function: the regulation of constitutional institutions and their operations through the establishment of the Constitutional Court⁷. The phrase "the Court regulates..." in the second paragraph of that article implies a model in which actions, decisions, and competences are subject to existing legal norms. Regulation, in this context, means conditioning all institutional activity within the bounds of legal validity⁸.

1.1.2. General vs. Specific Definitions

At a general level, within Algerian constitutionalism, *constitutional regulation* refers to the body of procedural rules, legal safeguards, and oversight mechanisms that subject public authorities—executive, legislative, consultative—to constitutional boundaries⁹. It aims to ensure that institutional action does not violate constitutional substance or form. At its core is the defense of legality, protected through independent oversight organs such as the Constitutional Court.

However, in times of exception, the definition narrows. In this more specific sense, constitutional regulation becomes:

A legal framework that governs the exercise of the President's powers during extraordinary conditions, ensuring that such action remains within constitutional constraints, and subject to

⁴ Ibn Manzur, *Lisan al- 'Arab*, Vol. 28, Dar al-Ma'arif, Cairo, n.d., p. 254.

⁵ Social control, in its broadest sense, refers to the mechanisms and practices used in any society to monitor individual behavior and align it with prevailing norms, values, and laws.

For further reading:

Hossam al-Din Mahmoud Fayadh, *Social Control: Definition, Importance, Types, and Mechanisms. A Sociological-Analytical Study*, Towards an Enlightened Sociology Library, 1st ed., Iraq, 2018, p. 6.

⁶ The 1976 Algerian Constitution has undergone several amendments, the most recent of which was in 2020. This latest revision was enacted by Presidential Decree No. 20-442, dated 15 Jumada al-Awwal 1442 AH (30 December 2020), and pertains to the promulgation of the constitutional amendment ratified by referendum on 1 November 2020. Published in: *Official Gazette*, Issue No. 82, dated 30 December 2020.

⁷ Article 185 of the amended Constitution.

⁸ Kaïs Chérif (Prof. Dr.), *The Role of the Constitutional Court in Establishing the Rule of Law*, paper presented at the International Symposium on "The Constitutional Court and Its Role in Building the New Algeria," organized by the Constitutional Council, held at the El Aurassi Hotel, Algiers, 6–7 April 2021, p. 50.

⁹ Wissam Beladjouz, *The Status of the Constitutional Court in Legislative Shaping*, Al-Mutannabi Publishing House, 1st ed., M'sila – Algeria, March 2024, p. 6.

review. The purpose is not obstruction, nor license, but legal structure—anchored in a balance between executive necessity and judicial oversight¹⁰.

2. Presidential Powers and Constitutional States of Exception: Conceptual Clarification

Once the structure of regulation is defined, attention turns to the other side: the President's role during national crises. When facing events that threaten state functioning or social cohesion, the constitution assigns to the President specific emergency powers. The question is how these powers are delimited, both textually and institutionally.

2.1. States of Exception in the 2020 Constitution

The law's core function is to preserve public order—including the constitutional order. When this order is disrupted—by conflict, disorder, or institutional paralysis—the constitution activates exceptional frameworks. The 2020 amendment names three:

- State of Emergency and Martial Law
- State of Exception
- State of War

Each presents different legal thresholds and consequences¹¹. Their definitions and constitutional uses follow.

2.1.1. Emergency and Martial Law

As previously noted, exceptional circumstances—due to their potential severity—have been addressed and codified in almost all comparative constitutional systems. Though terminologies differ, their substantive implications often converge¹². In the Algerian case, the constitutional text addresses both *state of emergency* and *martial law* together, reflecting their conceptual proximity. This is further confirmed by the fact that they are governed by the same conditions and procedures, and that their detailed regulation is delegated to an organic law¹³.

The *state of emergency*, as defined in a prior presidential decree issued during Algeria's historical period of internal unrest, refers to a legally designated situation accompanied by serious threats to

¹⁰ A close reading of the 2020 Algerian Constitution reveals that the President of the Republic, under Article 84, is entrusted with safeguarding the Constitution under all circumstances. Similarly, Article 185 assigns this very task to the Constitutional Court, making it clear that the constitutional framers envisioned a shared responsibility between the executive and the judiciary in ensuring constitutional integrity.

¹¹ Salah Belhaj, *Political Institutions and Constitutional Law in Algeria from Independence to the Present*, University Press Office, Algiers, 2nd ed., 2015, p. 209.

¹² A review of various constitutions and what constitutional literature refers to as "doctrinal traditions" reveals multiple designations for abnormal situations. Terms such as *martial law*, *sudden circumstances*, *force majeure*, *unexpected event*, and *state of necessity* are often used interchangeably. While the terminology may vary, the substance remains largely the same.

¹³ Due to the gravity of emergency and martial law, both are addressed under Article 97 of the 2020 constitutional amendment. They are regulated by organic law, not ordinary law—reflecting the heightened legal status and procedural rigor required. The difference between these two types of legislation lies in their formulation, the voting process, adoption procedures, and the requirement of mandatory review.

public security and order. It requires urgent, targeted responses—measures designed to protect, first, the lives of individuals, and then their property and vital interests¹⁴.

Martial law is treated as more severe. The assumed nature of the emergency is military in character—armed rebellion, invasion, or other direct threats—which justifies more extensive restrictions on individual and collective freedoms. Under martial law, authority is transferred from civil to military institutions¹⁵. This distinguishes it from the state of emergency, where civil powers remain in control but are expanded to secure public order.

Historically, both states have produced recognizable forms of restriction, including:

- Imposing restrictions on personal movement and the circulation of vehicles, both within and across national borders
- Prohibiting public demonstrations, strikes, and gatherings in open or public spaces
- Pre-publication censorship of all forms of media, including print, radio, and propaganda
- Revoking or restricting business licenses and regulating the opening or closing of commercial premises and public venues
- Authorizing searches of private homes and individuals outside regular legal hours and without prior judicial oversight.

2.1.2. State of Exception

The legal idea of exceptional circumstances, in its early form, came from French administrative jurisprudence. It was not originally a constitutional concept, but rather a judicial construction. During the First World War, the *Conseil d'État* issued key decisions. These rulings allowed the French executive to redistribute powers without a legal text—on the condition that a truly exceptional situation existed. That was the starting point. Later, this theory became constitutional, embedded in Article 16 of the 1958 French Constitution¹⁶.

Algeria's 2020 amendment, specifically Article 98, reflects a similar logic. It gives the President the power to declare a state of exception, subject to defined conditions. This was not new. Past

¹⁴ Algeria experienced a state of emergency in 1992, prompted by the extraordinary events then unfolding. It lasted 19 years, only being lifted in 2011. The regime was governed by Presidential Decree No. 92-44, dated 9 February 1992, which formally declared the state of emergency.

Published in: *Official Gazette of the People's Democratic Republic of Algeria*, Issue No. 10, 9 February 1992.

¹⁵ Salah Belhaj, *ibid.*, p. 210.

¹⁶ Waleed Chareet and Wahiba Ben Nasser, *Administrative Oversight Powers Under Exceptional Circumstances: The Case of the COVID-19 Pandemic*, *Afaq Journal for Sciences*, Vol. 5, No. 4, 2020, p. 108.

Algerian constitutions had already made room for such a possibility¹⁷. What's notable is how the 2020 text frames it with clearer boundaries.

The term itself suggests departure. The normal legal framework is no longer adequate. The situation is abnormal. In such cases, the President is allowed to activate emergency instruments that are already structured by the constitution—measures that go beyond what ordinary texts allow. These are not invented in the moment; they are anticipated by the constitutional order itself.

This scenario presupposes serious danger: a breakdown in institutional functioning, or a direct threat to public safety¹⁸. When such risks arise, the President may intervene, using powers outside the regular scope. But this does not mean discretion without control. The declaration of a state of exception is not free-form. It must follow a set of procedural and substantive rules. Those rules will be examined in the next part.

2.1.3. War

Article 100 of the 2020 Constitution addresses the *state of war*. It grants the President of the Republic the authority to declare it. Among all the emergency scenarios set out in the Constitution, this is the most extreme. Its gravity is such that the power to declare war cannot be delegated, nor exercised casually. It is tightly bound to the occurrence of actual armed aggression against the state.

Once declared, the consequences are immediate and far-reaching. The constitutional order is suspended. The Constitution ceases to operate.¹⁹ All governing powers are transferred to the President. Because of the scale of this authority, the framers placed clear restrictions on its use—both procedural and substantive. These limits are not optional; they are constitutionally required due to the exceptional danger this scenario represents.

It is also worth noting, as a clarification, that *general mobilization*, mentioned in Article 99, is not itself a state of exception. It is a measure the President may initiate in response to such conditions. It accompanies the emergency framework, but does not form a separate constitutional category.

3. Presidential Competence under Exceptional Conditions

In both ordinary and extraordinary settings, the Algerian President holds wide-ranging powers. As head of state, guardian of the Constitution, and commander of the armed forces, his institutional role is pivotal. During emergencies, this role broadens further—not as a seizure of unchecked power, but as a legally sanctioned response to crisis.

3.1. Constitutional Position

The President of the Republic occupies a central position within the Algerian constitutional framework. His role is defined by direct, secret, and universal suffrage, granting a form of

¹⁷ It is worth noting that Algeria did declare a state of exception in 1963, but the measure was later removed and remained absent until the promulgation of the 1976 Constitution.

¹⁸ Ahsan Gharbi, *Exceptional Situations Under the 2020 Constitutional Amendment*, *Al-Shama Journal of Law*, 2021, p. 47.

¹⁹ Articles 100 and 101 of the 2020 Constitutional Amendment.

representative legitimacy distinct from, and superior to, that of Parliament²⁰. This electoral mechanism constitutes a foundational element of his constitutional authority²¹.

The President's powers are broad under normal conditions and expand significantly under exceptional circumstances. His mandate is time-bound, but structurally autonomous. He is not politically accountable to Parliament in the same manner as a prime minister, nor is his authority subordinated to legislative confidence mechanisms.

The combination of his method of election, constitutional immunity, and wide-ranging powers establishes the presidency as a dominant constitutional institution. This is reflected in the 2020 Constitution, which devotes an entire section to defining presidential functions²². Additional references in the preamble and other chapters reinforce this position.

Under normal conditions, these powers are already extensive. In abnormal situations, they expand further—not for purposes of institutional hegemony, but in response to specific constitutional rationales addressed in the following sections.

3.2. Expanded Exceptional Powers of the President as Guardian of the Constitution

Article 84 of the 2020 Constitution assigns the President the responsibility of safeguarding the Constitution. The phrase “in all circumstances” extends this responsibility across both normal and exceptional contexts. This addition in the revised version introduces a broader interpretive scope²³. The article clearly refers to the defense of constitutional order, national sovereignty, and territorial unity.

Read together with Article 185, which outlines the role of the Constitutional Court, the text shows a shared function²⁴. Both institutions contribute to the protection of constitutional legality, but through distinct modes. The President acts through political authority; the Court operates judicially. Each follows a separate logic of intervention.

Constitutional protection implies the preservation of the legal framework in both form and substance. No deviation is allowed unless explicitly foreseen within the Constitution itself. The

²⁰ Article 85 of the 2020 Constitutional Amendment.

²¹ Salah Belhaj, *ibid.*, p. 191.

²² It is worth noting that the 2020 amended Algerian Constitution, in its Third Title, titled “*Organization of Powers and Their Separation*”, designates its first chapter as “*President of the Republic*”, departing from the 2016 Constitution, where the same section was titled “*Executive Authority*”.

²³ In the now-superseded Article 84 of the 2016 constitutional amendment, the President was described as: “*the embodiment of the Head of State and the unity of the nation; he is the guardian of the Constitution.*”

In the 2020 version, the formulation was extended to state that he “*ensures, under all circumstances, the unity of the national territory and the preservation of national sovereignty.*”

²⁴ Article 185 affirms that “*The Constitutional Court is an independent institution tasked with ensuring respect for the Constitution.*”

President must prevent obstruction or distortion of constitutional provisions, including violations by other state bodies²⁵.

The President is also tasked with an institutional arbitration role. This is not a power of command or intervention over other branches, but a mechanism to refer unresolved institutional conflicts back to the source of sovereignty—the people²⁶. This is reflected in procedures such as referenda, explicitly available under constitutional law.

These functions—protection and arbitration—are also affirmed in the constitutional oath. They are central to the logic of the office. The President is not only head of the executive, but also guarantor of institutional coherence. This dual mandate raises a structural issue. The powers conferred on the President may appear extensive, but they can also be read as constitutional burdens. The distinction between executive prerogative and institutional responsibility remains a matter of interpretation, shaped by how these powers are exercised in practice.

3.3. Authority to Declare Exceptional Measures

The Constitution, from Articles 97 to 100, specifies three exceptional states. After outlining their legal scope, the question shifts to who declares them. In the Algerian system, the answer is clear: the President alone holds that competence.

He may declare a state of emergency or martial law, based on a legal framework that imposes both procedural and substantive conditions. The President also holds the authority to determine when a state of exception exists—when the country faces a direct threat to territorial integrity or institutional paralysis²⁷. The Constitution grants him discretionary power to judge the necessity and initiate appropriate responses.

A close reading of Articles 97 and 98 reveals a shift in terminology. One speaks of “measures,” the other of “procedures.” This difference is not merely linguistic. Exceptional procedures imply actions that override normal legal boundaries. They grant a temporary legality to otherwise impermissible acts—limited in time, specific to the threat²⁸.

General mobilization, under Article 99, functions differently. It is not itself an emergency regime, but an action triggered by one. The President initiates it to support other measures. It is procedural, not categorical.

Article 100 addresses war. This is the most severe situation. The President may declare it—on his own. Not determine, but declare. The article does not say whether this must be written or oral. But

²⁵ Kamel Jaallab, *The Constitutional Role of the President of the Republic in Algeria*, *Tawasul Journal of Economics and Legal Administration*, Vol. 25, No. 04, December 2019, p. 390.

²⁶ Said Bouchaïr, *Compendium on Constitutional Law and Comparative Political Institutions, Vol. IV: Classification of Traditional Government Systems and Their Models*, Algerian Publishing and Distribution House, Algiers, 1st ed., 2021, p. 186.

²⁷ Ammar Abbas, *ibid.*, p. 104.

²⁸ Souhila Boukhamis and Mouna Maqlati, *The Independent National Electoral Authority and Its Efficiency in Ensuring the Normal Course of the Electoral Process Under Exceptional Circumstances: The 12 December 2019 Elections*, *Journal of the Algerian Constitutional Council*, Issue No. 13, 2020, p. 103.

the last paragraph clarifies: the President must inform the nation. This implies both—speech and written statement.

The declaration of war has immediate effects. The Constitution is suspended. Executive, legislative, and judicial powers merge in the presidency. This centralization explains why the constitutional drafters placed clear restrictions on this prerogative²⁹.

All exceptional powers, including this one, are framed by constitutional law. None are absolute. Each is constrained by rules written into the same document that authorizes their use.

4. Constitutional Regulation of Exceptional Powers – Forms and Mechanisms

Constitutional experience, both domestic and comparative, reveals a recurring structural limitation: legal and institutional frameworks are often unable to fully anticipate or manage the range of crises that may arise and endanger the state's cohesion or public order. This is especially evident in the case of exceptional circumstances, which are the focus of this study.

These situations are, in essence, events before they are laws. They are lived realities that precede their later formalization in constitutional documents. When they occur, the President of the Republic exercises powers not ordinarily accessible under normal constitutional conditions. This is not, strictly speaking, a suspension of the Constitution. It is rather the application of exceptional provisions written into the text itself. These provisions—such as those governing emergencies, siege, and war—form what may be described as an exceptional constitutional regime that permits the temporary overriding of ordinary norms for the duration of the crisis.

To avoid complete constitutional derailment or the emergence of unchecked executive power, the framers introduced legal safeguards. These compose what is now referred to as the constitutional regulation of emergency powers. This section is dedicated to analyzing that regulatory framework. First, the types and forms of regulation imposed on exceptional presidential powers will be outlined. Second, these forms will be linked to the body tasked with oversight—the Constitutional Court—and its essential role in judicial containment.

4.1. Forms of Constitutional Regulation of Exceptional Presidential Powers in Algeria

The late eighteenth and early nineteenth centuries marked a shift in constitutional thought. Informal norms and customs were progressively codified into written constitutions. The primary motive was to limit abuse of power³⁰. This global constitutional movement gave rise to the modern written

²⁹ Articles 100 and 101 of the 2020 Constitutional Amendment.

³⁰ Idris Boukra, *General Principles of Constitutional Law and Political Systems*, University Publications Office, 1st ed., Ben Aknoun, Algiers, 2016, p. 131.

constitution. Algeria's constitutional history aligns with this trajectory. Every Algerian constitution, from the 1963 version to the 2020 amendment, has been a written document.

The core objective was, and remains, the limitation of power—especially during abnormal conditions. Authority was distributed across institutions, and each was subject to boundaries. These limits are set not only through general legal norms but, in times of exception, through specific procedural and substantive constraints.

Under the 2020 amendment, the President's emergency powers are subject to two key forms of constitutional regulation:

A. Substantive Constitutional Regulation

Substantive regulation refers to the material conditions written into the Constitution that must be satisfied before emergency powers can be invoked. These provisions apply to all four exceptional regimes: the state of emergency, martial law, the state of exception, and war, along with the related mechanism of general mobilization.

The first two—emergency and martial law—are jointly governed by Article 97. Their trigger is the presence of a pressing necessity, which must be confirmed by the President³¹. It is this necessity that justifies the activation of these powers. However, the Constitution does not define this term precisely. Its clarification is deferred to organic legislation. In the absence of a precise legislative or constitutional definition, the meaning of “pressing necessity” must be interpreted based on doctrine and general principles of public law³². The absence of clarity opens space for broad executive discretion³³. Ultimately, the evaluation of this condition remains in the President's hands, based on military, security, and field intelligence assessments.

The state of exception, covered under Article 98, is activated by a different criterion: imminent danger. This is not a danger that has already materialized, but one that is verging on occurrence—one that directly threatens the constitutional order, institutional independence, or national unity³⁴. This criterion is more specific, and arguably more serious, than the standard used for emergency or siege. It implies an event whose occurrence is near-certain and whose effects are likely to be systemic³⁵. The language of the text points to a threat that is immediate, severe, and structurally

³¹ Ammar Abbas, *ibid.*, p. 103.

³² The final paragraph of Article 97 of the 2020 constitutional amendment refers the regulation of both the state of emergency and martial law to an organic law. Notably, this is the only case among the exceptional regimes whose legal framework is established via organic rather than ordinary legislation.

³³ Legal theory and jurisprudence have outlined three primary conditions for departing from ordinary legality, most importantly the presence of a serious and immediate danger. For further reading, see: Ben Khawan Abdelali, *Balancing the Preservation of Public Order with the Protection of Rights and Public Freedoms*, Doctoral Dissertation in Public Law, Faculty of Law and Political Science, University of Abou Bekr Belkaid, Tlemcen, 2025, p. 213.

³⁴ Article 98 of the 2020 Constitutional Amendment.

³⁵ For further clarification on how the concept of danger is treated in legal literature and practice, see: Mourad Badran, *The Legislative Competence of the President of the Republic Under Article 124 of the Constitution: The Legal Framework of Ordinances*, *Idara Journal*, No. 2, National School of Administration, Algiers, 2000, p. 29.

disruptive³⁶. Here again, discretion lies with the President, who must decide when these conditions are met.

Article 99 addresses general mobilization. A broad reading suggests it is not an emergency regime per se, but rather a procedural tool enacted via the Council of Ministers. It lacks a distinct substantive trigger and is not classified as a constitutional exception.

The final regime, war, is governed by Article 100. It is defined by the occurrence—or near-occurrence—of actual aggression. The Constitution aligns with the definition of aggression outlined by the United Nations: the unlawful use or threat of force by a state or entity, excluding cases of self-defense or those explicitly authorized by the UN Security Council³⁷.

B. Procedural Constitutional Regulation

Procedural safeguards complement the substantive requirements. These include formal conditions that the President must fulfill before exercising emergency powers. Failure to observe them may render such action unconstitutional.

For a state of emergency or martial law, certain procedural steps are required. The process begins with a meeting of the High Security Council. After that, the President must consult with the heads of both parliamentary chambers. The Prime Minister—or Head of Government, depending on the configuration—is also involved, as is the President of the Constitutional Court³⁸.

The meeting of the High Security Council is not a formality³⁹. It serves a concrete function. It creates a space for internal deliberation. What is said there, and by whom, may carry weight. It can shape the President's assessment and affect how he exercises his discretion⁴⁰.

Consultation with the Head of Government is standard⁴¹, reflecting the dual structure of executive authority under Article 112. It acknowledges the parallel responsibilities assigned to the Prime Minister.

These procedures also include a temporal restriction: the emergency regime cannot exceed 30 days, as stipulated in the first paragraph of Article 97. The inclusion of this deadline reflects historical lessons, notably Algeria's long state of emergency in the past, which had no clear endpoint.

³⁶ Waleed Chareet and Wahiba Ben Nasser, *ibid.*, p. 108.

³⁷ *Ibid.*, p. 110.

³⁸ Article 97 of the 2020 Constitutional Amendment.

³⁹ The High Security Council is a constitutional consultative body first introduced in the 1989 Constitution. It has been retained in subsequent constitutional amendments. Its primary role is to provide opinions and recommendations on issues of national security, under the leadership and chairmanship of the President of the Republic.

⁴⁰ Waleed Chareet and Wahiba Ben Nasser, *ibid.*, p. 110.

⁴¹ The 2020 constitutional amendment introduced a new designation reflecting the institutional structure of executive power. It recognizes two distinct scenarios emerging from legislative elections: if a presidential majority emerges, the government is led by a Prime Minister (*Premier ministre*); if a parliamentary majority is formed, the head of government is referred to as the President of the Government (*Président du gouvernement*), not a Prime Minister.

In the case of a state of exception, procedural constraints differ. Consultation is required with the President of the National People's Assembly, the President of the Council of the Nation, and the President of the Constitutional Court. The High Security Council is not mentioned here, nor is the Head of Government. The President must also convene the Council of Ministers⁴² and deliver an address to the nation—a requirement newly introduced in the 2020 Constitution.

Though these consultations are obligatory steps in the process, their opinions are not legally binding. Still, they carry constitutional weight and political significance⁴³. Once declared, a state of exception cannot last more than 60 days unless renewed by explicit approval of an absolute majority of both parliamentary chambers sitting jointly⁴⁴. When the crisis ends, the President must report all actions taken to the Constitutional Court. This triggers post hoc oversight—the Court issues an opinion evaluating the legality of the measures⁴⁵.

War, as the most extreme case, is subject to even stricter formal requirements. The declaration must follow a Council of Ministers meeting, incorporate the security assessments of the High Security Council, and be accompanied by consultations with both parliamentary leaders and the President of the Constitutional Court—not in his judicial role, but as a constitutional successor, in the event of simultaneous vacancy of the Presidency and the Senate leadership.

Parliament must then be formally convened in joint session, and the President must deliver an address to the nation announcing the declaration of war⁴⁶. This is not a discretionary process—it is constitutionally mandated⁴⁷.

5. Constitutional Oversight of the President's Exceptional Powers

Ensuring the effective protection of constitutional supremacy, legality, and fundamental rights—both individual and collective—in all political and institutional conditions has become a necessary foundation of modern constitutional orders. These guarantees no longer rely solely on what is written into constitutional texts but also on the creation of concrete mechanisms: constitutional courts, councils, and oversight structures with consultative authority. This is the path the Algerian constitutional legislator has taken—establishing an independent constitutional judiciary responsible for overseeing legality, especially in times of exception. This body exercises both oversight and consultative competences, as follows:

5.1. The Constitutional Court as a Regulatory Mechanism for Exceptional Powers

⁴² It is well-established that the Council of Ministers constitutes a governmental body serving as a forum for guidance and deliberation on matters concerning the executive branch. It is convened under the chairmanship of the President of the Republic and includes all members of the government. It reviews and resolves issues not yet decided at the level of the government or the presidency.

⁴³ Waleed Chareet and Wahiba Ben Nasser, *ibid.*, p. 108.

⁴⁴ Article 98 of the 2020 Constitutional Amendment.

⁴⁵ It is worth noting that among the newly introduced powers of the Constitutional Court is its oversight role concerning decisions made during a state of exception. Even when this oversight takes the form of a non-binding advisory opinion, it nonetheless enhances the constitutional legitimacy of the measures taken.

⁴⁶ Salah Belhaj, *ibid.*, p. 213.

⁴⁷ Article 100 of the 2020 Constitutional Amendment.

The Algerian experience in constitutional justice, while recent and still consolidating, initially adopted a political model of review, represented by the Constitutional Council established under the 1963 Constitution. Although it evolved gradually, including under the 2016 revision, it remained limited in scope and effectiveness⁴⁸. This led to the decision to replace it with a Constitutional Court, a shift that formed one of the central axes of the 2020 reform.

The new Court is defined by an entire section of the Constitution and entrusted with substantial functions⁴⁹. It enjoys structural independence and a core mission: to ensure the supremacy of the Constitution and the regulation of institutional functioning⁵⁰. One of its guarantees of independence is the power to define its own internal rules without external interference⁵¹.

A significant innovation is the Court's regulatory role over constitutional institutions—mentioned explicitly in the text. It is tasked with ensuring the proper operation of institutions in accordance with constitutional provisions, with no expansion or restriction beyond the framework of the text. This responsibility includes resolving disputes between constitutional bodies⁵². The mechanism for doing so is based on formal referral procedures⁵³.

In exceptional situations, the Court plays a parallel and indispensable role alongside the President. It monitors the legality of emergency measures to ensure they remain within constitutional limits. Under normal conditions, it exercises constitutional review over laws, regulations, treaties, and presidential ordinances. In exceptional conditions, it also carries consultative responsibilities.

5.2. Consultative Competences with Oversight Character in Exceptional Situations

In exercising its consultative functions, the Constitutional Court may be requested to issue opinions on matters involving exceptional states⁵⁴. During a declared state of exception, for instance, once it ends, the President must submit all decisions taken under that regime to the Court for review. The binding nature of its opinion in this context remains unresolved. This differs from the obligatory nature of its rulings on legislation and other constitutional acts.

⁴⁸ Farid Debbousha, *The Constitutional Court in Algeria: A Study in Light of the 2020 Constitutional Amendment and Related Legislative Texts, Supported by Comparative Legal Systems*, Bayt al-Afkar Publishing, 1st ed., Algiers, 2023, p. 5.

⁴⁹ The 2020 constitutional document introduced, for the first time, a Constitutional Court, replacing the former Constitutional Council. It was established as the primary and most significant oversight institution under Title IV of the Constitution and was assigned a dedicated chapter titled "*The Constitutional Court*", spanning Articles 185 to 198.

⁵⁰ Article 185 of the 2020 Constitutional Amendment.

⁵¹ See also: Presidential Decree No. 22-93, dated 8 March 2022, concerning the special rules governing the organization of the Constitutional Court. Published in: *Official Gazette*, Issue No. 17, 10 March 2022.

⁵² Article 192 of the 2020 Constitutional Amendment.

⁵³ It should also be noted that, in addition to the internal rules governing the functioning of the Court, Organic Law No. 22-19, dated 25 July 2022, was enacted. It sets out the procedures and modalities for referrals and petitions before the Constitutional Court. Published in: *Official Gazette*, Issue No. 51, 31 July 2022.

⁵⁴ The constitutional framers introduced new provisions regarding the composition of the Constitutional Court, marking a departure from the structure of the former Constitutional Council. The Court now includes six members elected from among constitutional law professors, two members drawn from the judiciary, and four appointed directly by the President of the Republic.

There are procedural gaps. The Constitution does not specify deadlines for submitting post-crisis decisions to the Court, nor does it indicate how long the Court may deliberate before issuing its opinion⁵⁵.

Additionally, the President of the Court is assigned a consultative role in all exceptional scenarios. Under Article 99, when the President decides to initiate general mobilization, the text requires him to consult the High Security Council and the presidents of both chambers of Parliament. The Constitutional Court, or its president, is not mentioned in that process. The exclusion is structural—not incidental.

Despite these exclusions, the Court remains an institutional guarantee. Its role is not diminished by silence in one provision. It continues to serve as a safeguard built into the constitutional design—especially where legality must be preserved under pressure.

Conclusion

The study centered on how constitutional regulation operates in Algeria, particularly during states of exception. The focus was on the institutional logic behind the President’s emergency powers and how they are subject to constitutional limits. The study worked through the legal framework—not in abstract, but with attention to how law functions during abnormal conditions.

The findings may be summarized as follows:

The method of electing the President—direct universal suffrage—grants a high degree of constitutional legitimacy, which is matched by wide-ranging powers. These powers expand in exceptional contexts.

The 2020 amendment represents a progressive development. It aligns the Algerian Constitution with comparative models by introducing institutional balance: strong executive powers under crisis, but tempered by judicial oversight. The Constitutional Court does not abolish these powers; it re-anchors them within the legal text, producing functional complementarity under a constitutional state model.

A notable omission remains. The Constitution does not address undeclared crises—situations not explicitly covered by Articles 97 to 100. Real-world emergencies often exceed predefined categories. This raises the question: Should creative interpretive authority be left to the constitutional judge? Or does this risk undermining the principle that exceptions must be narrowly defined?

These open questions suggest future research should focus on the boundaries of constitutional flexibility and the interpretive space of the judiciary under stress conditions.

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