



The System of Legislation by Presidential Ordinances and the Principle of the Separation of Powers Enshrined in the 2020 Constitutional Amendment

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Abstract

To ensure that constitutional rules remain the supreme legal norms and are properly implemented and effectively applied, modern constitutions founded on the principle of the rule of law have established a number of safeguards designed to serve as genuine and permanent restraints against the abuse of power and the encroachment of public authorities upon the powers assigned to them by the Constitution. The foremost of these safeguards is the institutional and functional implementation of the principle of the separation of powers, which constitutes a fundamental legal standard for guaranteeing the supremacy and effectiveness of constitutional rules from a formal perspective. This principle is further reinforced by other legal mechanisms, including constitutional review of legislation and the independence of the judiciary, thereby strengthening constitutional supremacy from a substantive perspective.

Nevertheless, constitutional practice has demonstrated that the Algerian political system has consistently tended to upset the balance among the branches of government in favor of the executive authority. Consequently, the principle of the separation of powers alone has proven insufficient to ensure the effective protection of constitutional rules.

Keywords: Separation of Powers; Constitutional Rule; Rule of Law; Executive Authority; Legislative Authority; Judicial Authority.

Introduction

The principle of the separation of powers is one of the most fundamental constitutional principles that constitutional states seek to enshrine in their national legal systems by elevating it to the rank of a constitutional norm. This serves, on the one hand, to comply with international constitutional standards and, on the other hand, to embody the essence of the constitutional state, of which the separation of powers constitutes a cornerstone.

In this regard, the 2020 Constitutional Amendment contributed to the constitutional entrenchment of the principle of the separation of powers by expressly recognizing it in Chapter Three, entitled “The State,” of Part One, which sets forth the general principles governing Algerian society.

However, the characteristics of a constitutional state governed by the rule of law cannot be achieved merely by recognizing the principle of the separation of powers. Rather, its



substance must be effectively implemented in practice instead of remaining a purely formal constitutional declaration.

The principle of the separation of powers has significant implications for the legal and institutional framework of the state as one of the pillars of constitutional rule of law. It requires that the relationship between the legislative and executive branches be characterized by balance, cooperation, and mutual influence, while ensuring sufficient independence for the judiciary to prevent any branch from exceeding the constitutional limits of another, in accordance with the principle of legality.

Nevertheless, constitutional practice has revealed a noticeable shortcoming in the effective implementation of the principle of the separation of powers. This is primarily attributable to the continuous intervention of the executive branch, the expansion of its powers at the expense of the legislature, and its relative insulation from effective oversight.

Among the most significant manifestations of executive intervention in the legislative domain is the mechanism of legislation by presidential ordinances, which grants the President of the Republic, as the head of the executive branch, a position of superiority over Parliament. This inevitably affects the realization of the principle of the separation of powers.

In light of the foregoing, this study seeks to address the following research question:

To what extent has the constitutional framers' 2020 Constitutional Amendment contributed to strengthening the principle of the separation of powers between the legislative and executive branches in light of presidential predominance through the mechanism of legislation by presidential ordinances?

To address the above research question, this study is organized into two main sections:

Chapter One: The Reality of the Application of the Principle of the Separation of Powers in Algeria before the 2020 Constitutional Amendment.

Chapter Two: Manifestations of the Undermining of the Principle of the Separation of Powers under the 2020 Constitutional Amendment.

Chapter One

The Reality of the Application of the Principle of the Separation of Powers in Algeria before the 2020 Constitutional Amendment

Section One

Manifestations of the Fusion of Powers under the Single-Party Constitutions of 1963 and 1976

Subsection One

The Fusion of Powers under the 1963 Program Constitution

The framers of the 1963 Algerian Constitution considered the principle of the separation of powers to constitute a fragmentation of national sovereignty. They embraced the idea that



"there can be no guarantee of stability except through a system founded upon the supremacy of the sovereign people and the one-party system."¹

Accordingly, the 1963 Constitution established a system of government based on socialism and the one-party system, with the party serving as the leader of the nation and the guide and supervisor of all state authorities. It also concentrated and centralized governmental powers in the hands of a single individual, namely the President of the Republic.²

This also resulted in the subordination of the other state authorities to it, which stifled the spirit of initiative among those responsible for these institutions and undermined their effectiveness. Consequently, they became mere instruments in the hands of the Party for implementing its political program, thereby giving precedence to the Party's program over the Constitution and consolidating a constitutional system of governance through the Party³.

The main manifestations of the exclusion of the 1963 Constitution from effectively establishing the principle of the separation of powers can be summarized from two perspectives:

1. Formal Aspect

The 1963 Constitution organized the state authorities under separate headings, with differences in both the order and designation of each authority. They were arranged as follows: the legislative authority under the title **"Exercise of Sovereignty – National Assembly"**, comprising 12 articles (Articles 27–38); the executive authority, retaining the designation **"Executive Authority"**, comprising 21 articles (Articles 39–59); and the judicial authority under the title **"Justice"**, comprising only 3 articles (Articles 60–62).

From a formal standpoint, several considerations demonstrate the absence of a genuine separation of powers and, instead, the clear predominance of the executive authority over the other two branches of government. This is reflected, first, in the constitutional framers' exclusive use of the term **"authority"** to designate the executive branch, while the term appeared elsewhere only once, in Article 53 of the Constitution.⁴

Moreover, a quantitative analysis of the constitutional provisions reveals a significant expansion in the number of articles devoted to the executive authority compared with those allocated to the legislative and judicial authorities, thereby creating a clear imbalance among the three branches.

¹ See paragraph 18 of the Preamble to the 1963 Constitution:

"The traditional presidential and parliamentary systems of government cannot guarantee such stability. However, a system based on the supremacy of the sovereign people and the single vanguard party can effectively guarantee it."

² Moussa Boudhan, *The Algerian Constitutions: Constitutions of 1963, 1976, 1989 and 1996 with the November 2008 Amendment*, Dar Kabk Publishing House, Algeria, 2008, p. 21.

³ Saïd Bouchair, *The Algerian Political System: An Analytical Study of the Nature of the System of Government in Light of the 1963 and 1976 Constitutions*, University Publications Office, Algeria, 2013, p. 76.

⁴ "The regulatory authority shall be exercised by the President of the Republic."



2. Substantive Aspect

A careful examination of the provisions of the 1963 Constitution indicates the existence of constitutional guarantees for the independence of each authority. This is evidenced by the adoption of several mechanisms inspired by the parliamentary system, particularly the constitutional legislator's decision not to limit Parliament's legislative domain while assigning the remaining matters to the Government, which would have granted the latter broad and undefined powers at the expense of the legislative authority. On the contrary, the Constitution expanded Parliament's powers in relation to the Government by granting it legislative, consultative, and oversight functions, including the supervision of governmental activities through the constitutional mechanisms and instruments of parliamentary control.⁵

However, the constitutional reality suggests otherwise and confirms that the National Assembly did not enjoy the degree of independence necessary from the executive authority, whether in terms of institutional independence, since its members were organizationally subordinate to the Party, or functional independence in the exercise of its legislative and oversight responsibilities⁶. Consequently, the Assembly was compelled to cooperate with the executive from a position of weakness rather than one of balance and equal institutional independence.⁷

Another significant indication of the absence of the separation of powers is the constitutional framers' lenient approach to the eligibility requirements for presidential candidates, together with the broad and comprehensive powers granted to the executive authority across virtually all areas of governance. These powers extended beyond the sphere of the legislative authority to encompass the judiciary as well. Under the provisions of the 1963 Constitution, the judiciary was effectively regarded as part of the executive authority. Judges rendered decisions in the name of the Algerian people in accordance with the conditions prescribed by the law governing the judicial organization. Furthermore, judges were subject not only to the law but also to the interests of the Socialist Revolution in the exercise of their judicial functions. This meant that their allegiance was directed not solely to the administration of justice, but also to the protection of socialist principles, which were themselves considered essential to ensuring the stability and continuity of the State.⁸

Although the Constitution formally recognized certain guarantees of judicial independence, including those provided by law and the establishment of the Supreme Judicial Council pursuant to the second paragraph of Article 62, these guarantees were not effectively implemented in practice. The Council was not insulated from political influence, as it was chaired by the President of the Republic. This arrangement is inconsistent with the concept of judicial independence as defined by R. Wely: "Judicial independence means the judge's right

⁵ See Articles 28, 38, 42, 44, 47, 48, 55, 56, 64, 71 and 72 of the 1963 Constitution.

⁶ Saïd Bouchair, *The Algerian Political System*, previous reference, p. 78.

⁷ Miloud Dhibih, previous reference, p. 66.

⁸ See Articles 60 and 62(1) of the 1963 Constitution.



to decide cases in a manner that may displease the government without thereby incurring any sanction."⁹

In conclusion, it can be inferred that the 1963 Constitution effectively excluded the principle of the separation of powers, despite its formal recognition of the legislative and judicial authorities. In practice, however, their role was merely symbolic, particularly in light of the concentration of power in the hands of the President of the Republic, who exercised exclusive authority over both domestic and foreign affairs and monopolized state powers under both ordinary and exceptional circumstances.¹⁰

Furthermore, the institutional framework established under this constitutional order did not reflect any genuine conception of the separation of powers. There was no distinction between the Government and the Revolutionary Council, the latter embodying all state powers—legislative, executive, and judicial. Pursuant to Article 6 of the Ordinance¹¹, the Revolutionary Council was also responsible for determining the functions of the Government and supervising its activities. Consequently, both bodies operated as integrated institutions under a single leadership.

This institutional integration marked a transition from a system characterized by the existence of two distinct organs to one in which two bodies exercised authority within a single governing institution. Such a development confirms one of the established principles of institutional theory: whenever a constitutional system rejects the existence of competing political wills and instead establishes the unity of political authority, state institutions likewise tend toward institutional integration.¹²

Section Two: The Exclusion of the Principle of the Separation of Powers under the 1976 Program Constitution

The 1976 Constitution was the clearest constitutional instrument in excluding the principle of the separation of powers. This is evident from its distinctive organization of state authority and its distribution into specifically enumerated functions under Part Two of the Constitution. It was founded on the concept of the functional division of state authority rather than its separation, while maintaining the unity of leadership within the executive institution. This constitutional approach effectively excluded the principle of the separation of powers, as demonstrated by the following:

First: The Formal Aspect

From a structural perspective, the executive authority was given precedence over the other branches in the constitutional arrangement. It was placed in Chapter Two, while the

⁹ Miloud Dhibih, previous reference, p. 72.

¹⁰ Maqoud Massouda, *The Balance between Administrative Regulatory Powers and Public Freedoms under Exceptional Circumstances in Algeria*, p. 202.

¹¹ In this regard, the ordinances issued by the Revolutionary Council and the ordinances issued by the Government are considered to have the same legal force and value and to enjoy the same legislative nature.

¹² Saleh Belhadj, *Political Institutions and Constitutional Law in Algeria*, University Publications Office, Algeria, 2015, p. 77.



legislative function was addressed in Chapter Three and the judicial function in Chapter Four. Furthermore, a quantitative analysis of the constitutional provisions reveals a clear imbalance in the number of articles allocated to each authority, reflecting the privileged constitutional position of the executive.¹³

Second: The Substantive Aspect

From a substantive perspective, the executive authority's intervention in the legislative and judicial branches can be examined from both institutional and functional dimensions.

With regard to the **institutional dimension**, membership in the National People's Assembly was based on nomination by the Party leadership pursuant to Article 128 of the Constitution. Likewise, the extension of parliamentary terms required the approval of the President of the Republic under paragraph 2 of Article 129. Concerning the judiciary, the President of the Republic served as Chairman of the Supreme Judicial Council and exercised indirect influence over the appointment of judges, the supervision of their disciplinary conduct, their transfer, and the management of their judicial careers¹⁴. In addition, the Minister of Justice's role as Deputy Chairman of the Supreme Judicial Council enabled him to exercise significant powers of the Council, including disciplinary proceedings, promotions, and appointments. These arrangements constitute factors that undermine judicial independence and clearly demonstrate the executive authority's institutional influence over both the legislative and judicial branches.

With regard to the **functional dimension**, the Constitution exhaustively enumerated the powers of the legislative authority under Article 151, while assigning all matters falling outside Parliament's legislative competence to the executive authority within its regulatory domain pursuant to Article 152. Moreover, Article 153 explicitly undermined the legislative sovereignty of the National People's Assembly by authorizing the President of the Republic to legislate by ordinance¹⁵. Although the constitutional framers subjected this power to two formal conditions, these restrictions did not constitute an effective limitation in practice, since the Constitution remained silent regarding any legal consequences arising from the failure to comply with those constitutional requirements and procedures.¹⁶

With regard to the executive's intervention in the powers of the judiciary, the 1976 Constitution granted the President of the Republic the power to grant pardons, remit or reduce penalties, and remove the legal consequences arising from judgments rendered by any judicial body, pursuant to Article 111(8). The lack of judicial independence was further reflected in the fact that the decisions and opinions of the Supreme Judicial Council were merely advisory

¹³ The executive authority consisted of 26 constitutional provisions, the legislative authority of 38 provisions, and the judicial authority of 19 provisions.

¹⁴ See Articles 181 and 182 of the 1976 Constitution.

¹⁵ Fattah Chebah, *Classification of Political Systems on the Basis of the Principle of Separation of Powers*, Master's Thesis, University of Batna, p. 104.

¹⁶ Article 126(2) provides that the People's National Assembly "exercises legislative power with full sovereignty."



in nature. The Council did not possess independent authority to issue judicial appointment decisions; rather, such decisions were made by the President of the Republic, while the Council's role was limited to acknowledging and approving them, in accordance with Article 182(1).¹⁷

In conclusion, it may be observed that the Algerian political system, founded upon the socialist model, embodied a distinctive constitutional philosophy regarding the organization of state powers. This approach was explicitly affirmed by the late Houari Boumediene during the opening of the judicial year on 19 September 1969, when he stated:

"If the principle of the separation of powers prevails in systems where individual interests take precedence over collective interests, then our people's choice of a socialist system, in which social justice prevails among all citizens, requires the development of a new understanding of this principle in a manner consistent with its true framework."¹⁸

Section Two: Manifestations of the Independence of Powers in the Pluralist Constitutions of 1989 and 1996

First Subsection: The Implicit Reference to the Principle of Separation of Powers in the 1989 Constitution

The 1989 Constitution differs from the 1963 and 1976 programmatic constitutions in that it established several principles aimed at consolidating political pluralism and adopting a free economic system based on competition. It also embraced the principles of democracy and freedom of expression¹⁹, in addition to introducing principles governing the organization of state powers on the basis of separation between them, although this separation remained relative rather than absolute.

This separation is based on a balanced distribution of power among constitutional institutions, each of which is responsible for exercising the public functions of the state, namely legislative, executive, and judicial functions. Although the principle of separation of powers was not explicitly stated in the Constitution, its adoption can be implicitly inferred through several elements, including:

First: From the Formal Perspective

The 1989 Constitution introduced a major transformation in the organization of power by dedicating an entire chapter to each state power within Title Two of the Constitution. These chapters followed the same order adopted in the 1976 Constitution. However, the difference lies in the terminology used, as the term “power” was adopted instead of “function.”

¹⁷ Nabil Aït Chaâlal, *The Foundations of Building the Rule of Law*, Master's Thesis, Hadj Lakhdar University of Batna, p. 122.

¹⁸ Miloud Dhibih, previous reference, p. 72.

¹⁹ With regard to institutional balances, the 1989 Constitution adopted a flexible model of separation of powers based on mutual influence and cooperation between authorities, as a combination of the parliamentary and semi-presidential systems.



Furthermore, regarding the quantitative analysis of the constitutional provisions devoted to each power²⁰, a certain degree of balance can be observed among them. The only notable exception is the increase in the number of provisions allocated to the legislative power in this Constitution.

Second: From the Substantive Perspective: The Organic and Functional Separation

The substantive aspect of the separation of powers can be examined through two dimensions: the organic separation and the functional separation.

The manifestations of organic separation are reflected in the impossibility for members of the executive authority to belong to Parliament, while members of Parliament, in turn, are not entitled to hold ministerial positions.

As for functional separation, it is demonstrated through the Constitution's affirmation that each authority exercises its powers independently and sovereignly²¹. Parliament exercises its legislative authority with full sovereignty in the 25 fields constitutionally assigned to it under Article 115. However, this authority was reduced by the provision contained in Paragraph 11 of the same article, which removed Parliament's legislative competence regarding the administrative organization of the country. In return for this restriction, the 1989 constitutional legislator restored the importance of legislative sovereignty by abandoning the mechanism of legislation by ordinances.

In addition, the Constitution limited the exercise of the regulatory power of the President of the Republic to matters not reserved exclusively for legislation, according to the first paragraph of Article 116, in order to prevent any encroachment upon areas constitutionally reserved for the law.

Regarding Parliament's exercise of its oversight function, it is carried out through constitutional parliamentary control mechanisms, including the obligation to approve the government's action plan, as well as the discussion and voting on the general policy statement through a motion of censure aimed at holding the government accountable and compelling it to resign.²²

Furthermore, Parliament possesses other means of influencing government action, including interpellations and written or oral questions, as provided for in Articles 124 and 125. Financial oversight is also exercised by Parliament over the government pursuant to Article 150. These mechanisms enabled the legislative authority to influence the executive authority.

In contrast to the aforementioned, the Algerian constitutional legislator also affirmed the independence of the executive authority by granting it broad powers, whether under normal or

²⁰The executive authority consisted of 25 constitutional provisions, the legislative authority of 37 provisions, and the judicial authority of 20 provisions.

²¹ Article 69 states: "...exercises supreme authority..." In addition, Article 92(2) provides that Parliament enjoys sovereignty, while Articles 129 and 138 affirm the independence of the judicial authority and judges.

²² See Articles 80, 126, 127 and 128 of the 1989 Constitution.



exceptional circumstances. This situation affected the effective and practical application of the principle of separation of powers.²³

With regard to the judicial authority, the 1989 Constitution explicitly guaranteed its independence by establishing that judges are subject, in the exercise of their functions, only to the law and are protected from any external pressures, as provided for in Articles 129, 138, and 139.

The Constitution also established the principles of legality and equality as the foundation of the judiciary and introduced mechanisms for challenging decisions issued by public authorities. Moreover, the 1989 Constitution contributed to strengthening judicial institutions by establishing the Supreme Court as the highest judicial authority, reconsidering the powers of the Supreme Council of the Judiciary,²⁴ and providing for the adoption of the judiciary's basic statute.

Furthermore, unlike the 1976 Constitution, the 1989 Constitution adopted a system of constitutional review of laws pursuant to Article 153.

Section Two: The Explicit Constitutional Foundation of the Principle of Separation of Powers in Law No. 16-01

The 1996 Constitution, as amended by Law No. 16-01, expressly enshrined the principle of the separation of powers, both in its preamble and throughout its substantive provisions. This marked a departure from the constitutional text prior to the 2016 amendment, which had recognized the principle only implicitly, as had the 1989 Constitution. The explicit constitutional recognition of the principle of separation of powers came within the framework of Algeria's continued efforts to build a liberal state governed by the rule of law, founded upon the principles of democratic organization, constitutional legitimacy, participatory democracy, social justice, and the protection of individual and collective rights and freedoms.²⁵

The manifestations of the independence of powers in the latest constitutional reform can be observed from two perspectives:

First: From the formal perspective:

Regarding the Constitution's preamble, paragraph 13 begins by stating: "The Constitution guarantees the separation of powers and the independence of the judiciary...". Furthermore, the first paragraph of Article 15 was amended to read: "The State is founded upon the principles of ... and the separation of powers...". From a formal standpoint, an analysis of the Constitution's preamble and Article 15 clearly demonstrates the explicit recognition by the Algerian constitutional framers of the principle of separation of powers. This is particularly evident because Article 15 is located in Chapter Three, entitled "The State," within Part Two,

²³ Saleh Belhadj, previous reference, p. 147.

²⁴ See Articles 143, 146 and 147 of the Constitution.

²⁵ Law No. 16-01 dated 6 March 2016, published in Official Gazette No. 14 dated 7 March 2016, amending the 1996 Constitution.



which sets forth the general principles governing Algerian society. This constitutional structure reflects a clear and unequivocal intention on the part of the constitutional framers to elevate the separation of powers to the status of a constitutional principle and one of the fundamental pillars upon which the modern rule-of-law state is based—a model that Algeria seeks to consolidate through the establishment of appropriate legal guarantees.

The formal manifestations of the separation of powers are also reflected in the remainder of the Constitution, particularly in Part Two, entitled “Organization of the Powers,” where an entire chapter is devoted to each branch of government. The same structure, sequence, and terminology were maintained. The only notable difference lies in the number of articles allocated to each branch: 44 articles for the legislative authority, 21 articles for the judicial authority, while the executive authority retained its previous total of 28 articles.²⁶

Secondly, from a substantive perspective, the manifestations of the independence of the authorities in this Constitution can be summarized through the most significant reforms introduced by the 2016 constitutional amendment, as follows:

With regard to the executive authority: The initial reforms affecting this authority concerned restricting the right to run in presidential elections and reconsidering the conditions for candidacy. As for the powers of the executive branch, the constitutional amendment retained the powers of the President of the Republic in the same form as provided for in the 1996 Constitution prior to the amendment.²⁷ These powers include diplomatic, military, and judicial competencies, the authority to appoint individuals to various public offices within the State, legislative powers, as well as the exercise of regulatory authority.

However, the current constitutional text has contributed to limiting and restricting these powers, particularly in the legislative and judicial fields, with the aim of establishing the principle of the separation of powers, which was expressly enshrined under this amendment. One of the most important reforms was the regulation of the President’s authority to legislate by ordinance, as the Algerian constitutional framers confined its use to urgent matters and reconsidered the conditions²⁸ and duration of its exercise. This clearly reflects the constitutional legislator’s intention to restore legislative sovereignty to Parliament²⁹.

With regard to the mechanisms of influence and oversight granted to the executive authority, they were maintained and may be summarized as follows:

Institutional mechanisms of influence: The executive exercises direct influence over Parliament through the presidential one-third representation, counterbalanced by the President’s constitutional power to dissolve Parliament. In both mechanisms, the President of the Republic enjoys broad discretionary authority to exercise these powers without

²⁶ See the Preamble to the 1996 Constitution as amended in 2016.

²⁷ Prior to the amendment, the 1996 Constitution contained 40 provisions relating to the legislative authority and 20 provisions relating to the judicial authority.

²⁸ See Articles 85(3), 87 and 88 of the 1996 Constitution as amended in 2016.

²⁹ See Article 142 of the 1996 Constitution as amended in 2016.



constitutional restrictions or limitations.³⁰ In addition, the government's involvement in preparing the agenda of both parliamentary chambers strengthens the executive institution's dominance in directing parliamentary activity.³¹

Furthermore, the executive possesses indirect moral means of influencing Parliament, including the authority to convene Parliament in both ordinary and extraordinary sessions, as well as the use of presidential messages as a form of psychological pressure, as provided for in Article 135(3) and (4).

As for the procedural mechanisms through which the executive influences Parliament, these include the government's role in the legislative drafting process through the Joint Equal Members Committee, the right to initiate legislation, and the promulgation of laws. Moreover, the President may object to the entry into force of legislation by requesting a second deliberation, exercising the right of constitutional referral, or resorting to a popular referendum³². These mechanisms enable the executive to exercise significant control over the work and procedures of the legislative authority.

In return, Law No. 16-01 introduced certain amendments to parliamentary oversight mechanisms, particularly by requiring members of the Government to respond to parliamentary interpellations within a period of at least thirty (30) days and by allocating a weekly parliamentary session for this purpose.

In addition to these mechanisms, the legislative authority retains the power to approve the Government's Action Plan pursuant to Articles 94 and 95 of the Constitution, as well as to debate the Government's General Policy Statement, which may be followed by a vote on a motion of censure compelling the Government to resign in accordance with Articles 153, 154, and 155. Furthermore, Parliament was granted financial oversight powers under Articles 179 and 180 of the Constitution.

All of these mechanisms reflect the intention of the Algerian constitutional framers to emphasize the characteristics of a flexible separation of powers, which requires the existence of mutual influence and reciprocal oversight between the executive and legislative authorities. With regard to the judicial authority, however, certain aspects continue to affect the institutional independence of the judiciary. This is evident from the President of the Republic's authority to appoint the heads of the highest judicial bodies pursuant to Article 92(4) and (5), as well as the introduction of a new paragraph in the latest constitutional amendment authorizing the President to appoint holders of other judicial offices through an organic law.

In addition, the Constitution provides that the independence of the judiciary is guaranteed by the President of the Republic under Article 156(2), while Article 160(2) guarantees the right

³⁰ See Articles 118(3) and 147 of the Constitution, and Presidential Decree No. 97-499 dated 27 December 1997.

³¹ See Articles 15 to 18 of Organic Law No. 16-12 dated 25 August 2016 relating to the organization and functioning of the People's National Assembly and the Council of the Nation, and the functional relationship between them and the Government, published in Official Gazette No. 50.

³² See Articles 151(1) and 152(1) and (2).



to litigation before two levels of jurisdiction. The constitutional amendment also strengthened the role of the Council of State as both a judicial and consultative body, particularly with regard to the mechanism of legislation by ordinance provided for in Article 142(1).

Furthermore, the constitutional amendment reinforced judicial decisions and rulings by requiring that they be reasoned in all cases pursuant to Article 162(2). It also criminalizes and sanctions any obstruction to the enforcement of judicial decisions. Moreover, Article 176(2) grants the High Council of the Judiciary administrative and financial independence.

The Constitution likewise provides lawyers, in the same manner as judges, with legal guarantees necessary for the proper performance of their professional duties and protection against any external pressure, pursuant to Article 170. In addition, Article 166 sets forth a number of requirements that judges must observe, including the prohibition of interference with the administration of justice, the obligation for judges—under penalty of legal sanctions—to refrain from any conduct that may undermine the integrity and impartiality of the judiciary, and the referral of matters relating to the status of judges and the organization of the High Council of the Judiciary to an organic law, pursuant to Article 176(2).

All these reforms are essential, first, to strengthen the independence of the judicial authority and, second, to ensure the effective implementation of constitutional provisions.

First Requirement: The Constitutional Reinforcement of the Principle of Separation of Powers Between Constitutional Text and Practice

First Branch: The Position of Constitutional Jurisprudence Regarding the Principle of Separation of Powers

With regard to the constitutional review of Law No. 89-14 of 8 August 1989, published in Official Gazette No. 33 of 9 August 1989, concerning the Basic Law governing Members of Parliament:

Through this opinion, the Constitutional Council contributed to the consolidation of the principle of the separation of powers. This is evident from its review of the constitutionality of Article 13 of the Basic Law governing Members of Parliament, where it stated that "the organization of the powers derived from the Constitution of 20 February 1989, approved by the people, clearly defines the competence of each constitutional institution; therefore, the constitutional institutions are required to ensure and preserve the independence of each institution."

The Constitutional Council further reaffirmed its position regarding the entrenchment of this principle in its review of the constitutionality of Articles 17 and 33, stating that "the principle of the separation of powers requires that each authority exercise its powers within the sphere assigned to it by the Constitution."

It also held that "each authority must always remain within the limits of its constitutional competences in order to preserve the established constitutional balance. By authorizing a Member of Parliament to individually pursue matters relating to the implementation of laws and regulations, the exercise of popular oversight, and matters concerning the activities of



various public services, the Basic Law governing Members of Parliament assigned responsibilities that exceed the scope of the Member's constitutional powers."

Based on the Constitutional Council's decision rendered in the exercise of its constitutional review over the Basic Law governing Members of Parliament, the Council's position was explicit and unequivocal in seeking to establish the principle of the separation of powers as a constitutional principle. Although the Constitution did not expressly provide for this principle, its implicit recognition through the provisions and rules of the Basic Law governing Members of Parliament confirms the significance of this law as a fundamental reference within the Algerian legal system.³³

Constitutional Review of the Compliance of Organic Law No. 04-11 Containing the Basic Law on the Judiciary

The Constitutional Council's efforts to consolidate the principle of the separation of powers are reflected in its opinion concerning the constitutionality of Organic Law No. 04-11 containing the Basic Law on the Judiciary³⁴. In its opinion, the Council stated:

"Considering the principle of the separation of powers, the constitutional framers entrusted the legislature with the authority to legislate exclusively in the fields expressly assigned to it by the Constitution, without extending such authority to the regulatory domains reserved for the executive branch."

"Considering that, although the legislature is required to rely on the Constitution and, where appropriate, on legislative provisions related to the subject matter of the enacted law, it may not rely on regulatory texts issued by the executive authority."

"Consequently, by relying on executive decrees in the provisions of the Organic Law referred to the Council, the legislature violated both the principle of the separation of powers and the constitutional distribution of legislative and regulatory competences."³⁵

With regard to the constitutional review of Organic Law No. 04-11 containing the Basic Law on the Judiciary, discussed above, the Constitutional Council, in its opinion of 22 August 2004, emphasized the fundamental legal status of the Basic Law on the Judiciary, recognizing that it enjoys a higher legal value than regulatory texts. The Council affirmed that, within the constitutional powers vested in the legislative authority, Parliament must remain within the legal fields exclusively assigned to it by the Constitution. Accordingly, matters falling outside the legislative domain and within the regulatory competence of the executive may not serve as a legal basis for legislative enactments. Therefore, the provisions and structure of the Organic Law containing the Basic Law on the Judiciary cannot be based on executive decrees, as

³³ Constitutional Council Decision No. 2.CC/89 dated 30 August 1989, concerning the Basic Law on Members of Parliament.

³⁴ Opinion No. 02/R.C/CC/04 dated 22 August 2004, published in Official Gazette No. 57 dated 8 September 2004, p. 3.

³⁵ Opinion No. 02/R.C/CC/04 dated 22 August 2004, published in Official Gazette No. 57 dated 8 September 2004, p. 4.



doing so would violate both the principle of the separation of powers and the constitutional distribution of competences.

From this perspective, it becomes evident that the Constitutional Council has played a significant role in defining the status of the Basic Law on the Judiciary as an organic law supplementing the provisions of the Constitution and constituting a fundamental legal text governing the judicial authority. This law enjoys a superior legal status under the principle of the separation of powers, a status that should not be disregarded by either the legislative or the executive authority.

Second Branch: The Position of the Constitutional Framers of the 2020 Constitution on the Constitutionalization of the Principle of the Separation of Powers

First: The General Framework for the Application of the Principle of the Separation of Powers to Achieve the Fundamental Balance of the State

The organization of public authorities and the separation of powers have constituted the cornerstone of Algeria's constitutional development since independence. However, a significant transformation occurred with the adoption of the 1989 Constitution, which, for the first time, expressly enshrined the principle of the separation of powers and reorganized the distribution of powers within the executive branch as well as the relationship between the executive and legislative authorities.

The restructuring of the executive branch under the 1989 Constitution granted the Head of Government a constitutional status that enabled him, following his appointment by the President of the Republic, to formulate a governmental program for which he was politically accountable before Parliament. This constitutional position also empowered him to appoint public officials to positions that did not fall within the appointment powers of the President of the Republic. This institutional arrangement was maintained under the 1996 Constitution and continued following its constitutional revision in 2002.

Nevertheless, this dual structure of the executive branch, which allowed the Head of Government to emerge as a second center of executive authority despite the President of the Republic retaining a constitutionally dominant position, encountered several practical difficulties. The impractical nature of this institutional arrangement became increasingly apparent within Algeria's political and constitutional system. In order to ensure greater coherence within the executive branch, this dual executive structure was abandoned through the 2008 constitutional amendment. The office of the Head of Government and its governmental program were replaced by the office of the Prime Minister, whose primary responsibility became the implementation of the President of the Republic's program. However, this new institutional arrangement ultimately departed from its intended objectives and resulted in the establishment of an excessively presidential system.

The relationship between the executive and legislative authorities is founded upon the principle of the separation of powers. However, in addressing this issue, the Committee emphasized the relative nature of this principle in the context of majority rule, noting that contemporary parliaments have evolved from institutions acting as counterweights to the



executive into bodies that generally support government policies. Accordingly, modern constitutions regulate the relationship between the executive and legislative branches on the basis of a functional distribution of powers, while placing particular emphasis on Parliament's authority to oversee governmental action and on strengthening the role of the parliamentary opposition.

The guiding principle underlying the Committee's work with respect to the separation and balance of powers was the expansion of Parliament's legislative powers. In particular, the Committee proposed granting Parliament the authority to establish the general rules governing public procurement. Previously, this matter fell within the regulatory domain. The purpose of this reform was to restrict the regulatory authority exercised by the President of the Republic under Article 143 of the current Constitution, which authorizes presidential intervention in matters not expressly reserved for legislation.

The Committee also sought, wherever possible, to refer matters provided for in the Constitution to statutory legislation, while at the same time strengthening constitutional review of regulatory instruments.

In the same context, the Committee worked to reinforce Parliament's oversight powers over governmental action.

To prevent delays in the implementation of laws adopted by Parliament, the Committee introduced a requirement obliging the Government to accompany draft legislation with the draft implementing regulations necessary for its enforcement. Should the Government fail to comply with this requirement, the relevant draft laws would not be placed on the agenda of the parliamentary session.

Parliamentary oversight was further strengthened by granting Parliament the authority to question the Government regarding the implementation of enacted legislation.

With respect to legislative ordinances issued by the President of the Republic that require parliamentary approval, oversight was reinforced through a provision stipulating that such ordinances shall automatically lapse if they are not submitted to Parliament for approval within one month from the opening date of the next parliamentary session.

The Committee also proposed additional oversight mechanisms, including the power to question the Government on any matter of national importance, with the requirement that the Government respond within a maximum period of one month. It further proposed granting parliamentary committees the authority to hear members of the Government and requiring the Government to provide Parliament with the information and documents it requests in the exercise of its oversight functions.

Furthermore, whereas the current Constitution permits the Government's political responsibility to be invoked only following the discussion of the General Policy Statement, the Committee proposed extending this possibility to include cases arising after the Government has been questioned on matters of national importance.

In the field of parliamentary oversight, the rights of the parliamentary opposition were also strengthened by proposing that opposition members be allowed to chair parliamentary



committees on a rotating basis with the parliamentary majority. The regulation of this matter was left to an organic law.

For the same purpose, safeguards were introduced to protect the parliamentary mandate through a more precise regulation of parliamentary immunity. A distinction was made between acts performed in the exercise of parliamentary functions, as defined by the Constitution, for which Members of Parliament may not be subject to legal proceedings, and acts unrelated to those functions, for which Members enjoy only procedural immunity under the conditions established by the relevant organic law.

The discussions on this issue also examined the possibility of referring disputes between the executive and legislative authorities concerning the lifting of parliamentary immunity to the Constitutional Court for adjudication. However, the Committee concluded that such a mechanism could undermine Parliament's institutional independence and therefore rejected the proposal.

With regard to the second chamber of Parliament, the Committee considered that the rationale behind its establishment in 1996 was to broaden parliamentary representation by including national experts and distinguished individuals who were not adequately represented in Parliament, thereby enhancing the professional expertise required for parliamentary functions. The same reasoning applies to representatives of territorial collectivities, whose practical experience enables them to contribute valuable knowledge concerning local issues.

In practice, however, these two objectives were largely deprived of their substantive effect, giving rise to a perception among a segment of public opinion that this institution lacked genuine effectiveness. Nevertheless, the Committee considered that, in line with prevailing international constitutional practice, the Council of the Nation should be maintained in order to strengthen political representation, preserve the balance among state institutions, and ensure the continuity of the State.

Secondly: Elevating the Rules Governing the Principle of the Separation of Powers to the Status of Constitutional Norms in Conformity with International Standards

1. Based on the Preamble to the 2020 Revised Constitution

The 2020 constitutional amendment elevated the rules governing the principle of the separation of powers to the rank of constitutional norms by expressly incorporating the principle into paragraph 15 of the Preamble to the Constitution.³⁶

Since the Preamble constitutes an integral part of the Constitution, it enjoys the same constitutional value as the substantive provisions of the constitutional text. Accordingly, the provisions of the Preamble possess supreme normative force, thereby conferring upon the principle of the separation of powers the status of a supreme constitutional norm.

³⁶ See paragraph 15 of the Preamble to the Constitution:

“The Constitution guarantees the separation of powers and the balance between them...”



2. Based on the Provisions of the Constitution

The constitutionalization of the principle is further reflected in Chapter One, entitled *General Principles Governing Algerian Society*, specifically in Chapter Three, entitled *The State*, under Article 16.

From a formal perspective, the inclusion of the principle within the chapter devoted to the State underscores its constitutional significance and confirms that the principle of the separation of powers constitutes one of the fundamental pillars of the Algerian constitutional order.

3. Based on Part Three of the Constitution, Entitled "The Organization of the Public Authorities and the Separation of Powers"

The title of this Part appears, at first glance, to reveal a certain inconsistency between the wording of the Preamble, which refers to the "separation of powers and the balance among them," and the title of Part Three, which is limited to "the organization of the public authorities and the separation of powers."

Part Three addressed the organization of powers in a manner different from that adopted in previous constitutional texts and their amendments. It also clarified the various mechanisms of influence, cooperation, and balance between the authorities.

Among the manifestations of the separation of powers and cooperation between them is the relationship between the legislative and executive authorities, which, under constitutional practice, has come to experience a degree of conflict and overlap between the competences of each authority. This negatively affects the proper implementation of the principle, and this issue will be examined in the following section.

Second Requirement: The Mechanism of Legislation by Ordinances as an Infringement on the Principle of Separation of Powers

Upon examining and analyzing the constitutional provisions relating to the exercise of the legislative function, it appears at first glance that Parliament is the sole holder of legislative competence and that the role of the executive authority is limited to implementing legislative acts. However, the reality is entirely different, as the executive authority participates in the law-making process, whether during periods of institutional stability or in cases of threats to public order, as provided for in Article 142 of the Constitution.

Accordingly, although several approaches have been proposed regarding the exercise of the legislative function in Algeria—whether it is exercised jointly by the legislative and executive authorities, through the President of the Republic replacing Parliament, or alternately according to a temporal distribution between them—the constitutional legislator, despite the validity of these different interpretations, has incorporated them within what is referred to as the presidential model of legislative activity. This approach conflicts with the principle of the separation of powers (between the executive and legislative authorities in the first branch) and (between the executive and judicial authorities in the second branch).



First Branch: Voting Without Debate as a Means of Weakening Parliamentary Oversight over Ordinances

Since the executive institution is authorized to participate in the legislative process alongside Parliament through ordinances pursuant to Article 142 of the Constitution, it exercises this competence under the supervision of both chambers of Parliament. This is expressly confirmed by paragraph two of Article 142.

However, the Constitution did not grant Parliament any authority to oversee presidential ordinances; rather, it weakens its role by obliging it to approve them without debate.³⁷

In addition to the constitutional provision, Article 37 of Organic Law No. 16-12, previously mentioned, adopted the principle of voting without debate on ordinances issued by the President of the Republic and submitted to Parliament for approval. This procedure appears to have been inspired by the French system; however, it has been deprived of its substance. In the French Constitution, legislative ordinances result from a legislative delegation and are subsequently subject to review, unlike the Algerian legal system, which allows the executive authority to issue ordinances without granting the legislative body corresponding means of oversight.

Accordingly, Parliament is limited to either accepting or rejecting the provisions of these ordinances as a whole, without the possibility of partial consideration, since it does not have the authority to assess individual provisions of the ordinance submitted to it. Therefore, Parliament is compelled either to approve them despite its lack of agreement with certain provisions, or to reject them because it approves only a limited part while opposing the remainder. This is due to the fact that Parliament may neither debate nor introduce amendments to the provisions of such ordinances.³⁸

In this regard, Professor Mahjour stated that parliamentary approval of ordinances provides Parliament with an opportunity to examine potential presidential abuse, either by approving the ordinance, thereby allowing it to produce its legal effects, or by rejecting it and terminating its effects, despite the fact that these acts are considered legislative acts.

As for the issue of voting on ordinances, since they constitute legislative acts, they are subject to the same voting system applicable to laws. However, the required majority for their approval varies depending on the legislative field in which the President of the Republic intervenes and within which he legislates through an ordinance.³⁹

If the subject matter of the ordinance falls within the domain of ordinary laws pursuant to Article 139, it is voted upon in accordance with Article 145(4), as well as Article 41 of Organic Law No. 16-12, by a simple majority of the members present of the People's National Assembly and the Council of the Nation. However, if the subject matter of the

³⁷ Saïd Bouchair, *The Relationship between the Legislative Institution and the Executive Institution in the Algerian Legal System*, PhD Dissertation, Faculty of Law, University of Algiers, 1984, p. 306.

³⁸ Saïd Bouchair, previous reference, p. 308.

³⁹ Karima Razik Bara, *The Limits of Executive Power: A Comparative Study*, Master's Thesis, 2011, p. 97.



ordinance falls within the domain reserved for organic laws pursuant to Article 140 of the Constitution, it is voted upon, according to its second paragraph and previous constitutional provisions, by an absolute majority of the members of both the People's National Assembly and the Council of the Nation. This differs from the previous constitutional provision, which required a three-quarters majority of the members of the Council of the Nation for the approval of ordinances.⁴⁰

At this level of legal regulation concerning parliamentary oversight of ordinances, the legal conclusion intended by the Algerian constitutional framers, according to the aforementioned constitutional provisions, is the ineffectiveness of such oversight. Consequently, voting without debate, particularly in the financial field, appears to be aimed at preventing Parliament from participating in the legislative process. As a result, the executive authority acquires another means of influence over the legislative authority by compelling it to provide only formal approval.⁴¹

Second Branch: Presidential Dominance over the Judiciary as an Obstacle to Subjecting Ordinances to Oversight

First: Judicial Review of Presidential Ordinances

Similar to certain comparative constitutional systems, the Algerian constitutional framers established a dual judicial system through the creation of the Council of State. This institution was granted judicial powers as the highest administrative judicial body, as well as advisory powers in its capacity as an advisor to the central administrative authority.

With regard to the role of the Council of State in the legislative field, it falls within the exercise of its advisory jurisdiction, pursuant to the provisions of Article 142, paragraph two.

Unlike previous constitutional provisions, the advisory role of the Council of State was limited only to draft laws. However, the Algerian constitutional framers addressed this shortcoming through the 1996 constitutional amendment under Law No. 16-01, by stipulating in Article 142, paragraph 2, that ordinances issued by the President of the Republic must be submitted for the opinion of the Council of State.

Through this approach, the constitutional legislator established, in addition to parliamentary oversight of ordinances, judicial oversight exercised by the Council of State. Nevertheless, this oversight is not absolute due to several considerations, which can be summarized as follows:

- The executive authority's control over the composition of the Council of State, whether in the exercise of its judicial or advisory functions. This is due, firstly, to the fact that the President of the Council of State is appointed by presidential decree, and secondly, that its members, who are judges, are also appointed by presidential decree. Consequently, the executive authority extends its influence over the Council of State

⁴⁰ Hamid Meziani, previous reference, p. 89.

⁴¹ Abdallah Boukfa, *Methods of Exercising Power: The Functional Relationship between Parliament and the Executive Authority (A Comparative Study)*, Dar Al-Houda Publishing House, Algeria, 2016, p. 148.



through appointment and dismissal, and such authority cannot be delegated to any other body.

Despite the fact that the Algerian constitutional framers sought to remedy the situation regarding the oversight exercised by the Council of State over ordinances, the effective implementation of judicial review over these ordinances remains an issue that continues to raise several questions.⁴²

Second: Constitutional Review of Presidential Ordinances

With regard to the legal characterization of the review of the constitutionality of ordinances within the Algerian constitutional system, this mechanism was introduced under the latest constitutional amendment of 2020, whereby the constitutional framers subjected presidential ordinances to review by the Constitutional Court. This differs from the previous constitutional text, which excluded ordinances from the scope of constitutional review mechanisms.

As for the influence of the executive authority on the issue of constitutional review, it appears through the content of the review relating to ordinances, which remains optional according to the constitutional wording and is dependent on a referral submitted by one of the authorities legally entitled to initiate such review.

In conclusion, regarding the mechanism of constitutional review in general and the right of referral in relation to ordinances in particular, both constitute, on the one hand, a means of protecting the Constitution and fundamental rights and freedoms, and on the other hand, a means of implementing the governmental program, embodying the general policy of the State, and ensuring its execution. Therefore, the constitutional legislator should reconsider the manner in which constitutional review is applied to presidential ordinances.

Conclusion

In conclusion, our study of this issue leads us to conclude that the system of legislation by ordinances established under Article 142 of the Constitution is not, at least from a theoretical perspective, an abnormal situation imposed by circumstances or a mere legal mechanism. Rather, it is a system dictated by practical necessities in cases where the legislative authority is absent. Therefore, it constitutes a legitimate and original mechanism derived directly from the Constitution, granting the head of the executive authority the power to legislate independently, whether under ordinary or exceptional circumstances. Furthermore, this power extends to the extent of granting the executive authority exclusive control over legislation in the financial field.

Accordingly, one of the most significant consequences of implementing this mechanism is the reduction of Parliament's effectiveness in exercising its most important constitutional powers, as these powers become concentrated in the hands of the executive authority. This situation reinforces the superiority of the executive branch while, conversely, weakening the position of parliamentary legislation, to the extent that it may be argued that there are two legislative authorities within the State. Such a situation constitutes an infringement of the constitutionally

⁴²See Articles 35 to 39 of Organic Law No. 98-01 relating to the powers and composition of the Council of State.



established principle of the separation of powers, particularly since the constitutional legislator adopted a flexible and cooperative model of separation of powers based on the necessity of achieving balance among the different authorities.

From our perspective, the solution lies in revising the legal provisions, particularly by clarifying the position of the constitutional legislator regarding the mechanism of legislation by ordinances, whether concerning its legal nature or the judicial and oversight framework to which it is subject. Moreover, it is necessary to promote a change in institutional practices and ensure respect for the Constitution by those exercising public authority. Representatives of the people must exercise their constitutional powers with full independence rather than gradually relinquishing them in favor of the executive authority, field by field. Otherwise, the legislative institution risks becoming subordinate, if not entirely controlled, by the executive institution in general and by the President of the Republic in particular.

References

1. See paragraph 18 of the Preamble to the 1963 Constitution: “The traditional presidential and parliamentary systems of government cannot guarantee such stability. However, a system based on the supremacy of the sovereign people and the single vanguard party can effectively guarantee it.”
2. Moussa Boudhan, *The Algerian Constitutions: Constitutions of 1963, 1976, 1989 and 1996 with the November 2008 Amendment*, Dar Kabk Publishing House, Algeria, 2008, p. 21.
3. Saïd Bouchair, *The Algerian Political System: An Analytical Study of the Nature of the System of Government in Light of the 1963 and 1976 Constitutions*, University Publications Office, Algeria, 2013, p. 76.
4. “The regulatory authority shall be exercised by the President of the Republic.”
5. See Articles 28, 38, 42, 44, 47, 48, 55, 56, 64, 71 and 72 of the 1963 Constitution.
6. Saïd Bouchair, *The Algerian Political System*, previous reference, p. 78.
7. Miloud Dhibih, previous reference, p. 66.
8. See Articles 60 and 62(1) of the 1963 Constitution.
9. Miloud Dhibih, previous reference, p. 72.
10. Maqoud Massouda, *The Balance between Administrative Regulatory Powers and Public Freedoms under Exceptional Circumstances in Algeria*, p. 202.
11. The ordinances issued by the Revolutionary Council and those issued by the Government are considered to have the same legal force and value and to enjoy the same legislative nature.
12. Saleh Belhadj, *Political Institutions and Constitutional Law in Algeria*, University Publications Office, Algeria, 2015, p. 77.
13. The executive authority consisted of 26 constitutional provisions, the legislative authority of 38 provisions, and the judicial authority of 19 provisions.
14. See Articles 181 and 182 of the 1976 Constitution.
15. Fattah Chebah, *Classification of Political Systems on the Basis of the Principle of Separation of Powers*, Master’s Thesis, University of Batna, p. 104.



16. Article 126(2) provides that the People's National Assembly "exercises legislative power with full sovereignty."
17. Nabil Aït Chaâlal, *The Foundations of Building the Rule of Law*, Master's Thesis, Hadj Lakhdar University of Batna, p. 122.
18. Miloud Dhibih, previous reference, p. 72.
19. With regard to institutional balances, the 1989 Constitution adopted a flexible model of separation of powers based on mutual influence and cooperation between authorities, combining elements of the parliamentary and semi-presidential systems.
20. The executive authority consisted of 25 constitutional provisions, the legislative authority of 37 provisions, and the judicial authority of 20 provisions.
21. Article 69 states: "...exercises supreme authority..." In addition, Article 92(2) provides that Parliament enjoys sovereignty, while Articles 129 and 138 affirm the independence of the judicial authority and judges.
22. See Articles 80, 126, 127 and 128 of the 1989 Constitution.
23. Saleh Belhadj, *Political Institutions and Constitutional Law in Algeria*, previous reference, p. 147.
24. See Articles 143, 146 and 147 of the Constitution.
25. Law No. 16-01 dated 6 March 2016, published in Official Gazette No. 14 dated 7 March 2016, amending the 1996 Constitution.
26. See the Preamble to the 1996 Constitution as amended in 2016.
27. Prior to the amendment, the 1996 Constitution contained 40 provisions relating to the legislative authority and 20 provisions relating to the judicial authority.
28. See Articles 85(3), 87 and 88 of the 1996 Constitution as amended in 2016.
29. See Article 142 of the 1996 Constitution as amended in 2016.
30. See Articles 118(3) and 147 of the Constitution, and Presidential Decree No. 97-499 dated 27 December 1997.
31. See Articles 15 to 18 of Organic Law No. 16-12 dated 25 August 2016 relating to the organization and functioning of the People's National Assembly and the Council of the Nation, and the functional relationship between them and the Government, published in Official Gazette No. 50.
32. See Articles 151(1) and 152(1) and (2).
33. Constitutional Council Decision No. 2.CC/89 dated 30 August 1989, concerning the Basic Law on Members of Parliament.
34. Opinion No. 02/R.C/CC/04 dated 22 August 2004, published in Official Gazette No. 57 dated 8 September 2004, p. 3.
35. Opinion No. 02/R.C/CC/04 dated 22 August 2004, published in Official Gazette No. 57 dated 8 September 2004, p. 4.
36. See paragraph 15 of the Preamble to the Constitution: "The Constitution guarantees the separation of powers and the balance between them..."



37. Saïd Bouchair, *The Relationship between the Legislative Institution and the Executive Institution in the Algerian Legal System*, PhD Dissertation, Faculty of Law, University of Algiers, 1984, p. 306.
38. Saïd Bouchair, previous reference, p. 308.
39. Karima Razik Bara, *The Limits of Executive Power: A Comparative Study*, Master's Thesis, 2011, p. 97.
40. Hamid Meziani, previous reference, p. 89.
41. Abdallah Boukfa, *Methods of Exercising Power: The Functional Relationship between Parliament and the Executive Authority (A Comparative Study)*, Dar Al-Houda Publishing House, Algeria, 2016, p. 148.
42. See Articles 35 to 39 of Organic Law No. 98-01 relating to the Powers and Composition of the Council of State.