

# The Decline of the Authority of the President of the Algerian Republic in Dissolving Parliament and Legislation by Decrees

## «A Reading of the Algerian Constitutional Amendments 1996 – 2016»

تراجع سلطتي رئيس الجمهورية الجزائرية في حل البرلمان والتشريع بأوامر  
"قراءة في التعديلات الدستورية الجزائرية 1996 – 2016"

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### Abstract:

The idea of an exclusive balance between the executive and legislative powers has sparked controversy among jurists, researchers, and politicians, on the premise that the executive power, represented especially in the person of the President of the Republic, is in a superior position vis-à-vis the legislative power. The reason for this superiority is due to the conditions required for the establishment of one of these two institutions on the one hand, and on the other hand it is raised by the powers granted to both of them, as this superiority appears through granting the executive authority the power to legislate, which many see as one of the inherent powers of the legislative authority. In contrast, we do not find Effective and powerful tools granted by the Constitution to the legislative authority specifically against the President of the Republic. A close examination of the Algerian constitutions, particularly the two amendments passed in 1996 and 2016, reveals that the President of the Republic's authority has diminished and has been reduced to the legislative branch. This includes the authority to dissolve Parliament, the authority to enact laws by proclamation, the authority to amend the constitution, and the authority to oversee its constitutionality laws that restore the proper balance between the two branches of government and do away with the notion that the president of the republic should always be in charge of the executive branch.

**Key words:** Executive power, legislative power, legislation by orders, dissolution of parliament, constitution, limitation of power.

### Introduction:

The President of the Republic embodies the unity of the nation, is the protector of the Constitution, and represents the supreme judge of the country. This characteristic that the President of the Republic enjoys within the Algerian state makes him occupy the forefront of

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other constitutional institutions, so the constitutional founder and the Algerian legislator surrounded it with special and distinct controls from both the substantive and procedural aspects.

The distinction of the rules regulating the institution of the Presidency of the Republic is evident in several aspects, starting with the method of selecting the President of the Republic, in which the Constitution stipulates the necessity of the availability of many distinct and unparalleled conditions for selecting other constitutional institutions, passing through those rules specifying the powers of the President of the Republic in the Algerian constitutional system, which It was not only stipulated in the separation of executive authority, but it is distributed throughout the entire constitutional document, ending with how the responsibility of the President of the Republic is established.

What draws attention regarding the controls governing the President of the Republic are the multiple and varied powers that he enjoys, an issue that has sparked great controversy among legal and political researchers alike, as most research has argued that the President of the Republic in Algeria enjoys absolute powers not only within the executive branch. Rather, it exceeds the rest of the other constitutional and legal bodies and institutions.

Also, many studies and researches that deal with the powers of the President of the Republic, especially those related to the legislative authority, often reach the conclusion that the Algerian constitutions and their successive amendments include an increase in the powers of the President of the Republic (the powers of the President of the Republic are constantly expanding), which gives him superiority in the face of other authorities. It affects the idea that power is limited by another authority, and the importance of studying the issue of the superiority of the President of the Republic in the face of other authorities increases, especially when it comes to the legislative authority, as a result of granting him the authority to dissolve Parliament and the legislative authority, which is originally within the jurisdiction of the legislative authority in accordance with what is determined and adopted by democratic political systems. Different countries in the world, and this is an idea that we see as incorrect, since those who follow the powers of the President of the Republic vis-à-vis the legislative authority find that they are in continuous decline.

Based on the above and to prove that the powers of the President of the Republic to dissolve Parliament and legislate by orders in the face of the legislative authority are declining and limited, and in order to achieve the rules of the methodology, we tried to study this issue by posing the following problem: What are the manifestations of the diminished powers of the President of the Republic in exercising his powers to dissolve Parliament and legislate by orders through Constitutional amendments from 1996 to 2016?

We will try to answer this problem by extrapolating the Algerian constitutional texts to explain the decline in the powers of the President of the Republic in the face of the legislative authority by dividing the study into the following axes:

- The decline of the President of the Republic's authority to dissolve Parliament in the face of the legislative authority
- \_ The Decline of the Authority of the President of the Algerian Republic to Legislate by Decrees to the legislative authority.

**1- The decline the President's parliamentary dissolution authority to the legislative authority:**

The constitutional authority granted to the President of the Republic to dissolve Parliament has led many to consider it a form of the superiority of the executive authority over the

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legislative authority. What created this superiority is the position of the President of the Republic in the Algerian constitutional system.<sup>1</sup>That is, one of the components of the executive authority and not the executive authority in its entirety. This result can be recognized for the period that preceded the constitutional amendment of 1996, but it differs from it after the issuance of this amendment, as the President of the Republic's authority to dissolve Parliament declined.

This can be stated by saying that if the power to dissolve Parliament was granted by successive constitutions and constitutional amendments to the President of the Republic as a constitutional measure aimed at ensuring that the legislative authority does not deviate from the tasks assigned to it or arbitrarily and deviate from the authority granted to it, then the authority can only be stopped by another authority parallel to it. As the jurist Montesquieu argued, this procedure guarantees the proper conduct of constitutional activity and the regular functioning of constitutional institutions, achieves the highest interest of the state, and constitutes one of the basic guarantees for the protection of rights and freedoms within the state.

Referring to the Algerian constitutions, we find that the 1963 Constitution, Article 56, did not grant the President of the Republic the power to dissolve Parliament, but rather made it a procedure associated with his obligatory resignation as a result of voting on the list of withdrawal of confidence from him.<sup>2</sup>As for the 1976 Constitution, Article 163 explicitly stipulated the authority of the President of the Republic to dissolve Parliament, a principle that was enshrined in successive constitutions and constitutional amendments after that (Article 120 of the 1989 Constitution, Article 129 Constitutional Amendment<sup>3</sup>1996, Article 129 Constitutional Amendment 2002, Article 129 Constitutional Amendment 2008, Article 147 Constitutional Amendment<sup>4</sup>2016).

But what can be recorded above about the power to dissolve Parliament is the distinction between two stages: The first stage was characterized by the absolute authority of the President of the Republic to exercise this right, with the exception of what was stipulated in the 1963 Constitution, and the second stage was characterized by restricting this authority, and we can explain this in the following:

**a) Before 1996 :**

This is the stage in which the Algerian Parliament consisted of only one chamber-National People's Assembly-Thus, the power of dissolution led to the expiration of legislative authority, which made the power to dissolve Parliament a deadly weapon in the hands of the President of the Republic. It is an issue that affects the balance of public authorities and the proper functioning of the constitutional institutions of the state and affects the rights and freedoms that individuals enjoy, and an example of this is the dissolution of the President. Former Chadli Benjedid of the National People's Assembly after submitting his resignation<sup>5</sup>this created a large constitutional vacuum that was not remedied until 1996.

**b) from 1996 to 2016 :**

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After the issuance of the constitutional amendment of 1996, the legislative authority in Algeria became composed of two chambers<sup>6</sup>; A second chamber was created, which was constitutionally called the National Assembly, alongside the National People's Assembly (dual legislative authority), thus transforming the Algerian Parliament from a single-chamber system to a two-chamber system.

The creation of a second chamber restricts the power of the President of the Republic to dissolve Parliament, as the constitutional amendment granted him the power to dissolve the National People's Assembly without the National Assembly, which is what other amendments followed until the year 2016, which created a balance between the executive and legislative powers, and put an end to the possibility of the legislative power expiring, as It was like that before<sup>7</sup>.

This issue indicates a decline in the absolute authority of the President of the Republic to dissolve Parliament that was granted to him by the 1976 and 1989 Constitutions (representing a decline in the exercise of the power of dissolution as a constitutional power owned by the President of the Republic), which reflects positively on the stability of constitutional institutions and the proper functioning of their work and achieves an additional guarantee for the rights and freedoms of individuals who They express their will through the institution of Parliament.

**2- The Decline of the Authority of the President of the Algerian Republic to Legislate by Decrees to the legislative authority:**

The legislative authority is represented by orders of an exceptional authority granted by successive Algerian constitutions to the President of the Republic, which he exercises within the framework of a set of constitutional conditions and controls. It constitutes one of the forms of the executive authority's participation in the legislative authority in exercising the constitutional authority through legislation.

If the Algerian constitutions have limited the areas in which the legislative authority legislates, this does not mean that the authority of the President of the Republic is absolute in legislating according to orders, as we find that there are restrictions that limit the authority of the President of the Republic in this area, which can appear through those substantive, procedural and temporal restrictions, which is What we will try to explain through the following two points:

01- The President of the Republic's authority to legislate by orders is limited due to objective restrictions

02- The President of the Republic's authority to legislate by orders is limited due to procedural restrictions

**2- 1- The President of the Republic's authority to legislate by orders is limited due to objective restrictions:**

The Algerian constitutional founder, through the constitutional amendment of 1996, stipulated the authority of the President of the Republic to legislate by orders.<sup>8</sup>The conditions

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that must be observed to exercise this authority are in accordance with the text of Article 124, which is the same as what was stipulated in the Constitutional Amendment of 2016 in Article 142 thereof.

It is stated in the text of Article 124: “ For president Republic that It is prescribed By orders in condition Council vacancy Popular the National or between My period Parliament And it shows president Republic Texts that Take it on all room from Parliament in first turn for him to approve on her.

Prepare Null Commands that no Approves on her Parliament.

Maybe president Republic that It is prescribed By orders in the condition Exceptional stipulated on her in Subject 93 from the Constitution.

Take Commands in council Ministers"

It is clear from the text of this article that there are objective conditions that must be observed to exercise the power of legislation by orders, which we can list as follows:

**a) Parliament vacancy :**

The Algerian Constitution does not specify exclusively the cases in which Parliament can be vacant, but by referring to some other texts of the Constitution, we can deduce the cases in which Parliament can be vacant.<sup>9</sup>Other cases not stipulated in the Constitution can also be identified, and these cases can be summarized as follows:

- . The President of the Republic exercising his authority to dissolve Parliament.
- . Mandatory dissolution of Parliament, which results from failure to approve the government's plan for the second time.
- . The case of voluntary resignation of all members of Parliament.
- . Death of all members of Parliament.
- . The exceptional situation and the state of war.

The absence of a vacancy in Parliament limits the power of the President of the Republic to legislate by orders.

In addition to the fact that the final vacancy of Parliament cannot be expected to occur except by exception (voluntary resignation of all members, death of all members, exceptional situation, state of war), while recording that the dissolution of Parliament by the intervention of the President of the Republic or mandatory dissolution includes only the National People's Assembly and not the National Assembly, and this What prompts us to say that the President of the Republic's authority to legislate is limited to orders, in contrast to what was the practice before 1996, when Parliament consisted of only one chamber.

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**b) Between parliamentary sessions and/or parliamentary recess:**

The text of Article 135 of the Constitutional Amendment of 2016 specified the duration of Parliament's session at ten months, taking into account other exceptional cases in which Parliament may convene to exercise its activity, which is not stipulated in the Constitutional Amendment of 1996, in which the legislator contented himself with specifying the number of sessions only (two regular sessions). (The fall session and the spring session), and by comparing the texts of the two articles, it becomes clear to us that the period during which Parliament is in recess according to the text of Article 142 is only two months, but based on the text of Article 124, the parliament's recess may extend from four months to six months if we consider that each The course lasts for three months.

The reduction of Parliament's recess in accordance with the 2016 amendment to the Constitution has narrowed the President of the Republic's power to legislate by orders. This indicates the limitation and decline of this power, if not to say that it may cause its loss, especially if Parliament resorts to holding extraordinary sessions and thus it may be in a permanent state of session.

**c) Exceptional case :**

From the text of Articles 124 and 142 mentioned above, we can say that the situation is exceptional<sup>10</sup>It constitutes one of the objective restrictions that grant the President of the Republic the power to legislate by orders, and this situation can only be approved in extraordinary circumstances that the state may go through, threatening its safety and existence, and it cannot be taken except after adopting a set of measures stipulated in the Constitution (Article 93 of Constitutional Amendment of 1996, Article 107 of the Constitutional Amendment of 2016).

The exceptional situation is not a normal circumstance, and therefore its occurrence is rare, and this is what makes the President of the Republic's exercise of the power to legislate by orders according to this situation very rare, if not non-existent, which is another reason for the decline in the President of the Republic's authority to exercise this right.

**d) Urgent matters (state of necessity and urgency):**

This situation was not stipulated in Article 124 of the Algerian Constitutional Amendment, but rather came under the Constitutional Amendment of 2016 with Article 142. Despite this amendment, the Algerian constitutional founder did not specify cases of urgency, nor their causes, nor their cases, which makes the matter a matter of discretion in the hands of the President of the Republic, as he is the one who decides. that<sup>11</sup>For our part, we see that leaving the issue of assessing the state of urgency to the President of the Republic is a natural matter, given that his executive powers are linked to security matters and as an authority for

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administrative control whose responsibility is to maintain public order, and he cannot take the authority to assess the state of emergency as one of the imaginary or unrealistic reasons for the practice. The authority to legislate by orders, as this poses a threat to the political position of the President of the Republic, which could lead him to legal prosecution, such as being accused of high treason.

**e) Issuing the Finance Law :**

The text of Article 138 of the 2016 Constitutional Amendment stated in its last paragraph that if Parliament does not ratify the Finance Law, the President of the Republic may issue it by order, and this case constitutes an exceptional case.<sup>12</sup> This is due to the danger that may befall the President of the Republic, as some constitutional norms consider him to be. If he does not issue the Finance Law before the end of the current year, then he is in the position of resigning from his position, not to mention the dangers that the state may be exposed to due to the delay in issuing the Finance Law and the consequences it causes. Problems and crises that may affect the security and stability of the state.

**2- 2- The President of the Republic's authority to legislate by orders is limited due to procedural restrictions:**

Through the text of Article 142 of the Constitutional Amendment of 2016, which corresponds to the text of Article 124 of the Constitutional Amendment of 1996, we conclude some procedural restrictions that the President of the Republic must adhere to in order to exercise the power of legislation by orders, and these conditions appear as follows:

**a) Taking into account the opinion of the senate:**

This procedure was introduced pursuant to the 2016 constitutional amendment, Article 142, which was not previously in effect. Presenting orders to the State Council is considered obligatory and not optional. It appears that the legislator, by approving judicial oversight of legislative orders, has equated them with the legal texts provided by the government. In addition to considering this matter as an administrative decision that requires its obligatory legality to be examined by the Council of State in accordance with what the provisions of the Constitution authorize it to do regarding legal texts, and thus this type of oversight is considered a new restriction added to restrict the authority of the President of the Republic to exercise legislation by orders, and this is considered a new restriction. The President of the Republic has the power to legislate by orders.

**b) Taking orders in the Cabinet meeting:**

According to the provisions of Articles 124 and 142 mentioned above, submitting orders to the Council of Ministers is obligatory, and neglecting it leads to the order being invalidated. This procedure does not constitute a real obstacle to the President of the Republic in his capacity as Prime Minister, and he often seeks to legislate by orders based on the government's desire.<sup>13</sup> In

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order to accelerate the implementation of the general policy of the state and ensure the provision of services to the public as it is the administrative and financial tool responsible for this, and for our part, we see that although the President of the Republic is obligated to do this procedure, it does not detract from the exercise of the power of legislation by orders as much as its goal is to involve the President of the Republic with his government in Make decision.

**c) The obligation to present to both chambers of parliament:**

Articles 124 and 142 mentioned above indicate that the President of the Republic is obligated, in the event of legislation by orders, to present the matter to Parliament in its first session. This procedure is one of the images that express the balance between the executive and legislative powers, and at the same time it is considered a decline in the role of the President of the Republic in exercising The power to legislate by orders will ultimately require the approval of Parliament<sup>14</sup>The continuation of the implementation of the legislative order on the one hand, and on the other hand, is tantamount to restoring the status of the legislative authority as having the inherent jurisdiction over legislation. Perhaps those who follow the situation in Algeria will find that most of the orders, if not all of them, never received objection from Parliament in its two chambers.

Overall, what can be said from the conditions set by the Algerian Constitution for the President of the Republic to exercise the power of legislation by orders between the two constitutional amendments 1996 and 2016 is that the intention of the constitutional founder is to limit the power of the President of the Republic, so it has become clear that the authority of the President of the Republic to exercise legislation by orders has declined.

**Conclusion:**

The idea of achieving a balance between the executive and legislative powers was and still is the main concern of researchers, especially those in the field of constitutional law and comparative political systems, and it is the ambition that all countries seek to achieve through their constitutions and the amendments that are attached to them.

The issue of the superiority of the President of the Republic in the face of the legislative authority in Algeria through the exercise of his constitutional powers in the field of the right to dissolve Parliament and legislate by orders has shown us that we must not accept at all that the authority of the President of the Republic in this matter is absolute and constantly increasing. On the contrary, they are Two powers are restricted by the highest laws within the state, which is the Constitution. Rather, more than that, the intention of the Algerian constitutional founder, through all the constitutional amendments that he proposed and which were initiated by the President of the Republic himself, tended to restrict these two powers and diminish them in favor of the legislative authority, which expresses confinement, contraction, and decline. The authority of the President of the Republic in these two areas, which would restore the balance between the

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executive and legislative powers, and restore confidence in the state's constitutional institutions by ensuring that each authority exercises its powers away from the conflict that may occur between them, thus realizing the idea that power can only be stopped by an authority like it. Like what the jurist Montesquieu called for, it ultimately serves the interest of preserving the rights and freedoms of individuals and establishing the state of law.

**Reference:**

<sup>1</sup> - For information on the superiority of the executive authority, see: Abdullah Bouqfa, methods of exercising authority in the Algerian political system (a comparative study). Dar Houma, Algeria, 2002, pp. 35, 36.

<sup>2</sup> - Muhammad Omran, dissolving parliament in the Algerian constitutional experience between practice and implementation. Journal of Legal and Political Research, Volume 03, Issue 16, Saïda University, Algeria, 2021, pp. 223, 224, 225.

<sup>3</sup> - Algerian Official Gazette, Constitutional Amendment of 1996, dated December 8, 1996, No. 76.

<sup>4</sup> - Algerian Official Gazette, Constitutional Amendment of 2016, dated March 7, 2016, No. 14.

<sup>5</sup> - The resignation was submitted on January 11, 1992, and was accompanied by the dissolution of the National People's Assembly. See that website:/ar.wikipedia.org

<sup>6</sup> - See the text of Article 98 of the 1996 Constitutional Amendment.

<sup>7</sup> - For more information, see: Doudi Aicha, Dissolving Parliament in Algeria. Journal of Constitutional Law and Political Institutions, Volume 03, Issue 02, 2019, pp. 57, 58.

<sup>8</sup> - Abdullah Baqfa, previous reference, p. 245.

<sup>9</sup> - Abdel Aziz Barquq, Constitutional restrictions on the power of the President of the Republic to legislate by orders in accordance with Article 142 of the Constitutional Amendment of 2020. International Journal of Legal and Political Research, Volume 06, Issue 03, 2022, pp. 193, 194, 195.

<sup>10</sup> - To learn more about the exceptional situation, see: Samir Shaaban, Ahmed Ghorab, the field of legislation by orders in light of Article 124 of the Constitution. Al-Baheth Journal for Academic Studies, Issue 07, 2015, pp. 101-105.

<sup>11</sup> - See on the subject: Othman Hajjaj, Qawi Bouhania, Legislation by Orders and Decrees in the Absence of Parliament (in light of the 2016 Algerian constitutional amendment and the 2014 Tunisian Constitution). Journal of Politics and Law Notebooks, Issue 19, University of Ouargla, pp. 37,38.

<sup>12</sup> - Khalloufi Khadouja, Legislation by Orders in Light of the Amendment to the Algerian Constitution of 2016. Al-Manara Consulting, Issue 06, 2016, pp. 143, 144.

<sup>13</sup> - On the idea of the government's desire, see: Saeed Boual-Sha'ir, Legislation by Orders between Constitutional Restrictions and Practical Practices. Management Journal, Issue 41, p. 10.

<sup>14</sup> - Madiha Bennaji, Legislation by Orders in the Algerian Constitutional System. Journal of Law and Human Sciences, Volume 10, Issue 04, pp. 328,329.