



Legislation through Presidential Orders in the Domain of Organic Laws According to the Algerian Constitutional Amendment of 2020

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Abstract:

The issue of issuing organic laws through presidential orders is of great importance in the Algerian legal system, given the status of organic laws in the hierarchy of laws. Accordingly, The reliance on presidential Orders for issuing organic laws in the Algerian constitutional amendment of 2020 can be justified through the thematic and procedural framework that regulates each. The President expresses popular sovereignty as elected by the people. These orders contain general and abstract rules that acquire legislative status. The procedures for their proposal and issuance in the executive aspect align with those of organic laws, while they differ in the parliamentary aspect. They are subject to mandatory constitutional control, although they do not achieve the constitutionality review set for organic laws.

Keywords: Presidential Order, Organic Law, President of the Republic, Parliament, Constitutional Court.

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Introduction:

The Algerian Parliament specializes in legislation, a fundamental competence, in addition to its role in overseeing the government. However, this exercise may sometimes face obstacles due to the absence of the Parliament for any reason, leading to the utilization of legislation through presidential orders, issued by the President according to Article 142 of the current Algerian Constitution.

The constitutional founder adopted the technique of legislating by orders in the 1963 Constitution¹, through what is known as legislative delegation, where this competence is granted to the President by the National Council², considering the Parliament's full legislative jurisdiction without reserving specific domains³. Conversely, the 1976 Constitution reserved a range of areas for Parliament for legislation⁴ and also adopted the technique of legislating through presidential orders.⁵ Between the 1963 and 1976 Constitutions, order No. 65-182 stipulated granting the government the competence to legislate by orders⁶, making legislation issued by this technique for an extended period.⁷

However, the 1989 Constitution abandoned this competence, uniquely distinguishing it from other constitutions⁸. Yet, the Supreme State Council's deliberation in 1992 granted it the competence to issue orders⁹ with legislative character in the absence of the legislative authority¹⁰. Subsequently, presidential

¹ Article 58 of the 1963 Constitution, Official journal of the Algerian Republic, issue 64 dated 10-09-1963.

² Abbas Rezazek, Mechanisms for Monitoring Presidential Orders in the Algerian Constitution, Master's Thesis in Public Law, Faculty of Law and Political Science, University of Algiers, 2014, p. 8.

³ Said Bouchair, The Algerian Political System: Part One: An Analytical Study of the Nature of the Governance System in light of the Constitutions of 1963 and 1976, University Publications Office, Algeria, 2013, p.77.

⁴ Article 151 of the 1976 Constitution, Official journal of the Algerian Republic, issue 94 dated 24-11-1976.

⁵ Article 153 of the 1976 Constitution.

⁶ Article 06 of Order No. 65-182 on the Establishment of the Government, Official journal of the Algerian Republic, issue 58 dated 13-07-1965.

⁷ Gigika Saidani Lounis, The Possibility of Legislating through Orders in the Field of Organic Laws, Algerian Review of Legal, Political, and Social Sciences, Volume 49, Issue 3, 2012, p. 67.

⁸ Ibid, p. 68.

⁹ Deliberation No. 92-02/MP, dated 14/04/1992, concerning orders with legislative character, Official journal <https://crlsj.com>

orders were utilized through the National Transitional Council,¹¹ and in the 1996 Constitution, the technique of legislating by orders was readopted with controls specified by Article 124 at the time, along with Article 179 of the 1996 Constitution, which contained exceptional transitional provisions regarding presidential orders.¹²

The President still possesses the authority to exercise this competence according to the 2020 constitutional amendment, through the provisions of Article 142, showing the use of presidential orders in Algeria through the constitutional framework explicitly stating them and outside the constitutional framework where they were used in specific stages due to parliamentary absence caused by institutional vacuum. The President's competence to issue orders within the Algerian constitutional system is justified by the need for continuous and permanent state management.

Thus, this technique enables legislation in the absence of the legislative authority, regarding both laws and organic laws, the latter emerging through the 1996 Constitution, which expressly stipulated in its transitional provisions the possibility of legislating by orders in the domains of organic laws exceptionally until the new Parliament was formed then.

The constitutional founder delegates the President to assume the Parliament's legislative competence during specific situations, and practical reality proves the President's use of this competence in the domain of organic laws outside the provisions of Article 179 of the original 1996 Constitution, despite the strict procedures and controls for their issuance. Their subjects generally relate to issues linked to rights and freedoms, or the formation and organization of authorities.

The use of this competence by the President is demonstrated through order No. 21-01, which includes the organic law related to the electoral system, amended and supplemented.¹³

Hence, the study's problem can be formulated as follows: To what extent can the scope of legislating by orders accommodate the domain of organic laws in the Algerian constitutional amendment of 2020?

To answer this study's problem, we will rely on the analytical method to explore the compatibility of the presidential orders scope with the domain of organic laws in terms of form and content according to the 2020 constitutional amendment. Therefore, the study will be divided into two main parts, the first discussing the thematic compatibility between presidential orders and organic laws, and the second addressing their formal compatibility.

1. Thematic Compatibility Between Presidential Orders and Organic Laws

The thematic compatibility between presidential orders and organic laws first concerns the competent authority's standing to issue each of them and, therefore, its legal capacity to undertake this task. Primarily, the Parliament is the original legislative body for organic laws, holding authority in this framework based on Articles 114 and 140 of the Constitution.

Exceptionally, the President legislates through orders based on Article 142 of the Constitution, as demonstrated by issuing order No. 21-01, which contains an organic law related to the electoral system, as the first presidential order to include an organic law under normal circumstances without exceptional constitutional permission.

of the Algerian Republic, issue 28 dated 15/04/1992.

¹⁰ Article 25 of the Presidential Decree No. 94-40 concerning the publication of the platform including the National Accord on the Transitional Phase, Official journal of the Algerian Republic, issue 06 dated 31/01/1994.

¹¹ The 1996 Constitution, Official journal of the Algerian Republic, issue 76 dated 8-12-1996.

¹² Mimouna Souad, the Legal Nature of Legislation by Orders, Master's Thesis in Local Administration Law, University of Tlemcen, Algeria, 2011, p. 25.

¹³ Order No. 21-01 concerning the Organic Law on the Electoral System, Official journal of the Algerian Republic, issue 17 dated 10-03-2021, amended and supplemented by Order No. 21-05, Official journal of the Algerian Republic, issue 30 dated 22-04-2021, amended and supplemented by Order No. 21-10, Official journal of the Algerian Republic, issue 65 dated 26-08-2021.

Thematic compatibility also concerns the scope of presidential orders in both ordinary and organic laws, despite the distinction between them through a series of substantive and procedural features and controls.

1.1 Constitutional Standing of the Authority Legislating Through Orders

Organic laws are issued by Parliament, as it is the primary authority in legislation in both ordinary and organic domains¹⁴, according to Articles 114, 139, and 140 of the Constitution. Thus, the domains stipulated in this framework are reserved for Parliament, while presidential orders are issued by the President who exclusively exercises this competence and cannot delegate it according to Article 93 of the Constitution, nor can it be exercised by the head of state according to Article 96 of the Constitution.

Relying on presidential orders for legislating in the domain of organic laws leads us to examine the President's standing in the state's constitutional system relative to the three powers, especially the legislative power, typically responsible for issuing organic laws. This examination helps us understand the President's exercise of this competence through the issuance of orders.

The scholarly debate remains active regarding the President's right to legislate through orders, reflected through the exploration of the nature of these orders as legal acts. They are typically identified through two main criteria: the organic criterion and the substantive criterion¹⁵, which cover other criteria that might differentiate legal acts, such as the authority to issue, the domain, the timing, and the purpose.

1.1.1 According to the Organic Criterion

This criterion is based on the issuing body of the legal act, according to the principle of separation of powers. If the act is issued by the legislative authority (Parliament) within its stipulated domains, it constitutes a legislative act and falls within the law's scope. If the act is issued by the executive authority, it falls within the scope of regulations and ordinances.¹⁶

This view is adopted by legal scholar **Hans Kelsen**, who argues that the state's public authorities exercise manifestations of a single authority and sovereignty in a hierarchy with the legislative authority at its apex, followed by the executive and judicial authorities. The hierarchy is based on the nature of the authority issuing the act and its position in the hierarchy of powers.¹⁷

Therefore, acts issued by the President are considered administrative acts, as he remains a representative of the executive authority. The successive Algerian constitutions have always entrusted the President with this power. On this basis, presidential orders are considered regulatory acts according to the formal criterion, as they are issued by the executive authority¹⁸ and do not fall within the scope of legislative action, despite their naming and the domain of reliance on them.

The President occupies a significant and prioritized constitutional position in the Algerian constitutional system, exceeding the representation of the executive authority only¹⁹. Therefore, he exercises this competence under constitutional provisions, leading us to seek the scholarly justification that enables the President to directly perform legislative actions through presidential orders.

To overcome the notion that an act issued by the President, according to the organic criterion, is merely an administrative action, a part of constitutional law scholarship, represented by scholars such as **Duguit** and

¹⁴ Mimouna Souad, *Ibid*, p. 13.

¹⁵ Ahsen Rabehi, *The Principle of Legal Norms Hierarchy in the Algerian Legal System*, Doctoral Thesis in Law, University of Algiers, Algeria, 2006, p. 336.

¹⁶ Othman Hadjaj, Bouhanian Goui, *Legislation by Orders and Decrees in the Absence of Parliament in the Context of the 2016 Algerian Constitutional Amendment and the 2014 Tunisian Constitution*, *Journals of Politics and Law*, Volume 10, Issue 19, 2018, p. 42.

¹⁷ Taous Ben Hamou, *Oversight of the Unilateral Acts of the President in the Algerian Constitutional System*, Doctoral Thesis in Law, Faculty of Law and Political Sciences, University of Djelfa, Algeria, 2018-2019, p. 158.

¹⁸ Ahsen Rabehi, *A Theoretical Attempt to Approach the Phenomenon of Legislative Orders*, *Algerian Journal of Legal, Economic, and Political Sciences*, Volume 45, Issue 1, 2008, p. 60.

¹⁹ Dalal Louchen, *The Legislative Powers of the President*, Doctoral Thesis in Public Law, University of Batna, Algeria, 2012, p. 49.

Hauriou, and Professor **Soliman El-Tamawy**, among others, believes that based on the provisions of exceptional circumstances, the executive authority can issue necessity decrees, which enact legislative actions that are fundamentally within the Parliament's jurisdiction. However, the protection of public order under these exceptional circumstances necessitates the executive authority's exceptional assumption of this competence.²⁰

Furthermore, Article 141 of the Algerian Constitution stipulates the President's original competence to exercise regulatory power in matters not reserved for law. Despite the regulatory administrative nature of these acts, they enable the President to engage in parallel legislation in areas beyond the Parliament's jurisdiction, which, in reality, constitutes genuine legislation in the full sense of the term.²¹ The basis for the President's assumption of this competence is his election by the people, who exercise sovereignty through the constitutional institutions they choose and through their elected representatives.²²

Although presidential orders are initially issued by the President, they are presented by him to each chamber of Parliament at the beginning of the next session for approval. Orders not approved by Parliament are considered null and void, thus demonstrating the legislative nature of these orders according to the organic criterion through Parliament's eventual approval.²³

1-1-2 According to the Substantive Criterion

This criterion, based on the principles of generality and abstraction as discussed by Rousseau²⁴, posits that any general and abstract legal rule is considered legislation, regardless of the issuing authority. Therefore, regulatory acts issued by the executive authority, and specifically by the President, are considered legislative actions as long as they contain general and abstract legal rules. Consequently, independent regulatory decrees are considered legislative acts according to this criterion, especially since they are issued without reliance on another law, thus distinguishing them from executive decrees, which are issued in application of the law.²⁵

On the other hand, the issuance of legislative orders by the President does not present a legal issue according to this criterion, considering that the content of these orders consists of general and abstract legal rules, thus constituting pure legislative acts.

The inclusion of these orders in the Constitution formally falls within the scope of legislative power, subject to consultation with the State Council, similar to bill projects, and are not subject to administrative judicial review in this context.²⁶

1-2 Domains of Organic Laws and Presidential Orders

Organic laws are considered supplementary to the Constitution, as they address issues of a constitutional nature²⁷, through domains specified in Article 140 of the Constitution or other constitutional references that delegate the regulation of a domain to an organic law.²⁸

Given that the constitutional document cannot formally encompass all the details and specifics of these issues, organic laws are distinguished from ordinary laws through several features addressed by the Constitutional Council, highlighting the constitutional founder's distinction of organic laws from ordinary

²⁰ Mimouna Souad, Ibid, p. 20.

²¹ Ahsen Rabehi, The Principle of Legal Norms Hierarchy in the Algerian Legal System, previous reference, p. 415.

²² Article 08 of the Constitution, Official journal of the Algerian Republic, issue 82 dated 30-12-2020. Ismail Latrash, Bouhania Goui, The Principle of Popular Sovereignty and its Mechanisms of Exercise and Embodiment in Algerian Legislation, Journals of Politics and Law, Volume 13, Issue 3, 2021, p. 145.

²³ Othman Hadjaj, Bouhania Goui, Ibid, p. 42.

²⁴ Dalal Louchen, Ibid, p. 57.

²⁵ Mohamed Oumayou, On the Presidential Nature of the Algerian Political System, Doctoral Thesis in Law, University of Tizi Ouzou, Algeria, 2013, pp. 259, 260.

²⁶ Othman Hadjaj, Bouhania Goui, Ibid, pp. 43, 44.

²⁷ Ahsen Gherbi, Control of the Conformity of Organic Laws to the Constitution, Academic Journal of Legal Research, Volume 10, Issue 1, 2019, p. 153.

²⁸ Ibid, p. 153.

laws in terms of constitutional terminology, the procedures to be respected during preparation and approval, and the domains designated for each²⁹

The President has the competence to issue presidential orders according to Articles 142 and 146 of the Constitution. The former relates to the absence of Parliament due to recess, or vacancy of the National People's Assembly, or during an exceptional situation, while the latter pertains to issuing the annual finance law by order if Parliament does not approve it within 75 days from its submission.

Unlike Article 146, which specifies the domain of presidential orders within the context of the finance law, Article 142 of the Constitution does not define the domains in which the President may issue legislative orders, covering the scope of Articles 139 and 140 of the Constitution, which reserve specific domains for Parliament through ordinary and organic laws, respectively.

Before the issuance of the 1996 Constitution, the domain of presidential orders did not pose a problem, as laws were issued uniformly without differentiation between ordinary and organic laws. Thus, debate has arisen regarding the sufficiency of presidential orders to regulate domains reserved for organic laws, considering their distinction from ordinary laws as determined by the Constitution in Article 140 and other references where the Constitution delegates the regulation of a domain to an organic law.³⁰

The discussion on the domains of organic law brings us back to the importance of this technique in the Algerian legal system, as adopting this technique could be for the purpose of safeguarding certain legal provisions from continuous amendment, thereby achieving legislative stability and thus bestowing a constitutional or quasi-constitutional nature on them³¹, especially those related to the exercise of certain rights and freedoms linked to special systems often concerning the formation of constitutional institutions³², which are beyond the scope of ordinary laws, such as the electoral system, political parties, and also domains related to the organization of constitutional institutions.³³

Furthermore, through the examination of the domains designated for organic law, the clear criterion adopted by the Algerian constitutional founder in defining the scope of organic laws can only be discerned through the constitutional criterion that refers to organizing a certain domain by organic law.

The topics designated in this framework vary, including the organization of the exercise of certain rights and freedoms, such as associations, political parties, elections, media, then the organization of emergency situations,³⁴ potential scenarios for the election of the President of the Republic, and those related to the organization of the formation and functioning of legislative and judicial authorities, and independent regulatory institutions.

On the other hand, the domain of presidential orders is determined through a set of mechanisms. Initially, this competence can be exercised through a delegation law, where the Parliament specifies the subject and scope within which the President can legislate by order. In this case, the Constitution may prohibit the delegation of legislation by orders in the domain of organic laws.³⁵

The constitutional system witnessed the delegation law in the 1963 Constitution, but this did not distinguish between ordinary and organic laws and only lasted a short period after its issuance.

Regarding the 1976 Constitution, it stipulated legislating by orders in domains that fall within Parliament's jurisdiction according to Article 153, and Article 197 included the provision for using legislation by orders in the domain of establishing certain entities mentioned in the Constitution at that

²⁹ Opinion No. 02/A.LO/ CC/04 dated 6 Rajab 1425 corresponding to 22 August 2004, on the control of the conformity of the Organic Law containing the Basic Law of the Judiciary to the Constitution, Official journal of the Algerian Republic, issue 57 dated 08-09-2004.

³⁰ Articles: 4, 53, 92, 97, 98, 119, 128, 135, 140, 172, 179, 180, 183, 196, 199, of the Constitution.

³¹ Ghazlan Salima, the Idea of Organic Law, Master's Thesis in Law, University of Algiers, Algeria, 2002, p. 65.

³² Nabil Amalou, the Specificity of the Finance Law and the Organic Law in the Algerian Legal System, Master's Thesis in Law, University of Algiers, Algeria, 2007, p. 30.

³³ Ghazlan Salima, *Ibid*, p. 47.

³⁴ *Ibid*, p. 62.

³⁵ Article 70 of the 2014 Tunisian Constitution, Official journal of the Tunisian Republic, special issue, dated 10-02-2014.

time, during the period following the Constitution's issuance until the installation of the National People's Assembly³⁶. The constitutional amendment of 1988 recognized the role of the Head of Government in proposing legislation by orders.

A part of the doctrine believes that presidential orders cannot cover subjects of public rights and freedoms³⁷, as this is an absolute competence of the Parliament, being a political body that exercises sovereignty. In this context, the transitional constitutional ruling included in the 1996 Constitution³⁸, Article 179, stated: *"The legislative authority existing at the time of this Constitution's issuance and until the end of its term, as well as the President of the Republic after this term and until the election of the National People's Assembly, shall undertake legislating by orders, including in matters that have become part of organic laws."*

Article 179 of the 1996 Constitution reflects the constitutional founder's direction regarding the issuance of presidential orders in the domain of organic laws, considered as an exception through the interpretation of the phrase "including," which implies the expansion of the scope of orders to cover, in addition to domains of laws, domains of organic laws exceptionally.

The actual application of this article led to the issuance of two legislative orders related to the electoral system and political parties, although they were issued with the existence of the National Transitional Council, as the text of Article 179 mentioned above included the possibility of using presidential orders for all legislation issued after the Constitution under the institutions existing at that time, which were the National Transitional Council and the President of the Republic.

Upon reviewing the mentioned orders, it was clear they were issued after the approval of the National Transitional Council and did not constitute presidential legislation in the sense discussed in this study.³⁹

Professor **Said Bouchair** believes that legislating by orders within the provisions of the 1996 Constitution cannot address issues within the domain of organic laws or finance laws, justifying the exception of orders from the domain of organic laws by their special nature with strength and rank superior to ordinary laws, and they are subject to constitutional conformity control.⁴⁰

It is inconceivable to present these orders for conformity control before presenting them to Parliament. However, the constitutional founder in the 2020 amendment attempted to address this issue with the constitutional review stipulated in the second paragraph of Article 142 of the Constitution, which we will discuss later.

At the end of this section, the issuance of Order No. 21-01, which includes the organic law related to the electoral system and represents the first order to contain an organic law in the Algerian legal system (excluding Order No. 97-07 on the organic law of the electoral system and Order No. 97-09 on the organic law related to political parties, which were part of the transitional provisions of the 1996 Constitution), can be justified through the political circumstances Algeria went through during the transition period witnessed by the Algerian constitutional system since 2019 until the formation of constitutional institutions stipulated by the constitutional amendment of 2020.

The electoral law during that period was a second priority after the constitutional amendment, leading the President of the Republic to decide to form an expert committee to draft this order, which was discussed with the political class and civil society before being presented to the Council of Ministers.⁴¹

Given that the National People's Assembly existing at that time did not enjoy popular trust after the 2019 transition, leading to its dissolution, adopting the electoral law was not feasible through an organic law.

³⁶ Mimouna Souad, Ibid, p. 28.

³⁷ Dalal Louchen, Ibid, p. 151.

³⁸ Mimouna Souad, Ibid, p. 29.

³⁹ Nabil Amalou, Ibid, p. 141.

⁴⁰ Said Bouchair, Legislation by Orders between Constitutional Restrictions and Practical Application, Administration Magazine, Volume 21, Issue 1, 2011, p. 17.

⁴¹ Official journal of the Discussions, National People's Assembly, Ninth Legislative Period, Ordinary Parliament Session (2021-2022), First Year-No. 17, dated 25-11-2021.

Therefore, there were only two ways to adopt the electoral law: the first through a referendum law that is not subject to any control, with significant difficulties in holding another referendum at that stage, or through issuance by order, which was actually done to overcome this deadlock, with this order subject to constitutional review by the Constitutional Council in application of Article 142 of the Constitution.

2. Formal Compatibility Between Organic Laws and Presidential Orders

Utilizing the technique of presidential orders is conditioned by the existence of scenarios prescribed for it under Article 142 of the Constitution, in normal or exceptional circumstances, with differences in the controls for their issuance in both cases. In normal circumstances, the President is bound by the condition of urgency, the vacancy of the National People's Assembly, or the parliamentary recess.

These orders are then subjected to consultation with the State Council and presented to the Constitutional Court for constitutional review, as well as later approval by Parliament. In exceptional circumstances, the President is not bound by any of the aforementioned conditions, affirming that this study is related to the issuance of these orders in normal circumstances, as actually done through the issuance of Order No. 21-01 on the organic law related to the electoral system, amended and supplemented.

The study does not discuss the legal framework for legislating by orders as much as it discusses an important issue related to the philosophy of issuing organic laws through these orders. Organic laws hold significant importance in the hierarchy of laws, subjecting them in the formal aspect to a set of strict controls, starting from their issuance techniques, through their preparation and presentation to Parliament, discussion of their content, and voting on them, followed by their review by the Constitutional Court for constitutional conformity, comparing this aspect with that related to presidential orders, through the 2020 constitutional amendment.

2.1 Techniques for Issuing Organic Laws and Presidential Orders

Undoubtedly, the source of laws according to the provisions of the Algerian Constitution is either through a bill presented by the government to Parliament or a proposal made by Parliament members. Thus, the text of an organic law before its issuance is subject to a series of controls distributed between the executive and legislative authorities.

Presidential orders are also subject to a series of controls before and after their issuance. Although they are initially issued through the executive authority, Parliament also subsequently approves them.

Despite the uniqueness of organic laws, the constitutional founder did not distinguish them from ordinary laws concerning legislative initiative⁴². However, in practice, they are always presented through a bill proposed by the government, as proposing laws is practically faced with many constitutional and legal restrictions that could prevent its realization⁴³, especially as stipulated by Article 147 of the Constitution, and provisions of Articles 19 and 22 of the Organic Law No. 16-12 specifying the organization of the National People's Assembly and the Council of the Nation, their functioning, and the functional relationships between them and the government, amended and supplemented.

The organic law undergoes a series of techniques and stages within the executive, then parliamentary domain, as follows:

➤ Preparation of the organic law project by the concerned minister:

Within the powers determined for each minister and in the framework of the policy outlined within the government's work program, the concerned minister initiates the preparation of the text of the organic law project based on the data and controls determined in the concerned ministerial departments and

⁴² Samia Belali Cherif, the Status of Organic Laws in the Algerian Legal System, Master's Thesis in Law, University of Batna, Algeria, 2015, p. 46.

⁴³ Ibid, p. 52.

various government services. The text is prepared in accordance with the Constitution and the procedures determined for drafting legal texts.⁴⁴

➤ **Study of the text at the level of the Government's General Secretariat:**

The Government's General Secretariat undertakes the final legal drafting of the organic law project after presenting it to various ministerial sectors. The Secretary-General of the Government registers the text in the agenda of the government meeting, and after approval, it is presented to the State Council for consultation.⁴⁵

➤ **Consulting the State Council regarding legislative texts:**

Legislative texts, both organic and ordinary, are mandatorily presented to the State Council for its opinion, in accordance with Article 143 of the Constitution.

➤ **Presentation of the text to the Council of Ministers:**

The concerned minister presents an overview of the organic law project before the Council of Ministers, chaired by the President of the Republic. The Secretary-General of the Government may provide some remarks and elements that require arbitration or discussion, for the text to be approved in the Council of Ministers if it meets all required conditions, or the approval may be postponed to address the points raised about it, or to enrich the text based on consultations and discussions presented in the Council of Ministers by the President of the Republic or government members.

Sending the organic law project to the Parliament: After the Council of Ministers approves the organic law project, the Secretary-General of the Government, on behalf of the government, sends the organic law project to the office of the National People's Assembly, considering that the domains of organic laws do not relate to the priority of review by the Council of the Nation, in application of the provisions of Article 144 of the Constitution.

➤ **The parliamentary phase:**

The parliamentary phase of discussing and voting on the organic law begins upon its submission to the office of the National People's Assembly, where the permanent committees undertake the study of the organic law project and enrich it.

The government's role in accompanying or withdrawing the text during this phase is apparent, to be then presented to the deputies for discussion and voting by an absolute majority, followed by its referral to the Council of the Nation for discussion and approval also by an absolute majority.

An important point emerges during the approval of legislative texts by the Council of the Nation since the constitutional amendment of 2016, which is the non-impact of the appointed third on the approval of legal texts since the currently determined rate is an absolute majority, previously it was 3/4 of the members of the Council of the Nation, which restricted the issuance of such texts with the approval of at least 12 members from the appointed third at that time.⁴⁶

Regarding presidential orders, a lot of relative conformity appears in the procedures determined for preparing and approving the order project, especially within the executive domain. The order project is prepared by the concerned minister, and the General Secretariat of the Government undertakes the legal drafting after consulting various government departments, and it is registered by the Secretary-General of the Government in the agenda of the government meeting for enrichment, and presented to the State Council for an advisory opinion, then discussed and approved in the Council of Ministers, to be finally issued by the President of the Republic after being presented to the Constitutional Court for constitutional

⁴⁴ Yahia Boukhari, Mechanisms for Preparing a Bill or its Amendment, State Council Journal, Issue 10, 2012, p. 10.

⁴⁵ Ibid, p. 12.

⁴⁶ Mohammed Elbordj, Abdelkarim Ben Ramadane, The Position of the Algerian Senate in Parliamentary Work through the 2020 Constitutional Amendment, Journal of Constitutional Law and Political Institutions, Volume 6, Issue 1, 2022, p. 24.

review, and presented by the Secretary-General of the Government at the beginning of the next parliamentary session for approval.⁴⁷

The apparent difference in the controls for preparing and issuing organic laws and presidential orders is a matter of parliamentary discussion and approval, which first occurs regarding organic laws before their issuance, by an absolute majority of members of each chamber of Parliament, while parliamentary approval of presidential orders, even if they include organic laws, is done by a simple majority of the present members, and it occurs after the issuance of these orders, considering that approval of these orders in Parliament is done by ordinary laws, returning to an important issue of exercising sovereignty⁴⁸, which is presumed to be exercised by Parliament as the representative of the people, as well as by the President of the Republic, also elected by the people, as previously discussed.

2.2 Mandatory Constitutional Review of Organic Laws and Presidential Orders

Since the inception of relying on the technique of organic laws in the original Constitution of 1996, the constitutional founder mandated their issuance to be subject to mandatory conformity review with the Constitution, as they are related to constitutional or quasi-constitutional domains.

The constitutional amendment of 2020 reinforced this direction, clarifying an important issue in this context, which is the development regarding the conformity review with the Constitution compared to the constitutional amendment of 2016, where the mandatory aspect was related to the Constitutional Council's opinion on conformity review, and not the mandatory referral by the President of the Republic.⁴⁹

Conversely, the constitutional amendment of 2020 established for the first time since its re-adoption in the Constitution of 1996, a mandatory constitutional review by the Constitutional Court on presidential orders.

Conformity review with the Constitution is the process through which the provisions of the organic law are made consistent and aligned with the Constitution,⁵⁰ meaning strict adherence both formally and substantively to the constitutional provisions⁵¹, not to be violated in letter and spirit, is a mandatory and preliminary review but not automatic⁵², exercised by the Constitutional Court upon referral by the President of the Republic, in accordance with the provisions of Articles 140, 190 of the Algerian Constitution, encompassing the entire text, and not limited to a judgment, article, or some articles only.⁵³

The President initiates referral to the Constitutional Court regarding presidential orders, following Article 142 of the Constitution⁵⁴. This referral is also mandatory, exercised exclusively and individually by the President, although it pertains to constitutional review, not conformity review, and the Constitution does not explicitly specify deadlines for its exercise⁵⁵. However, practical application shows that it occurs before the issuance of presidential orders, generally concerning the text of the order.

Article 142 of the Constitution sets the deadline for the Constitutional Court to issue its decision on the constitutionality of orders at a maximum of 10 days from the date of referral, considering these orders have an urgent nature. Meanwhile, Article 194 of the Constitution sets a 30-day deadline from the referral

⁴⁷ Yahia Boukhari, Ibid, p. 13.

⁴⁸ Official journal of the Discussions, Ibid.

⁴⁹ Abdelhamid Mellal, The Mandatory Presidential referral Mechanism for the Control of the Constitutionality of Laws, Numéros Académique Journal, Volume 4, Issue 1, 2023, p. 242.

⁵⁰ Ghazlan Salima, Ibid, p. 111.

⁵¹ Ahmed Ben Messaoud, The Rank of Organic Laws in the Algerian Constitutional System, Academic Journal for Legal and Political Research, Volume 6, Issue 2, 2022, p. 1241.

⁵² Dominique Rousseau, Right of Constitutional Litigation, Preface by Georges Vedel. 7th edition, Delta Editions, 2006, p. 192.

⁵³ Paragraph 5 of Article 190 of the Constitution.

⁵⁴ Article 6 of the Organic Law No. 22-19 defining the procedures and modalities of referral before the Constitutional Court, Official journal of the Algerian Republic, issue 51 dated 31-07-2022.

⁵⁵ Ahmed Ben Ziane, Subjecting Legislative Orders to the Control of the Constitutional Court in the Context of the 2020 Algerian Constitutional Amendment, Journal of Research in Law and Political Sciences, Volume 7, Issue 2, 2021, pp. 204, 205.

date for issuing decisions on conformity review, which can be reduced to 10 days in case of an emergency, upon request from the President.

Based on the above, there appears to be a formal convergence between the Constitutional Court's review of organic laws and presidential orders.

The content of the conformity review encompasses several elements that the Constitutional Court monitors over the entire text, evident through examining one of the Court's decisions on this matter⁵⁶. These elements are consistent across other decisions and include:

- The bases upon which the decision was issued: relating to Article 190 of the Constitution, which was the basis for the President's referral, followed by information specific to the President's referral letter, then the constitutional articles and the texts regulating the Constitutional Court's work, which form the basis for the conformity review.
- Listening to the report of the designated member, and mentioning the Constitutional Court's deliberation.
- Formal aspect: Formal reasons related to the text of the organic law and the referral.
- Substantive aspect: Substantive reasons related to the content of the text, through the title of the organic law, regarding the organic law's annotations, and regarding the articles of the organic law that require explanation, clarification, and correction.
- Decision outcome: Expressed as follows:

❖ **Formally:**

- **First:** Preparation procedures,
- **Second:** referral procedures.

❖ **Substantively:**

- **First:** Articles or provisions that are corrected and deemed consistent with the Constitution.
- **Second:** Communication of the Constitutional Court's decision.
- **Third:** Publication of the Constitutional Court's decision.
- Date of the Constitutional Court's deliberation, and the list of present members.

Regarding the content of the Constitutional Court's decisions on the constitutional review of presidential orders, they also include all the above elements, with differences in the bases for referral, including the circumstances under which the order was issued, such as the absence of Parliament due to the vacancy of the National People's Assembly or parliamentary recess, and the urgency issue, as they are issued following Article 142 of the Constitution, implying that it is a mandatory constitutional review,⁵⁷ practically preliminary,⁵⁸ which focuses on rejecting provisions showing imbalance in jurisdiction distribution or the principle of separation of powers, among other potential constitutional violations.⁵⁹

⁵⁶ Decision No. 04/D.CC/P.C.C/22 dated 29 Dhul-Qi'dah 1443 corresponding to 19 June 2022, concerning the control of the conformity of the Organic Law defining the procedures and modalities of referral before the Constitutional Court to the Constitution, Official journal of the Algerian Republic, issue 51 dated 31-07-2022.

⁵⁷ Ahmed Ben Ziane, Ibid, p. 203.

⁵⁸ Ibid, p. 205.

⁵⁹ Abdelmajid Jabar, The Constitutional Control of Organic Laws and the Opinions of the Constitutional Council related to the Laws of Political Parties and Elections, Administration Magazine, Volume 10, Issue 2, 2000, p. 79.

It concerns the relationship of approval or non-contravention as seen by Professor Abdelmajid Jabar⁶⁰. However, it is broader in form and substance than the conformity review, characterized by precision, rigor, and the necessity of respecting constitutional provisions formally, substantively, and in spirit.⁶¹

Observing the Constitutional Court's decision regarding the constitutional review of Order No. 21-01, which includes the organic law on the electoral system, it contained some detail in the review process relatively close to that stipulated for conformity review, given that Order No. 21-01 comprises an organic law, compared to the Constitutional Court's decision on the constitutional review of Order No. 22-01, which includes the supplementary finance law for the year 2022, containing an ordinary law.⁶²

It should be noted that the Constitutional Council conducted a conformity review of both Order No. 97-07, which includes the organic law on the electoral system, and Order No. 97-09, which includes the organic law on political parties, with the Constitution, as they contained organic laws, based on Article 165, paragraph 02 of the Constitution at that time. However, these orders were issued in application of the exceptional constitutional provision set forth in Article 179 of the Constitution, and therefore, they do not adhere to the same controls established for orders according to the constitutional amendment of 2020, as previously discussed.

Subjecting presidential orders to constitutional review marks a significant development in the establishment of a rule of law state, and confers a constitutional quality on these orders, especially considering they are not issued by the original legislative authority, the Parliament. This was the rationale of the French Constitutional Council for the infeasibility of subjecting presidential orders to its review, given that the Parliament had not ratified them, and thus they did not acquire legislative status.⁶³

However, the Algerian constitutional founder in the 2020 amendment resolved this issue by explicitly subjecting them to mandatory constitutional review before Parliament's approval, while the Constitutional Court could be referral about the content of the law endorsing them by Parliament later, raising another issue regarding how the Constitutional Court deals with this referral, considering it does not review texts already under its review unless circumstances change.⁶⁴

The Constitutional Court's review could be limited to the law endorsing the presidential order, focusing on the law itself, not the content of the order. This is a constitutional review, not a conformity review, as this law falls within the domain of ordinary law, not organic law.⁶⁵

Subjecting presidential orders that contain organic laws to constitutional review may not achieve the content of conformity review designated for these texts when issued by Parliament. Nonetheless, it remains a significant advancement towards ensuring these texts are free from unconstitutional provisions or provisions that restrict the exercise of rights and freedoms guaranteed by the Constitution⁶⁶. Conversely, it is essential to move towards restricting the President's authority to legislate in the domain of organic laws by order, by subjecting it to conformity review with the Constitution, to align its content with the category of organic laws at least.

⁶⁰ Said Bouchair, *The Constitutional Council in Algeria*, University Publications Office, 2012, p. 78.

⁶¹ *Ibid*, p. 96.

⁶² Decision No. 05/D. CC/22 dated 29 Dhul-Hijjah 1443 corresponding to 28 July 2022, concerning the constitutional control of the Order containing the Supplementary Finance Law for 2022, *Official journal of the Algerian Republic*, issue 53 dated 04-08-2022.

⁶³ Gigika Saidani Lounis, *Ibid*, p. 78.

⁶⁴ Article 21 of the Organic Law No. 22-19 defining the procedures and modalities of referral before the Constitutional Court.

⁶⁵ Law No. 21-02 approving Order No. 21-01 dated 10 March 2021, concerning the Organic Law on the Electoral System, *Official journal of the Algerian Republic*, issue 91 dated 5-12-2021.

⁶⁶ In Decision No. 20/D.CC/21 dated 10 Ramadan 1442 corresponding to 22 April 2021, concerning the constitutional control of the Order amending and supplementing the Order containing the Organic Law on the Electoral System, *Official journal of the Algerian Republic*, issue 30 dated 22-04-2021, it is stated: Regarding the provisions of the Order subject to referral:

Considering that the provisions of the Order amending and supplementing the Order containing the Organic Law on the Electoral System, subject to referral, do not require any special remarks regarding their constitutionality, and do not affect the constitutional guarantees for the citizen's exercise of their right to stand for election, therefore, they are constitutional.

It is worth mentioning that presidential orders issued during a state of emergency are not subject to any of the controls established for urgent matters during the vacancy of the National People's Assembly or the parliamentary recess. However, they are subject to ex-post review by the Constitutional Court, as the President is obliged to present the decisions taken during the state of emergency, after its expiration, to the Constitutional Court for an opinion, in accordance with the last paragraph of Article 99 of the Constitution.

Conclusion:

The constitution guarantees the President's ability to legislate by orders, subject to a set of substantive and procedural legal controls. While urgent matters in the domain of ordinary laws have been addressed using this technique, following the constitutional amendment of 2020, this mechanism was also employed to legislate in the domain of organic laws, through the issuance of Order No. 21-01, which includes the organic law related to the electoral system, along with its subsequent amendments.

This study has discussed this matter and has led to the following conclusions:

- Legislation by orders in the domain of organic laws can be justified based on two elements: the first is substantive, related to the status of the issuing entity of the text, and the second is procedural, related to the established procedures for issuing the text.
- Although the Parliament is the original legislative authority, representing the popular sovereignty, the President can also represent popular sovereignty, being elected by the people.
- Presidential orders include general and abstract rules, making them legislative in nature according to the substantive criterion. This criterion is not affected by the level of the text, whether it is an ordinary or organic law.
- Given the circumstances preceding the issuance of Order No. 21-01 mentioned above, the President's resort to the orders legislation mechanism in this case can be justified from a political perspective, as the country was undergoing a sensitive transitional phase before and after the constitutional amendment, necessitating the renewal of previous constitutional bodies.
- The preparation procedures for organic law projects align with those for orders in the executive domain, going through the same stages from proposal to approval in the Council of Ministers. However, the parliamentary approval procedures differ entirely; while laws require an absolute majority of members from both chambers of Parliament for approval, orders are issued by the President and presented at the beginning of the subsequent parliamentary session for approval by a simple majority of present members, considering that parliamentary approval of orders is done through ordinary laws.
- The constitutional amendment of 2020 marked a significant development by subjecting all presidential orders issued in normal circumstances, including those containing organic laws, to mandatory constitutional review by the Constitutional Court. However, this remains different from the conformity review to the constitution provided for organic laws.

Despite Order No. 21-01 being issued under special political circumstances, and Article 142 of the constitution ensuring constitutional review of presidential orders containing organic laws, this study proposes the following:

- Restrict the issuance of presidential orders containing organic laws to specific areas directly related to the continuity of the state that cannot be postponed, and only in the event of the vacancy of the National People's Assembly, excluding parliamentary recesses. The involvement of the Council of the Nation in the discussion and issuance process should be under the supervision of the Constitutional Court to exercise this authority.
- Establish the obligation to apply a conformity review to the constitution on orders containing organic laws before their issuance.

- Require parliamentary approval of orders containing organic laws, by an absolute majority of members from both chambers of Parliament.

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