

A Reading of Law No. 04/26 Containing the Constitutional Amendment

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Abstract:

The 2020 constitutional amendment is considered one of the most significant amendments experienced by Algeria. Its drafting and preparation were entrusted to experts and specialists in constitutional law, who prepared a preliminary draft and submitted it for enrichment and consultation by all interested stakeholders, including political parties, associations, civil society organizations, university professors, and specialists in law and economics. Subsequently, the amendment bill was prepared and submitted for parliamentary approval and then put to a popular referendum on 1 November 2020. With the passage of time, certain gaps and shortcomings became apparent, necessitating their review and correction as promptly as possible. This was effectively achieved through a partial amendment of certain constitutional provisions, whereby some articles were revised and specific deficiencies were addressed. This amendment was referred to as the *technical constitutional amendment*, and Law No. 26-04 containing the text of the constitutional amendment was consequently enacted.

Keywords: Technical Constitutional Amendment; 2020 Constitutional Amendment; Constitutional Court; Parliament.

Introduction:

The Constitution is regarded as the supreme law, established by the highest authority in society. It constitutes the primary and fundamental reference for all other legislation, which may neither contradict nor depart from its provisions; otherwise, such legislation becomes subject to constitutional review by the Constitutional Court. This demonstrates the significant status occupied by the constitutional document, owing to the subjects it regulates and its particular nature. Consequently, the process of drafting and amending constitutions differs considerably from that of other legal texts.

A constitution is established by an original constituent authority entrusted with the task of drafting the Constitution of the State. This authority is not derived from a previous constitution, and its members enjoy complete independence and freedom in formulating constitutional provisions in accordance with the needs and requirements of society at that particular time. This reflects the democratic principle and the participation of the people in

the drafting of their Constitution through those whom they have elected, namely the original constituent authority.

Generally, the original constituent authority emerges in cases involving the creation of a new State or the occurrence of a revolution or military coup leading to a fundamental change in the system of government and, consequently, the repeal of the existing constitution and its replacement with a new one. There is also what is known as constitutional amendment through the subsidiary or derivative constituent authority, whose function is not to draft a new constitution but merely to amend the existing one. Moreover, its powers are not absolute; rather, they are limited and restricted by the provisions of the Constitution in force, which establishes conditions governing constitutional amendment that members of the derivative constituent authority must respect. This has been observed in the various constitutional amendments that Algeria has experienced up to the 2020 constitutional amendment. The latter was the result of a special committee that prepared a draft constitutional amendment, submitted it for discussion and approval, and subsequently subjected it to a popular referendum, which constituted the final step leading to its promulgation through a presidential decree. This constitutional amendment was the product of political and social circumstances that required treatment and reform.

According to many constitutional law experts, this amendment is considered one of the best constitutional revisions undertaken in Algeria since independence, as it introduced numerous reforms and amendments affecting almost all chapters of the Constitution, particularly those related to the expansion of fundamental rights and freedoms in accordance with international treaties and conventions on human rights, foremost among them the Universal Declaration of Human Rights. The latest constitutional amendment included forty-three provisions concerning rights and freedoms. Furthermore, it became necessary to establish an effective constitutional mechanism to protect these rights and guarantee their non-violation. Accordingly, the mechanism of the plea of unconstitutionality before a judicial body (the Constitutional Court) was introduced. This judicial procedure constitutes a form of subsequent constitutional review of legal provisions relating to human rights and fundamental freedoms. However, despite the reforms and additions introduced by the 2020 constitutional amendment, five years of practical application revealed the existence of certain ambiguous provisions and others that were contradictory, making it necessary to be reviewed and corrected in accordance with the prevailing circumstances and conditions. This prompted the President of the Republic to exercise his constitutional right to initiate a constitutional amendment without submitting it to a popular referendum. This was indeed carried out, and the resulting amendment, referred to as the “technical constitutional amendment”, incorporated a set of amendments and corrections aimed at eliminating ambiguity and contradictions between constitutional provisions, as well as filling legal gaps that had emerged during practical application or removing inconsistencies that could hinder the functioning of public institutions. In light of the foregoing, the research problem may be formulated as follows: **What is meant by the technical constitutional amendment, and what are the principal innovations introduced by Law No. 26/04 containing the latest constitutional amendment?**

To answer this problem, the study has been divided into two sections: The first section examines the concept of the technical constitutional amendment and the stages involved in its adoption. The second section addresses the content of the constitutional amendment in accordance with the provisions of Law No. 26-04 containing the technical constitutional amendment. The nature of the subject requires reliance on both the descriptive and analytical approaches in examining the legal provisions introduced by the technical constitutional amendment, particularly those contained in Law No. 26-04 concerning the latest constitutional amendment, in addition to the provisions of the 2020 constitutional amendment and the various relevant sources relating to constitutional amendment.

Section One: The Concept of the Technical (Partial) Constitutional Amendment

The Constitution is the supreme law of the State, as it determines the system of government, regulates the relationship between public authorities, and guarantees rights and freedoms. An examination of the Algerian Constitution reveals that it contains a broad range of rights and freedoms compared with previous constitutions¹. Accordingly, the 2020 constitutional amendment devoted an entire chapter to rights and freedoms. The constitutional framers enshrined what are known as guarantees of rights within the Constitution itself, alongside several other additions and reforms. However, practical implementation revealed the existence of a number of ambiguous and contradictory provisions, which accelerated the need for a partial constitutional amendment to address these deficiencies and rectify the situation. Consequently, this partial amendment affecting the 2020 constitutional amendment came to be known as the “technical constitutional amendment”. Therefore, the concept of the technical constitutional amendment will first be examined in the first subsection, followed by a discussion of the stages and procedures governing the technical constitutional amendment in the second subsection.

First Subsection: The Meaning of the Technical Constitutional Amendment

Starting from the premise that the majority of States adopting systems of direct democracy do not recognize any distinction between rulers and the ruled, since the people are considered the holders of sovereignty and directly vote on all laws to which they are subject, including the approval or rejection of constitutional amendments through a popular referendum². In this regard, Algeria has adhered to this principle in all its constitutions and constitutional amendments from independence to the present day.

Within this framework, legal scholars use expressions such as “partial amendment” or “limited amendment” to refer to amendments affecting the Constitution. In contrast, what is known as a “revision by repeal” is regarded as the enactment of a new constitution. The

¹Souhila Gammoudi, *Fundamental Rights and Freedoms through Algerian Constitutions*, Office des Publications Universitaires (OPU), Algiers, n.ed. (no edition specified), 2012, p. 15.

²Hamid Meziani, “Constitutional Amendment in Comparative Systems and in Algeria,” *Critical Journal of Law and Political Sciences*, Faculty of Law and Political Sciences, University of Tizi Ouzou, Vol. 16, No. 2, June 2021, p. 395.

people remain the principal actor in accepting or rejecting the Constitution, as they are the ultimate holders of sovereignty in this matter.¹

This principle was reaffirmed by the 2020 constitutional amendment through several provisions enshrining the mechanism of the popular referendum, beginning with Article 8, paragraphs 3 and 4, which provide that: "...The people shall also exercise this sovereignty through referendum and through their elected representatives."² It was further confirmed by Article 91, paragraph 9, and Articles 219 to 222 of the 2020 constitutional amendment, all of which concern constitutional amendment.

Article 219 specifically established the exclusive right of the President of the Republic, to the exclusion of other members of the executive authority, to initiate constitutional amendments. After approval by the National People's Assembly and the Council of the Nation, the amendment is submitted to the people for referendum within fifty days following its adoption, after which it is promulgated by the President of the Republic. This was the procedure followed for the 2020 constitutional amendment. However, following its practical implementation, certain constitutional provisions proved to be ambiguous while others appeared contradictory, thereby necessitating a partial amendment or what came to be termed a "technical amendment" with the objective of correcting and removing ambiguities from certain constitutional provisions.

In this respect, it should be noted that every constitutional amendment presupposes the drafting of constitutional provisions in accordance with formal and procedural requirements relating to wording, meanings, and the orderly arrangement of phrases

In a precise technical manner encompassing the general structure of the Constitution, including its chapters, sections, and articles. All of this is intended to avoid ambiguity or contradictions in certain expressions or constitutional provisions.³

Within this framework, a draft constitutional amendment was effectively submitted to both chambers of Parliament for debate and approval, together with a draft amendment to the Electoral Law in preparation for the forthcoming legislative elections. This materialized through the enactment of Organic Law No. 26-05 amending and supplementing Ordinance No. 21-01 containing the Organic Law relating to the electoral system⁴. The objective was to introduce measures aimed at addressing ambiguities and contradictions between provisions that had emerged during practical implementation.

At the same time, the amendment did not include any proposal to extend the presidential term of office or to permit more than two terms, contrary to certain interpretations that linked the anticipated "amendment" to an alleged intention to extend the presidential mandate beyond

¹ Mouloud Didan, *Studies in Constitutional Law and Political Systems in Light of the Latest Constitutional Amendment* (1 November 2020), Belkis Publishing House, 2022 Edition, Dar El Beida, Algeria, 2022.

² Presidential Decree No. 20-442 of 30 December 2020 concerning the Promulgation of the Constitutional Amendment Approved by Referendum on 1 November 2020, Official Gazette, No. 82, 30 December 2020.

³ Hamza Yahiaoui, "Requirements of Constitutional Drafting and Their Applications in the 2020 Algerian Constitution," *Professor-Researcher Journal for Legal and Political Studies*, Vol. 7, No. 2, December 2022, p. 363.

⁴ Organic Law No. 26-05 of 4 April 2026 amending and supplementing Ordinance No. 21-01 containing the Organic Law relating to the Electoral System, Official Gazette of the People's Democratic Republic of Algeria, No. 24, 4 April 2026.

2029. No such provision was included. It remains important to note that the introduction of the term “technical amendment” initially raised significant questions among researchers, academics, and politicians alike. This is due to the fact that the use of this term constitutes a precedent in the history of Algeria’s constitutions and constitutional amendments, from independence up to the 2020 constitutional amendment. Consequently, the question arises as to what exactly is meant by this new term.

In this regard, the President of the Justice and Statement Party attempted to clarify the true meaning of the technical constitutional amendment by stating that it is: “not a change in the system of government, nor a redrawing of the political landscape; rather, it is a limited amendment in wording or procedures aimed at harmonizing the Constitution with new organic laws, filling legal gaps that have emerged during implementation, removing inconsistencies that may hinder the functioning of institutions, and, finally, protecting laws from challenges based on unconstitutionality.” In this context, it may be observed that many States emphasize the existence of constitutional provisions expressly prohibiting constitutional amendments affecting specific subjects or groups of subjects.¹

Based on the concept outlined above, it can be argued that the technical constitutional amendment is merely a reform of mechanisms and procedures and does not affect the national constants or fundamental principles of the State. Furthermore, in light of the provisions of the 2020 constitutional amendment, this technical amendment may be regarded simply as a set of amendment procedures carried out within the framework of the Constitution currently in force. It is essentially a formal amendment that does not affect the substance of the constitutional document; rather, its purpose is to address certain deficiencies, shortcomings, or imbalances

That have emerged from constitutional practice in reality, particularly where contradictions may arise between certain constitutional provisions and constitutional principles contained in the Preamble or in the chapter relating to general principles². Furthermore, the technical constitutional amendment will help ensure the regular functioning of the State’s constitutional and legal institutions. It also falls within the broader framework of political and constitutional reforms aimed at promoting good governance and consolidating a State founded on the rule of law, institutions, and legality. In general, the technical constitutional amendment seeks to fill specific gaps in order to address predetermined and clearly defined concerns, particularly those relating to constitutional institutions and bodies such as the Council of the Nation. It also seeks to fill the gap concerning the manner and procedure for administering the constitutional oath of office to the President of the Republic. This falls within the broader objective of strengthening the performance of State institutions, organizing their structures, and improving their functioning. Moreover, the technical constitutional amendment constitutes a simple technical revision affecting only specific points and not a substantive amendment. This was effectively reflected in the publication of the constitutional

¹ Hamid Meziani, “Constitutional Amendment in Comparative Systems and in Algeria,” op. cit., p. 394.

² Hamza Yahiaoui, “Requirements of Constitutional Drafting and Their Applications in the 2020 Algerian Constitution,” op. cit., p. 365.

amendment in the Official Gazette through Law No. 26-04 containing the constitutional amendment.¹

Second Subsection: Procedures Followed in the Technical Constitutional Amendment

By reference to the provisions of the Constitution, particularly Chapter Four entitled “Constitutional Amendment” (Articles 219–223), the stages that must be followed for amending the Constitution have been clearly defined. These stages consist of: the initiation of the constitutional amendment proposal, the acceptance of the proposal, and finally the definitive adoption of the constitutional amendment². Under the Constitution of 1 November 2020, the President of the Republic possesses the exclusive or shared right (depending on the circumstances) to initiate constitutional amendments. This is expressly provided for in Article 219, which grants the President of the Republic the right to propose constitutional amendments and either submit them to a referendum or have them adopted through Parliament in its two chambers. In the case of this technical constitutional amendment, the President of the Republic exercised his right to initiate a constitutional amendment without submitting it to a popular referendum. This was based on a set of conditions established by Article 221 of the 2020 constitutional amendment, which requires obtaining the opinion and approval of the Constitutional Court regarding the proposed constitutional amendment. Such an amendment must not, under any circumstances, affect the general principles governing Algerian society, nor the rights and freedoms of human beings and citizens. Likewise, it must not in any way alter the fundamental balance between powers and constitutional institutions. Subsequently, the Constitutional Court provided the reasoning underlying its opinion The rule of law, institutions, and legality. Following the conclusion of consultations and discussions, the Constitutional Court was seized and issued its reasoned opinion confirming that the proposed amendment did not affect the general principles governing Algerian society, nor the rights and freedoms of individuals and citizens, nor the fundamental balance between the constitutional powers and institutions. Consequently, the conditions stipulated in Article 221 of the Constitution were fulfilled. With regard to this matter, the President of the Republic was subsequently able to promulgate directly the law containing the constitutional amendment without submitting it to a popular referendum for approval or rejection, provided that it also obtained the approval of three-quarters ($\frac{3}{4}$) of the members of both chambers of Parliament. The requirement of this specific majority aims to ensure broad consensus among the representatives of the people regarding the constitutional amendment project and to guarantee that it effectively achieves its intended objectives without infringing upon the conditions established by the aforementioned constitutional provision³. This procedure is not exceptional, as it exists in several countries whose constitutions expressly prohibit constitutional amendments relating to certain subjects. An example is the Constitution of the French Fourth Republic of 1949, which prohibited any constitutional amendment affecting

¹ Law No. 26-04 of 26 March 2026 containing the Constitutional Amendment, Official Gazette of the People's Democratic Republic of Algeria, No. 22, 26 March 2026.

² Farid Debboucha, *Constitutional Law in Algeria and Comparative Law (First Semester: General Theory of the State and General Theory of the Constitution)*, 1st ed., Labeled Publishing and Distribution, Algeria, 2022.

³ Article 221 of Law No. 26-04 containing the Constitutional Amendment.

the republican form of government. Similarly, the Basic Law of West Germany of 1949 prohibited any amendment affecting the federal organization of the constituent states forming the federation¹. Based on the foregoing, it can be stated that the technical constitutional amendment enacted through Law No. 26-04 passed through a series of stages and procedures that differ significantly from those followed during the constitutional amendment of 2020. The principal difference lies in the fact that the most recent partial amendment was not submitted to a popular referendum. Since the Algerian Constitution itself determines the procedures for constitutional amendment either through an initiative by the President of the Republic proposing a constitutional amendment bill, or through a proposal adopted by three-quarters of the members of both chambers of Parliament meeting jointly and submitted to the President of the Republic, who may then refer it to a popular referendum the referendum remains a mechanism of direct democracy through which voters express either approval or rejection². However, because the amendment was characterized as a “technical amendment,” it was adopted through the mechanism provided for in Article 221 of the 2020 constitutional amendment, which states: “If the Constitutional Court considers that any proposed constitutional amendment does not in any way affect the general principles governing Algerian society, nor the rights and freedoms of human beings and citizens, nor the fundamental balance between powers and constitutional institutions, and provides reasons for its opinion, the President of the Republic may directly promulgate the law containing the constitutional amendment without submitting it to a popular referendum, provided that it obtains the approval of three-quarters of the members of both chambers of Parliament.” Accordingly, this article summarizes the process followed for the technical constitutional amendment, beginning with the initiative of the President of the Republic to propose the technical amendment project. The submission of the proposal for discussion among researchers, academics, and political parties through broad consultations constituted in itself a positive and important step reflecting a genuine commitment to participatory democracy, as well as an effort to formulate amendments that are more realistic and better adapted to current challenges, particularly with regard to strengthening the State The rule of law, the continuity of institutions, and the integrity of the electoral process. Moreover, ensuring and confirming compliance with the constitutional conditions governing such amendments constitutes an additional safeguard for upholding the supremacy of the Constitution and respecting the sovereignty of the people. Among the most important of these conditions is the prohibition against amending the entrenched constitutional clauses, namely: the republican character of the State; the democratic system founded on political pluralism; the social character of the State; Islam as the religion of the State; Arabic as the national and official language; Tamazight as a national and official language; fundamental freedoms and the rights of human beings and citizens; the integrity and unity of the national territory; the national flag and national anthem as symbols of the November 1954 Revolution; and, finally, the prohibition on holding more than two presidential terms, whether consecutive or non-consecutive, with

¹ Hamid Meziani, “Constitutional Amendment in Comparative Systems and in Algeria,” *op. cit.*, p. 394.

² Article 222 of Law No. 26-04 containing the Constitutional Amendment.

each term lasting five years.¹ In this regard, the Constitutional Court is entrusted not only with reviewing compliance with the foregoing constitutional guarantees, but also with verifying that the proposed constitutional amendment does not affect the general principles governing Algerian society, nor the rights and freedoms of human beings and citizens. Likewise, it must ensure that the proposed amendment does not disturb the fundamental balance between constitutional powers and institutions. Thereafter, the Court issues a reasoned opinion confirming whether these conditions have been satisfied. Once such confirmation has been obtained, the President of the Republic may promulgate directly the law containing the constitutional amendment without submitting it to a popular referendum, provided that the amendment secures the approval of three-quarters ($\frac{3}{4}$) of the members of both chambers of Parliament. This final requirement constitutes an important safeguard against the adoption of provisions that could undermine individual rights and freedoms, which are among the most significant general principles emphasized by both contemporary international and domestic legal systems. These rights relate to essential human needs and fundamental demands that must be guaranteed in order to preserve human dignity and existence. Furthermore, the members of both chambers of Parliament are the legitimate representatives of the people, speaking and acting on their behalf. This mechanism therefore reflects a concrete manifestation of genuine democracy, popular sovereignty, and the rule of law. Accordingly, Law No. 26-04 of 26 March 2026 containing the constitutional amendment was enacted. The amendment incorporated a number of provisions embodying the reforms previously announced by the President of the Republic. It also addressed the shortcomings, ambiguities, inconsistencies, and gaps that had become apparent in certain provisions of the 2020 constitutional amendment through practical application. At the same time, the amendment contributes to the realization and consolidation of the principle of legal certainty, which serves as a fundamental safeguard for acquired rights and freedoms, as well as for the stability of legal relationships and legal positions. In this sense, it reinforces and embodies the principles of a State governed by law and justice.²

Section Two: New Developments Introduced by the Constitutional Amendment under Law No. 26-04: The Constitution occupies the highest position within the hierarchy of legal norms in the State, as it constitutes the source from which all other legal rules derive their validity. Consequently, it is characterized by supremacy and superiority, which are among the essential features of a State governed by the rule of law. Indeed, it is impossible to ensure the subordination of the State to the law and the commitment of rulers and public authorities to superior constitutional norms defining their powers and limiting their authority, unless constitutional rules exist that are binding upon both rulers and citizens alike. In pursuit of these objectives, the constitutional amendment introduced a number of additions and modifications affecting various chapters of the Constitution. However, practical application

¹ Article 223 of Presidential Decree No. 20-442 of 30 December 2020 concerning the promulgation of the 2020 Constitutional Amendment.

²Hejri Amine and Laroussi Halim, "The Quality of Constitutional Drafting and Its Role in Achieving Legal Certainty through the 2020 Constitutional Amendment," *Journal of Law and Human Sciences*, Vol. 15, No. 03, 2022, p. 637.

revealed the existence of certain gaps and shortcomings that required corrective measures. This objective was achieved through the technical constitutional amendment enacted by Law No. 26-04 containing the constitutional amendment. This amendment addressed several important issues, primarily concerning the President of the Republic, which will be examined in the first subsection. The second category of amendments, relating mainly to Parliament and other significant matters, will be discussed in the second subsection.

First Subsection: Amendments Affecting the Office of the President of the Republic

Law No. 26-04 containing the constitutional amendment provided answers to numerous questions that had recently arisen regarding the content and substance of these amendments. An examination and analysis of its provisions reveal that the constitutional legislator focused on amending several constitutional articles, particularly Articles 87, 89, 91, 93, 121, 134, 138, 145, 180, 181, 202, and 224 of the Constitution, while also supplementing its provisions through the introduction of Article 226. Among the most significant amendments concerning the office of the President of the Republic, who occupies the highest political position in the country, the constitutional legislator introduced several modifications and additions affecting both the conditions for presidential candidacy and certain presidential powers. First, attention must be given to the amendments introduced to Article 87 of the 2020 constitutional amendment, which was the first provision to be revised. This article concerns the conditions that candidates for the Presidency of the Republic must satisfy. A new requirement was introduced obliging every candidate for the office of President of the Republic to demonstrate a specified educational level. Consequently, possession of a university degree has become an essential condition for any individual wishing to run for the presidency. This represents a significant qualitative addition attributable to the constitutional legislator, as it aims to prevent unqualified individuals from seeking access to the highest office of the State. Furthermore, the importance of the position and the need for the officeholder to comprehend and address complex and sensitive issues provide sufficient justification for the introduction of such a requirement. This amendment therefore constitutes an important and decisive step toward ensuring the quality of political leadership. It should also be noted that this was not the only amendment relating to the office of the President of the Republic. The amendment further extended to a more detailed regulation of the constitutional oath-taking ceremony by specifying both the institution before which the oath must be taken and the authority responsible for administering it. This modification affected Article 89 of the 2020 constitutional amendment. Under the new provisions, the President of the Republic is required to take the constitutional oath before both chambers of Parliament convened in joint session, in the presence of the highest institutions of the Nation and senior State officials, during the week following his election. This choice reflects the fact that Parliament, composed of its two chambers, constitutes the principal expression of popular sovereignty and serves as its primary representative. Furthermore, the amendment stipulates that, in the event of a vacancy in the National People's Assembly, the newly elected President of the Republic may take the constitutional oath before the Council of the Nation alone. The First President of the Supreme Court is entrusted with administering and reading the text of the

constitutional oath to the President of the Republic, after which the latter may immediately assume his duties¹. These amendments clearly fall within the framework of addressing certain organizational gaps, strengthening the continuity and effectiveness of State institutions, consolidating the principle of legal certainty, and ensuring the protection of rights and freedoms. The second category of amendments affecting the office of the President of the Republic concerns the powers vested in him. More specifically, paragraph 11 of Article 91 was amended through the addition of the words “or local,” so that the provision now reads: “He may decide to hold early presidential, legislative, or local elections.” A similar addition was made in the following article, which now provides that: “He may not delegate his authority to resort to a referendum, dissolve the National People's Assembly, or decide on early legislative or local elections...”² These additions were intended to remedy shortcomings that existed within the 2020 constitutional amendment, particularly the omission of any explicit authority enabling the President of the Republic to call for early local elections when circumstances so required. Under the previous constitutional framework, the President could only call for early presidential or legislative elections. This deficiency has now been corrected through the latest constitutional amendment, thereby providing greater precision regarding the President’s authority to initiate early elections, whether presidential, legislative, or local, the latter being no less important than the former categories. The constitutional amendment also included a proposal to remove the requirement of obtaining the binding opinion of the High Council of the Judiciary concerning appointments to specific judicial positions and the annual transfer or reassignment of presidents of judicial councils and public prosecutors, on the grounds that the President of the Republic himself presides over the High Council of the Judiciary.

Second Subsection: Various Amendments Affecting, in Particular, the Algerian Parliament: An examination of the latest constitutional amendment commonly referred to as the technical constitutional amendment and enacted through Law No. 26-04 reveals that the constitutional legislator did not limit the reform process to addressing the gaps identified in Chapter One of Title Three relating to the President of the Republic. Rather, these reforms were extended to other chapters of the same title, particularly those concerning Parliament. The constitutional legislator thus introduced a number of amendments aimed at improving the functioning of parliamentary institutions, enhancing institutional coherence, and ensuring greater harmony between constitutional provisions and the practical requirements revealed through their implementation. To begin with, Article 121 of Law No. 26-04 regulated the issue of the election of members of the National People's Assembly as well as members of the Council of the Nation. These amendments were introduced in order to adapt the constitutional framework to the changes that have occurred in Algeria’s territorial organization, particularly the increase in the number of provinces from forty-eight (48) to sixty-nine (69) and the elevation of delegated provinces into fully-fledged provinces with

¹ Hejri Amine and Laroussi Halim, “The Quality of Constitutional Drafting and Its Role in Achieving Legal Certainty through the 2020 Constitutional Amendment,” *op. cit.*, p. 637.

²Article 93 of Law No. 26-04 of 26 March 2026 containing the Constitutional Amendment.

complete administrative powers¹. Given the disparities in population size among the provinces, Article 121 was amended to reflect these developments. Under the new provision, two-thirds (2/3) of the members of the Council of the Nation are elected by indirect and secret ballot, with each province being allocated either one (1) or two (2) seats depending on its population size. Previously, representation had been uniformly fixed at two seats for every province regardless of demographic differences. Article 226 addressed the situation arising from the creation of new provinces. It provides that, in such circumstances, one-half (1/2) of the elected members of the Council of the Nation, excluding its President, shall be renewed during the first term of membership after the third year through a lottery system. The members selected by lot are then replaced according to the same conditions and procedures applicable to their original election. The constitutional amendment did not stop there. It also proposed extending the term of office of the President of the Council of the Nation from three years to six years, while maintaining the principle of half-renewal of the Council's membership². This measure seeks to preserve institutional expertise, avoid disruptions resulting from frequent changes in leadership, and reinforce the principle of continuity of State institutions. The rationale for this amendment is closely linked to the issue of constitutional vacancy, a concept primarily associated within the Constitution with the office of the President of the Republic, particularly under Article 94 and the provisions that follow it. These provisions stipulate that: "The Constitutional Court shall convene and ascertain the definitive vacancy of the Presidency of the Republic. The President of the Council of the Nation shall then assume the functions of Head of State for a maximum period of ninety (90) days in order to organize new presidential elections. If it proves impossible to hold such elections within that period, the deadline may be extended for an additional period not exceeding ninety (90) days after consultation with the Constitutional Court."

On the one hand, the amendment therefore aims to ensure institutional continuity in circumstances involving a vacancy in the Presidency of the Republic. On the other hand, it seeks to establish a more coherent basis for the half-renewal mechanism governing the membership of the Council of the Nation. This raises an important constitutional question: does the proposal primarily concern the members of the Council of the Nation, or is it fundamentally related to the presidential office itself? The significance of this issue becomes apparent when recalling the constitutional vacuum scenario experienced by Algeria at the end of the mandate of the former interim President, Abdelkader Bensalah. Under the Constitution, Mr. Bensalah was expected to organize presidential elections within the prescribed constitutional timeframe. However, the Constitutional Council annulled the electoral process due to the absence of valid candidates and consequently extended his mandate for an indeterminate period in order to prepare the conditions necessary for a new presidential election. Such a situation was not expressly provided for under the existing constitutional framework. In this context, the important role played by the President of the Council of the Nation, as head of the upper chamber of Parliament, becomes particularly evident. This role

¹ Law No. 26-06 of 4 April 2026 amending and supplementing Law No. 84-09 of 4 February 1984 relating to territorial organization, Official Gazette of the People's Democratic Republic of Algeria, No. 25, 5 April 2026.

² Article 134, Paragraph 2, of Law No. 26-04 of 26 March 2026 containing the Constitutional Amendment.

has existed since the adoption of the 1996 Constitution, which introduced the bicameral parliamentary system as a political choice designed to ensure the stability and continuity of the State, broaden the scope of national representation, provide representation for local authorities, and remedy deficiencies that may arise within the electoral representation system. since the adoption of the 1996 Constitution, which established the bicameral parliamentary system as a political choice aimed at ensuring the stability and continuity of the State, broadening the scope of national representation, providing representation for local communities, and remedying shortcomings in electoral representation¹. The amendments also included improvements to the regulatory framework governing the ordinary parliamentary session. Greater flexibility was introduced regarding its opening and closing dates, while maintaining the principle that the session shall commence in September and conclude ten (10) months after its opening. Under the current constitutional framework, the parliamentary session begins on the second day of September each year². Article 145 of Law No. 26-04 addressed situations in which disagreements persist between the two chambers of Parliament, namely the National People's Assembly and the Council of the Nation. Under the previous constitutional provisions, the Government could request the National People's Assembly alone to make the final decision. In such cases, the text prepared by the Joint Committee would be adopted, and if agreement proved impossible, the last version approved by the National People's Assembly would prevail.

The amendment extended this prerogative to the Council of the Nation. The provision now states: "In the event of a continuing disagreement between the two chambers, the Government may request the National People's Assembly or the Council of the Nation, as the case may be..." This amendment seeks, on the one hand, to strengthen institutional balance and cooperation between the two chambers of Parliament and, on the other hand, to ensure consistency with the spirit and content of Article 144 of the 2020 constitutional amendment.

In the same context, it should be noted that the constitutional legislator did not limit itself to correcting shortcomings within Chapters One and Three of Title Three concerning the organization and separation of powers. The reform process was also extended to Chapter Four relating to the judiciary. Articles 180 and 181 were amended with respect to the composition and functioning of the High Council of the Judiciary. The amendment proposed a reorganization of the Council's membership by removing two categories of members: two judges representing the trade union or professional judicial representation, and the President of the National Human Rights Council. In exchange, the Public Prosecutor-General before the Supreme Court was incorporated into the membership of the High Council of the Judiciary.³

Within the same reform dynamic, the constitutional legislator introduced important changes concerning the Independent National Electoral Authority in order to align the constitutional framework with the newly enacted Organic Law on Elections. The amendment therefore

¹ Aqila Kharbachi, *The Position of the Council of the Nation in the Algerian Constitutional System*, Dar El Khaldounia for Publishing and Distribution, 2013 Edition, El Qobba El Qadima, Algiers, 2013, p. 73.

² Article 138 of Law No. 26-04 of 26 March 2026 containing the Constitutional Amendment.

³ Article 180 of Law No. 26-04 of 26 March 2026 containing the Constitutional Amendment.

addressed shortcomings identified in Chapter Three of Title Four, specifically Article 202 of the 2020 constitutional amendment. The recently adopted constitutional amendment consequently affected the Independent National Electoral Authority, to which the Constitution had entrusted the preparation, organization, management, and supervision of electoral processes, without clearly defining its oversight role. In order to address this gap, the constitutional amendment expanded its supervisory powers while assigning responsibility for the material and logistical preparation of electoral operations to the Ministry of the Interior. This is reflected in the penultimate paragraph, which states that: “The administration shall ensure the material preparation of electoral and referendum operations...”¹

This amendment reflects a desire to return to the previously applicable framework by transferring technical and logistical oversight of elections to the Ministry of the Interior. Such a transfer encompasses various aspects, including voter registration, voting procedures, and vote counting, thereby establishing a distinction between the supervisory functions entrusted to the Independent National Electoral Authority and the material organization of elections. Among the justifications advanced for this reform are the difficulties encountered by the Independent National Electoral Authority during previous electoral processes.

In this context, reference may be made to the considerable controversy surrounding the results of the most recent presidential election held on 7 September 2024. The Authority faced significant challenges in collecting results from the various provinces. Representatives of the three candidates criticized what they described as the “opacity, inconsistency, ambiguity, and discrepancy of figures” that were recorded. This situation prompted the Constitutional Court to undertake substantial corrections to the results and the calculation of votes in order to ensure their accuracy.

It is also worth noting that several political parties had previously called for granting the Independent National Electoral Authority permanent powers extending from the convocation of the electorate to the official announcement of election results. They further advocated strengthening its financial and administrative independence and restructuring it through the inclusion of representatives of candidates and political parties at all stages of the electoral process. These parties also emphasized the need for complete transparency in the acceptance of candidacy files and insisted that the Authority should refrain from excluding candidates, obstructing their participation without legal justification, or damaging their reputation in the absence of evidence or a judicial ruling. In addition, they called for political parties and candidates to be granted access to all data and information related to the electoral process and, finally, for complete vote-counting records to be published before the final announcement of election results.

Conclusion

The successive constitutional amendments introduced in Algeria have primarily aimed at strengthening institutional stability, particularly since the popular movement of 2019 and the presidential changes that followed. Since the constitutional amendment of 2020, Algeria has entered a new phase characterized by efforts to restructure state institutions, prevent

¹ Article 202 of Law No. 26-04 of 26 March 2026 containing the Constitutional Amendment.

constitutional vacancies, and ensure the continuity of the State, especially in light of the forthcoming presidential, legislative, and local elections.

This orientation is reflected in attempts to consolidate the role of the executive branch through the abolition of the requirement of obtaining the binding opinion of the High Council of the Judiciary concerning judicial appointments, as well as through the restructuring of the High Council of the Judiciary by reducing the trade-union representation of judges and removing the representation of the President of the National Human Rights Council. At the same time, the electoral process has been reorganized by assigning responsibility for its material preparation to the public administration, with the objective of enhancing electoral credibility and ensuring that elections are conducted under strict state supervision. Such measures are considered mechanisms for combating corruption and guaranteeing free and fair elections.

These reforms are presented as a response to the aspirations of the Algerian people and an expression of their will, while also addressing challenges related to national security and regional stability. Their purpose is to prevent the recurrence of political transition crises and constitutional deadlocks and to prepare the institutional framework for forthcoming electoral processes.

Given the practical significance of this constitutional amendment and the expectations placed upon it regarding the management of Algeria's upcoming political and electoral stages, the following recommendations may be proposed:

- The amendments were presented as “technical” rather than political reforms and were justified as administrative improvements. This approach may reduce criticism regarding substantial changes in constitutional balances, particularly those affecting the Independent National Electoral Authority.
- All dimensions of political transition should be thoroughly examined in order to avoid the recurrence of political transition crises.
- The latest constitutional amendment should have withdrawn the presidency of the High Council of the Judiciary from the President of the Republic and entrusted it instead to a judge elected by his or her peers. Such a reform would further reinforce the principle of separation of powers and judicial independence.
- Although these amendments embody a discourse of reform and institutional consolidation, their practical implementation remains essential, particularly with regard to electoral legislation.
- These reforms may be viewed as a response to both domestic and international pressures through a technical revision intended to remedy the shortcomings and gaps of the 2020 constitutional amendment, while simultaneously preparing the country for future electoral processes.
- The determination of eligibility requirements for the presidency and the extension of the term of office of the President of the Council of the Nation form part of preparations for the future political landscape. However, it is recommended that Article 87 of the Constitution be reconsidered by introducing a clearly defined educational requirement, namely possession of at least a bachelor's degree (Licence),

both for the President of the Republic and for the President of the Council of the Nation, who occupies the position of second highest state authority and assumes presidential functions in the event of a vacancy in the office of the President of the Republic.

- The Government should strengthen institutional mechanisms within all bodies and institutions responsible for the protection and promotion of human rights, particularly parliamentary mechanisms and oversight institutions such as the Constitutional Court, by ensuring their genuine organizational and functional independence.
- The role of individuals and civil society should be strengthened in order to achieve the effective realization of rights and freedoms, as the true challenge lies not in constitutional or legislative amendments themselves but rather in their proper implementation.
- Practical experience remains the most reliable means of assessing the strengths and weaknesses of this technical constitutional amendment, particularly following the adoption of the Electoral Law and related legislation. Political parties and civil society organizations should continue to play a central role in educating and guiding young people toward participation in the construction of Algeria's future.
- Consideration should be given to accelerating the organization of early local elections in order to address challenges arising within a volatile regional environment.
- Efforts should be intensified to promote civic awareness and legal culture at all levels of society, enabling citizens to better understand both their rights and their obligations.

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