

“On the legal status of the Acting Speaker of the People’s National Assembly?”**حول الوضع القانوني لرئيس المجلس الشعبي الوطني بالنيابة؟***Date of send: 12/09/2020**date of acceptance: 15/02/2021**date of publication: 15/07/2021****Dr. KADRI Tewfik****University of Blida 02 - Lunisi Ali****kadrit11@yahoo.co.uk****Abstract:**

It is recognized that democracy means the rule of the elected majority (the party or parties of the majority after the coalition), whether at the level of the executive or legislative powers or both. This principle is enshrined in all democratic states, or those that strive to be democratic.

Another principle necessary for any democratic system is achieving a balance between the three powers that make up the state (executive, legislative and judicial). The main objective of implementing the rules of balance between the three powers is the stability of the state.

This article aims to study the Algerian legislative power during its eighth term (2017-2022), with a focus on the legal status of the acting Speaker of the National People's Assembly.

In fact, the remarks in the article aim to create a constitutional debate about the legal status of the Speaker of the National People's Assembly, and the proposals made in the article seek to receive adequate attention in the near future.

Keywords: *democracy, balance of powers, the National People's Assembly.*

ملخص:

من المسلم به أن الديمقراطية تعني حكم الأغلبية المنتخبة (حزب أو أحزاب الأغلبية بعد الائتلاف)، سواء على مستوى السلطات التنفيذية أو التشريعية أو كليهما. هذا المبدأ مكرس لدى جميع الدول الديمقراطية، أو تلك التي تسعى إلى أن تكون ديمقراطية. وهناك مبدأ آخر ضروري لأي نظام ديمقراطي وهو تحقيق التوازن بين السلطات الثلاث التي تشكل الدولة (التنفيذية والتشريعية والقضائية). إن الهدف الرئيسي من تنفيذ قواعد التوازن بين سلطات الدولة (الديمقراطية) هو إرساء استقرار الدولة.

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يهدف هذه المقال إلى دراسة السلطة التشريعية الجزائرية، خلال فترة عهدها الثامنة (2017 - 2022)، مع التركيز على موضوع الوضع القانوني لرئيس المجلس الشعبي الوطني بالنيابة.

في الواقع، الملاحظات الموجودة في المقال تهدف إلى خلق نقاش دستوري حول المركز القانوني لرئيس المجلس الشعبي الوطني، كما تسعى المقترحات الى أن تحظى بالاهتمام الكافي في المستقبل القريب.

الكلمات المفتاحية: ديمقراطية، التوازن بين السلطات، المجلس الشعبي الوطني.

Introduction :

It is recognized that democracy means the rule of an elected majority (party or parties of the majority after the coalition), whether at the level of the executive or the legislative powers or in both. This concept is relevant to all democratic states, or at least for those states seeking to be democratic.

Another concept necessary for any state’s democratic system is the realisation of a balance between the three powers that constitute a state (executive, legislative and judicial). The main purpose behind creating the rules of a balance between the powers of a democratic state is to establish a state stability.

The intention of this article is to study the Algerian legislative power, during the period of its eighth term (2017-2022), with the focus on one particular issue that is the speaker of the People’s National Assembly.

Indeed, the following remarks are to create a constitutional debate on the issue of the council’s speaker, and to make proposals that would gain adequate consideration in the near forthcoming:

1 / First Remark:

The 2016 constitution states in its article 131 that “The President of the People’s National Assembly shall be elected for the term of the legislature.” The election of the president means that his peers in the assembly elect him for the term of legislature.

However, the eight term of the National People's Assembly has seen three presidents. Indeed, the first one speaker was elected in conformity with the constitution and the internal rules and procedures of the assembly,

the second was elected after the assembly has gone through a chaotic situation, and the third and last one has gained the presidency through accreditation of the presidents of the parliamentary groups. It is to say that the second and third ways of getting to presidency of the People’s National Assembly are unknown in the constitution and in the rules and procedures.

Thus, the People’s National Assembly has known three president in its eight term because of its instability and the lack of the rule of law. Thus, the events experienced by the People’s National Assembly are completely inappropriate with the objective of building a democratic state based on the rule of law.

2 / Second Remark:

The same article 131 of the 2016 constitution reveals a constitutional loophole, where there is neither a mention on the possibility accorded to the members of the Assembly or to the majority of it to withdraw their confidence from the speaker of the assembly, nor the remove of the speaker from his presidency by any means. Therefore, the members of the Assembly and as well as the parliamentary groups have no right to remove the speaker if they are not satisfied with his performance and duties.¹

Thus, the Assembly elects its speaker for a term of a legislature, which is for 5 years, unless there is a legal inability pertaining him to perform his duties.² However, neither the 2016 constitution, nor the Organic Law No. 16-12 of August 25, 2016, fixing the organization and functioning of the People's National Assembly and the Council of the Nation as well as the functional relations between them and the Government have mentioned the vote for the mention of confidence or the discharge of the speaker of the Assembly.

The constitution in its article 132 refers to the organic law to define the organisation and the functioning of the People’s National Assembly. The enacted organic law 16-12 refers,³ in its article 11, to the internal regulations (rules and procedures). The internal rules and procedures states in its article 10 that:

“In the event of the vacancy of the presidency of the National People's Assembly due to resignation, incapacity or incompatibility or death, the President of the National People's Assembly shall be elected according to the same modalities provided for by these internal

regulations, within a maximum period of fifteen (15) days from the declaration of the vacancy.

The Bureau of the National People's Congress must meet to ascertain the vacancy and refer the matter to the Commission responsible for legal affairs.

The Commission draws up a report noting the vacancy and submits it to the plenary session for adoption by the majority of the members of the Assembly.

In this case, the operation of the election is directed by the dean of the non-candidate vice-presidents assisted by the two youngest members of the National People's Congress.”

In fact, the article 10 of the internal regulations has mentioned three possibilities to declare the vacancy of the presidency. The first one is the resignation, the second is incapacity or incompatibility, and the third one is death. Thus, article 10 does not mention the vote of confidence or the discharge of the speaker of the Assembly.

As for Article 3 of the internal regulations⁴, it is concerned only with procedures for the election and the inauguration of the speaker of the People’s National Assembly.

Therefore, after more than twenty years after the promulgation of the internal rules and regulations of the People’s National Assembly, on July 30, 2000 during the sixth legislature, it has become an outdated document. The internal rules and regulations cannot respond to legal issues and situations encountered by the assembly in its legislative business.

For that reason, it is a necessity and a must to update the internal rules of regulations and adapt its provisions to the constitution and to the organic law, either in conformity with the 2016 constitution or with a future constitution.⁵

3/ Third Remark

The constitution of 2016 did not stipulate in its article 131 the possibility of having several speakers who succeed one another at the assembly. The same observation is valid for the Organic Law No. 16-12 and for the internal regulations. One of the loopholes of the internal rules and regulations is that it has not foreseen the possibility of such a scenario.

In this context, we point out that the Tunisian legislator has organized the issue of one speaker for a legislature except when there is a legal incapacity as stated before. Thus, the internal rules of the Tunisian Assembly of the Representatives of the People, issued on 02 February 2015, has mentioned the possibility of withdrawing the confidence from the speaker of the assembly but just once in a term and through a vote called a vote on the withdrawal of confidence.

Such prevision and anticipation is detailed in article 51 of the internal rules of the Tunisian Assembly of the Representatives of the People, which states that:

“The Assembly of the Representatives of the People may withdraw confidence from its speaker or one of its two deputies with the approval of the absolute majority of the members of the Council based on a justified written request submitted to the Council’s office from at least one-third of the members, and the request shall be submitted to the plenary session to vote on the withdrawal of confidence or not, within a period not exceeding three weeks of its submission to the seizure office.

The vacancy resulting from the withdrawal of confidence shall be filled in the same way as the election set forth in articles 10 and 11 of this bylaw.

It can be said that in the event of resignation, the deputy who succeeds the independent speaker will perform the task of chairing the council on behalf of the council until the term ends.”

Once more, the amendment of the internal rules and regulations of the Algerian People’s National Assembly is reiterated to promote a durable stability in the assembly and to avoid the assembly to drop in chaotic situations as experienced throughout the eight legislature. Such chaotic situations have had certainly a negative impact on the assembly quality of business and on the management of the administration.

The other loophole to be pointed out is the non-provision, in the Algerian assembly internal rules and regulations, of the functions of first and second vice presidents as the Tunisian Assembly of the Representatives of the People did in article 52 of its internal regulations⁶.

4 / Fourth Remark

The enabling of a member of parliament from a minority party to take over the presidency of the National People's Assembly is a hazardous precedent that affects the concept of democracy, rule of law and state institutions credibility. Indeed, the governing of the majority is a sacro-saint principle in any democratic state and no exemption to this rule is granted.

However, political turmoil within the assembly has permitted a member of parliament from a minority party to chair the assembly. Nevertheless, the decision makers would have taken some measures, guarantees and shown a road map to preserve the democratic process in Algeria. The significant guarantee is that “the acting speaker of the National People's Assembly” would have to run the affairs of the assembly until the assembly is dissolved, either for early elections or after the completion of the mandate, and the holding legislative elections.

Thus, it is imperative to create parliamentary practises and custom followed by all members of the assembly in all circumstances. Among these practised the election of one speaker for a legislature except where there legal incapacities as shown above.

Accordingly, the National People's Assembly elects its speaker at the beginning of the legislature and what comes after in the presidency of the assembly, in constitutional and legal ways, would be an acting speaker with determined duties. Otherwise, the legislature would have several speakers in one legislature, which is unconceivable in the Algerian constitution and laws, and unthinkable for any world parliament.

5 / Fifth Remark

The fifth remark is to raise a financial issue that concerns the rights and privileges of the speaker of the national’s people assembly. Indeed, the national’s people assembly adopts its budget previsions on one speaker for the legislature. The objective of a budget previsions is the rational management of the budget of the assembly and the preservation of public funds.

With regards to the eight legislature, the assembly will encounter a legal problem where the national’s people assembly had three speakers and each of them can request the enjoyment of the privileges which are

granted to him as ex-president of the assembly after the end of his mandate in the assembly or after his retirement. In this case, it is certain that the assembly will have a serious overflow in its budget and a liability on the Algerian state budget.

The assembly also includes in its budget provisions the privileges granted to previous speakers (after the end of the mandate, retirement, death) through instructions from the bureau of the assembly.

Consequently, it is logical to say that it is not because one has occupied important functions that one has to keep the advantages associated with these functions all one's life.

Moreover, it is an incoherence and a violation of parliamentary ethics to put two persons who held the presidency of the assembly, one for months and the other for a full term (5 years), on the same threshold of privileges.

The perceived incoherence would probably encourage certain members of the assembly to race for the presidency by any means to take advantage of the privileges granted to the speaker of the assembly.

These are unnecessary budget charges if one bears in mind that the speakers as well as the members of the assembly are elected by the people and supposed to be the representative of the people. Therefore, the speakers and the vice presidents (bureau) of the assembly have no right to dispose of the assembly budget as they wish by granting among other privileges to themselves through instructions.⁷

Moreover, the instructions of the bureau of the assembly grant privileges to the nine members of the bureau without any control since the quaestors are members of the bureau. The legality of the instructions of the bureau of the assembly related to the financial expenses and their burden on the assembly budget will be discussed in a future article. Comparatively, the French national assembly created a special commission of fifteen members responsible for auditing and auditing the accounts. The special commission consists of a president, three vice-presidents and three secretaries. The special commission should have its president from a group, which has declared itself in opposition⁸.

Conclusion:

The eight legislature of the People’s National Assembly, a lower chamber of the Algerian parliament, has derogated from the constitutional provisions, the organic law No. 16-12 of August 25, 2016 and the internal rules and procedures organising it. Indeed, the eight legislature of the National People's Assembly has seen three presidents, which is completely unsuitable with the objective of building a democratic state based on the rule of law and transparency. Indeed, the internal rules and regulations has mentioned three possibilities to declare the vacancy of the presidency (the resignation, incapacity or incompatibility, and death) but not a word on the vote of confidence or the discharge of the speaker of the Assembly by other means.

Thus, it is imperative to amend the rules and regulations of the People’s National Assembly, an outdated document that cannot keep pace of evolution of the assembly and of the world parliaments.

Therefore, it is judicious to implement the rule according to which “one elected speaker at the beginning of the legislature” and what comes after in the presidency of the assembly, in constitutional and legal ways, would be an acting speaker with determined duties.

The key recommendation in this article is to consider the speaker who acts on behalf of the original speaker, elected at the first session, as an acting Speaker of the National People's Assembly except where the presidency vacancy was due to the death of the first speaker.

Thus, this rule would eliminate opportunism and anarchy and would consecrate constitutional traditions, stability, and promote democracy and the value of the Algerian parliament at the international level.

References:

¹ In the British House of Commons, there has been no revocation of Speaker since in 1695 Sir John Trevor was expelled from the House for corruption. He was accused of taking bribes from the East India Company and the City of London, and was investigated by a committee chaired by the Commissioner of Accounts, Paul Foley MP. On 7 March 1695, he was found guilty of accepting a bribe of 1000 guineas (£1050, but equivalent to around £1.6 million in 2009) from the City of London Corporation to aid the passage of a bill through the house. This was judged to be a "high crime and misdemeanour" and he was expelled from the House of Commons, a move which he initially resisted on the ground of ill-health. He was not asked to refund the bribe^[2] and retained his judicial position until his death at the age of 79 or 80 on 20 May 1717.

In <http://en.wikipedia.org>

² See articles 124 to 129 of the 2016 constitution.

³ Article 11 of the organic law states that “. - The President of the Council of Nation, and the president of the People's National Assembly are elected in accordance with the provisions of Article 131 of the Constitution.

The internal regulations of each room specify the modalities of their election.”

⁴ “ In accordance with article 114 of the Constitution and article 11 of the organic law establishing the organization and functioning of the National People's Assembly and the Council of Nation as well as the functional relations between the chambers of Parliament and the Government, the president of the National People's Congress, is elected by secret ballot in the event of a plurality of candidates. The candidate having obtained the absolute majority of deputies is declared elected.

In the absence of an absolute majority, a second round is organised between the first two candidates having obtained the greatest number of votes.

The candidate having obtained the majority is declared elected.

In the event of equal votes, the oldest candidate is declared elected.

In the case of a single candidate, the election is carried out by show of hands and he is declared elected if he obtains the majority of votes.”

⁵⁵ In [Encyclopaedia Britannica](#) “Parliamentary procedure, also called rules of order, the generally accepted rules, precedents, and practices commonly employed in the governance of deliberative [assemblies](#). Such rules are intended to maintain [decorum](#), to [ascertain](#) the will of the majority, to preserve the rights of the minority, and to [facilitate](#) the orderly transaction of the business of an [assembly](#).”

⁶ Chapter 52 of the Tunisian Assembly of the Representatives of the People states:

“In the event of the final vacancy of the position of the Speaker of the Assembly of the Representatives of the People, his first deputy shall exercise all his powers until the election of a new president in accordance with the requirements of these by laws, within a maximum deadline of fifteen days from the date of the vacancy.”

⁷ See articles 11 and 12 of the internal regulations of the People’s National Assembly

⁸ Article 16 of the internal regulations of the French assembly states that :

“1 The expenses of the Assembly are settled by fiscal year (6).

2 At the beginning of the legislature and, each following year, with the exception of the one preceding the renewal of the Assembly, at the beginning of the ordinary session, the Assembly appoints, with the proportional representation of the groups according to the procedure provided for by the Article 25, a special commission of fifteen members responsible for verifying and clearing the accounts. Its office consists of a president, three vice-presidents and three secretaries. Can only be elected to the presidency a Member of a group which has declared itself in opposition. Board appointments are made with an attempt to replicate the political configuration of the Assembly and to ensure representation of all its components. The members of the board are appointed under the conditions provided for in Article 39 (1).

3 The committee discharges the quaestors for their management or reports to the Assembly. At the end of each financial year, it draws up a public report (2).

4 Members of the Bureau of the Assembly cannot be part of this committee.

5 The Bureau determines by internal regulations the rules applicable to accounting.

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