

# Strengthening the motion of censure as a Mechanism to raise the Government's Political responsibility in the 2020 Constitutional Amendment

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## Abstract

The legislative power has several oversight mechanisms against the executive power, and the mechanism of the motion of censure is considered one of the most important, and it was enshrined in the Algeria's constitutions starting with the 1989 and 1996 constitutions, as well as the 2016 constitutional amendment. However, political practice in Algeria has proven the reluctance of many governments in the Algerian political system to submit the annual statement of general policy in many successive governments. This is perhaps due to the constitutional founder linking the motion of censure to the statement of general policy, in addition to surrounding it with some strict conditions, which prompted the constitutional founder, in light of the constitutional amendment of 2020, to strengthen this mechanism, as it responded to the jurisprudential demands that called for expanding the motion of censure and not linking it only to the statement of general policy. This was embodied in the text of Article 161, which expanded the actions that raise the government's responsibility through the mechanism of the motion of censure, which now includes another means in addition to the statement of general policy, namely the interpellation, and thus the parliamentary interpellation became a means of oversight that raises the resignation of the government in the event that the motion of censure was voted on.

Keywords: parliamentary oversight, motion of censure, policy statement, interpellation.

## Introduction

Parliamentary oversight finds its basis in the parliamentary system, as this system distributes power between three legislative, executive and judicial bodies. The separation of these powers is not absolute, but rather cooperation and participation in the exercise of powers arises. Mutual oversight between the executive and legislative powers is considered one of the most important

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guarantees that aim to achieve the principle of balance between them, so that each authority possesses mechanisms of pressure that it exercises on the other, and among these mechanisms is the motion of censure, by virtue of which the representatives can initiate procedures to withdraw confidence from the government. On this basis, the motion of censure is considered “an offensive weapon placed in the hands of the representatives through which they can oppose the continued existence of the government after determining its political responsibility<sup>1</sup>.”

Algeria introduced the motion of censure for the first time in the 1989 constitution, and it was confirmed in the 1996 constitution and the constitutional amendment of 2016. However, political practice in Algeria has proven the reluctance of many governments in the Algerian political system to submit the annual statement of general policy in many successive governments. This is perhaps due to the constitutional founder linking the motion of censure to the statement of general policy, in addition to surrounding it with some strict conditions, which prompted the constitutional founder, under the constitutional amendment of 2020, to strengthen this mechanism, as he responded to the jurisprudential demands that called for expanding the motion of censure and not linking it only to the statement of general policy. This was embodied in the text of Article 161, which expanded the actions that raise the government’s responsibility through the mechanism of the motion of censure, which now includes another means in addition to the statement of general policy, namely the interpellation. Thus, the parliamentary interpellation became a means of oversight that raises the resignation of the government in a solution that was Voting on the motion of censure. From this standpoint, we raise the following problem statement:

How effective is the mechanism of the motion of censure as a constitutional guarantee for the embodiment of the political responsibility of the government? To reply to this question, the topic is addressed within a plan that includes two sections: The first section: Controls for practicing the mechanism of the motion of censure. The second section: Legal implications resulting from practicing the mechanism of the motion of censure.

#### Section 1: Controls for practicing the mechanism of the motion of censure.

The motion of censure is a list signed by a number of representatives that includes criticism of the government’s efforts. Its procedures and results differ from the regular lists that follow the government’s general policy statement. It is a constitutional tool that allows the government to be held accountable if it deviates from the specific directions in implementing the approved program. It can lead to its downfall when the legal conditions required to initiate and vote on it are met. Given the seriousness of this procedure, constitutions have surrounded it with conditions and procedures. Accordingly, we will address these conditions and legal procedures in the following two requirements: conditions before submitting the motion of censure (1.1) and others after submitting the motion of censure (1.2).

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<sup>1</sup>-Philippe Ardant , institution politiques et droit constitutionnel, France , paris , librairie général de droit et jurisprudence 12 em édition, 2000, p 584.

### 1.1: Scope of the oversight petition mechanism

The 2020 constitutional amendment<sup>1</sup> sought to expand the scope of parliamentary oversight by expanding the actions that require the implementation of the motion of censure after it was subject to the government submitting the annual statement, as the constitutional founder added the interpellation in accordance with what was approved by the text of Article 161, which states: "The National People's Assembly, when discussing the general policy statement or following an interpellation, may vote on a motion of censure that focuses on the responsibility of the government."

#### 1.1.1: Linking the motion of censure to the annual statement of general policy

The motion of censure is to inform Parliament of what was implemented during the past year of the program and what is in the process of being completed, highlighting the difficulties that the government encountered and the future prospects that it intends to undertake<sup>2</sup>.

The constitutional founder settled in the latest amendment of 2020 on the motion of censure as a constitutional means that can be arranged on the occasion of presenting the general policy statement. The government is obligated to submit annually to the National People's Assembly a statement on general policy. By reading the text of Article 111 of the constitutional amendment of 2020, which states: "The Prime Minister or Head of Government must submit annually to the National People's Assembly a statement on general policy....." (which was confirmed by the text of Article 51 of Organic Law 16-12), the mandatory nature of the procedure for presenting the government's general policy statement before the National People's Assembly becomes clear. It also becomes clear that the constitutional founder linked resorting to the motion of censure to the general policy statement<sup>3</sup>. It is clear from this that representatives can only exercise this right once a year at most<sup>4</sup>.

This procedure is immediately followed by a discussion of the government's work, which may result in either the submission of a list, or the filing of a motion of censure by the National People's Assembly, which may result in a mere warning to the government to its removal from power by dismissing its responsibility, or the government's initiative to request a vote of confidence.<sup>5</sup>

#### 1.1.2: Expanding the mechanism of the motion of censure to include interrogation

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<sup>1</sup> Presidential Decree No. 20-442 of December 30, 2020, promulgating the constitutional amendment approved in the referendum of November 1, 2020, Official Gazette No. 82

<sup>2</sup> Salma Aba, The Relationship between the Executive and Legislative powers in Light of the Constitutional Amendments after 1996, Master's Thesis in Law, Specialization in Constitutional Law, Department of Law, Faculty of Law and Political Science, Hadj Lakhdar University, Batna, 2013-2014.

<sup>3</sup>- Article 111 of the 2020 constitutional amendment states: "The Prime Minister or the Head of Government, as the case may be, must submit annually to the National People's Assembly a statement on the general policy..."

<sup>4</sup>Amar Abbas, Parliamentary Oversight of Government Work in the Algerian Political System, Dar Al-Khaldouniya for Publishing and Distribution, Algeria, 2006, p. 272.

<sup>5</sup> See Article 111 of the Constitutional Amendment of 2020, see also Article 51 of Organic Law No. 16-12 dated 22 Dhu al-Qi'dah 1437 corresponding to 25 August 2016 defining the organization, work, and functional relations between the National People's Assembly and the Council of the Nation and the government, as amended and supplemented by Organic Law 23-06 dated 05/18/2023, JORA./No. 35

The interrogation of the government is the strongest tone of parliamentary questions because it includes a question accompanied by accusation, criticism and accountability of the government<sup>1</sup> for its actions on a current issue and within the scope of implementing its program approved by Parliament, which is a political charter between Parliament and the government. The interrogation is the product of the French system, while Algeria knew this mechanism under the successive Algerian constitutions of 1976, 1989 and 1996, as well as the constitutional amendment of 2016. However, what was criticized about the consecration of this mechanism was that it was merely an informational tool, since its practice did not entail any political responsibility for the government, until the constitutional amendment of 2020, which strengthened the effect of the interrogation as a control mechanism over the government's actions through the Article 161 thereof.

First - Conditions for practicing the interrogation:

In order for the parliamentary interrogation to be acceptable, a set of conditions must be met, including those related to the form of the interrogation and those related to its subject.

-- Formal conditions:

✓ Submitting the interpellation request in writing to the President of one of the two chambers of Parliament. This condition is not explicitly stated in the legal texts, but all the terms mentioned in the content of the articles mentioned below "request, signs, sends, distributes, posts" indicate that the interpellation is submitted in writing.

✓ Submitting the interpellation request in writing to the President of one of the two chambers of Parliament<sup>2</sup>. This condition is not explicitly stated in the legal texts, but all the terms mentioned in the content of the articles mentioned below "request, signs, sends, distributes, posts" indicate that the interpellation is submitted in writing.

✓ The requirement of the legal quorum: The interpellation will not be valid unless it is signed by at least three 30 members of the National People's Assembly or thirty 30 members of the Council of the Nation (Article 66/2 of Organic Law No. 16-12, as amended and supplemented). This condition is exaggerated, as its achievement on the ground is extremely difficult, which leads to curbing the use of this mechanism<sup>3</sup>.

✓ The interrogation must include its subject: It must include an explanation of its motives and facts. Article 68 of Organic Law 16-12, as amended and supplemented, was satisfied with stating the necessity of presenting a presentation on the subject of the interrogation<sup>4</sup>.

- Objective conditions:

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<sup>1</sup>Walid Chriet: Legislative authority through Algerian constitutional development, Abu Bakr Belkaid University, Tlemcen, PhD thesis in public law, 2011-2012, p. 347

<sup>2</sup>See Articles 66/2 of Organic Law No. 16-12, Articles 92/2 and 3 of the Internal Regulations of the National Assembly of 2017, and Article 23/3 of the Internal Regulations of the National People's Assembly.

<sup>3</sup> Miloud Dhibih: The effectiveness of the Algerian Parliament (comparative analytical comparison) p. 132

<sup>4</sup> The above-mentioned article states: "The representative of the interpellators shall submit a presentation on the subject of his interpellation during the session of the National People's Assembly or the Council of the Nation designated for this purpose, and the government shall respond to that."

✓ One of the most important objective conditions stipulated by the legislator is that the subject of the interpellation be related to a matter of national importance or the implementation of laws. Thus, the constitutional founder has expanded the actions that require interpellation. After interpellation was limited to one of the current issues in the constitutional amendment of 2016, members of parliament can now interrogate the government on any matter of national importance, as well as the implementation of laws. Article 66 of Organic Law 16-12, after its amendment, included an exception in matters for which an interpellation cannot be submitted, which are matters related to national defense and state secrets in foreign relations, and the answer must be within a maximum period of 30 days.

#### Second - Interrogation procedures:

Organic Law 16-12, amended and supplemented, organized the procedures for conducting interrogation in its ninth section pursuant to the provisions of Articles 66, 67, and 68, whereby the President of the National Assembly or the President of the National People's Assembly shall notify the text of the interrogation signed, as the case may be, by at least thirty deputies or thirty 30 members of the National Assembly, to the Prime Minister or the Head of Government, as the case may be, within 48 hours following its acceptance. Then, the National People's Assembly Office or the National Assembly Office shall determine, in consultation with the government, the interrogation session, so that the session may be held within 30 days at most following the date of notification of the interrogation.

The representative of the interrogators may withdraw the interrogation before it is presented in the session and shall inform the President of the relevant chamber of the government. The representative of the interrogators shall submit a presentation addressing the subject of his interrogation during the session of the National People's Assembly or the National Assembly designated for this purpose, and the government shall respond to that.

#### 1.2 Conditions and procedures for exercising a motion of censure

##### 1.2. 1 : Tightening the percentage of signatures on the motion of censure

Organic Law 16/12 stipulated in its Article 58, which came in implementation of the text of Article 161 of the Constitution, the signature of at least 1/7 of the number of representatives in order for the motion of censure to be accepted, and the signature of more than one motion of censure for each representative was prohibited<sup>1</sup>, but the requirement of this percentage is exaggerated, which makes censure difficult to achieve<sup>2</sup>.

##### 1.2.2 Filing and publishing a motion of censure

The text of the motion of censure is submitted by the delegate of its owners to the office of the National People's Assembly to be published in the Official Gazette of the National People's Assembly

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<sup>1</sup> See Article 59 of Organic Law 16-12 as amended and supplemented.

<sup>2</sup> Aissa Taibi, The Nature of the Political Responsibility of the Prime Minister in Algeria in Light of the 2008 Constitutional Amendment, Algerian Journal of Legal, Economic and Political Sciences, Issue 04, Year 210, p. 21.

discussions, and is posted and distributed to all deputies<sup>1</sup>. The purpose of this publication is to enable public opinion to be informed of the criticisms directed at the government<sup>2</sup>.

#### 1.2.3-Parties intervening to discuss the motion of censure.

Organic Law 16-12 limits the parties intervening during the discussion of the motion of censure related to the government's statement of general policy, by questioning the government to:

- ✓ The government upon its request
- ✓ The delegate of the motion of censure
- ✓ A deputy wishing to intervene against the motion of censure
- ✓ A deputy wishing to intervene in support of the motion of censure<sup>3</sup>.

#### 1.2.4- Imposing a time limit before the vote on the motion of censure.

The constitutions set a time period before voting on the motion of censure. This period allows the deputies who initiated the motion of censure to seek support from their colleagues in order to support them during the vote. In return, it is an opportunity for the government to take action with the aim of thwarting the motion, so that the council is unable to achieve the required quorum. This period also allows the absent deputies to wait to join the session to vote on the motion<sup>4</sup>. According to the Algerian constitution, the motion of censure is not voted on until three days after the date of its submission.<sup>5</sup>

#### 1.2.5- The legal quorum for voting on a motion of censure

In order for the motion to have its legal effects, the approval of 2/3 <sup>6</sup>of the deputies is required. However, requiring this percentage reduces the chances of the National People's Assembly moving the government's responsibility to a minimum and supporting the stability of the government, as it has approved the possibility of forming a support government of 1/3 of the deputies plus one and an opposition government of 2/3 minus one deputie. Also, when calculating the votes that came in opposition to the government, those deputies who abstained from voting, or were neutral, or whose votes were cancelled, are considered as if they voted in favor of the government, i.e. against the motion of censure. The success of the motion of censure also depends on the type of the majority prevailing in the National People's Assembly. If the government has a clear majority, the chances of the motion of censure succeeding are slim, and the issue of overthrowing the government is unlikely<sup>7</sup>

It is worth noting that if the constitutional founder obliged the government to submit a general policy statement before the National People's Assembly, he granted the government the

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<sup>1</sup> - See Article 60 of Organic Law 16-12 as amended and supplemented.

<sup>2</sup>Ammar Abbas, previous reference, p. 273.

<sup>3</sup>See Article 61 of Organic Law 16-12 as amended and supplemented.

<sup>4</sup>Belhaj Saleh, Political Institutions and Constitutional Law in Algeria, from Independence to Today, Office of University Publications, Algeria, 2009, p. 286.

<sup>5</sup> See the second paragraph of Article 162/2 of the 2020 constitutional amendment.

<sup>6</sup>See Article 61 of Organic Law 16/12 as amended and supplemented

<sup>7</sup>Akila Kharbashi, The Center of the Council of the Nation in the Algerian Constitutional System, Thesis for a Doctorate in Legal Sciences, Department of Legal Sciences, Faculty of Law and Political Science, Hadj Lakhdar University, Batna, 2009/2010, pp. 7316-317



discretionary power to present its general policy statement before the National Assembly. There is nothing that compels the government to submit a general policy statement before it<sup>1</sup>, and here the role of the second chamber is marginalized and there is inequality between the two chambers.

## Section 2 :Legal consequences of invoking the political responsibility of the government

Parliament's approval of the government's work program does not mean that it evades responsibility. Rather, its responsibility can be raised through the mechanism of the motion of censure, despite the difficult conditions and procedures to achieve in addition to the support of the parliamentary majority. However, despite this, the possibility of successfully invoking this mechanism remains not impossible. If this possibility is achieved, the government submits its resignation (2.1). The result can also be reflected against Parliament by the President of the Republic using his authority to dissolve (2.2).

### 2.1: Government resignation:

If Parliament agrees to withdraw confidence from the government, this leads to the end of the exercise of the political function before the end of its natural term. Therefore, expressing no confidence requires a joint resignation (2.1.1) or an individual resignation (2.1.2). But is the President of the Republic obligated to accept it (2.1.3)?

#### 2.1.1: Solidarity resignation

It is the responsibility of the entire government for the general policy it is pursuing and which has not gained the confidence of Parliament, which leads to the resignation of the Prime Minister or the Prime Minister and members of his government. There are certain obligations arising from ministerial solidarity, as the ministers form the Council of Government, and the latter cannot carry out its work unless the condition of unity and solidarity is met<sup>2</sup>. Referring to the Constitution in its Article 162/3, which stipulates: "If the National People's Assembly approves the motion of censure, the Prime Minister shall submit the resignation of his government to the President of the Republic." This is the same effect confirmed by Article 62, Paragraph Three of Organic Law 16/12, which was adopted by the Tunisian constitutional founder in Chapter 98, which states: "The resignation of the Prime Minister shall be considered a resignation of the entire government, and the resignation shall be submitted in writing to the President of the Republic, who shall inform the President of the House of Representatives of it."

#### 2.1.2 Individual resignation:

Individual resignation is the responsibility of each minister individually, arising as a result of the individual action of one of the ministers in a matter related to the management of the affairs of his ministry, which results in the removal of the minister from whom confidence was withdrawn without affecting the rest of his colleagues. For example, the Tunisian constitution stipulates the establishment of individual responsibility alongside the collective responsibility of the members of

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<sup>1</sup> See paragraph 7 of Article 98 of the 2016 Constitutional Amendment

<sup>2</sup>Fatima Zahra Ghribi, Legislative Authority's Oversight of the Executive Authority's Actions in the 1996 Constitution, Master's Thesis in Constitutional Law and Political Institutions, University of Blida, 2005, p. 32.

the government, which is what Article 97 stipulates in its fourth paragraph, which states: "The House of People's Representatives may withdraw confidence from a member of the government."

2.1.3: The extent to which the President of the Republic is obligated to accept the resignation.

It is unreasonable for the government to insist on running the country's public affairs in the face of a parliamentary majority that opposes its policy, as this results in a deadlock in the relationship between the government and parliament. Therefore, the first result that the motion of censure necessarily leads to is the resignation of the government. In fact, it can be said that the constitution indicated the necessity for the prime minister to submit the resignation of his government immediately after the conditions required in the motion of censure are met. However, it did not clarify the extent of the President's obligation to accept or reject the government's resignation. By referring to Article 107, which stipulates that, in the event that the National People's Assembly does not approve the government's work plan, the President of the Republic shall appoint a new Prime Minister according to the same procedures, and it is inferred from this that the President of the Republic is obligated to accept the resignation. However, it is possible to rely on Article 111/7, which stipulates: "In this case, the President of the Republic may resort to the provisions of Article 151 before accepting the resignation." In contrast, the Tunisian constitution did not clarify the extent of the President's obligation to accept the resignation, and the Tunisian constitutional founder was satisfied with stipulating the presentation of an alternative candidate, as mentioned previously.

2.2.:Repercussions of moving a motion of censure against Parliament.

The petition for censure may have negative repercussions on Parliament, by the President of the Republic using his authority to dissolve the National People's Assembly. The Algerian constitutional founder did not address the possibility of dissolving the National People's Assembly in the event of the government's resignation. Therefore, some constitutional law scholars have said that the first result of a successful petition for censure is the fall of the government presented by the Prime Minister. He adds that, in return, the President of the Republic can resort to using his right to dissolve the National People's Assembly on the basis that the President of the Republic is the one who chose and appointed the Prime Minister and the members of the government and that the implemented program is the program of the President of the Republic. The fall of the government by withdrawing confidence from it through the petition for censure may prompt the President of the Republic to react immediately to defend his program<sup>1</sup>. By reading Article 151 of the constitutional amendment of 2020, we find that it states: "The President of the Republic may decide to dissolve the National People's Assembly or hold legislative elections before their due date..." It is understood from this article that the President of the Republic's authority to resort to the presidential dissolution of the National People's Assembly is an absolute and unrestricted authority if the dissolution is not stipulated within the scope designated for refusing to grant confidence to

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<sup>1</sup>Ammar Abbas, previous reference, p. 279.



the government when requested by the National People's Assembly in Paragraph 6 of Article 111 of the 2020 Constitutional Amendment: There is nothing to prevent the President of the Republic from resorting to dissolution for other reasons, including dissolution in exchange for withdrawing confidence through a motion of censure. However, the absolute authority of the President of the Republic does not mean that the matter is very easy. After the dissolution<sup>1</sup>, legislative elections will be held early within a maximum period of 3 months, and it is likely that the same majority that was dissolved will return, which puts the President in a critical situation. Therefore, the dissolution is subject to precise legal and political calculations. The President of the Republic does not resort to it unless he secures a parliamentary majority supporting him. It may also be imagined that the President of the Republic will resort to dismissing the government and dissolving the National People's Assembly together, then reappointing the resigned Prime Minister and all or some of its former ministers within the new government. These are possibilities, and if they occur, the motion of censure will be emptied of its content and become one of the constitutional mechanisms that have no effect<sup>2</sup>.

#### Conclusion:

The mechanism of the motion of censure that the Algerian constitutions derived from the parliamentary system aims to oblige the government to submit its resignation whenever the conditions for its activation are met, in order to create a balance between the legislative and executive authorities. However, through the analysis and interpretation of the constitutional texts and internal regulations, it is noted that they have been fenced in with conditions and procedures that make it difficult to overthrow the government. The Algerian constitution before the 2020 constitutional amendment was severe and strict, especially when it linked the motion of censure to the annual statement of general policy, which gave the government annual immunity that made it immune from censure. However, the 2020 constitutional amendment brought an important gain regarding the government's responsibility through the mechanism of the motion of censure, as it expanded the latter and did not limit it to the annual statement, but rather expanded it to include the interrogation, which has become one of the means that raises the government's responsibility after this means was just an inquiry and nothing more.

Accordingly, we reach the following results:

✓ The mechanism of the motion of censure was strengthened under the constitutional amendment of 2020, as the latter responded to the jurisprudential demands that called for expanding the motion of censure and not linking it only to the general policy statement. This was embodied in the text of Article 161, which expanded the actions that raise the government's responsibility through the mechanism of the motion of censure. The latter is no longer linked only to the general policy statement as known in previous constitutions, but rather includes another

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<sup>1</sup> Ammar Abbas, *The Relationship between Authorities in Contemporary Political Systems, and in the Algerian Political System*, 1st ed., Dar Al-Khaldouniya, 2010, pp. 171-174.

<sup>2</sup> Drif kaddour, the previous reference, p. 99.

means, which is the interpellation. Thus, the parliamentary interpellation has become a means of oversight that raises the government's resignation if the motion of censure is voted on.

✓ Fencing the motion of censure with strict conditions through the exaggerated legal quorum for the initiative (signature 1/7 in Algeria), as these percentages are considered impossible and not easy for representatives to reach.

✓ Limiting the motion of censure to the deputies of the National People's Assembly without the members of the National Assembly, which is not in line with the text of Article 160, which allowed both chambers of Parliament equally to question the government. Based on the above, we propose the following recommendations in order to activate the mechanism of the motion of censure to establish the political responsibility of the government:

✓ Allowing deputies to move the motion of censure whenever it is necessary to question the government, as has been done in comparative constitutions, and not linking the motion of censure to the annual statement of general policy.

✓ The need to reduce the number of deputies who initiate the signing of the motion of censure to 1/10 - The need to amend the required majority for voting to overcome the negative effects of the conditional majority and replace it with an absolute majority of the deputies present.

✓ Granting the oversight role to the second chamber to achieve the purpose for which it was established. - Reducing the obstacles that prevent representatives from performing their oversight role, most notably the political culture that results from the feeling that governments do whatever they want regardless of the National People's Assembly, which affects the Assembly in performing its oversight role.

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