

	Science, Education and Innovations in the Context of Modern Problems Issue 2, Vol. 9, 2026	
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Issue web link	<h2 style="text-align: center;">Government Formation under the 2020 Algerian Constitutional Amendment: A Constitutional Analysis of Article 103 and the Limits of Presidential Authority</h2> <p>Dr. University of Djilali Bounaama Khemis Miliana Algeria Email: chitaabdnour44@gmail.com</p> <p>https://imcra-az.org/archive/392-science-education-and-innovations-in-the-context-of-modern-problems-issue-2-vol-9-2026.html</p>	
Keywords	Government formation; Algerian Constitution; Article 103; executive power; Prime Minister; Head of Government; constitutional amendment; separation of powers.	
Abstract <p>The government occupies a central position within the Algerian constitutional system as the second core component of the executive authority, alongside the Presidency of the Republic. Its constitutional significance lies not only in the scope of its powers but also in the mechanisms governing its formation, which constitute the institutional foundation for the exercise of executive authority. The 2020 constitutional amendment introduced substantial changes to the process of government formation, particularly through Article 103, by linking the appointment of the Prime Minister or the Head of Government to the results of legislative elections. This study aims to analyze the constitutional framework governing government formation in Algeria following the 2020 amendment, with a specific focus on the legal and political implications of Article 103. It examines the dual model adopted by the constitutional legislator, whereby the leadership of the government alternates between a Prime Minister and a Head of Government depending on whether the legislative elections produce a presidential majority or an opposing parliamentary majority. The research also explores the extent of the President of the Republic's discretion in appointing and dismissing the head of government, as well as the constitutional limits imposed on this authority. Adopting an analytical and doctrinal approach, the study critically assesses the balance of power within the executive branch, the degree of governmental autonomy, and the effectiveness of constitutional controls designed to regulate government formation. The findings reveal that, despite the apparent reinforcement of parliamentary influence through electoral outcomes, the President of the Republic continues to play a dominant role in shaping the executive authority. This dominance raises important questions regarding executive balance, political accountability, and constitutional coherence. The study concludes that while the 2020 amendment represents a qualitative development in Algerian constitutional practice, further clarification and refinement of constitutional provisions are necessary to strengthen institutional equilibrium and ensure effective democratic governance.</p>		
Citation Chita Abdenmour. (2026). Government Formation under the 2020 Algerian Constitutional Amendment: A Constitutional Analysis of Article 103 and the Limits of Presidential Authority. <i>Science, Education and Innovations in the Context of Modern Problems</i> , 9(2), 1-8. https://doi.org/10.56334/sci/9.2.41		
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Received: 11.09.2025	Accepted: 22.12.2025	Published: 11.01.2026 (available online)

Introduction:

Like other constitutional systems around the world, the executive authority is composed of the President of the Republic and the government, which differs in terms of who leads it, whether a Head of Government or a Prime Minister, depending on each system. This is also the case adopted by Algeria in its political system. In this regard, we find that the Algerian constitutional founder has given great attention to the government and has granted it an important and central position, as evidenced by the successive constitutional texts that have governed the formation of this constitutional body, whether under the leadership of a Head of Government or a Prime Minister. What draws

attention, however, is the active role of the President of the Republic in forming this institution, as he has come to rely on the results of the legislative elections. If the legislative elections result in a presidential majority, the President of the Republic appoints a Prime Minister. If the results of the legislative elections result in a parliamentary majority, the President of the Republic appoints a Head of Government, who enjoys some broad powers compared to the Prime Minister.

Based on the foregoing, we propose the following research question: To what extent are the constitutional frameworks and controls effective in forming the government, and what are the limits of the President of the Republic in this regard?

To answer this question, we divided this research into two chapters: The first chapter: Adopting the technique of appointment to the position of Prime Minister or Head of Government.

The second chapter: The appointment of ministers based on who leads the government.

Chapter One: Adopting the Technique of Appointment to the Position of Prime Minister or Head of Government

The government is considered a constitutional body alongside the Presidency of the Republic and enjoys powers that contribute to embodying and implementing the program of the President of the Republic. Given its importance in the parliamentary system, the Constitution has granted it an important position, reflected in the manner of its formation, as evidenced by the provisions of the Algerian constitutional amendment of 2020, which stipulated the unity of the authority responsible for appointing the leader of the government, with a difference in the method of its formation. This is what we seek to clarify by first addressing the appointment of the Prime Minister or the Head of Government.

Section One: Appointment of the Prime Minister or the Head of Government

The 2020 constitutional amendment introduced a new method for appointing the leader of the government, a procedure that constitutes a precedent in the history of the Algerian Constitution. Through it, the constitutional legislator adopted dual polarity at the level of the leadership of the government. However, this is linked to the results of the legislative elections. If the legislative elections result in a presidential majority, the President of the Republic appoints a Prime Minister (A). If the results of the legislative elections result in a parliamentary majority other than the presidential majority, the President of the Republic appoints a Head of Government (B).

A- The Position of Prime Minister Derived from the Presidential Majority

The appointment of the Prime Minister has witnessed a new approach in the method of appointment, whereby the President of the Republic relies on the results of the legislative elections that produce a presidential majority, enabling him to issue a presidential decree appointing him. At the same time, he has the authority to terminate his duties.

1- How the Prime Minister Is Appointed:

Based on the provisions of the 2020 constitutional amendment, we find that the first paragraph of Article 103 stipulates that the government is led by a Prime Minister if the legislative elections result in a presidential majority. Likewise, the first paragraph of Article 105 of the same Constitution states that "If the legislative elections result in a presidential majority, the President of the Republic appoints a Prime Minister." From these two paragraphs, it becomes clear that if a parliamentary majority with the same presidential orientation prevails in the legislative elections, the President of the Republic appoints a Prime Minister and entrusts him with managing and leading the government. However, by comparing the first paragraph of Article 105 with the fifth paragraph of Article 91 of the 2016 constitutional amendment, it becomes evident that the authority of the President of the Republic to appoint the Prime Minister has changed and taken a different course in the 2020 amendment compared to what it was previously. Despite the Constitution granting the President of the Republic the authority to appoint the Prime Minister, there are criteria for this appointment, among which is the element of trust, which is considered the fundamental condition for the President of the Republic in the appointment process. This may indicate the freedom and broad discretionary authority he enjoyed under the 2016 constitutional amendment and before. However, despite its breadth, this authority is not absolute, since the President of the Republic is the guardian of the Constitution, the embodiment of the unity of the nation, and the guarantor of the stability of constitutional institutions. It is inconceivable that the President of the Republic would appoint a person to this position who is not trustworthy. In addition, reputation plays an important role, as does competence, which is among the most important criteria relied upon by the President of the Republic, as well as political affiliation.

However, by returning to the previous reading of Article 105, it appears that the constitutional founder adopted the term "parliamentary majority" that shares the same orientation as the President of the Republic and called it the "presidential majority." This designation, in our opinion, is subject to criticism, on the basis that there is only one majority in parliament, namely the parliamentary majority, whether it aligns with the orientations of the President of

the Republic or differs from them. In other words, the dominant majority in parliament can only be called the parliamentary majority, which remains consistent regardless of whether its inclinations and orientations align with or differ from presidential policy. It should also be noted that the President of the Republic appoints from this presidential parliamentary majority the appropriate person for the position of Prime Minister without any condition or restriction, which grants him authority and freedom that increase the strength of his dominance over the executive authority.

From the foregoing, it can be said that the Prime Minister appointed by the President of the Republic on the basis of the presidential parliamentary majority resulting from the legislative elections is merely an instrument for implementing and embodying the tasks of the President of the Republic, which explains his subordination to him. His position, like that of the other ministers, differs only in some powers, such as presiding over government meetings.

2- Termination of the Prime Minister's Duties:

It should be noted that these reasons are included in the provisions of the 2020 constitutional amendment, which clarified that there are three situations that lead to the termination of the Prime Minister's duties. Among the reasons is the submission of his resignation. In this regard, resignation may be mandatory or voluntary. Mandatory resignation by operation of law occurs when parliament does not approve the government's action plan. In this case, parliament's refusal to approve the government's action plan places the government in an awkward position, forcing the Prime Minister to submit the government's resignation to the President of the Republic. The Prime Minister also submits his resignation to the President of the Republic in the event of a vote on a motion of censure by a two-thirds majority of deputies, where voting does not take place until three days after the motion of censure is submitted. Likewise, in the event of a lack of approval of a vote of confidence, the Prime Minister or the Head of Government, as the case may be, resigns, as well as in the event of his candidacy for the presidency of the Republic. As for voluntary resignation, Article 113 of the latest amendment stipulates that the Prime Minister or the Head of Government, as the case may be, may submit the government's resignation to the President of the Republic. However, what is evident is that the constitutional founder did not specify the reasons for voluntary resignation. The absence of defined reasons opens the door for the Prime Minister to submit his resignation whenever he deems it appropriate and in line with his personal interests. Given that the position of Prime Minister is a sensitive and important position in the state, the reasons for voluntary resignation should be specified. There is also dismissal, which means that the President of the Republic appoints the Prime Minister or the Head of Government, as the case may be, and terminates their duties. It should be noted that in the event of a vacancy in the position of President of the Republic, the existing government cannot be dismissed or reshuffled during the occurrence of the impediment, death, or resignation of the President of the Republic, until the new President of the Republic begins exercising his duties.

As for death, the Algerian constitutional legislator did not address this case. In practice, this situation has not occurred in Algeria, but it is clear that in the event of the death of the Prime Minister, the President of the Republic issues a presidential decree terminating the Prime Minister's duties due to death.

1- How the Head of Government Is Appointed:

Previously, under the Algerian constitutional system, the President of the Republic enjoyed broad powers and prerogatives, including the authority to appoint and choose the most suitable person to head the government, which in reality was a manifestation of the government's responsibility before him. He alone selected and appointed him according to his personal assessments and inclinations, making the Head of Government indebted in loyalty and subordination to the President of the Republic. However, with reference to the developments of the 2020 constitutional amendment, it is observed that the Algerian constitutional founder introduced a new pattern completely different from what existed previously in the formation of the government. This amendment introduced a new procedure that constitutes a precedent in the history of the Algerian constitutional experience. It revolves around the case where the legislative elections result in a parliamentary majority other than the presidential majority. In this case, the President of the Republic appoints a Head of Government from this majority. This indicates that the Constitution has linked the appointment of the Head of Government exclusively to the legislative elections related to the National People's Assembly, without regard to presidential elections. Consequently, presidential elections are not considered in determining the type of government. It should also be noted that the Constitution excluded the President of the Republic from the procedures for appointing the Head of Government, which granted the latter a degree of organic independence derived from the popular will. In other words, the people are the ones who directly choose the government, and for this reason, it is proposed to abolish the responsibility of the Head of Government before the President of the Republic and grant it to parliament and the people.

Based on the foregoing, the naming of the Head of Government is no longer a discretionary authority linked to the inclinations and orientations of the President of the Republic, which he previously exercised after conducting formal consultations with the parliamentary majority and various political actors. Rather, it has become a task undertaken by the popular will expressed through the ballot boxes.

2- Termination of His Duties:

The same applies to the Head of Government, whose termination of duties is also in the hands of the President of the Republic pursuant to the fifth paragraph of Article 91 mentioned above, which states that the President of the Republic appoints the Prime Minister or the Head of Government, as the case may be, and terminates their duties. This article shows that despite the different origins of the Prime Minister and the Head of Government and the latter's independence from the President of the Republic through the appointment procedure, he remains subject to the authority of termination by the President of the Republic, who is granted this power by the Constitution. This demonstrates the position and dominance of the President of the Republic over the various constitutional bodies. To achieve a kind of balance in the distribution of powers within the executive authority, this dominance and disparity should be reduced. It would have been more appropriate to grant and link the termination of the Head of Government's duties to the legislative authority, on the basis that he emanates from it and that it is the body that withdraws confidence from him.

Chapter Two: The Appointment of Ministers Based on Assignment

B- The Head of Government Emanating from the Parliamentary Majority:

After a careful reading of the provisions of the 2020 constitutional amendment in its section relating to the government, we observed that the government adopted a completely different method of formation compared to the past. Previously, the President of the Republic enjoyed absolute authority in appointing the Prime Minister after consulting the parliamentary majority, which was in reality a formal consultation. However, by comparing his authority to appoint members of the government under the 2016 constitutional amendment with his authority under the 2020 amendment, it becomes clear that the constitutional legislator reduced this authority, especially in the event that the legislative elections related to the National People's Assembly result in a parliamentary majority. This obliges him to appoint a Head of Government even if he is opposed to his political orientations. This procedure forced the President of the Republic to accept and coexist with it. Based on the foregoing, we can address how he is appointed and how his duties are terminated.

By referring to the formation of the government, we find that it is composed of the Prime Minister or the Head of Government, as the case may be, as previously indicated, and several ministries, each headed by a minister. Naturally, the constitutional experience has gone through two phases regarding who leads the government. Before the 2008 constitutional amendment, the government was led by a Head of Government, and thereafter it was led by a Prime Minister. What the constitutional legislator adopted in the 2020 constitutional amendment was stipulating that the government is led by either the Prime Minister or the Head of Government, as the case may be. This implies a difference in the composition of the government, which leads us to address the method of appointing ministers in the case of a presidential majority (A) and in the case of a parliamentary majority (B).

A- Appointment of Ministers in the Case of a Presidential Majority:

Based on the provisions of the Constitution, the government is led by the Prime Minister if the legislative elections produce a presidential majority. In this case, the 2020 constitutional amendment granted the President of the Republic the authority to appoint ministers after they are proposed by the Prime Minister. This indicates the limited authority of the Prime Minister in appointing members of his government, as well as in terminating their duties, in contrast to the Head of Government, whom the Constitution granted broader authority to appoint members of the government without the intervention of the President of the Republic.

1- Limited Authority of the Prime Minister in Appointing Ministers:

The Constitution did not grant the Prime Minister the authority to appoint ministers. Rather, it granted him the power to propose members of the government whom he deems suitable to the President of the Republic, who has absolute authority to appoint them or choose some of them, in accordance with Article 104 of the latest amendment. Article 105 of the latest amendment clarified that "If the legislative elections result in a presidential majority, the President of the Republic appoints a Prime Minister and entrusts him with proposing the formation of the government and preparing an action plan to implement the presidential program, which he presents to the Council of Ministers." From these two texts, it is clear that the first step in forming the government is closely linked to the results of the legislative elections. After the results are confirmed and the majority aligned with the President of the Republic—referred to as the presidential majority—wins, the President of the Republic, who is granted by the Constitution the authority to form the government, appoints the Prime Minister. What is noteworthy is that the Prime Minister does not exercise this authority independently, as does the Head of Government in the parliamentary majority, since the Constitution limited him to merely proposing the names of ministers.

It should be noted that the President of the Republic has absolute freedom to accept or reject this proposal, due to the absence of an explicit constitutional text obliging him to do so. It should also be noted that successive constitutions

in the Algerian political system did not restrict the President of the Republic to specific conditions that must be met by a member of the government. Therefore, the conditions required of a minister do not go beyond general customary conditions such as nationality, age, and enjoyment of civil and political rights. Thus, he exercises his competence in selecting members of the government with complete freedom. We also note that under the 1963 Constitution, the President of the Republic was the Head of Government and selected members of the government from among two-thirds of the members of the National Council to appoint them as members of the government in accordance with Article 47, which stated that "The President of the Republic is the sole person responsible before the National People's Assembly; he appoints the ministers, at least two-thirds of whom must be chosen from among the deputies, and presents them to the Assembly." As for the 1976 Constitution, it did not oblige the President of the Republic to appoint a Prime Minister, which led him at that time not to use this right, as he monopolized all powers, including the appointment of members of the government.

2- Termination of Ministers' Duties:

The decision to terminate the Prime Minister's duties is always accompanied by the termination of the duties of all members of the government (ministers), due to the organic relationship that links the Prime Minister to the ministers. We note that the source of this authority is the President of the Republic, who is granted it by the Constitution without being bound by the Prime Minister's proposal regarding the appointment of members of the government. This indicates the absolute authority he exercises over the ministerial formation, collectively or individually, demonstrating that this relationship, by its political nature, is primarily a relationship of loyalty and trust before it is a relationship of superior and subordinate. The President exercises and controls it either collectively or individually.

The Prime Minister may also propose to the President of the Republic the dismissal of one of the members of his government. Some ministers may also be dismissed at the sole discretion of the President of the Republic through the issuance of a presidential decree dismissing one or more ministers. This may be due to their failure to respect the government's action plan, in which case the Prime Minister may propose their dismissal to the President of the Republic. In addition, ministers' duties may end through resignation, whether mandatory through the resignation or dismissal of the Prime Minister, as previously indicated, or through voluntary resignation by each minister by submitting a resignation to the President of the Republic, who has the authority to accept it or not. If it is accepted, a presidential decree is required to terminate the minister's duties at his request. Accordingly, it can be said that the termination of the duties of any member of the government does not mean his permanent removal from all other government positions; he may be a minister in one government and a Prime Minister in another.

B- Appointment of Ministers under the Leadership of the Head of Government: After addressing the appointment of ministers by the Prime Minister, we now address the appointment of ministers by the Head of Government and highlight some comparisons between them, in addition to addressing the termination of their duties.

1- How Ministers Are Appointed:

Practical reality in the Algerian political system has shown that after the President of the Republic wins the presidential elections, assumes office, and takes the constitutional oath, he begins exercising the powers granted to him constitutionally, including what is stipulated in Article 77, paragraph 5, of the 1996 Constitution: "The President of the Republic appoints the Head of Government and terminates his duties." Accordingly, the President of the Republic is obliged to appoint the Head of Government. This is no longer a discretionary matter as it was under the 1976 Constitution, when he had the authority to choose the appropriate person. After the President of the Republic appoints the Head of Government, the latter presents the members of his government whom he has chosen to the President of the Republic, who appoints them. However, with reference to the developments of the 2020 constitutional amendment, it is observed that the procedures for appointing ministers have changed and taken a different course. This becomes evident beginning with the appointment by the President of the Republic of the Head of Government from the parliamentary majority, whom he entrusts with forming his government. Since the government is tasked with implementing the program of the parliamentary majority, it must possess harmony and cohesion to facilitate its mission and enable it to perform its tasks smoothly. This required harmony and cohesion are achieved by the Head of Government selecting members of his government from among those he deems compatible with his policy in implementing the parliamentary majority's program during the formulation of the government program. In this regard, the first paragraph of Article 110 of the 2020 constitutional amendment states: "If the legislative elections result in a parliamentary majority other than the presidential majority, the President of the Republic appoints a Head of Government from the parliamentary majority and entrusts him with forming his government and preparing the parliamentary majority's program." From this text, it is clear that the Head of Government enjoys independence in forming his government without interference from the President of the Republic, with the exception of the Ministers of Foreign Affairs and Defense. This is evident from the phrase "entrusts him with proposing the formation of the government." Accordingly, it is inconceivable that the President of the Republic would reject ministers appointed by the Head of Government, unlike the Prime Minister, whose proposed ministers may be rejected by the President of the Republic.

Based on this, it can be said that although the appointment of the government in both cases is carried out by the President of the Republic through a presidential decree that includes the appointment of the members of the government, it has been observed that the method of forming the government differs depending on who leads it. If the President of the Republic possesses broad discretionary power in selecting the Prime Minister, who implements his action plan, and also enjoys wide discretionary authority in choosing, approving, or rejecting the members of the government proposed by him, the situation differs with regard to the Head of Government. In this case, it has been observed that the Head of Government is restricted in his choice, as the constitutional legislator obliges his appointment from among the parliamentary majority. At the same time, the Constitution imposes on him a period of thirty (30) days within which he must form the government.

This restriction reflects the extent of the organic control exercised by the President of the Republic over the Head of Government, as the latter is threatened with termination of duties if he does not respect the time limit set by the Constitution. Even if this is intended to serve the stability of constitutional institutions so as to prevent delay by the Head of Government in forming his government, it nevertheless, on the other hand, expresses the extent of the President of the Republic's dominance over the position of Head of Government. Accordingly, if the constitutionally granted thirty (30)-day period expires without result, the President of the Republic must appoint a new Head of Government and entrust him with forming his government. However, the issue that arises is what action should be taken in the event of the failure of the Head of Government appointed for the second time. Should the President of the Republic appoint a third Head of Government, or should he resort to dissolving the National People's Assembly and holding early legislative elections?

2- Termination of Ministers' Duties:

According to the 2020 constitutional amendment, it has become clear that the method of appointing ministers differs depending on the outcome of the legislative elections. As previously discussed, if the results of the legislative elections produce a presidential majority, the President of the Republic appoints a Prime Minister and entrusts him with proposing the formation of the government. This implies that the Prime Minister has limited authority, confined only to proposing ministers rather than appointing them. However, if the results of the legislative elections produce a parliamentary majority, the method of appointing the leader of the government differs from the previous case, as the Constitution obliges the President of the Republic in this instance to appoint a Head of Government and entrust him with forming his government. From the expression "forming the government," it can be inferred that the Head of Government is independent in appointing the members of his government (ministers). Nevertheless, the fundamental issue raised by the foregoing discussion does not lie in the method of appointing ministers, but rather in the method of terminating their duties. Despite the different methods of appointment, ministers remain subject to the authority of the President of the Republic, who possesses absolute power to terminate their duties. Since the Constitution grants the Head of Government the authority to appoint his members, it is proposed that he should also be granted the authority to terminate their duties, as they are obligated to implement his program rather than that of the President of the Republic. Moreover, in the event that a minister submits his resignation to the President of the Republic, it is proposed that the resignation be submitted instead to the Head of Government who appointed him. It is also proposed to avoid collective responsibility, which is the responsibility of the government as a whole before parliament and constitutes collective accountability, meaning the collective dismissal of ministers in the event that parliament does not approve the program of the Head of Government. It would be preferable if the constitutional legislator applied individual responsibility, on the basis that some ministers may be capable of meeting the expectations related to implementing the program of the Head of Government.

Conclusion

The government is considered a constitutional institution and represents the backbone of any political system, as it is responsible for supervising the implementation and embodiment of the government's action plan or government program, as applicable, which is the practice in Algeria. For this reason, it has received wide attention from the constitutional founder, who granted it a distinguished status. This is evident through the amendments that have affected it, particularly the new procedure introduced by the 2020 constitutional amendment, which constitutes the central source of its establishment by relying on the results of legislative elections. In addition to the practical aspect, which plays an important role in implementing this plan or program, despite the difference in the method of appointing its leader—whether the Prime Minister or the Head of Government, as the case may be—and despite the slight disparity in powers between them, particularly with regard to appointing ministers, both are equal in bearing responsibility before the National People's Assembly in the event of its failure to approve the government's action plan, as well as due to the termination of their duties by the President of the Republic whenever he deems it appropriate.

Ethical Considerations

This research was conducted in accordance with established ethical standards in legal and constitutional studies. The study relies exclusively on constitutional texts, legal analysis, and publicly available sources and does not involve human participants, personal data, or confidential information. Therefore, no ethical approval was required. The author adhered to principles of academic integrity, objectivity, and proper citation throughout the research.

Acknowledgement

The author expresses sincere appreciation to colleagues and faculty members at the University of Djilali Bounaama Khemis Miliana for their academic support and constructive discussions, which contributed to the development and refinement of this research.

Funding

This research did not receive any specific grant from funding agencies in the public, commercial, or not-for-profit sectors.

Conflict of Interest

The author declares that there is no conflict of interest regarding the publication of this article.

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