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The Electoral Body as a Mechanism to Activate Public Oversight of the Electoral Process in Order no. 21-01 Mark on the Electoral System

Abstract

Elections are the cornerstone of the democratic process in establishing elected councils. The selection of candidates through an effective electoral program is within the authority of the electoral body, which plays a pivotal role in forming elected councils or electing the President of the Republic.

The essence of the electoral process lies in the electoral body, which has become an active partner in elections from the beginning to the end of the process. As the holder of popular sovereignty, the electoral body is responsible for choosing the best representatives. This occurs within a well-organized legal framework that grants the electoral body effective powers to ensure fairness and transparency in the electoral process, thereby enhancing its oversight role alongside electoral monitoring bodies.

Keywords: *electoral body, transparency and fairness, elections, public oversight*

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Seçki orqanı seçki sistemi haqqında 21-01 saylı sərəncam işarəsində seçki prosesinə xalq nəzarətini aktivləşdirmə mexanizmi kimi

Xülasə

Seçkilər seçilmiş şuraların yaradılmasında demokratik prosesin təməl daşıdır. Effektiv seçki proqramı vasitəsilə namizədlərin seçilməsi seçilmiş şuraların formalaşdırılmasında və ya Respublika Prezidentinin seçilməsində mühüm rol oynayan seçki orqanının səlahiyyətindədir.

Seçki prosesinin mahiyyəti prosesin əvvəlindən sonuna kimi seçkilərdə fəal tərəfdaşa çevrilmiş seçki orqanındadır. Xalq suverenliyinin sahibi kimi seçki orqanı ən yaxşı nümayəndələrin seçilməsinə

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cavabdehdir. Bu, seçki orqanına seçki prosesində ədalətliliyi və şəffaflığı təmin etmək üçün səmərəli səlahiyyətlər verən və bununla da seçki monitorinqi orqanları ilə yanaşı onun nəzarət rolunu gücləndirən yaxşı təşkil olunmuş qanunvericilik çərçivəsində baş verir.

Açar sözlər: *seçki orqanı, şəffaflıq və ədalətlilik, seçkilər, xalq nəzarəti*

Introduction

Algeria has undergone constitutional and legal reforms as a result of a popular movement, culminating in a constitutional amendment referendum in 2020. This amendment introduced several constitutional reforms, such as the establishment of the National Observatory for Civil Society, the Higher Council for Youth, and the Constitutional Court, which acts as the arbiter of elections. These reforms aim to regulate and democratize the electoral process.

The constitutional reforms led to legal and political changes, including the issuance of Ordinance 21-01 on the Electoral System. This ordinance introduced new provisions to uphold fairness and transparency in elections, particularly concerning the financing of electoral campaigns and the role of the Independent National Authority for Elections. All these measures aim to instill ethical practices in political life, wherein the electoral body plays a significant role in political participation and decision-making. Consequently, Ordinance 21-01 on the Electoral System guarantees the representation of the electoral body in all stages of the electoral process, recognizing it as the holder of popular sovereignty in forming elected councils and electing the President of the Republic (2020 Constitution, 2020).

Research

From this perspective, the following questions arise:

- What is the role of the electoral body in ensuring fairness and transparency in the electoral process under Ordinance 21-01 on the Electoral System?
- How effective is the electoral body in achieving integrity and credibility in elections as the holder of sovereignty?

To address these questions, we adopted an analytical approach and divided the study into two main sections:

Section One: The role of the electoral body in ensuring fairness and transparency during the preparatory phase of the electoral process.

Section Two: The role of the electoral body in ensuring fairness and transparency during the subsequent phases of the electoral process.

Section One: The Role of the Electoral Body in Ensuring Fairness and Transparency During the Preparatory Phase of the Electoral Process

The seriousness and effectiveness of the electoral process in achieving its objectives are closely linked to the availability of sufficient guarantees to ensure the legitimacy of the electoral process. From this perspective, numerous legal guarantees and mechanisms have been established to ensure the integrity, fairness, and transparency of the electoral process. These measures enable voters to freely exercise their right to vote during the preparatory phase of all electoral events (Ordinance 21-01 containing the Organic Law on the Electoral System, 2021).

The electoral legislator has worked to guarantee the rights of the electoral body as the foundation of the democratic electoral process, whether in exercising its right to vote or its right to popular oversight as an active participant alongside the bodies and institutions responsible for monitoring the electoral process.

First: The Scope of Electoral Body Oversight During the Preparatory Phase to Enhance Transparency in the Electoral Process

The electoral body is one of the most important constitutional entities, from which constitutional authorities in the state directly or indirectly derive their powers. Elections serve as the basis for the appointment and representation of such entities, and the electoral body plays a crucial role in the preparatory phase of the electoral process.

A. Ensuring the Formation of an Electoral Body for Electoral Oversight

The electoral legislator has guaranteed the electoral body the right to exercise electoral oversight over the electoral process through the following (Nabila Mezouaghi, 2020):

1. **Defining the Electoral Body**

According to Article 50 of Ordinance 21-01:

"Every Algerian man and woman aged 18 years or older on election day, who enjoys full civil and political rights, and is not subject to any conditions of incapacity... is considered an elector."

The electoral legislator has stipulated that, to exercise the right to vote and thus electoral oversight, an individual must have reached the age of political maturity, defined as 18 years old on election day. This approach expands the base of the electoral body by lowering the age of political maturity to 18, unlike some countries where the political maturity age is set at 20 years in Tunisia or 21 years in Lebanon.

2. Citizenship as a Primary Factor for Actualizing Electoral Body Participation

Laws governing nationality grant an individual citizenship based on birth within the state's territory or through the bloodline. In this regard, many countries distinguish between natural-born citizens and naturalized individuals. Some impose restrictions on naturalized citizens' right to vote for a certain period, as determined by each country's constitution and laws (Yehya Al-Jamal).

According to Article 50 of Ordinance 21-01:*"Every Algerian man and woman is considered an elector..."* The electoral legislator does not specify whether the nationality must be original or acquired. This is a positive aspect, as the matter pertains to exercising the right to vote rather than the right to run for office.

3. Requiring the Electoral Body to Enjoy Civil and Political Rights

Voters must be fully competent to exercise their political rights. In this context, Article 50 of Ordinance 21-01 on the Electoral System states:

"Every Algerian man and woman aged 18 years or older on election day, who enjoys full civil and political rights, is not subject to any conditions of incapacity as defined by applicable legislation, and is registered on the electoral list, is considered an elector."

4. To ensure the integrity of the electoral body and electoral lists, prevent fraud, and promote transparency, fairness, and credibility, the legislator has excluded certain individuals from registering on the electoral list, as outlined in Article 52 of Ordinance 21-01.

Second: Securing Electoral Lists to Protect Voter Will

1. Mandatory One-Time Registration on Electoral Lists

Registration on electoral lists is mandatory for every citizen who meets the legal requirements. According to Article 54 of Ordinance 21-01: *"Registration on electoral lists is mandatory for every citizen who meets the legal conditions."*

Additionally, the law prohibits anyone from registering on more than one list. Article 56 of Ordinance 21-01 states (Mohamed Barakat, 2021):

"A person cannot be registered on more than one electoral list."

Registering on multiple lists creates opportunities for voter fraud by allowing the use of a voter's name in tampering with the process, thereby undermining the voter's will.

2. Establishing a National Registry for the Electoral Body

To ensure the protection of the electoral body and prevent its misuse for unlawful purposes that could undermine the credibility of the electoral process, the electoral legislator, under the responsibility of the Independent Authority, established a national registry for the electoral body. This registry comprises all electoral lists from municipalities as well as diplomatic and consular centers abroad.

In this context, all Algerian men and women residing abroad and registered with diplomatic and consular representations can request to register:

1. For Municipal and Provincial Popular Council Elections, on the electoral list of one of the following municipalities:

- The municipality of the applicant's place of birth,
- The municipality of the applicant's last residence,
- The municipality of the place of birth of one of the applicant's ancestors.

2. For Presidential, Legislative, and Referendum Elections, registration is done on the electoral list of Algerian diplomatic and consular representations in the voter's country of residence.

To preserve the voter's right to vote despite a change of residence, and within the framework of the constitutional right to change residence, the law grants citizens the right to register in their new municipality of residence. This requires the removal of their name from the previous municipality within three (3) months of changing residence. The same applies in the event of death, where the voter's name is removed immediately after the relevant municipal services, or diplomatic and consular authorities, inform the Independent Authority (Amin Rimal, 2021).

3. Reviewing Electoral Lists to Ensure Transparency

Given the importance of electoral lists in determining the number of voters and ensuring the integrity of the electoral process, these lists are prepared and periodically reviewed, either annually or on the occasion of each election or referendum. This is done in each municipality by a municipal committee responsible for reviewing electoral lists, working under the supervision of the Independent Authority. These reviews typically occur during the last quarter of each year. Exceptionally, the lists may be reviewed pursuant to a decree summoning the electoral body, which specifies the opening and closing dates of the review period.

4. The Role of the Municipal Committee Responsible for Reviewing Electoral Lists in Ensuring Integrity

The municipal committee responsible for reviewing electoral lists is composed of:

- A judge appointed by the president of the territorially competent judicial council, who acts as the chairperson,
- Three (3) citizens from the municipality, selected by the provincial delegation of the Independent Authority from among voters registered in the electoral list of the concerned municipality.
- A permanent secretariat, managed by a municipal employee with experience, competence, and impartiality, is placed at the disposal and under the supervision of the municipal committee for the review of electoral rolls.
- **According to Article 63**, it is clear that the electoral legislator, in order to ensure the fairness and credibility of the electoral rolls, has included in the composition of the committee tasked with reviewing the electoral rolls three (3) citizens from the municipality who are registered voters in the electoral roll of the concerned municipality, in addition to a judge serving as the committee chair. This measure aims to guarantee the credibility of the electoral rolls by involving members of the electorate in the committee's composition (Saleh Hussein Ali Abdullah, 2012).
- As for the preparation and review of electoral rolls abroad, this process is conducted in every diplomatic or consular district under the supervision and responsibility of the independent authority through an electoral roll review committee composed of:
  - The head of the diplomatic representation or the head of the consular center, or their representative, as chairperson.
  - Two (2) voters registered in the electoral roll of the diplomatic or consular district, appointed by the independent authority, as members.
  - A consular employee, as a member. The committee appoints a secretary-general from among its members.

Through this, the electoral legislator has granted voters the right to participate in the preparation and review of electoral rolls abroad.

Third: The Electorate's Right to Appeal Electoral Rolls

The electoral law assigns the authority to address and decide on grievances and objections submitted by voters to the municipal committee for the review of electoral rolls.

1. Objections before the Municipal Committee for the Review of Electoral Rolls

The law grants voters the right to object and file grievances in the following cases:

- Any citizen who has been omitted from an electoral roll may submit their grievance to the chairperson of the municipal committee for the review of electoral rolls.

- Any citizen registered in an electoral roll of the district has the right to submit a reasoned objection to remove a person wrongly registered or to register a person omitted in the same district.

A. Deadlines for Filing Objections

Ordinance 21-01 sets the deadlines for filing objections regarding registration or deletion during the ten (10) days following the announcement of the closure of the review process. However, this deadline is reduced to five (5) days in the case of exceptional reviews.

These objections are referred to the Electoral Roll Review Committee, which issues a decision within a maximum of three (3) days.

The chairperson of the municipal committee for the review of electoral rolls or the head of the diplomatic or consular representation must notify the concerned parties of the committee's decision within three (3) full days using any legal means.

2. Appeal to the Judiciary

The electoral legislator has assigned the jurisdiction to adjudicate appeals regarding electoral rolls to the regionally competent court for citizens residing in Algeria. For Algerian citizens residing abroad, the Algiers Court has jurisdiction. Concerned parties may file an appeal within five (5) full days from the date of notification of the decision. If no notification is provided, the appeal can be filed within eight (8) full days from the date of objection.

The appeal must be recorded by simple declaration at the clerk's office of the competent court under the ordinary judicial system. The court must issue its ruling within a maximum of five (5) days, without procedural costs or requiring legal representation. Notifications are sent to the concerned parties three (3) days before the hearing. The court's decision is final and not subject to any form of appeal.

Through this, the legislator has ensured the electorate's right to judicial recourse in ordinary courts for any infringement related to electoral rolls.

Fourth: The Voter's Right to Access the Electoral Roll

The electoral legislator has granted voters the right to review the electoral roll concerning them to confirm that their name is registered. This measure adds fairness and credibility to the preparation of electoral rolls. Granting voters this right acts as subsequent oversight of the electoral roll, ensuring the administration's diligence in preparing and organizing electoral rolls. This is affirmed in Article 70 of Ordinance 21-01:

"Every voter has the right to review the electoral roll concerning them whenever they request it."

Fifth: Criminal Protection of Electoral Rolls (Safeguarding the Will of the Electorate)

The legislator has provided criminal protection for electoral rolls to safeguard the will of the electorate due to their vital and fundamental role in the electoral process. Any tampering with electoral rolls is considered an electoral offense punishable by law. This aims to uphold integrity, transparency, and prevent electoral roll fraud, as stipulated in Articles 278 to 285 of Ordinance 21-01 regarding the electoral system.

Article 278 states:

"Anyone who registers themselves on more than one electoral roll under false names or identities, or conceals a condition of ineligibility stipulated by law when registering, shall be punished with imprisonment from three (3) months to three (3) years and a fine ranging from 4,000 DZD to 40,000 DZD."

Article 279 states:

"Any falsification in issuing or presenting a registration or removal certificate from the electoral rolls shall be punished with imprisonment from six (6) months to three (3) years and a fine ranging from 6,000 DZD to 60,000 DZD. Attempted falsification is punishable with the same penalty."

By analyzing these provisions, it becomes evident that the legislator has linked imprisonment with financial fines simultaneously, leaving no discretionary authority for the criminal judge to choose between penalties.

Through this, the legislator has imposed harsher penalties to protect the electorate's will from being tampered with, as any infringement upon the electorate ultimately undermines the democratic process as a whole.

Section Two: The Role of the Electorate in Ensuring Integrity and Transparency in the Execution Phase of the Electoral Process

After the electoral campaign phase, where candidates who meet the legal requirements for candidacy play a significant role in presenting and promoting their programs, comes the voting phase. This phase allows voters to select the best candidate based on their program, ultimately leading to electoral success.

This is a critical stage in which the role of the electorate becomes evident: the voting process and the selection of candidates. The electorate plays a prominent role from the date of the election until the announcement of the results.

First: General Voting in Elections as a Means to Expand the Electorate

General voting aims to strengthen democracy by allowing a large number of voters to participate in the process of delegating authority to members of parliament or the president of the republic. It enables all citizens to participate in political life whenever they meet the legal conditions (Yousra Boulaqwas, 2021).

General voting is manifested through direct elections, which involve voters directly selecting their representatives.

A. Direct and Secret General Voting for Electing the President of the Republic

In the 2020 constitutional amendment, **Article 85** states:

"The President of the Republic is elected through direct, secret, and general voting..."

B. Direct and Secret General Voting in Electing Members of the National People's Assembly

The constitutional legislator adopted the principle of direct and secret general voting in the election of members of the National People's Assembly. **Article 121** states: *"Members of the National People's Assembly are elected through direct, secret, and general voting.*

Two-thirds (2/3) of the members of the Council of the Nation are elected through indirect, secret voting, with two seats per wilaya (province), selected from among members of the municipal and provincial councils..."

This principle directly connects to the will of the voter, as they cast their vote to select candidates, embodying the theory of popular sovereignty.

It is noted from **Article 121** of the 2020 constitutional amendment that the legislator adopted the principle of general voting for electing members of the National People's Assembly, thereby broadening the electorate. In contrast, the election of members of the Council of the Nation is exclusively conducted among members of municipal and provincial councils.

Second: Strengthening the Electorate's Presence in Voting Centers and Electoral Committees as a Guarantee for Electoral Transparency

The electoral legislator organized provisions related to the voting and polling processes in Chapter 1, Section 4 of Ordinance 21-01.

Article 125 of Ordinance 21-01 states:

"Voting takes place within the electoral district, and voters are distributed by a decision from the coordinator of the provincial delegation of the independent authority to polling stations. However, when two or more polling stations are located in the same place, they form a 'Voting Center,' which falls under the responsibility of a Center Head appointed by a decision from the coordinator of the provincial delegation of the independent authority..."

A. Composition of the Polling Station (The Role of Polling Station Members in Protecting Voters' Ballots)

Article 128 of Ordinance 21-01 states:

"The polling station may be fixed or mobile and is composed of:

- **Chairperson,**
- **Vice-Chairperson,**
- **Secretary,**
- **Two Assistants.**

Article 129 states:

"Members of the polling station and additional members are appointed and assigned by a decision from the coordinator of the provincial delegation of the independent authority, chosen from among voters residing in the province, with the exception of candidates, their relatives and in-laws up to the fourth degree, and individuals affiliated with their parties, in addition to elected members..."

From this text, it is clear that the members of the polling stations are all part of the electorate, which indicates that this body is not affiliated with any authority, political party, or candidate. This ensures the integrity and transparency of the voting process. Therefore, the electoral legislator, aiming to protect voters' ballots, has made the electorate a supervisory and protective entity through the composition of polling station members (Mouloud Didan, 2014).

B. The Electorate's Right to Object and Appeal in Court Regarding the Composition of Polling Station Members

1. Objection

Article 129 of Ordinance 21-01 states:

"This list may be subject to modification in case of an acceptable objection, which must be submitted in writing to the coordinator of the provincial delegation of the independent authority, and should be legally justified within five (5) days following the date of the initial posting and delivery of the list."

The decision of rejection must be communicated to the concerned parties within three (3) full days from the date of submission of the objection.

2. Judicial Appeal

Any interested party may appeal the rejection decision issued by the independent authority before the regionally competent administrative court within three (3) full days from the date of notification of the decision.

The administrative court must issue a ruling on the appeal within five (5) full days from the date of its submission (Said Bouchaïr).

An appeal may be filed against the administrative court's ruling before the competent administrative appeals court within three (3) full days from the date of notification of the judgment. The competent administrative appeals court must issue a ruling within five (5) full days from the date of registration.

The decision of the administrative appeals court is final and not subject to any form of appeal.

The judgment or decision, as the case may be, must be communicated immediately upon issuance to the concerned parties and to the coordinator of the provincial delegation of the independent authority for implementation.

From **Article 129**, it is clear that the electoral legislator, in order to ensure the integrity of the electoral process, granted the voter the power to object to and appeal the composition of polling station members before the judiciary, as a means of subsequent supervision to ensure the integrity and transparency of the electoral process.

C. Involving Voters in the Vote Counting Process

The vote counting process begins immediately after the voting concludes and continues without interruption until it is fully completed. The counting must be done publicly and in the polling station (Karoun Mohamed Arzaki, 2023).

The tables for the counting process are arranged in such a way as to allow voters to gather around them.

Members of the polling station appoint the vote counters from among the voters registered in the polling station where the counting is taking place, in the presence of representatives of the candidates or candidate lists.

If there are not enough counters, all members of the polling station may participate in the counting process.

Once the reading and tallying of the points is completed, the counters must submit the tally sheets signed by them to the chairperson of the polling station. A record of the counting results is kept in each polling station.

D. Involving the Electorate in the Composition of Electoral Committees

Article 264 states:

*"At the level of each municipality, a municipal electoral committee is created for each election. It is composed of:

- A judge appointed by the president of the relevant regional judiciary, who serves as the chair.
- A vice-chair and two assistants appointed by the coordinator of the provincial delegation of the independent authority from among the voters of the municipality, excluding candidates, their party members, and their relatives up to the fourth degree..."* Unlike the provincial electoral committee and the committee for citizens residing abroad, in these two committees, voters are not involved as all members are civil servants. The municipal electoral committee is responsible for tallying the voting results obtained in all polling stations within the municipality.
- It is clear that the composition of the municipal electoral committee includes voters alongside a judge as the chair, which ensures the integrity, transparency, and credibility of the electoral results.

Conclusion

Ultimately, the electorate plays a significant role in the democratization and integrity of the electoral process, from its beginning until the announcement of the final results, by being present at every stage of the elections. This is outlined in Ordinance 21-01 regarding the Electoral System. Based on the above, the following recommendations are provided:

- It is necessary to strengthen the electorate with effective mechanisms to ensure the integrity of the elections.
- It is necessary to expand the electorate's presence at every stage of the electoral process in a manner that guarantees the role of the electorate in ensuring the integrity of the elections.
- The presidency of the electoral committees should be given to the electorate, provided it possesses the necessary competence to manage the elections at each stage.
- The electorate should be granted the right to appeal any action that violates electoral law, at any stage of the electoral process, as it represents the sovereign body and elected bodies are there to serve it, thus contributing effectively to the building of these bodies.

References

1. Amin Rimal. (2021). *The Legal System of Legislative Elections in Algeria and its Impact on Achieving Democracy*. Doctoral Thesis in Public Law. Faculty of Law and Political Science, Tlemcen University.
2. Karoun Mohamed Arzaki. (2023). The Impact of Direct Universal Suffrage on the Legal Status of the President of the Republic in Algeria. *Journal of Legal and Political Thought*, 7, 2.
3. Mohamed Barakat. (2021). *The Legal System of Parliamentary Members*. A Comparative Study of Algeria, Egypt, France, and Other Systems, Part One, University Publications House.
4. Mouloud Didan. (2014). *Studies in Constitutional Law and Political Systems*. Balqis Publishing House.
5. Nabila Mezouaghi. (2020). Toward Strengthening Electoral Transparency through the Independent Electoral Authority. *Journal of Comparative Legal Studies*, 6, 2.
6. Ordinance 21-01 containing the Organic Law on the Electoral System. (2021, March 10). *Official Gazette*, 17.
7. Saleh Hussein Ali Abdullah. (2012). *The Right to Vote, A Comparative Study*. Modern University Office.
8. Said Bouchaïr. *Constitutional Law and Political Systems*, 1.
9. Yehya Al-Jamal. *The Constitutional System in the Arab Republic of Egypt*. Dar Al-Nahda Al-Arabiya.
10. Yousra Boulaqwas. (2021). Procedures for Registration in the Electoral List under Ordinance 21-01. *Journal of Legal and Economic Studies*, 04(01).
11. 2020 Constitution. (2020, December 30). *Official Gazette*, 82.

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