

Judicial Oversight of Local Elections

الرقابة القضائية على الانتخابات المحلية

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ABSTRACT:

ملخص باللغة العربية:

The local popular assembly is one of the most important constitutional institutions that underpin the rule of law in a country, embodying the principles that ensure freedoms and rights within the framework of democratic governance. It is a reaffirmation of the famous constitutional rule that "the people are the source of all authority."

يعد المجلس الشعبي المحلي أحد أهم المؤسسات الدستورية التي تدعم سيادة القانون في أي بلد؛ إذ يجسد المبادئ التي تضمن الحريات والحقوق في إطار الحكم الديمقراطي. وهو إعادة تأكيد للقاعدة الدستورية الشهيرة بأن "الشعب مصدر السلطات كلها".

In many constitutions around the world, including the Algerian constitution, it is emphasized that "the people are the source of power". This concept is embodied through democratic voting and civil participation in the political process

وفي العديد من الدساتير حول العالم، بما فيها الدستور الجزائري، تم التأكيد على أن "الشعب هو مصدر السلطات". ويتجسد هذا المفهوم من خلال التصويت الديمقراطي والمشاركة المدنية في العملية السياسية.

Keywords: Oversight, Administrative Judiciary, Independent Authority, Local Administration, Local Elections.

الكلمات المفتاحية: الرقابة، القضاء الإداري، السلطة المستقلة، الإدارة المحلية، الانتخابات المحلية.

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Introduction:

The Algerian legislature has consistently sought to reform the electoral system to institutionalize the principle of peaceful power transition by establishing the rules of constitutional institutions. Local elections are essential in enabling the people to choose their representatives in local popular councils (municipal and provincial levels) as they are closest to the citizens and allow them to exercise power directly. Direct oversight by the administrative judiciary over these elections is a direct guarantee of their success, ensuring their fairness, transparency, and the proper allocation of votes to their rightful recipients. It grants every rightful individual their due rights.

The administrative judiciary closely monitors the entire electoral process, starting from the registration phase on the electoral rolls to the counting of votes and the submission of appeals against the results. In order to achieve this goal, the Algerian legislature has worked to create favorable conditions. Judicial supervision of the electoral process and the establishment of administrative judiciary control over it are among the most important guarantees provided by the legislature in this context.

How does the administrative judge supervise local elections? To answer this question, we will following plan:

1. First Section: The Concept of Judicial Supervision of Elections and its Stages

- First Demand: The concept of judicial supervision of local elections.
- Second Demand: Stages of judicial supervision of local elections.

2. Second Section: Administrative Judiciary Control over Voting

- First Demand: Oversight of the voting process.
- Second Demand: Oversight of the election results.

First Section: The Concept of Judicial Supervision of Local Elections

The process of supervision exercised by the administrative judiciary over local elections is one of the most important processes that contribute to the success of the electoral process as a whole. The term "supervision" can be understood as a sense of honor and elevation, indicating a person's elevated position among their people. It can also be understood as proximity, indicating that something has approached or become closer¹.

First Demand: Concept of Judicial Supervision over Local Elections

Supervision, linguistically, means observing, approaching, caring for, and ensuring the integrity of something. It also implies elevating and improving that thing, placing it in a superior and elevated position. Therefore, the process of supervision aims to elevate the matter to a deserving status, higher than other matters.

From a terminological perspective, judicial supervision refers to the control exercised by the administrative judiciary through its oversight of the entire electoral process, from voter registration to the details of the voting process, including monitoring the registration process and overseeing the completion of the voting process and the announcement of results.

Judicial supervision over local elections refers to the control exerted by the administrative judiciary over all aspects

1 Ahmed Barakat, "Elections and Parliamentary Representation in Algeria", *Journal of Politics and Law*, University of Ouargla, Special Issue, April 2011, p. 291.

of the electoral process, starting from voter registration to the voting process and the announcement of results. This supervision aims to ensure the integrity and transparency of the electoral process, as well as its safety and validity. The role of the administrative judiciary includes monitoring all stages of the elections to ensure their implementation in accordance with the applicable laws and regulations, with the goal of achieving a democratic and transparent electoral process¹.

This type of supervision is essential to ensure the integrity of the electoral process and the trust of voters in the results of local elections. It contributes to strengthening democracy and respecting the will of the people in choosing their representatives.

The Algerian legislator, in all organic laws concerning elections, takes the broad meaning of judicial supervision over the electoral process. This is also evident in Article 169 of Law 01-12, as well as in Organic Law No. 20-02, which states that this law applies from the date of submitting the candidacy application until the end of the electoral process.

Supervision is different from monitoring because supervision means the participation of the judiciary in managing the elections at all stages they go through, with the ability to control, manage, and approve their results. The judiciary is known for its competence and a high degree of neutrality².

On the other hand, monitoring is the process of observation carried out by civil society organizations or,

1 Shihata Elqani, "The Principle of Judicial Supervision of Elections," Dar Al-Fikr, Cairo, 2005, p. 20.

2 Ziad Akl, "Supervision of the Credibility of Elections," Al-Ahram Center, Cairo, 2012, p. 192.

sometimes, at the request of the state, by international organizations known for their neutrality.

They monitor the electoral lists after being granted access to them, as well as the preparation process, and they oversee the voting process, providing observations on the progress of the process and preparing reports on the overall conduct of the elections.

The 2020 constitutional amendment established an independent authority responsible for supervising elections in Algeria. This authority derives its independence from the constitution and has an independent institutional structure. However, this does not mean that the administrative judge does not have a role in supervising elections. The final word always remains with the judge regarding:

- Challenging electoral lists.
- Rejecting candidacies.
- Disqualifying certain candidates.
- Challenging the results of elections.

The administrative judiciary is considered a guarantor of neutrality and transparency in all stages of the electoral process, starting from the announcement of candidacy and the preparation of electoral lists to the declaration and finalization of results, as well as considering any challenges. The role of the administrative judiciary is to ensure the transparency and fairness of the electoral process and to review any challenges or objections that arise during this process¹.

1 Ziad Akl, Op Cit, p. 193.

Second Demand: Stages of Judicial Supervision over Elections

After the constitutional amendment in 2020, the organization of local elections was entrusted to the Higher Independent Authority for Elections, which is responsible for preparing the electoral lists after being enabled to do so. It is also possible to challenge the process of list adjustment before this authority, and ultimately, its decisions can be challenged.

The legislator attached great importance to the process of registering on electoral lists, and it included several safeguards to ensure the transparency of the electoral process and to avoid any violations that contradict the transparency guaranteed by the constitution for the voting process from its inception to the announcement of the results.

The registration on electoral lists is of great importance, as it is surrounded by several guarantees to ensure the transparency of the electoral process and to avoid any violations that contradict the transparency stipulated in the constitution. The electoral body refers to the group of individuals who are legally entitled to vote and participate in various elections. The issue of preparing and reviewing electoral lists is of utmost importance for the success of the electoral process, as this process embodies the integrity and transparency of elections. The Algerian legislator has wisely entrusted this process to an independent higher authority¹.

There are conditions for registration on electoral lists:

1 Francis Hamon, Constitutional Law, 35th edition, LGDJ, Lextenso Edition, Paris, 204, p. 447.

1. Objective conditions:

- Algerian nationality requirement.
- Age requirement.
- Electoral residence requirement.

2. Cases of disqualification from registration on electoral lists:

- Loss of political and civil rights.
- Supervisory controls on the review of electoral lists.

The process of successfully reviewing electoral lists is an important step to ensure the transparency of the electoral process. This stage helps determine the eligibility of candidates and maintain the legitimacy of the electoral process. The process of reviewing electoral lists includes several key aspects, including verifying the eligibility of candidates and ensuring the legitimacy of the electoral process.

For a candidate to be eligible to run for a position in Algeria, certain requirements must be met. They must be an Algerian citizen, at least 18 years old, and have full civil and political rights. If a candidate passes away or faces a legal obstacle, they are given a one-month grace period before the election date to submit their new candidacy. Candidates must submit their nomination forms before the election date, and any changes or additions to the lists must be made before the deadline. If a candidate passes away or faces a legal obstacle after submitting the list, a new nomination is allowed, provided that the deadline for submitting applications is within one month of the election date¹.

1 Ziad Akl, Op Cit, p. 196.

First: The Sentence Concerning Review:

The committee responsible for reviewing the electoral lists operates under the authority of the Higher Independent Authority for Elections and consists of:

- A presiding judge.
- Three citizens.
- A permanent secretariat.
- The secretariat is managed by a competent employee.
- As for overseas, it includes¹:
 - The head of the diplomatic representation.
 - Registered voters in the electoral lists.
 - Consular citizens.
- The committee appoints a secretary-general from among its members.

Secondly: Judicial Oversight of the Decisions of the Electoral Lists Review Committees:

Citizens have the right to access the final electoral lists and file grievances and objections against the decisions issued by the relevant Higher Independent Authority for Elections. Any interested party has the right to resort to the administrative judiciary and request the nullification of these decisions based on exceeding the legal provisions regarding registration,

1 Article 63 of Order 21-01 (Organic Law on Elections).

deletion, and enabling affected individuals to reclaim their rights through appeals before the administrative judge.

Appealing electoral matters used to fall under the jurisdiction of the ordinary judiciary according to Law 97-07 until the issuance of Organic Law No. 04-01¹, which assigned the recourse in such cases to the administrative judiciary, applying the organic standard stated in Article 800 of the Civil and Administrative Procedure Law².

Second Topic: Administrative Judge's Oversight of the Voting Process:

The voting process is the culmination of the long preparation process for elections. It is the important part in the success of the electoral process. In fact, the voting process is a crucial part of the success of elections and represents the pinnacle of intensive preparation. It plays a vital role in effectively implementing the democratic process.

The voting process is considered the peak of the electoral process, where citizens exercise their right to choose their representatives and shape the future of their country through a democratic and participatory approach. It is a highly organized and precise process because it determines the winners in the voting process. Disputes may arise that lead to non-recognition of the results and objections. Therefore, a regulatory system must be implemented for this process.

1 Organic Law No. 04-01 on Elections.

2 Massoud Chihoub, "General Principles of Administrative Disputes," Algerian University Publications Office, 2009, p. 76.

First Demand: Oversight of the Voting Process:

After the election results are announced, as mentioned above, one of the parties may object to them. Therefore, the Algerian legislator was keen on conducting the voting process in a proper manner to avoid electoral disputes.

First: Formation of Sorting Committees and their Location and Time:

It is stipulated by Article 153 of Law 21-01, and its members are required to be from the electoral body. Electors from the registered voters in the electoral lists are designated to carry out this process¹.

There are those who believe that the sorting process is very important, so it should be assigned to an independent and impartial body known for its neutrality to provide greater transparency to the sorting process. This ensures that the votes are counted fairly and without bias, ultimately contributing to a more transparent and credible electoral process.

Regarding the location of the sorting process, it usually takes place in the office where the voting itself was conducted. This saves time and avoids transferring the papers to another location to preserve them. As for the timing of the sorting process, the Algerian legislator addressed it in Article 152 of Order 21-01, stating that "vote sorting begins immediately after the end of the voting and continues without interruption until it is completed entirely".

1 Refer to Article 153 of Law 21-01.

Secondly: Criteria for the validity of ballots:

The Algerian legislator defined them in the following points:

- Place the envelope without the ballot.
- Do not put multiple ballots in the envelope.
- Do not strike out the ballots.

The Algerian legislator also specified the cases in which the ballots are invalidated in Article 154 of Law 21-01.

It should be noted that the statistical committees are three:

- The municipal committee, consisting of a presiding judge, a vice president, and two assistants.
- The provincial committee, consisting of a judge with the rank of counselor as the president, a member of the provincial delegation of the independent national electoral commission, and a public officer as a member.
- The committees abroad, consisting of a judge with the rank of counselor as the president, a representative of the independent national electoral authority, a public officer as an observer, and an employee proposed by the Minister of Foreign Affairs.

Second demand: the supervision of the announcement of election results

Usually, the voting process is accompanied by reservations about certain behaviors that may be observed by some parties, especially the representatives of the candidates. The provided sources indicate that the voting process is

accompanied by reservations about certain behaviors. In the context of elections, concerns may arise about behaviors such as attempts to buy votes in cash or gifts before the elections.

In addition, there are observations about the existence of violations during the voting process, where some cases have been described as exceeding acceptable practices, but they do not necessarily constitute violations. These observations emphasize the importance of vigilance and adherence to ethical behavior to ensure the integrity and fairness of the electoral process. They particularly focus on attempts at forgery or violation of the electoral regulations, which can lead to challenging the legitimacy of the results.

After the sorting process is completed, the members of the voting office sign a list of vote sorting signatures. The minutes are written in three copies with indelible ink, and the head of the office declares the final results of the voting at his level and attaches the results to the sorting list. A copy is given to each legal representative of the candidates, and then the head of the independent electoral authority announces the provisional results within 48 hours of receiving the final sorting records¹.

Each candidate has the right to lodge an objection to the election results by submitting an appeal to the Constitutional Court Registry within 24 hours following the announcement of the provisional results. This is stated in Order 21-01, which includes the organic law on elections.

The Constitutional Court decides on the appeals submitted to it within three days, based on a justified decision, either by canceling the challenged elections or by amending the prepared

¹ Refer to Article 152 of Law 21-01.

results report. The elected winner is announced definitively, and the court announces the final results within 10 days from the date of receiving the provisional results.

In the case of canceling the elections for the popular, municipal, and provincial councils, objections are registered with the provincial committee and follow the appeal procedures before the administrative court. The latter fails to consider these appeals within five days from the date of their submission. It is also possible to appeal the decision of the administrative court before the competent regional administrative court within three days from the date of notification of the challenged judgment.

The administrative court of appeal decides on the appeal within five days from the date of submission, and its decision is not subject to appeal and is legally effective. The results become final.

The provincial delegation of the independent authority publishes the final results, and these results are not subject to appeal.

Conclusion:

Algeria has witnessed a significant legislative movement concerning electoral matters. Several organic laws have been enacted, the latest being Order 21-01. Through this legislation, the legislature sought to align with the constitutional amendment of 2020, which established the Constitutional Court as an effective system to ensure the transparency of elections. Alternative mechanisms were also introduced to provide greater guarantees for the protection of the electoral process as a whole.

The years 2020 and 2021 were crucial for the constitutional founder and the Algerian legislator in establishing the principle of separation of powers. This was achieved by

dedicating judicial oversight over the electoral process from its beginning until the announcement of results. The electoral process, which was previously under the administration's jurisdiction from start to finish, now has an independent electoral authority responsible for it. Additionally, control over the results was ensured through administrative and constitutional judicial oversight.

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