

Judges Membership in Oversight Committees for Preparatory Processes

-Mechanism for Electoral Moralization-

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Abstract: The committees organizing the preparatory phase of electoral process are a guarantee of its moralization; this enhances the memberships of judges and their leadership of these committees, as a safeguards guarantee, which limits the administration's interference in reviewing electoral lists and making them transparent, as the campaign cleanses corrupt money and wastes public money.

Keywords: moralization-municipal committee for the review of electoral lists–judges - electoral campaign finance monitoring committee.

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Introduction:

The election is a fundamental pillar for the consolidation of democracy, it is a right and a duty enshrined in international instruments¹.

The election is a legal procedure that determines its system, time and place in a constitution or regulation to choose the person who holds the presidency or membership of a council, trade, union, symposium...².

Algeria like other states, constitutionalized the right to vote from the constitution 1963 to the 2020 constitutional amendment, which allows all citizens with legal requirement the right to stand and vote³.

In order to avoid the electoral process from its legitimate framework and to achieve its purpose, the Algerian legislator has created a legal arsenal to strengthen the electoral system as with ordinance no.21-01, which regulates the latter since the issuance of the presidential decree declaring elections until the results announced.

This regulation is not without its supervisory aspect such oversight is directly within the framework of so-called judicial oversight, or indirectly through the management committees.

This study specifically aims to highlight the effectiveness of the judge in chairing the monitoring committees for the preparatory phase of the elections, as dangerous from election preparation to the end of the election campaign, it comprises various activities and tasks directly related to the preparation of election without it the electoral system loses any practical or legal value⁴.

¹ Article 21 of universal declaration of human right: « Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

Everyone has the right of equal access to public service in his country.

The will of the people shall be the basis of the authority of the government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures », And Article 2 of international convening on civil and political rights : « Each state party to the present covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant... »

² محمد المساري، النظام الانتخابي وبناء العملية الانتخابية، العربي للنشر والتوزيع، مصر، 2018، ص.25.

³ المادة 56، المرسوم الرئاسي: 20-251، المؤرخ في 15 سبتمبر 2020 الموافق ل 27 محرم 1442، المتضمن التعديل الدستوري لسنة 2020، ج.ر.ع.54، الصادرة في 16 سبتمبر 2020، ص.15.

⁴ بولقواس يسرى، دور القاضي في العملية الانتخابية، أطروحة دكتوراه فيالقانون العام، كلية الحقوق والعلوم السياسية، جامعة باتنة1، الجزائر،

2021-2022، ص.151.

Judges Membership in Oversight Committees for Preparatory Processes -Mechanism for Electoral Moralization-

The criterion for separating the preparatory processes, from the voting process is the distinction of the first to the second.

These procedures are without prejudice to results of voting, so it's considered as separable decisions, among these actions are the following: renewal of electoral districts, renewal of voting desk members, timing and closure of polls, decision to submit the ballot hour and finally nominations⁵.

This research paper derives its importance from the fact that the electoral process is the basis of credibility and transparency of political activity within the state and moralization of political action.

Therefore, it was necessary for the judge to be present as an independent person on the organizing committees and to monitor the election process to ensure impartiality, if we have to answer the next problem: **how morally the judge chairing the observer committees has contributed to the preparatory phase of the election in the moralization of the electoral work. Moreover, what are these committees?**

To answer this problem, we will address two parts:

Part 1: role of the chairperson's judge of the municipal committee for the review of electoral lists in the moralization of election

Part 2: judge's role as chairperson's of the electoral campaign finance monitoring committee in the moralization of election

TITLE 1: Role of the chairperson's judge of the municipal committee for the review of electoral lists in the moralization of election

The ordinance No.21-01 removed the administration completely from managing the electoral process and created the independent national election authority with relevant competent national, for to be able to control the electoral process, especially in the sensitive before starting the voting process.

This ordinance shall install various electoral committees at the local level in the same way as municipal committees to review electoral lists and it have the privilege of membership of judges in their composition.

For more detail, we will address the statutory system of the municipal committee to review the electoral lists and the jurisdiction of the judge within this committee.

First Subtitle: The statutory system of the municipal committee to review the electoral lists

⁵عبد المومن عبد الوهاب، النظام الانتخابي في الجزائر مقارنة حول المشاركة والمنافسة السياسية في النظام الجزائري، دار الألمعية، الجزائر،

This committee is included in the electoral assistance committee, during her tribal phase; Algeria has known these kinds of committees in the context of unilateralism and political pluralism.

The first appearance of this type of committee was under decree No.63-307 containing the exceptional review of electoral lists, but this decree is different from the composition and rules of procedure and it has the same power ⁶ and here we wonder about the concept of the municipal committee to review the electoral list, its composition and its powers.

1: The concept of the municipal committee to review the electoral lists

This committee is a legal means developed by the authority to guide and sensitize voters, about how to register and delete from the electoral list, assign their personal data ⁷ and oversight functions during the preparatory phase of the electoral process by ensuring proper handling of electoral lists.

This process is carried out through their preparation and permanent review in the ordinary case during the last tripartite of each year and its exceptional review on each electoral referendum entitlement by presidential decree, including the recall of the electorate⁸.

The Algerian legislature come up with this type of committee to put an end to the administration's interference in the electoral list, to avoid inflation and questioning the number of registered persons in the list, and the commission's offices will also remain open for the duration of the legally prescribed days from 09 am to 16:00 pm⁹.

The electoral lists are nominal lists arranged alphabetically and officially, for all names citizens who meet them now of their liberation of special conditions for membership of the electorate and the exercise of the right to vote.

The electoral lists includes all the names of citizens who have the right to vote, it's called « the political people's nominal list » or « registered in the electoral calendar », so it's the elective mass for every electoral entitlement¹⁰.

⁶ إبراهيم بوعمر، الإطار القانوني للجنة الإدارية الانتخابية، مجلة النبراس للدراسات القانونية، جامعة العربي التبسي تبسة، مجلد6، عدد2، ديسمبر 2021، ص-ص. 46-49.

⁷ يونس بن عمار، موقع الجزائر اليوم، حصري...المراجعة الدورية للقوائم الانتخابية بين 5 نوفمبر و5 ديسمبر، 4 سبتمبر 2023، <https://www.aljazairyoum.dz/>، 19 سبتمبر 2023 -13:09.

⁸ المادة 62، الأمر: 01-21 المؤرخ في 26 رجب عام 1442 الموافق 10 مارس سنة 2021، يتضمن القانون العضوي المتعلق بنظام الانتخابات، ج.ر.ع. 17، المؤرخة في نفس اليوم، ص.14.

⁹ الموقع الرسمي للسلطة الوطنية المستقلة للانتخابات، بيان افتتاح المراجعة الدورية للقوائم الانتخابية من 12-12-2021 الى 16-12-2021، <https://ina-elections.dz/> ، 24 ديسمبر 2023، 21:02.

¹⁰ شريط وليد، الرقابة القضائية كضمانة لتجسيد الضوابط القانونية للعملية الانتخابية [دراسة على ضوء القانون العضوي: 01-16 المتعلق بنظام الانتخابات، مجلة دراسات وأبحاث، المجلة العربية في العلوم الإنسانية والاجتماعية، جامعة زيان عاشور الجلفة، السنة 9، العدد 28، 28 سبتمبر 2017، ص.245.

Judges Membership in Oversight Committees for Preparatory Processes -Mechanism for Electoral Moralization-

2: The composition of the municipal committee to review the electoral lists

The Algerian legislature has adopted the hybrid configuration similar to global legislation; this achieves the principles of integrity and electoral neutrality.

This committee includes a judges appointed by the president of the competent judicial council regionally and remarkably, it is a regular judge and three municipal citizens selected by the state delegate of the independent authority among the voters registered on the relevant municipal electoral list.

In addition to a competent and experienced staff, who does not belong to any political party, when he runs the permanent secretariat of the commission¹¹.

The nominal list of committee members may be also appoints and determines by a decision of the authority¹².

We note the extension of the presidency of this committee has been entrusted to the judges, and therefore that the administration has been abandoned in the conduct of this process as provided for in the past.

The order no.97-07 on the electoral system, in its article 19, which states: « The electoral lists are prepared and reviewed in each municipality under the supervision of an administrative committee composed of judge appointed by the council as president ... »¹³, so the judicial component of this commission is not recent.

3: The powers of the municipal committee to review the electoral lists

This committee handles ‘all matters related to the electoral list, supervised by the independent authority, applications for registration of Algerian citizens who have reached the age legal statutory election age set at 18 full years on polling day and those who enjoy their civil and political rights.

It is also required that those who wish to register on electoral lists should not lose their legal capacity, this electoral lists are reviewed by the commission during the last tripartite of each years, it can also be exceptionally reviewed by presidential decree to call the electorate¹⁴.

¹¹الفقرة 2، المادة 63، الأمر: 01-21، المرجع السابق، ص.14.

¹² benmadani ameur, prospects of electoral reform in Algeria post-hirak of February 22nd a comparative study of the most significant changes in the electoral process, dirassat and abhath, the Arabic journal of human and social science, university ziane achour djelfa, vol.13, issue.4, July 2021, p.20.

¹³المادة 19، الأمر: 07-97، المؤرخ في 27 شوال عام 1417 الموافق ل 6 مارس سنة 1997، يتضمن القانون العضوي المتعلق بنظام الانتخابات، ج.ر.ع.12، الصادرة في 27 شوال عام 1417، ص.5.

¹⁴بن ناصف مولود، الضمانات القانونية لحماية العملية الانتخابية في الجزائر، أطروحة دكتوراه في القانون العام، كلية الحقوق، جامعة الجزائر I بن يوسف بن خدة، الجزائر، 2017-2018، ص.60.

The commission shall reserve the final electoral list to its permanent secretariat, and shall transmit a copy to the secretariat of the ordinary court, to the national independent electoral authority and to the state delegation of the national authority¹⁵.

The commission shall monitor the conformity of the requirements for the review of the electoral list with respect to voter registration and write-off as the case may be¹⁶.

The committee also considers objections to registration or deletion by decision no later than 3 days¹⁷, those concerned shall also be appointed within 3 days of the latter's date¹⁸.

The committee shall transmit requests for registration and delisting¹⁹ and consideration of objections and preparation records and decisions in the presence of chairperson and a member of the committee and its secretary²⁰.

The committee set up a schedule for the list of newly registered and erased voters, which contains their titles, surnames, names, dates of birth and residence addresses²¹, this schedule suspended within 24 hours following the electoral roll review committee²².

The commission shall ensure the execution of judicial decisions when reporting matters relating to the registration or removal of voters²³.

Second Subtitle: The judge's status within municipal committee to review the electoral lists

The Algerian legislature has incorporated the judicial component into the electoral review process by giving the chairperson of the committee to a judge, as a guarantee of its impartiality and independence; it is the moral respect.

Therefore, the preparatory procedures for electoral process will be subject to indirect judicial supervision by the individual judge, the president of the committee,

In order to ensure greater efficiency in the functions of the commission, the legislator had to add another judge to the commission as a vice-chairman as a proactive solution in the event of an objection to the president²⁴.

¹⁵المادة 71، الأمر: 01-21، المرجع السابق، ص.15.

¹⁶المادة 7، القرار 15، المؤرخ في 19 ربيع الثاني 1444 الموافق 13 نوفمبر 2022، المحدد لقواعد سير لجان المراجعة الدورية للقوائم الانتخابية، السلطة الوطنية المستقلة للانتخابات، ص.2.

¹⁷الفقرة 3، المادة 68، الأمر: 01-21، المرجع السابق، ص.15.

¹⁸الفقرة 4، المادة نفسها، المرجع نفسه، الصفحة نفسها.

¹⁹المادة 8، القرار 15 المحدد لقواعد سير لجان المراجعة الدورية للقوائم الانتخابية، المرجع السابق، ص.2.

²⁰المادة 10، القرار 15 المحدد لقواعد سير لجان المراجعة الدورية للقوائم الانتخابية، المرجع نفسه، الصفحة نفسها.

²¹المادة 11، القرار 15 المحدد لقواعد سير لجان المراجعة الدورية للقوائم الانتخابية، المرجع نفسه، الصفحة نفسها.

²²المادة 12، القرار 15 المحدد لقواعد سير لجان المراجعة الدورية للقوائم الانتخابية، المرجع نفسه، الصفحة نفسها.

²³المادة 15، القرار 15 المحدد لقواعد سير لجان المراجعة الدورية للقوائم الانتخابية، المرجع نفسه، الصفحة نفسها.

Judges Membership in Oversight Committees for Preparatory Processes -Mechanism for Electoral Moralization-

The independent national electoral authority opens up the possibility for citizens to register on the electoral lists electronically through the site: <http://serviceina-election.dz>, nothing that electronic registration does not prejudice the powers of the municipal committee to review electoral lists, but it facilitates the citizen and the committee together²⁵.

The judge appointed by the judicial council chairing the municipal commission for the review of electoral lists and its duties are subject to his supervision, the chairperson of the committee shall preside over its meetings, no decision shall be issued without his presence and opinion²⁶, and he also indicates the records of the commission's work²⁷.

The factions of a judge as former chairperson of the electoral administrative commission in the past and it has previously been the same, so he shall to:

- observing the holding of the electoral list.
- monitoring the deposit of copies of the final electoral list at the level of secretariat for the seizure of the competent tribunal and former independent high electoral supervision authority previously but currently the independent national electoral authority.
- control of the running of the municipal card for voters.
- monitoring the maintenance of deceased voters' write-off records²⁸.

TITLE 2: Judge's role as chairperson's of the electoral campaign finance monitoring committee in the moralization of election

The election campaign is the most important stage of the electoral process, through which the public can see the electoral programs, but this process needs funds for financed in a number of ways; while the principles of equality between political contenders supposes for used this freedom²⁹.

Due to the danger of political money in a particular election game, this funding must be subject to independent control, This idea emerged in the late 1970s and 1980s after the

²⁴ بن ناصف مولود، المرجع السابق، ص.ص.60.61.

²⁵ وكالة الأنباء الجزائرية، فترة المراجعة الدورية للقوائم الانتخابية ل 2023 ستكون من 5 نوفمبر الى غاية 5 ديسمبر المقبل، <https://www.aps.dz/ar/algerie/151206-2023-5-5> ، 11 ديسمبر 2023، 10:20.

²⁶ المادة 10، القرار 15 المحدد لقواعد سير لجان المراجعة الدورية للقوائم الانتخابية، المرجع السابق، ص.2.

²⁷ المادة 14، القرار 15 المحدد لقواعد سير لجان المراجعة الدورية للقوائم الانتخابية، المرجع نفسه، الصفحة نفسها.

²⁸ المادة 11، المرسوم التنفيذي: 17-12، المؤرخ في 18 ربيع الثاني عام 1438 الموافق 17 يناير سنة 2017، يحدد قواعد سير اللجنة الإدارية الانتخابية، ج.ر.ع.3، الصادرة في 18 يناير 2017، ص.6.

²⁹ عبد المومن عبد الوهاب، المرجع السابق، ص.146.

some countries like the united states set up institutions to monitor the election campaign represented by the federal election commission³⁰.

First Subtitle: The legal system of the electoral campaign finance monitoring committee

Its French counterpart influenced the Algerian legislature by the establishment of a monitoring body for electoral campaigns or rather; the control of political expenditures reprints on the national committee for campaign and political finance.

He created the electoral campaign finance monitoring committee, as a legal means and institutional guarantee established by the independent authority to monitor the financial aspect of electoral publicity and not to derogate from the legal and moral framework, this committee consists of;

- a judge appointed by the supreme court, among its judges as president.
- a judge appointed by the council of state, among its judges.
- a judge appointed by the court of accounts, among its judges.
- a representative of the supreme authority for transparency, prevention and combating corruption.
- a representative of the ministry of finance³¹.

The judicial category emerges within the commission; it is evidence of the legislator's desire for judicial control over the protection of public money at the level of rules and provisions on campaign funding sources and expenditures,

it is a guide to its independence and enhances its impartiality in the light of the judges' constitutional and legal guarantees, that's why independent judges are so essential³², with theirs competence in the necessary legal matters for reporting on sensitive topics or financial and accounting issues, which constitutes a guarantee of objectivity and accuracy in decision-making³³.

Although its chairperson is a judge and one of its members is a judge, the commission has administrative rather than judicial capacity, the French constitutional council confirmed

³⁰ Dr Michael Pinto-Duschinsky, Dr Alexander Postnikovr, campaign finance in foreign countries: legal regulation and political practices (A comparative legal survey and analysis), international foundation for election systems, USA, 2005, p-p.1-4.

³¹المادة 115، الأمر: 01-21، المرجع السابق، ص.18.

³²المادة 163، المرسوم الرئاسي: 20-251، المرجع السابق، ص.36.

³³ريكلي الصديق، النظام القانوني للجنة مراقبة تمويل الحملة الانتخابية في الجزائر، مجلة الحقوق والحريات، جامعة محمد خيضر بسكرة، مجلد11، عدد1، 2023، ص.420.

Judges Membership in Oversight Committees for Preparatory Processes -Mechanism for Electoral Moralization-

it³⁴, when it considered its works to be administrative in nature, although its composition contained a judges³⁵.

But in Algeria, the decisions of this commission cannot be appealed to the courts, they are challenging her before the constitutional court³⁶, is what makes its work not included in the administrative functions of traditional administration as usual.

Second Subtitle: Judge's place within the electoral campaign finance monitoring committee

Integrating judges into the supervision of campaign funding aims at preventing corrupt money from entering the electoral process, after this censorship was the constitutional council's prerogative.

Where this control judicial configuration varies between the ordinary judge, the administrative judge and the accounted judge, in the absence of the committee's domestic law, we will use general provisions, to elaborate on the implications of this commission's judicial composition.

1: Mandate of the ordinary judge within the electoral finance monitoring committee

The committee is chaired by a judge appointed by the Supreme Court from among its judges, he is supposed to be experienced and skilful as a judge of jurisprudence, who chairs meetings and deliberations and signs record and he conducts administrative and judicial investigations lasting 6 months by mandating judicial discipline to investigate or intervene where necessary.

He endorses the relevant decisions relating to the calculation of the campaign whether by accepting, refusing or requesting amendment³⁷, he broadcasts the rejection of the account if it fails to comply with the legal requirements³⁸ and he represents the commission before the independent authority and other bodies³⁹.

³⁴فاضل الهام، مستجدات الرقابة على تمويل الحملة الانتخابية في قانون الانتخابات 01-21، مجلة طبنة للدراسات العلمية الأكاديمية، المركز الجامعي بربكة، مجلد5، عدد1، 2022، ص.1027.

³⁵أحمد محروق، الاشراف القضائي على الانتخابات النيابية في الجزائر، رسالة ماجستير فيالقانون الدستوري، كلية الحقوق والعلوم السياسية، جامعة بسكرة، الجزائر، 2014-2015، ص.127.

³⁶المادة121، الأمر:01-21، المرجع السابق، ص.19.

³⁷المادة118، الأمر:01-21، المرجع نفسه، الصفحة نفسها.

³⁸المادة119م، الأمر:01-21، المرجع نفسه، الصفحة نفسها.

³⁹موقع الشروق أونلاين، شرفي: تمويل الحملة الانتخابية تحت مجهر القضاء،

<https://www.echoroukonline.com/%D8%B4%D8%B1%D9%81%D9%8A-%D8%AA%D9%85%D9%88%D9%8A%D9%84-%D8%A7%D9%84%D8%AD%D9%85%D9%84%D8%A9->

2: Mandate of the administrative judge within the electoral finance monitoring committee

The state council appoints one of its judges to the election finance monitoring committee, he considers from the judge of jurisprudence in the administrative article along the lines of the electoral article.

This membership is part of judicial supervision as the role of administrative judge, and the judicial supervision is a function of the judiciary and its independence and impartiality in the performance and function of the judiciary⁴⁰.

The administrative judge participates in all the functions and work of the commission, especially regarding the examination of the electoral pregnancy accounts, he checks and ensure that the formal requirements have be respectedand respect the substantive requirements.

2-A: Check formal requirements

-ensure that these accounts deposited within the legally prescribed deadlines by 2 months from the date of announcement of the results of the presidential or legislative elections.

-ensure that the finance secretary of the electoral campaign prepares the accounts report.

-ensure that the campaign financier for funding opens a single bank account.

-ensure that campaign accounts were deposited with the campaign finance monitoring committee by the portfolio of accounts due to which the candidate received donations from natural persons or state subsidies.

-ensure that the legal justification of the revenues included by nature and source and that the calculation of the account included the expenses justified by the supporting documents⁴¹.

2-B: Verification of substantive requirements

-ascertain the source and nature of revenues.

-ensure that the candidate respects the cap on expenses incurred in the election campaign and specified in the texts.

[%D8%A7%D9%84%D8%A7%D9%86%D8%AA%D8%AE%D8%A7%D8%A8%D9%8A%D8%A9-%D8%AA%D8%AD%D8%AA-%D9%85%D8%AC%D9%87%D8%B1](#), 2023-09-26, 21:38.

⁴⁰بولقواس يسرى، المرجع السابق، ص.11.

⁴¹رداد نور الدين، الرقابة على حسابات الحملة الانتخابية "قراءة في الأمر 21-01 المتضمن القانون العضوي المتعلق بنظام الانتخابات"، مجلة العلوم الإنسانية، جامعة محمد خيضر بسكرة، مجلد33، عدد4، ديسمبر 2022، ص.420.

Judges Membership in Oversight Committees for Preparatory Processes **-Mechanism for Electoral Moralization-**

-ascertain the authenticity and credibility of the processes restricted in the campaign account given the documentation received and evidence relating to the campaign's calculation⁴².

The administrative judge's opinion on the validity of these requirements is essential in view of his professional experience in handling document and administrative decisions.

3: Mandate of the accounted judge within the electoral finance monitoring committee

The accounted judge is instrumental and effective in the audit of the operations recorded in the electoral campaign accounts, as the verification of evidentiary and associated documents enhances objectivity, independence and impartiality.

The court of accounts is an independent supreme institution that controls public property and funds, this institution charges with the remote control of state, local communities and public utility's funds, contributing to the promotion of good governance and transparency in the conduct of public funds and deposit accounts, and combat various forms of forgery and illegal practices⁴³.

In addition to the tasks assigned to the accounted judge, and that's why the departments, institutions, public bodies or local communities can follow it⁴⁴.

Given the judge's experience in financial matters, he is considered to be the commission's first expert, he has the task of the disclosing accounts, the involvement of a judge of the accounting board in the commission's composition is in the direction of the state of readily activate false or fraudulent financial control.

He is also familiar with public spending, so he is able to distinguish the right accounts from the magnified accounts.

Conclusion:

At the conclusion of this paper, we can say that the judge has an essential role in the electoral process across its various stages, similar to the preparatory phase, its work is highly sensitive, it must therefore be subject to the administration and control of judges as an independent authority and ensuring the credibility, transparency and integrity of electoral process.

Among the finding, we state the following:

⁴²رداد نورالدين، المرجع نفسه، ص.421.

⁴³المادة 199، المرسوم الرئاسي:20-251، المرجع السابق، ص.41.

⁴⁴المادة 41، مطة2، الأمر:95-23، المؤرخ في 29 ربيع الأول عام 1416 الموافق 26 غشت سنة 1995، يتضمن القانون الأساسي لقضاة مجلس المحاسبة، المعدل والمتمم، ج.ر.ع.48، المؤرخة 8 ربيع الثاني عام 1416، ص.15.

Kenza BENALI– Souad HAFDI

The independence of the municipal commission for the review of electoral lists due to the change in its composition and this after being cleared of member of the chairman of the municipal people's assembly.

The independence of electoral campaign finance monitoring committee and its non-independence on anyone, it has only a functional supervision relationship with the independent election monitoring authority.

Despite the judge's membership and leadership of this committee, their decisions are not regard as judicial acts; it does not resemble judgments and injunctions.

Appeals against the municipal commission's decisions to review electoral lists before the ordinary judiciary shall be within 8 days; this derives its work from the department of administrative affairs, which is responsible for the judiciary's work.

Appeals against the decisions of the electoral campaign finance monitoring committee shall made to the constitutional court within 30 days; this gives a special nature to these decisions.

Therefore, the legislature has to:

The rules of procedure of the electoral finance monitoring committee, which have not yet promulgated for more than 2 years, are regulate.

Adds a member of the composition of the electoral campaign finance monitoring committee as a representative of the independent national electoral authority.

Indicate how members of the committee should be disagreed, with in the event of blocker.

The leadership of the election financing monitoring committee assigns to the judge of the council of state, who is responsible for administrative matters administrative as compared to the Supreme Court judge.