

The role of the administrative judge in the electoral process in Algeria

دور القاضي الإداري في العملية الانتخابية في الجزائر

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Abstract:

Elections have become a democratic phenomenon and a cultural practice to assure the freedom of the individual to choose who he deems appropriate to represent him. The judiciary is one of the mechanisms that contribute to real and effective protection of the electoral process, for this and To ensure the integrity of this process, the Algerian legislator assigned control over its legitimacy at certain stages to the administrative judge, under the provisions of the organic law on the electoral system, which resulted in an administrative dispute of a special nature. Therefore, in this study, we must define the general framework for the intervention of the administrative judge in the electoral process in the Algerian electoral system, by clarifying the forms of interference at the various stages of the process, and then judging the effectiveness of the role of the judiciary as a guarantor of the integrity and transparency of the elections through constitutional extrapolation, legal and regulatory texts relating to all stages of the electoral process.

key words: Electoral Process - Electoral Law - Administrative Judge - Judicial Oversight - Electoral Disputes.

المخلص :

أصبحت الانتخابات ظاهرة ديمقراطية وممارسة حضارية لتأكيد حرية الفرد في اختيار من يراه مناسباً لتمثيله. ويعد القضاء واحداً من الآليات التي تساهم في إحداث حماية حقيقية وفعالة للعملية الانتخابية. وعليه اسند المشرع الجزائري رقابة مشروعيتها في مراحل معينة منها للقاضي الإداري بموجب نصوص القانون العضوي المتعلق بنظام الانتخابات مما أفرز منازعة إدارية من طبيعة خاصة. وعليه وجب علينا في هذه الدراسة تحديد الإطار العام لتدخل القاضي الإداري في العملية الانتخابية في النظام الانتخابي الجزائري، من خلال توضيح أشكال التدخل في شتى مراحل العملية، ثم الحكم على مدى نجاعة دور القضاء باعتباره ضامناً لنزاهة وشفافية الانتخابات من خلال استقراء النصوص الدستورية والقانونية والتنظيمية المتعلقة بجميع مراحل العملية الانتخابية

الكلمات المفتاحية: العملية الانتخابية- قانون الانتخابات- القاضي الإداري- الرقابة القضائية-

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Introduction:

The elections are one of the effective mechanisms for achieving democracy, and because it is the basic way of citizen participation in decision-making, the electoral process requires bodies that organize, manage, monitor and closely monitor all stages of its to give transparency and integrity when conducted, giving them great credibility and acceptance by the elected.

The Algerian legislator has assigned control of the electoral process to various bodies, including the administrative judge's supervision under the organic law on the electoral system, which has resulted in an administrative dispute of a special nature.

This intervention focuses on identifying the strengths and weaknesses of the provisions of the organic law on the electoral system in relation to the legal protection it provides to citizens' rights to political participation through the role assigned to the administrative judge, who has the task of controlling the legitimacy of certain stages of the electoral process. So the following questions can be raised: - **How effective is the administrative judge's oversight of the electoral process in terms of maintaining the right to political participation?**

- **Has the amendment of the recent electoral law strengthened the role of the judiciary in monitoring the electoral process?**

To answer these questions, we have relied in our study on the analytical method of analysis of legal texts and regulatory provisions in order to reach an extensive and comprehensive study of the subject by addressing the study of the scope of administrative judicial oversight in the preparatory phase of the electoral process (section 1), Then the scope of administrative judicial oversight of contemporary and post-voting procedures (section 2).

Section I: the scope of administrative judicial oversight in the preparatory phase of the electoral process

The pre-election procedures are the focus of the electoral process and the basis for the close association between these procedures and the voting process, as the validity and nullity of the latter depends on the validity of these procedures, which are achieved only within the framework of legislative and administrative regulation and in a way that guarantees transparency and integrity.¹ However, the development of the legislative and regulatory framework is not sufficient to achieve the integrity and credibility of the process, but it is necessary to develop neutral bodies that are tasked with monitoring the proper application of these provisions while granting the right to challenge the decisions of these

bodies. Accordingly, the organic law on elections ensures that the decisions of the administrative authorities are challenged before the competent judicial authorities.

However, the scope of judicial oversight does not extend to all procedures leading up to the electoral process, such as the establishment and identification of electoral districts, the decision to invite the electorate, and the preparation of electoral lists, The nomination stage, and the election campaign.

If the determination of electoral districts is done by law, the issue is also outside the control of the judiciary with regard to the decision to invite the electorate, because it is an institutional constitutional act whose nature derives from the fact that its source is a constitutional organ, and its subject is related to constitutional and qualitative authority, these matters are sufficient on their own to make it Away from the control of the administrative judiciary.²

our study in this section will focus on the supervision of the administrative judiciary on the electoral lists and on the nomination process.

A) The role of the judiciary in disputes related to registration and delisting from electoral lists:

Electoral lists are a document that counts voters. and their names are arranged in alphabetical order, including all data regarding their personal and family name, date and location of birth, place of residence or residence in the electoral district.³ That is, a list that includes all those who have registered to vote in a particular area. Therefore, the process of preparing and reviewing the electoral lists is the cornerstone of the beginning of the electoral process. Whenever the lists are sound and free from errors and misrepresentations, the elections are sound.⁴

A proper electoral registration is one of the basic guarantees that contributes to reassuring the voter that the beginning of the electoral process is fair and transparent, and therefore the legislator has established a municipal committee to review the electoral lists operating under the supervision of the Independent National Electoral Authority, which was headed by a judge appointed by the president of the competent judicial council regionally.⁵ This committee is competent to adjudicate complaints filed by citizens who have failed to register on the electoral list, and also to adjudicate on the pending objections made to write off an improperly registered person or to register a fool in the same district.⁶

After submitting a complaint or objection to the Chairman of the Municipal Committee for the Review of Electoral Lists within the 10 days following the

announcement of the conclusion of the regular phase and five days in the case of the exceptional review, with the need to decide the committee by a decision within a maximum of three days and reach within three full days to those concerned by each legal means - i.e. reporting of its types, whether by address or publication. The Algerian legislator granted the persons concerned the right to appeal the committee's decision to reject the decision of the committee to reject within five full days of the date of notification and eight days in the event of non-reporting, and if those deadlines were not respected, the right to appeal is immediately waived⁷.

The appeal against the Committee's decision shall be recorded in the court as soon as the seizure is authorized and submitted to the competent regional court or the Algiers Court of the Community living abroad, which broadcasts such appeals by a maximum of five days without the expenses of the proceedings.

On the basis of a normal notice sent to the parties concerned three days in advance, the court's ruling is incapable of any form of appeal.

It should be noted that the legislator did not restrict appellants to the courts with the formalities required to submit petitions, but rather to appeal once a permit has been submitted.

Another problem arises and we are in the process of analyzing article 21 of Law 16-10 related to election system, amended and complemented by organic law 19-08 about the competent judicial authority in adjudicating such disputes related to registration and write-off, especially since the legislator has only uttered the court. Some believe that the competent judicial body in this type of dispute, which was identified by the legislator, cannot be outside the jurisdiction of the administrative judiciary, especially since one of the parties to the dispute is a municipal committee or the presence of the municipality in relation to the organic standard of article 800 of the Civil and Administrative Procedures law.

However, another group considers that the jurisdiction is the ordinary judiciary, so that the legislator intended, in the court's words, that he had assigned jurisdiction to adjudicate such disputes with the ordinary judiciary, and that he had assigned the adjudication of other decisions to the administrative judiciary explicitly. In addition, the electoral list disputes are of a special nature, and this relates to matters that are within the purview of the ordinary judge, since they relate to nationality, citizenship and the eligibility of persons in general - civil status - and therefore the average judge has an exception.

However, we do not agree with this proposition because there is a real administrative dispute, since once the management is in place in any dispute and

this department has used the means of common law, or the public authority in the dispute has appeared to describe its work in this case as administrative work and the jurisdiction of the administrative judiciary, this necessarily corresponds to disputes in which the municipal committees are a party are represented on the one hand representing an administrative body.

Accordingly, it can be said that the administrative judge can settle the disputes of registration in the electoral lists, even if the latter related in its essence and subject to issues related to the civil status.

B) The role of the judiciary in protecting the right to stand for election:

The right to stand for election is one of the basic components of establishing a true democracy governed by the rule of law, which is the order of various international and regional conventions enshrined in Article 62 of the Algerian Constitution, It states: "Every citizen who meets the legal requirements is elected and elected."

In order to protect the right to stand for election, the administrative judge must extend his control over the provisions governing the candidacy, whether it be for the local elections or the parliamentary elections, which are his prerogative under the explicit provision of organic law 16-10 relating to the electoral system, amended and complemented by organic law 19-08⁸. This is in accordance with the compatibility of these provisions with the candidate who raises the dispute before him by rejecting his candidacy by the competent authorities.

1- Disputes to run for local elections:

The administration regulates the exercise of the right to run in local and legislative elections⁹, so the competent state interests process the application files and issue decisions to accept or reject the application files, as evidenced by the text of Article 78 of Law 16-10, which states that "the rejection of any candidate or list of candidates by the decision of the Governor shall be legally and explicitly explained..." and giving the law to the administration the authority to reject candidacy files is considered a factor that can influence the principle of freedom of candidacy and its generality, considering that the administration may misuse its discretion and it is certain that any violation of the controls and provisions stated is subject to rejection from the governor. However, the Algerian legislator devoted judicial oversight to this decision, making the decision to refuse to run subject to judicial oversight, especially since it stipulated that the decision should be clearly reasoned and that it be made public within 10 days of filing the application. The Administrative Court decides on the appeal five days from the date of the appeal to be lodged by a final decision that is not subject to any

complaints of the forms of appeal, and shall be immediately informed of the parties concerned and to the Governor for the purpose of its execution¹⁰. It should be noted that the urgency of the case, a five-day dismissal and the non-appealability of the sentence, is a justification for the special nature of the nomination process, which must be terminated before the campaign begins.

2- Parliamentary elections disputes:

Article 116 of the Organic Law 16-10 related to the elections, amended and complemented by organic law 19-08 in Chapter Four under the heading provisions relating to the election of elected members of the National Assembly states that "The State Electoral Commission, formed under the same conditions as article 154 of this organic law, decides on the validity of nominations." Therefore, the competent body to study the applications for membership of the National Assembly is the State Electoral Commission, which operates under the supervision of the Independent National Electoral Authority, which has the power to reject any candidacy by a given decision, and must inform the person concerned of the decision of refusal in full two days from the date of filing the permit to run with the possibility of challenging the decisions of the State Electoral Commission before the administrative judiciary.

3- Competent authority to consider the validity of nominations for the presidential elections:

The National Independent Electoral Authority is the competent body to consider the validity of the presidential nominations, Article 141 of the Electoral Code stipulates that "the Independent National Electoral Authority shall decide on the validity of nominations for the presidency by a legally reasoned decision no later than 7 days from the date of filing the nomination." It should be noted that it was the Constitutional Council that decided on the validity of presidential nominations by non-appealable decisions.

In the 1999 presidential elections, candidate Mahfod Nahnah was excluded by the Constitutional Council. So the concerned person resorted to a judicial appeal before the State Council, This latter issued a decision on August 30, 1999, stating that it had no jurisdiction and acknowledging that the decisions of the Constitutional Council regarding decisions to accept or reject candidacy are final and not subject to appeal.¹¹

The Constitutional Council also rejected the candidacy of Ahmed Taleb Ibrahim in the 2004 presidential elections because the candidate did not obtain a quorum for signatures.

However, after the amendment of the Electoral Law 16-10 and the task of considering the validity of nominations for the presidency of the Republic to the Independent National Electoral Authority, the candidate who refused his candidacy has the right to appeal the rejection decision to the Constitutional Council no later than 7 days from the date of the last decision of the independent authority.

It should be noted that Law 19-08¹², amended Law 16-10 on the electoral system, has kept judicial oversight of the process of running for local and legislative elections without reforms, It has been enough to restore what was done by giving candidates the right to judicial appeal against decisions to reject nominations before the competent regional administrative court, where the administrative court decides a non-appealable ruling. What is new to this amendment is that it has granted the presidential candidate who has been rejected by the Independent National Electoral Authority the right to appeal this decision to the Constitutional Council.

Section II: The scope of administrative judicial oversight of contemporary and post-voting procedures

The contemporary procedures of the electoral process mean the sum of the stages or voting processes that are at the core of the electoral process from the voting process to the counting to the identification and announcement of the results, and the sum of these processes reflects the precise technical concept of the electoral process¹³.

And since the decisive stage in the elections is the voting stage, and the ensuing counting of votes as the stage that is usually the stage for falsifying the will of the voters, it is necessary that it be framed by a neutral body and subject to judicial supervision, It is necessary to be framed by a neutral body and subject to judicial control. Therefore, we will try to study this stage and demonstrate the effectiveness of the judiciary in ensuring the correctness and integrity of the process of appointing members of the polling station, and the extent of its oversight over the validity of voting operations.

A) Administrative judiciary control of voting office members' lists:

In accordance with article 30 of the amended Election Law 16-10, members of the Voting Office and additional members are appointed by the state delegate of the Independent National Electoral Authority from among the voters residing in the state territory, With the exception of candidates, their relatives and

their in-laws up to the fourth degree, individuals belonging to their parties as well as elected members.

It should be noted that the legislator has strengthened the guarantee that those associated with the candidates who are related to relatives will not be appointed to the list of members of the voting offices by reaching the fourth degree of kinship, and thus seeks to break all doubts expressed by the parties to the electoral process regarding the impartiality of the members of the voting office.

It is noteworthy that the Algerian legislator did not involve the judges in direct supervision of polling stations and offices, but assigned them the role of oversight of the formation of voting offices through a judicial challenge to the decision to refuse to modify the composition of the voting offices, where the competent administrative court decides to appeal for a full five days from the date of registration of the appeal and the decision is not subject to any form of appeal¹⁴.

- Composition of voting office members for national assembly elections

Unlike the composition responsible for managing voting processes related to the election of members of the National People's Assembly and members of local councils, the voting phase in the midterm elections of elected members of the National Assembly was characterized by the specificity of full judicial oversight. Under organic law 16-10 on the electoral system, the voting office is made up of a president, a vice president, two assistants and four additional members, all judges appointed by the Minister of Justice¹⁵.

The judicial component of the voting office composition in the National Assembly elections indicates that these elections are subject to judicial supervision as mentioned above, which would be a fundamental guarantee of the integrity of the electoral process, but it should be noted that the Algerian legislator in law 16-10 did not open the field of judicial challenge to the composition of voting offices for the elections of members of the National Assembly.

B) Control of the administrative judiciary on the validity of voting processes:

The total number of voting processes representing the vote, counting and announcement of the results represents the precise technical concept of the electoral process, which is one of the most important stages and procedures of the electoral process, and its incorrectness eliminates the rest of the voting stages mentioned above¹⁶. That is why the legislator has placed strict judicial oversight

in ensuring the validity and integrity of voting processes related to local elections, Except for voting processes related to legislative and presidential elections and referendums, which are outside the scope of judicial oversight and fall within the jurisdiction and control of the Constitutional Council.

The electoral legislator granted the administrative judge the authority to control the validity of voting operations for the election of members of municipal and state people's councils, where each voter¹⁷ has the right to object to the validity of the voting process by filing a protest in the voting office where he voted to be recorded in the minutes of the voting office, and then sent to the State Electoral Commission to broadcast the protest submitted to it and issue its decisions no later than 5 days from the date of notification of the protest.

The decision to reject the protest shall be subject to an appeal for 3 days from the date of notification to the competent regional administrative court, which broadcasts it within 5 days and is not subject to any form of appeal.¹⁸

The administrative judge has full powers in electoral disputes, and the judge's decision may be to reject or accept the appeal.

- It may reject the appeal, in two cases, it may automatically reject the appeal in the form because it did not fulfill the conditions that must be met in it, especially as it relates to it as the appellant, or the date for filing the appeal, where the supreme council refused to challenge the validity of the results of the legislative elections to be submitted after the expiration of the specified legale period¹⁹. or the deficiency in the data and formalities of the petition of appeal. In addition to formally rejecting the appeal, the appeal may be rejected objectively under the risk of non-establishment. This means that the administrative judge can confirm the outcome of the vote when it is found that the facts and means raised in the appeal are not realized, and will not affect the outcome of the vote In addition to formally rejecting the appeal, the appeal may be rejected objectively under the risk of non-establishment. This means that the administrative judge can confirm the outcome of the vote when it is found that the facts and means raised in the appeal are not realized, and will not affect the outcome of the vote, despite the fact that violations have been found to have marred the electoral process if the means raised in this regard is not from the public order.²⁰

- In the event that the appeal is accepted, the election judge intervenes either to amend the results of the election, which is achieved in practice by

redistributing the seats, or to cancel the election once it is established that the electoral irregularity in question has significantly affected the results of the election announced.²¹

Electoral appeals do not necessarily lead in any case to the cancellation of the entire electoral process, the electoral challenge may lead to the removal of the membership status of the person who declared his victory without necessarily having to cancel the election process, if the conditions are not met by the candidate, the ruling on this appeal is limited to nullifying the election of this candidate alone without prejudice to the electoral process itself and replacing the candidate who has the right to do so.

We should note that in addition to the judicial guarantees granted by the electoral legislator to the health and integrity of voting processes, he has protected her criminally by controlling the penalty that ensures that they are respected. In addition to the effective role of the independent supreme electoral monitoring authority, which is a quasi-judicial body within the powers vested in it during the voting process.²²

Conclusion:

The study tried to highlight the position of the administrative judiciary in the electoral process in light of the new electoral reform, which did not make strengthening judicial oversight a priority as evidence of maintaining the same nature of judicial oversight over the electoral process, and that was limited to some stages of the electoral process without other stages, such as preparing the electoral card, preparing electoral proxy and the electoral reform gave oversight of the electoral process to other regulatory bodies, namely the Independent National Electoral Authority. In addition to closing the door in the face of candidates whose files are rejected by the administration, where the decisions of administrative courts are final, not subject to appeal, and this is inconsistent with the principle of litigation in two degrees.

Accordingly, the following suggestions can be made:

- The Algerian legislator must adopt the principle of litigation in two degrees in the elections article, as it is not always possible to argue the urgent nature of electoral disputes and to enable the Council of State as the highest pyramid in the administrative judiciary to intervene in electoral disputes by considering all disputes related to the electoral process, especially those relating to the preparatory stage and the nomination stage in particular.

• We also appreciate what the Algerian legislator went on by opening the door to appeal against the composition of the voting office in accordance with the administrative and judicial appeal mechanisms. However, it should be stipulated that the criteria of competence and management experience should be met when selecting voting office members, while strengthening this formation with a judicial component by assigning at least the presidency of the voting center to a judge.

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- ⁵ - Article 15 of the Organic Law 16-10 of August 25, 2016 related to election system, amended and complemented by organic law 19-08 , the official journal No. 50
- ⁶ - see Articles 18 and 19 of Organic Law related to elections amended and complemented.
- ⁷ - see article 21 of the Organic Law related to the elections amended and complemented.
- ⁸ - It should be noted that the presidential elections are due to the Constitutional Council and not to the judiciary.
- ⁹ - Organic Law 16-10 mandated the study of candidacy files for local and legislative elections to the governor and to the relevant diplomatic or consular departments for candidates abroad.
- ¹⁰ - see article 78 of Law 16-10 related to elections amended and complemented by organic law 19-08 .
- ¹¹ - In the same vein, see Resolution 2871 of 12/11/2001, published in the Journal of the Council of State , Issue 01 of 2001, p. 141.
- ¹² - Organic Law 19-08, September 14, 2019, amends organic law 16-10, election-related, Official journal No. 55.
- ¹³ - Rahmani DJihad, *Judicial Oversight of Electoral Processes in Algeria*, theses of Majester, Faculty of Law, University of Algiers 1, 2015, p. 125.
- ¹⁴ - see article 30 of the Organic Law 16-10. related to election system, amended and complemented by organic law 19-08.
- ¹⁵ - see article 118 of the Organic Law 10-16 related to the elections, amended and complemented by organic law 19-08.
- ¹⁶ - Mohammed Asghir Baali, *Administrative Courts*, Al-Uloom Publishing and Distribution House, Annaba, 2011, p. 99.

¹⁷ - The voter here includes the nominated voter and the non-candidate voter who used his right to vote or their legally qualified representatives and this is evidence of expanding popular control over the legitimacy of electoral operations.

¹⁸ - Article 170 of the Organic Law 16-10.

¹⁹ - Resolution No. 30902 of November 27, 1982, published in the Judicial Review No. 01 of 1989, p. 241.

²⁰ - Chawki Yaich temmam, the previous reference, pp. 314-315.

²¹ - Chawki Yaich temmam, the same reference, p. 314.

²² - Article 07 and Article 08 of the Organic Law 19-07 of September 14, 2019 related to the Independent National Election Authority, Official journal No. 55.