

The Formation of Elected Councils and Its Impact on the Effectiveness of Local Governance

تشكيل المجالس المنتخبة وأثرها على فعالية الحكامة المحلية

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Abstract:

Our study aims to investigate the legal mechanisms adopted in determining the formation of municipal and provincial councils in Algerian legislation, especially the Municipal People's Council as the basic territorial community and the cornerstone of decentralized administrative organization. The Algerian legislator has specified certain conditions based on which the formation of elected councils is determined. Our study focuses on understanding the considerations adopted in determining the formation of elected councils and the implications of this on the performance of their administrative and developmental tasks.

key words: Elected councils, Electoral system, Municipality, Administrative organization.

المخلص:

تهدف دراستنا إلى البحث عن الآليات القانونية المعتمدة في تحديد تشكيل المجالس البلدية والولائية في التشريع الجزائري خاصة المجلس الشعبي البلدي باعتباره الجماعة الإقليمية القاعدية وحجر الأساس في التنظيم الإداري اللامركزي، فقد حدد المشرع الجزائري شروط معينة يتم بمقتضاها تحديد تشكيل المجالس المنتخبة، ودراستنا تتجه نحو معرفة الاعتبارات المعتمدة في تحديد تشكيل المجالس المنتخبة وتداعيات ذلك على أداء مهامها الإدارية والتنمية.

الكلمات المفتاحية: المجالس المنتخبة، النظام الانتخابي، البلدية. التنظيم الإداري.

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Introduction:

Municipal and provincial councils in Algerian legislation represent a manifestation of the practice of democracy and a form of popular participation in decision-making and the management of local affairs, which benefits the general public of the municipality's residents.¹ Although local administration is a form of administrative organization, it has its own characteristics², as it constitutes a field for citizens' participation in managing local affairs through elected councils, especially the municipal council, which is supposed to achieve harmony between the interests of its residents and the public interests and to encourage progress. Some have considered that the strength of peoples lies in the strength of elected councils.³

By virtue of the fact that elected councils enjoy multiple competencies in various fields, which differ according to regions, residential communities, and the variation of their social and economic conditions, their exercise of the role entrusted to them depends primarily on the efforts and capabilities of their elected members from a legal and technical perspective. That is, they must possess technical and administrative skills. The members of local councils are nothing but an embodiment of administrative decentralization, which expresses a method of administrative organization that represents a means for local administration to achieve its multiple objectives efficiently and effectively to realize economic, social, and even political development.⁴ Considering these factors and the importance aimed at by local administration, the study's problematic emerges: How can one reconcile the technical and administrative skills that the elected official must possess with the political considerations that require adopting the principle of participation in managing public affairs through elections, which is considered an essential condition for the establishment of local governance in a democratic state?

To answer this issue, the study is divided into two sections. The first section addresses the political and administrative considerations in the formation of elected councils. The second section discusses the established methods in Algerian legislation.

1- Political and administrative considerations in the formation of elected councils:

Local councils are considered the first form of administrative decentralization, which is primarily a political and constitutional phenomenon.⁵ The importance of local administration appears as it embodies the principle of local democracy from a political perspective. It seeks to provide a public service aimed at bringing administration closer to the citizen, which fundamentally leads to achieving efficiency in administrative management, within the context of administrative considerations and the efficiency of administrative work.

1-1- Political considerations in the formation of elected councils:

All Algerian constitutions have enshrined elected councils as a framework for local management⁶. Elected councils are considered the foundation of decentralization and a place for citizen participation in managing public affairs.⁷ Local administration, in

its political concept, ensures citizen participation in decision-making concerning various aspects of their lives at the local level. Thus, although this system is administrative, it is linked to the ideas of democracy and political participation⁸ Democratic local administration is established based on the element of election, which means guaranteeing the citizen's right to choose those who manage local affairs.

Which embodies its foundation in the principle "power from the people, to the people, and by the people."⁹ For regional decentralization to be genuine on the political level, the entities acting on behalf of local bodies must represent the residents and natives of the region, not the central authorities in that region. This can only be achieved through the method of election¹⁰. To realize this representative character, two essential conditions must be met:

A- The first condition: The local bodies responsible for managing the affairs of the local unit must belong to the residents and natives of that unit, i.e., from the inhabitants of that local environment.

B- The second condition: The members of the local bodies must be chosen by the residents of the local unit. Democracy is the system that allows a given society to govern itself.

The political management of local affairs actually constitutes a school for teaching democracy and bearing responsibilities. The elected officials who bear this burden must earn the trust of the citizens who elect them and to whom they are accountable¹¹. However, local democracy must go beyond merely going periodically to the ballot boxes to exercise the electoral right; it must reach the level of actual participation through media, the public's right to access the work of local bodies, and the right to be consulted on all matters related to the management of local affairs¹² This will only be possible with sufficient awareness among citizens. Hence, it has become necessary to consolidate good governance that achieves transparency, which is only possible by providing the necessary amount of information at the appropriate time so that citizens can raise the necessary grievances. It is impossible to respond to citizens' requests and address their concerns without effective representation at the practical level¹³.

Therefore, enabling the public to access public information is the first step towards rationalization to embody local participation, which is considered a constitutional principle stipulated in Article 55 of the 2020 constitutional amendment.¹⁴ Article 14 of the Municipal Law¹⁵ According to the provisions of the article, the right to information and access to municipal or provincial decisions or obtaining administrative information is guaranteed; however, its actual practice has not yet reached the desired level, especially since the regulatory texts organizing it have not appeared to date.

1-2- Administrative considerations in the formation of elected councils:

Although administrative decentralization may achieve some advantages from the administrative side, such as reducing the burden on central administration and achieving uniformity in administrative methods, the administrative units represented in local

administration, especially municipal councils, undertake municipal affairs at a limited regional level and for a limited number of residents, which makes them closer to local matters and faster in managing them. This primarily leads to improving the quality of public service and the efficiency of administrative work.

The local administration system contributes to alleviating the burdens placed on central authorities. The proper functioning of local administration reflects the degree of development of the state, as the backwardness of the state is closely linked to the degree of backwardness of its administration. Some authors have written on this matter: "The main industry ... is currently administration."¹⁶

The role and importance of local administration from an administrative perspective also appear in eliminating bureaucracy or at least mitigating its severity in its negative sense, which often exists in the administrative apparatus, especially concerning poor planning, lack of coordination, and absence of organization. These are usually apparent as a result of the concentration of administrative functions and their distance from the public.¹⁷ Local administration primarily seeks to work according to the principle of specialization and division of labor, which is considered one of the most important features of modern administration, proven effective in raising the efficiency of the administrative apparatus and improving its capabilities to face various changes and developments.

Entrusting elected bodies with local affairs assumes that, given their popular trust, they have the ability to understand local needs, defend them, and meet their requirements. However, this is not enough; elected officials who reach the elected councils must possess some legal, technical, and administrative aspects that keep them away from falling into mistakes that some may deliberately cause them to commit. We see this as one of the main reasons for the weakness of administrative leadership in local councils, especially if the primary goal of the elected officials is to achieve personal gains and exploit the facilities of the service for their personal benefit, i.e., achieving private interest at the expense of the public interest. Therefore, we consider that the skills of the elected official are the same skills that must be available in the administrative leader, which are technical skills represented in the accumulation of technical information that enables him to deal with the individuals of the facility or institution, along with political skills consistent with the general policy of the state. The higher the educational attainment of the elected official, the better it is to achieve a high degree of administrative effectiveness, especially given the complexity and multiplicity of the tasks of the members of local councils. Administrative efficiency in administrative management requires that the elected officials be at the level of the tasks that awaits them.

If the goal targeted by regional decentralization is political, then the objective aimed at by the elected councils is to ensure the proper functioning and effectiveness of public facilities on both administrative and economic levels. Their goal and objective can

only be achieved through individuals who are aware of the magnitude of the responsibility entrusted to them and possess the scientific competence that allows them to carry out various tasks.

Based on this, the question arises: what are the mechanisms that allow achieving this efficiency, and how can a balance be struck between the administrative competence required of the elected members in the councils and the political considerations that are primarily based on the idea of election?

2- The issue of balancing administrative and political competence to achieve efficiency in administrative management and the position of the Algerian legislator on it :

In order to address the issue of balancing administrative and political considerations¹⁸ as a method to achieve administrative efficiency at the local level, we first examine the methods of forming local councils, then study the position of the Algerian legislator on this subject through the examination of the legal provisions related to the topic.

2-1- Methods of forming local councils:

The issue of determining the methods of forming elected councils has witnessed a divergence of opinions. Three trends have emerged regarding the method or approach to forming local councils: the first trend relies on the appointment of all members of the local council; the second trend adopts the full election of all members of the local council; and the third trend sees the necessity of mixing both election and appointment methods when forming the local council, which is known as the mixed approach.

2- 1- 1- The first approach: full appointment:

According to this approach, the central authority appoints all members of the local council without giving citizens the opportunity to choose who represents them at the local level¹⁹. This approach gives importance to administrative efficiency considerations at the expense of political considerations. However, the system of appointing members of the local council raises doubts about the council's dependence on the appointing authority, and it contradicts the mechanisms of good governance, which require the principle of participation that can only be achieved through the method of election. The traditional dispute over considering election as a pillar of regional decentralization has been strongly raised in both Western and Arab jurisprudence.

French jurisprudence, represented by Professors G. Vedel and P. Delvolve,²⁰ considered that the management of recognized local interests should be entrusted to bodies enjoying real independence vis-à-vis central authorities, which are limited to accepting the existence of legal entities other than the state²¹. However, they explicitly acknowledge that election is the best method to achieve and guarantee the independence of local bodies. Meanwhile, the jurist Benoit considers that administrative decentralization cannot be imagined without election, as he views it as the application of democracy to administration.²²

Some Egyptian jurisprudence has been influenced by the approach that adopts appointment. Dr. Fouad Al-Attar states, "If it is permissible to say that members of decentralized bodies are usually chosen through election, there is nothing to prevent achieving the decentralized system by appointing these members by the executive authority from among the residents of the regions, provided that their independence in managing the autonomous regional interests is guaranteed and that they are not dismissed."²³

The appointment method has been adopted in Saudi Arabia and most Gulf Arab countries, where the central authority appoints all members of the local council without giving citizens the right to choose who represents them.²⁴ This approach gives importance to administrative competence considerations at the expense of political considerations.

2 – 1 – 2 - The second approach : Full Election:

Contrary to the first opinion, some researchers consider local administration as an expression of democracy, inherently linked to democratic principles and popular participation in managing local affairs. Therefore, according to this view, election is considered one of the most important pillars through which participation in managing local affairs is achieved, as it realizes the principle of the people's will to manage their affairs and ensures the selection of individuals capable of understanding, being influenced by, and responding to local interests.

According to this approach, the residents of the region fully elect all members of the local council, including the council president. Proponents of this approach give great importance to political considerations and the necessity of maintaining the independence of local bodies as an essential condition for their existence. In this regard, the French jurist Horio says, "The justifications for regional decentralization are not administrative in nature but are actually constitutional in nature. If it were only an administrative perspective, administrative centralization, including non-decentralization, would ensure the state a more capable, neutral, integrated, and economical administration than decentralization. However, the modern state needs more than just good administration; it needs political freedom ²⁵." However, the most significant drawback of this method is that it may lead to the election or acquisition of membership in the local council by individuals who do not possess the necessary competence to fulfill their commitments, which are primarily related to local development.

Based on the above, election is considered a necessary element without which local administration cannot exist, even though participatory democracy does not rely solely on elections but must also extend to actual popular participation in the management of local affairs. Many countries have adopted this approach, such as the United States of America, Britain, France, Egypt, Morocco, and Algeria. The Algerian legislator has enshrined the principle of the total election of members of the municipal

people's council in all municipal laws that Algeria has known. Such as law²⁶1967 and the law²⁷1990, and the law²⁸2011.

2 – 1 – 3 - Combining Election and Appointment:

Given the differences regarding the method to be followed in forming elected councils—which primarily stems from each party's perspective on the purpose behind implementing administrative decentralization—some consider it an effective means to achieve local democracy. However, election is not the only method; a decentralized member may not be subject to the authority of central executive bodies even if appointed by these authorities. Others view it merely as a method of administrative organization. Nevertheless, the role of administrative competence should not be overlooked under the pretext of achieving local democracy. Therefore, it is possible to introduce conditions related to appointing members with certain qualifications and educational levels to raise the level of administrative performance while maintaining the election method.

2 – 2 - The position of the Algerian legislator on the methods of forming elected councils:

The Organic Law relating to the Electoral System of 2021.²⁹ The details of the formation of local popular councils and their election system, and what concerns us within the framework of this study is what relates to the conditions for candidacy and the voting pattern related to elected councils, especially in light of the urgent need to improve the performance of municipal councils and activate them. However, the legislator has maintained the same approach adopted since independence, which is the full election of the members of the local councils.³⁰

Indeed, the legislator has made significant amendments by requiring that at least one third of the candidates for membership in elected councils must have a university educational level. This means that political parties are responsible for presenting candidate lists in local elections with members who have a university degree. However, the electoral process, according to Article 169 of Organic Law 21-01, stipulates the method of proportional voting on an open list, which restricts the freedom of political parties in arranging their candidate lists and thus gives voters the freedom to choose candidates according to their personal preference. As a result, the candidates who receive the highest number of votes win, regardless of their order on the electoral list. Here, the level of awareness among citizens plays a fundamental role in selecting the competent, which requires raising their awareness of their essential position and effective role in participating in development and efficient management at the local level by choosing members who possess the ability to manage public affairs.

Especially in light of the complexity and multitude of tasks assigned to members of local councils, the absence of a requirement for a specific educational level for the heads of local popular councils, particularly the head of the municipal popular council, keeps the issue of competence in managing local councils unresolved. This is especially true since the prevailing situation in selecting candidates for local elections is, in reality,

based on considerations of loyalty and sectarianism without regard for choosing the competent. Therefore, it is necessary to embody the role of civil society in spreading a culture of actual participation through effective contribution to the making of developmental policy, which can only be achieved by strengthening the level of awareness among voters and explicitly stipulating that the heads of local councils must possess a certain educational level.

With reference to the latest amendment of the Municipal Law issued by Ordinance No. 21-13, the selection of the President of the Municipal People's Assembly, according to the text of Article 64 bis, is as follows: the Municipal People's Assembly meets under the chairmanship of the eldest elected member, for the purpose of electing its president, within five days following the installation of the assembly. A temporary office is established to supervise the election, consisting of the eldest elected member, assisted by the two youngest elected members, provided they are not candidates. The aforementioned temporary office receives nominations for the election of the president and prepares the list of candidates.

The candidate for the presidency of the Municipal People's Assembly is presented from the list that has obtained the absolute majority of seats. If no list obtains the absolute majority of seats, the two lists that have obtained at least thirty-five (35) percent of the seats may each present a candidate. If no list obtains at least thirty-five (35) percent of the seats, all lists may present a candidate. The election is secret, and the candidate who obtains the absolute majority of votes is declared president of the Municipal People's Assembly. If no candidate obtains the absolute majority of votes, a second round is held between the candidates who ranked first and second, and the candidate who obtains the majority of votes is declared the winner. In the event of a tie in the votes obtained, the eldest candidate is declared the winner.

Organic Law No. 21-01 related to elections includes new conditions regarding the composition of municipal and provincial popular assemblies. The list of candidates must include a number exceeding the number of seats to be filled by three in electoral districts with an odd number of seats, and by two in electoral districts with an even number of seats. The lists submitted for elections must, under penalty of rejection, respect the principle of parity between women and men, and at least half of the nominations must be allocated to candidates under the age of forty.

In comparison with the previous law, the voting system is based on proportional representation by list, without mentioning any condition related to educational level.

Conclusion:

– Local councils are considered the fundamental framework for citizens' participation in the management of public affairs. Since council members are elected from among the residents of the area, they are theoretically more knowledgeable and closer to the citizens, enabling them to address their concerns and express their will at the local level. The primary aim is to achieve local development, which reflects the citizen's

right to participate in the management of local affairs. This participation can only be realized through the presence of members who possess the ability and competence to manage local public affairs.

– However, this study has revealed that the criteria adopted in selecting local council members are mainly based on political considerations, reflecting democratic principles manifested in the principle of representation and participation in the management of local public affairs.

– This has led to shortcomings in the quality and efficiency of management by local council members. Accordingly, we propose the following recommendations:

– The composition of local councils, especially municipal councils, should be based primarily on scientific competence. Administrative decentralization is merely a method of administrative organization aimed at achieving efficiency in management.

– It is necessary to focus on qualifying local council members by explicitly stating in the municipal law that the majority of local council members must possess an educational level that enables them to perform their functions, and not merely settle for the one-third ratio.

– It should be explicitly stated that the president of the municipal people's council must hold a university degree.

– Citizens should be made aware of their important role in the electoral process by promoting a culture of political awareness, which enhances the chances of selecting competent individuals to manage local affairs, away from tribalism and other considerations unrelated to good local governance.

– Electronic media should be used to educate citizens about the progress of public affairs to ensure broad participation.

– The need to activate the participation of citizens and civil society by expanding the culture of participation in decision-making at the local level in managing the municipality's public affairs.

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⁴ - René CHAPUS, *General Administrator, 3rd Edition, Montchretien, Paris, 1987, P301*

⁵ - Article 17 from the latest amendment to the Constitution of November 28, 1996, by Presidential Decree No. 20-442 dated December 30, 2020, Official Buletin No. 82 dated December 30, 2020. According to the text of Article 11 of the Municipal Law: "The municipality constitutes the

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⁶ - The Algerian constitutions, starting from the first constitution of the People's Democratic Republic of Algeria issued in 1963, then the constitutions of 1976, 1996, and the latest amendment issued in 2020—with the note that in the 2020 amendment, a new paragraph was added that did not exist in the previous constitutions, which is: (.....We encourage the participatory democratic state at the level of local communities, especially through civil society.)

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¹¹ -Ahmed Mahio, op. cit., p. 186.

¹² -Awkil Mohamed Amin, *Problems of Activating Participatory Democracy at the Level of Municipal People's Councils*, *Journal of Comparative Legal Studies*, Issue 02, 2019, p. 199.

13 -Ibid.

¹⁴ - Article 55 of the 2020 constitutional amendment stipulates that "every citizen has the right to access, obtain and circulate information, documents and statistics

¹⁵ - It should be noted that this article has been referred to a regulatory text, namely Executive Decree 16-190 on the Modalities of Accessing the Extracts of Municipal Deliberations and Decisions, Official Buletin No. 41 of July 12, 2016

¹⁶ - Ahmed Mahio, op. cit., p. 186

¹⁷ - Mohamed Mohamed Abdel Wahab, *Bureaucracy in Local Administration*, New University Publishing House, Alexandria, Egypt, 2004, p. 175

¹⁸ -Especially since the principles of decentralization and how to apply them often provoke political tensions, as they are based on a multidimensional philosophy in which the efficiency and effectiveness of administrative work are combined with democracy.

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157. Quoted from Ali Khattar Shatnawi, *Local Administration*, previous reference, p. 104.

²⁴ - René CHAPUS, *Droit administratif général*, op.cit, p.301.

²⁵ - *Ibid*, P.302 .

²⁶ - Order 67-24 dated January 24, 1967, containing the Municipal Law, Official Gazette No. 9 dated January 18, 1967.

²⁷ - Municipal Law 90-08 dated April 7, 1990, Official Gazette No. 15, dated April 11, 1990

²⁸ -Municipal Law 11-10 of 22 June 2011, Official Gazette No. 37 of 03 July 2011

²⁹ - Order No. 21-01 dated March 10, 2021, containing the organic law relating to elections, Official Gazette No. 17 dated March 10, 2021

³⁰ - With the observation that, regarding the members of the National People's Assembly, Article 191 of Election Law No. 21-01 stipulates "that one third of the candidates for membership in elected councils must have a university level of education."

