

The elections management through independent bodies: the experience of the Independent National Authority in the legislative elections of 2021

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Abstract:

This study aims at knowing the nature of the legal and constitutional frame of the work of the Independent National Authority of Elections INAE and its role in the management of the legislative elections of 2021. Findings show that the emergence of this body is a new phase in the management of the electoral process. Besides, its existence directly contributes to the neutrality, honesty, and transparency of the elections. Finally, the study recommends enlarging its prerogatives to cover the phase of the division of the constituencies based on the bank of information that must be available for it. Moreover, a program of training and awareness must be set to raise awareness and exchange experiences between INAE and other countries in the same field.

Keywords: INAE; elections management; guaranteeing the honesty and transparency of the elections; legislative elections of 2021.

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1. INTRODUCTION

The electoral process is the basis of any democratic rule because it determines the legitimacy of the regime inside the society. Moreover, it is the basis in enshrining the concept of the public sovereignty (Al Bahri, 2014, p.01). The principles of neutrality, honesty, and transparency of the elections have so long been the subject of debate. In this line, the Algerian state, as the other states, tried to set an effective legal system that aims at achieving honesty and neutrality. Thus, it established a new mechanism known as the Independent National Authority of Elections INAE to manage and organize the elections in response to popular demands. Besides, it issued the Constitution of 2020 and enacted a new organic law of elections No° 21/01 on 10 March 2021 which showed how to supervise and organize the elections by the INAE as an introduction to the legislative elections of 2021.

1.1 Aims of the study:

This study aims at knowing the legal and constitutional frame of the work of INAE, the way of selecting its members, its role in the management of the legislative elections of 12 June 23021, its efficiency, and the guarantees provided by the organic law 231/01 so that the elections be honest and transparent. Moreover, the study aims at finding conclusions that help the decision makers in Algeria manage INAE.

1.2 Importance of the study:

The importance of the study lies within the fact that it aims to know the functional role of INAE in the management of the honest and transparent elections.

1.3 Problematic of the study:

Based on what has been said, this study aims at answering the following problematic: “to what extent did INAE succeed in guaranteeing the transparency and honesty of the legislative elections of 12 June 2021 ?”

This problematic includes sub-questions as follows:

- What is the concept of the management of the elections?
- What is the nature of the legal frame that organizes the work of INAE in Algeria?
- How are the members of INAE selected to manage the elections in Algeria?
- Did INAE succeed in organizing the legislative elections of 12 June 2021 in Algeria?

1.4 Hypotheses of the study:

This study is based on the following hypotheses:

- The organic law of elections 21/01 of 10 March 2021 paves the way for the separation and independence of the elections from the executive branch.
- The organic law of the elections 21/01 gave INAE guarantees honest and transparent elections.
- INAE succeeded in supervising the legislative elections of 12 June 2021 without any violations.

1.5 Methodology of the study:

To answer the problematic of the study, we used the analytical descriptive method through analyzing the legal provisions related to INAE, mainly the organic law 21/012 of 10 March 2021. Besides, we examined its efficiency in organizing the legislative elections of 12 June 2021 and all the phases with honesty and transparency.

2. The circumstances of the genesis of INAE in Algeria:

The Algerian system witnessed the political committees for the supervision of the elections for the 1st time in 1995 when the 1st free presidential elections were held in the light of the multiplicity of the parties. These committees differ than the Supreme Independent Body for Elections Supervision because their role ends with the end of the elections. Moreover, the political nature given to them differs regarding the principle that conforms to the name and structure recognized by the Legislator (Arrache, 2015, p. 185). In this context, the elections witnessed a positive development because they had been organized by an organic law starting from 1997. This granted the elections more immunity against any

amendments by the executive branch. However, this immunity is not enough due to the domination of the executive branch in Algeria mainly in the light of the one party policy and even in the political multiplicity and the constitution of 1989. In the same line, we can say that the amendment that resulted from the referendum of 28 November 1996 is a qualitative leap because it created organic laws and included the elections system within the points to be legislated by the Parliament through organic law.

According to the constitutional jurisdiction, the organic laws are in the second rank after the constitutional laws. Thus, they have superiority over the ordinary laws regarding their making (Ziouche, 2021, p. 87) because they must be supervised by the constitutional council according to paragraph 3 of Article 141 of the constitution (Organic Law, 2016). This can be seen as an imitation of the French constitutional legislator who resorted to the same style since the constitution of 1948 in its Article 115 that provided for organic laws which most have an electoral nature. This leads to supporting the election so that it does not become subject to the violations by the executive authority.

The Algerian constitutional founder followed the paths of the Tunisian legislator which established an independent body for elections in 2011 to achieve the goals of the revolution, the democratic shift, and the political reform after it had been convinced with the necessity of separating the task of organizing the elections and their management from the executive branch. Thus, he assigned it to an independent body. To guarantee the conduct of the electoral process, the Algerian legislator established the Independent Supreme Body to supervise the elections through the constitutional amendment of 2016 whose Articles 193 and 194 aim at the transparency and honesty of the elections in all the phases. However, they showed their limitations and weak guarantees in the legislative elections of 2017 (Slimani, 2020, p.431). After the failure of the Independent Supreme Body, INAE had been established by the organic law 19/07 of 14/09/2019. This authority monitors the elections and referenda starting from summoning of the electors until the primary results of the elections, this

was a result of the events of 22 February 2019 in Algeria that are known as the Hirak, i.e. the upheaval. Thus, INAE called for the freedom of the elections and referenda far from the domination of the executive branch as confirmed by the organic law 21/01 of 10 March 2021 on the elections system, and in response to the constitution of 2020 which enshrines the principle of the public sovereignty. In this regard, we point at two important points that are:

- Despite its supervision and organization, it was not constitutionalized until the declaration of a new constitution in 2020. Thus, we can speak about a committee, not an authority since it had not been constitutionalized.
- There are those who ask how it is independent while it is still under the authority and control of the executive branch.

3. The organization and conduct of INAE in Algeria

3.1 In the concept of the management of the elections:

Before speaking about the management and conduct of INAE, we shall identity the concept of the management of the elections. The international institution of democracy and elections defines the elections management starting from the organic criteria as that institution or body which is legally in charge of all or some basic sides of the elections and referenda with all their types. Moreover, it had been defined based on the objective criteria as all the activities and works related to the planning, organization, and execution of the elections (Kaddour, 2020, p. 244).

The expression “management of the elections” refers to the body that is responsible for the management of the elections. Legally speaking, it is the only body in charge of managing all or some basic elements to make the elections and the direct democratic tools such as referenda, the people’s votes, and recounting the votes. These basic elements cover the legitimate to vote, the reception of the candidatures’ of the parties and candidates, making the poles, counting the votes, and tabulating the votes (Alan et al., 2006, p. 5).

Most of the jurisprudents and theorists of the electoral field agree that the management of the elections requires the existence of bodies that

prepare, supervise, and control. This increases the citizen's trust in the political system because these bodies are based on legal and constitutional provisions and applicable international conventions. In the same context, we shall show the various models of the management of the elections according to the international experiences:

- **The elections management that is made up of representatives of all the political parties:** this style is used in the states that witness a shift from the totalitarianism and autocracy into democracy and multiplicity.
- **The elections management made up of independent experts:** this system relies on the criteria of the professional qualifications in selecting the members of this administration, not the loyalty or party affiliation.
- **The composed electoral administration:** this administration is made up of representatives of the political parties and others who have no party affiliations including judges, lawyers, and representatives of the civil society.

Based on the aforementioned models, the Algerian decision makers adopted the second model that is made up of independent national figures that neither have political, ideological, nor party affiliations due to the political circumstances the state witnessed mainly after the public upheaval on 22 February 2019 which was a turning point in the state. Later, INAE was established with prerogatives granted by the law mainly enshrining and deepening the constitutional democracy and fostering the electoral system in a way that allows for the peaceful and democratic access to power. Hence, the independent authority draws its reference from the public sovereignty that is practiced through transparent and honest elections that guarantee the right to vote with freedom without discrimination between the electors as provided for in the preamble of the charter of the ethics of the electoral practice (the people's democratic republic of Algeria, 2019). In this regard, all the electoral powers that were at the hands of the constitutional council, the Ministry of the Internal Affairs, and the related

local administrations such as the organization and local administration directorates, the Wilaya, the municipality, the Daira, the Ministry of Justice, the Ministry of External Affairs, and the national body for supervising the elections have been transformed by the law into an independent authority mainly in what concerns the supervision, the control, the organization, and the conduct of the elections in order to add more transparency and validity to the elections in all the phases and guarantee the neutrality of the organizers.

3.2 The organization and structure of INAE in Algeria:

INAE is a new mechanism that had been established by the organic law 19/078 of 14 September 2019 on the elections system as a result of the public upheaval of 22 February 2019. Article 02 provides that an independent national authority is established to exercise tasks without any bias. It has the moral personality, the administrative and financial independence, and is an “independent authority”. It is located in Algiers and has extensions in the local and external levels. Moreover, it gets the support it asks from the public authorities and the necessary documents and information to make its tasks. In addition, it takes advantage of the national audiovisual media outlets (Organic law, 2019). Based on what has been said, we infer that this authority has the elements of independence such as the moral personality and the administrative independence. In this context, it makes its own rules of procedure as its employees are subject to a basic law ratified by its council. Besides, its financial independence manifests in a private budget of management under the expenditures. Its accountancy is based on the general accountancy. Moreover, the accountancy is based on the appropriations meant for the elections separately from the management budget. Its president is the financial responsible who guarantees its execution to make sure it exercises its tasks without pressure from the public authority.

According to the organic law 21/01 of 10 March 2021, this independent authority is made up of a deliberative body represented by the independent authority council, and an executive body represented by the president of the independent authority (Organic law of elections, 2019).

3.2.1 The independent authority council:

Composition of the council:

It includes 20 independent members appointed by the President of the Republic for a non-renewable term of 06 years (Organic law of elections, 2019). One member must be from the Algerian Diaspora abroad. The council prepares its internal law when established and publishes it in the official gazette as provided for in Article 22 of the organic law 21/01 of 10 March 2021 (Organic law of elections, 2019). The council meets when the president summons its members or when 2/3 of its members call for a meeting (Organic law of elections, 2019). The proceedings of the council rely on the majority and in case of draw, the president will have a casting vote (Organic law of elections, 2019). The proceedings are registered in a digital register after ratification by the president of the independent authority. They are later kept according to the applicable law and published in the official gazette of the independent authority (Organic law of elections, 2019).

Prerogatives of the council:

The council exercises the following prerogatives:

- It ratifies the program of the independent authority that is submitted by its president.
- It makes the lists of the members of the delegations of the Wilayas, municipalities, the diplomatic representatives, and the consulate aboard.
- It receives the candidatures to the presidential elections without violation of the provisions of paragraph 03 of Article 121 of the constitution. In addition, it rules according to the organic law.
- It makes in a fair and just way programs and the ways of using the audiovisual media outlets during the electoral campaigns and referenda, the distribution of the meetings rooms, and the use of the advertising spaces.
- It uses the appeals and objections after the elections and referenda.
- It ratifies the report made by the committee of controlling and

funding the accounts of the electoral and referenda campaigns.

- It ratifies the reports about the elections and referenda submitted by the president of the independent authority.
- It ratifies the budget of the independent authority.
- It gives opinion regarding the laws projects and the regulations related to elections.
- It makes the charter of elections ethics and promotes for it (Organic law of elections, 2019).

3.2.2 The president:

He is appointed by the President of the Republic for a non-renewable term of 06 years.

Prerogatives of the president:

The president exercises the following prerogatives:

- He heads the council and executes its proceedings.
- He summons and heads the meetings of the council.
- He represents the independent authority at the level of all the public bodies and the other participants in the elections.
- He represents the independent authority in front of the justice regarding all the administrative and civil actions.
- He appoints the members of the delegations of the Wilayas and municipalities, the diplomatic representatives, and the consulate aboard according to the proceedings of the council.
- He mobilizes the members of delegations of the Wilayas and municipalities, the diplomatic representatives, and the consulate aboard during the elections, referenda, and the revision of the electoral list. Then, he publishes them in the entire country.
- He appoints and requisitions the supervisors of the votes' centers and offices.
- He collaborates with the competent authorities the processes of the international delegations to monitor the elections, their reception, distribution, and accompaniment.
- He is in charge of the temporary final results of the presidential

elections, legislative elections, and referenda.

- He makes the reports of the elections and referenda and publishes them after the ratification of the council.
- He is in charge of the budget of the independent authority.
- He appoints and fires the general secretary of the independent authority.
- He appoints and fires the administrative and technical employees of the independent authority
- He exercises the presidency on all the technical and administrative employees of the independent authority.
- He signs the proceedings and decisions of the independent authority, guarantees their publication, and monitors their execution (Organic law of elections, 2019).

The independent authority has an extension locally such as:

3.2.3 The delegations of the Wilaya:

The delegations of the Wilaya are made up of 03 to 15 members taking into consideration:

- The number of municipalities.
- The distribution of the electors (Organic law of elections, 2019).

The president of the independent authority determines the structure of the delegation of the Wilaya with his decision after the ratification of the council. The delegation of the Wilaya is managed by a Wilaya coordinator who is under the authority of the president of the independent authority.

The municipal delegations:

They are managed by a Wilaya manager who is under the authority of the president of the independent authority (Organic law of elections, 2019).

3.2.4 The delegations abroad:

In addition to the local delegations, the independent authority needs diplomatic ones abroad to help organize the elections. These abroad delegations are established by the council of the independent authority. The

condition of the ratification of the council is just an enshrinement of the principle of separating the elections from the executive branch to add transparency, honesty, and independence. However, we notice in return that the coordinators of the delegations and representations are appointed by the president without ratification by the council. Does this mean that the system voluntarily made these procedures to impose the executive branch that is represented by the president on the elections while their appointment must be left to the independent authority?

Thus, from the articles of the organic law of the elections, the president of the independent authority is the first one in charge of guaranteeing the transparency and validity of the elections and referenda and their respect to all the applicable legislative elections texts and regulations.

4. The administration and control of INAE- the legislative elections of 12 June 2021 as a model:

To manage the legislative elections of 12 June 2021, INAE issued an agenda that can be shown as follows:

- The exceptional revision of the electoral lists from Tuesday 16 March 2021 till Tuesday 23 March 2021 (Presidential elections Decree 21/96, 2021).
- The objections and appeals against the registration and writing off from Wednesday 24 March 2021 till Sunday 28 March 2021, i.e. after 05 days of the declaration of the end of the revision (Organic law of elections, 2019).
- Submission of candidatures from Thursday 11 March 2021 till Thursday 22 April 2021.
- Appeals against the candidatures from Friday 23 April 2021 till Monday 14 May 2021.
- Renovation of the candidatures before Tuesday 18 May 2021.
- Making a voting proxy from Saturday 27 March 2021 till Tuesday 08 May 2021.
- Making a press conference on Wednesday 27 March 2021 headed by the president of the independent authority Mohamed Chorfi to

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prepare for the elections of 12 June 2021 and evaluate the 1st week of the electoral campaign that had started on 20 May 2021.

- Publishing the list of the voting offices from Friday 23 April 2021 till Friday 07 May 2021.
- Making appeals against the lists of the supervisors of the voting offices from Saturday 24 April 2021 till Wednesday 28 May 2021.
- The electoral campaign from 20 May 2021 till Tuesday 09 June 2021.
- Submission of the lists of the candidates before 23 May 2021.
- Banning the broadcast or publication of any polls of the electors by the various media outlets from Sunday 09 May 2021 till Saturday 12 June 2021.
- The Election Day on Saturday 12 June 2021.
- Objection against the conduct of the elections on Saturday 12 June 2021.
- Declaration of the temporary results after one hour of the reception of the proceedings of the electoral committees of the Wilayas and abroad.
- Appealing against the results of the elections after one hour of the declaration of the temporary results.
- Declaration of the final results by the constitutional court days after the reception of the temporary results by the INAE (Agenda of the legislative elections, 2021).

Based on what has been said, we point out that INAE took all the legal measures to manage the elections since summoning the electoral college till the declaration of the primary results. The management of the elections is a national effort par excellence made by INAE despite it is the 1st experience in managing the legislative elections and the second after the presidential elections of 2019. It managed to requisition all the available potentials to achieve the pivotal objective that is managing the legislative elections easily with honesty, transparency, and neutrality as explicit.

In the light of the management of the elections, INAE declared the following results:

Party	seats
• National front of liberation	105
• The total of the independent lists	78
• Movement of the peace society	64
• National democratic reunion	57
• Future front	48
• National building movement	40
• Good rule front	03
• Voice of the people	03
• Development and justice front	02
• Freedom and justice	02
• The new dawn	02
• The new Algeria front	01
• Decency	01
• New generation	01

The results obtained by the political parties and the independent lists are temporary according to the organic law of INAE (temporary results of legislative elections of 12 June 2021). Despite the will of the Algerian system to set a special law that guarantees to INAE the right to manage transparent and honest elections, there are some drawbacks such as:

- The Algerian Legislator did not show how to supervise and train the members of INAE because not all of them know the constitutional law and the election system for example.
- The legal system of INAE needs more update and revision to achieve transparency, honesty, and credibility in performing the tasks and in response to the current political scene as provided for in Article 19 that provides for an executive body represented by the president of the independent authority. Thus, how cannot it be a managerial body mainly after it had been appointed by the president of the executive branch represented by the President of the Republic so that we can

remove the hidden executive nature?

- The structure of INAE is made by the President of the Republic according to Article 20. This imposes the hypothesis of surrender, loyalty, and bias. Thus, it would be better for the President of the Republic to just appoint the president of the authority and leave the prerogatives of appointing the rest of the structure to the president of the authority. The position of the vice president must be established via votes.
- Any participant in the elections including political parties, candidates, and electors has the right to submit a petition or objection to the national authority according to Article 14 that did not specify the needed measures. In this context, it resorts to notification and intervention in the case of inspection during the phases of the elections as provided for by Article 46. This shows the contradiction in the authority's actions.
- Article 26 did not identify the role of the authority in how to manage the appeals related to elections that must have an urgent nature to correct the violations and a direct or indirect deterrent nature.
- The national authority establishes a committee to control the funding of the electoral campaigns that includes the judge of the supreme court, the judge of the state council, the judge of the accountancy council, the representative of the supreme authority for transparency and prevention of corruption, and the representative of the Ministry of Finance according to Article 115. On the other hand, this lacks a member of the authority council as a president or independent supervisor for the committee mainly that the authority council ratifies the report of the council. Hence, the membership of the council would reflect the balance of the views about the work of the committee.

5. CONCLUSION

After analyzing the role of INAE in managing the legislative elections of 12 June 2021 in Algeria, we found out that:

- INAE managed somehow to supervise the legislative elections of 12 June 2021.
- INAE committed to the organic law 21/01 of 10 March 2021 when supervising and organizing the legislative elections.
- The public upheaval of 22 February 2019 had a direct impact on the political life in Algeria.
- The demands and claims of the Algerian public movement manifested in making more political reforms.
- The establishment of INAE was a new phase in the management of the elections, which had so long been under the auspices of the Ministry of Internal Affairs.
- The existence of an independent authority with guarantees that enable it to manage the elections with transparency and honesty shows the will of the regime to foster directly the trust of the social and political forces.
- INAE makes its own rules of procedure and acquires the prerogatives of requisitioning, delegating, and appointing its employees according to the requirements of the elections.
- INAE coordinates with the competent international bodies in observing the elections and grants licenses to the national and foreign written and audiovisual media outlets to cover the elections objectively and neutrally.
- Making a charter for the ethics of the electoral practice and promoting it with the various actors of the elections (members of the authority, independent parties and candidates, and media outlets) is a moral commitment for the success of the elections. Besides, it reflects the future vision of the role of the authority and is an index of the peaceful access to power.

In the end of the study, we recommend:

- Strengthening and fostering the legal status of INAE and making it a constitutional authority so that it gets a position among the political components.
- Enlarging the prerogatives of INAE so that it makes the final

declaration of the elections and leaving the appeals for it mainly that its structure includes experts in the constitutional jurisdiction.

- Adopting the mechanism of the bi-elections of the members each 03 years inside the council and committing to the elections as the unique mechanism.
- Coping with the societal news and the political circumstances through the promotion of the legal, technical, and logistic mechanisms to preserve the continuity of the work of INAE and guarantee its transparency, independence, and honesty.
- Enlarging the prerogatives of INAE to cover the division of the constituencies based on the bank of information that must be available for it (the demographic distribution, the electoral mass, and the registered).
- Establishing permanent independent offices at the level of the delegations of the Wilaya and municipalities that update and control the electoral lists so that they can be in a position close to the citizen through the technique of the direct link to the civil state bodies.
- Suggesting the establishment of a fund for INAE that receives the surplus financial resources coming from the donations based on the report of the committee of controlling the funding of the electoral campaign instead of pouring them into the public budget; making sure this committee is headed by the authority in the future or includes it as a member.
- The continuous intensive training for the members of the authority and its adherents mainly regarding the constitutional law because its structure includes the council, the Wilaya and municipal delegations, the diplomatic representations, and the consulate abroad.
- Establishing workshops to discuss and exchange ideas between the various actors of the political scene and the citizens to formulate an ethical guide that enshrines the principle of ethicizing the elections.
- Intensifying the efforts with the various research centers and

institutions to promote the scientific research in the field of elections and valorize the role of the observatory of the promotion of the electoral paths to foster the real democracy.

- The real care about the digital electronic system at the level of the authority to add credibility and transparency to the elections and make them at the hand of the public opinion.
- Making programs of awareness, training, and exchange of ideas between INAE and another successful state in the same field regardless whether it is an Arabic state with the same circumstances or a foreign one.
- Restoring the trust between the regime and people through cutting off the traditional practices.
- Finally, the system must find solutions and ways to remobilize about the importance of the electoral practices correctly through support, refusal, or reluctance. In the legislative elections of 12 June, irrational practices were noticed in some regions as a reaction against the system mainly vandalism and the attempt to shut down the elections center with violence.

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