# Reading on the Developments of the Electoral Campaign According to Ordinance No. 21-01 Related to the Electoral System in Algeria

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*Received: 01/ 05/ 2025* *Accepted: 15/ 04/ 2026* *Published: 26/ 04/ 2026*

## Abstract:

Today, elections are considered a manifestation of modern democracy and a means of communication between citizens and elected parliamentary bodies, contributing to achieving effective political participation for all members of the Algerian people as broadly as possible.

Although the legislator has granted the right to vote to every citizen and emphasized this in all successive constitutions up to the current constitution, it has also established necessary legal and regulatory rules, particularly regarding the electoral campaign, by monitoring election financing and ensuring its compliance with applicable laws.

These regulations also include guarantees for the integrity of the electoral process in terms of voting methods and candidacy requirements.

**Keywords:** electoral campaign; the right to run for elections; guarantees; integrity of the electoral process; monitoring election financing; the right to vote.

## INTRODUCTION

Elections are considered the primary means of participating in the management of public affairs of the state, which makes them highly important in a democratic system. The Algerian Constitution, in its preamble, affirms the protection of the principle of the

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people's freedom of choice, thereby granting legitimacy to the exercise of authority and strengthening democratic alternation through the organization of regular elections. These elections have been surrounded by numerous legal guarantees to ensure their integrity, transparency, and soundness, free from distortion or fraud.

The repeated constitutional amendments and frequent elections reflect the Algerian legislator's interest in developing and protecting the electoral process and addressing any shortcomings that may arise.

The most recent constitutional amendment of 2020 is clear evidence of this, as it replaced the independent national authority for elections and restructured its role from the beginning of the process until the announcement of the results. Additionally, Ordinance No. 21-01 was issued, which includes the organic law related to elections. This ordinance repealed Law No. 19-07 concerning the independent authority for elections and Organic Law No. 19-08 related to elections. Thus, the rules governing the electoral process were unified under a single legal framework—Ordinance No. 21-01.

In this context, and based on the aforementioned, the following problem arises:

**What are the key legal regulations that contribute to the success of the electoral campaign, as organized by the legislator in light of Ordinance No. 21-01 related to elections?**

To answer this question, it is necessary to adopt a scientific research methodology, particularly the

descriptive analytical method—also referred to as content analysis—which is the most suitable and commonly used in this type of legal scientific research.

To explore the topic, we have chosen to divide it into two main axes:

- Monitoring election financing and ensuring its compliance with applicable laws.
- Guarantees of the integrity of the electoral process in terms of voting methods and candidacy requirements.

## 1. Monitoring Election Financing and Ensuring Its Compliance with Applicable Laws

The process of supervising and monitoring the electoral campaign aims to embody the fundamental principles upon which it is based, the most important of which is the principle of equality. This principle ensures that all candidates are granted equal and fair opportunities, enabling each of them to benefit from all available resources and to enjoy all the facilities provided by the state. Efforts must also be made to guarantee equal access to media outlets for candidates and political parties, in order to prevent any discrimination or favoritism based on financial capabilities or governmental support. In addition, it is essential to emphasize the neutrality of the administration and the integrity of the means used.

It is worth noting that Ordinance No. 21-01 related to the electoral system has regulated the financing of the electoral campaign and its oversight in Chapter Two, which is divided into two sections: the first dedicated to

the financing of the electoral campaign, and the second to its monitoring[1].

In this context, this section will focus first on the financing of the electoral campaign, followed by a discussion of the monitoring of electoral campaign financing.

### 1.1 Financing the Electoral Campaign

The electoral campaign is considered a legal means through which the candidate presents their electoral program to citizens, aiming to gain their trust, motivate them, and encourage them to vote in their favor. However, when the principle of equal opportunity among political parties in electoral competition is violated, the competition becomes imbalanced and illegitimate. In such cases, a dominant ruling party faces smaller parties that lack the financial and organizational resources necessary to compete, even within limited means[2].

Moreover, violations of the principle of equal opportunity may also occur among candidates in terms of electoral advertising. A wealthy candidate may invest large sums of money in their campaign, using advanced techniques alongside traditional methods, as well as organizing banquets and inviting voters to attend, in addition to distributing gifts and donations to voters.

Therefore, the campaign period is a decisive phase in the electoral process, marked by intense competition among candidates and continuous communication with voters to persuade them to vote.

However, this activity is subject to a set of principles and rules that ensure the candidates' right to conduct their campaigns equally, and voters' right to interact with them in order to learn about their orientations and programs. This enables voters to make effective decisions based on their freely chosen will, free from any material or moral inducement or coercion.

Article 87 of Ordinance No. 21-01 states that campaign financing may come from the following sources:

- Contributions from political parties, which come from members' subscriptions and income generated by party activities.
- The candidate's personal contribution.
- Monetary or in-kind donations from citizens as natural persons.
- Possible aid granted by the state to young candidates on independent lists during legislative and local elections.
- The possibility of state reimbursement for part of the campaign expenses.

It is prohibited for any candidate in national or local elections to receive, directly or indirectly, any monetary or in-kind donations or any type of contribution, regardless of form, from any foreign country or from any natural or legal person of foreign nationality[3].

The campaign treasurer is the only person legally authorized to manage campaign accounts and is not permitted to delegate this task to anyone else, including the candidate.

The treasurer must submit all information related to the bank account to the committee for monitoring campaign financing. Thus, the treasurer acts as the sole intermediary between the candidate and the campaign contributors, and is the only person authorized to collect funds and settle campaign-related expenses. The treasurer must also issue receipts to all donors, specifying the conditions for their preparation and use according to applicable regulations.

The treasurer is responsible for all administrative and managerial activities conducted in relation to others, the candidate, or the candidate list. Additionally, the treasurer prepares accurate and detailed campaign accounts, including all revenues by source and all expenditures by nature[4].

An electoral campaign account must be opened in the name of the candidate in presidential elections, whether the candidate is party-affiliated or on an independent list. In legislative elections, the campaign account is submitted to the committee responsible for monitoring campaign accounts by an auditor, who examines the account after reviewing the necessary documents.

It is important to note that submitting the account through an auditor is not mandatory if the candidate or list of candidates did not receive donations from individuals or aid from the state.

### 1.2 Monitoring the Financing of the Electoral Campaign

Article 115 of Ordinance No. 21-01 stipulates the formation of a committee to monitor the financing of the electoral campaign under the supervision of the Independent Election Authority. This committee is composed of:

- A judge appointed by the Supreme Court from among its judges, serving as president.
- A judge appointed by the Council of State from among its judges.
- A judge appointed by the Court of Auditors from among its advisors.
- A representative from the High Authority for Transparency, Prevention, and Fight Against Corruption.
- A representative from the Ministry of Finance. The committee is responsible for drafting and approving its internal regulations.

The campaign account must be submitted to the Committee for Monitoring Campaign Financing within a period not exceeding two months from the date the final election results are announced. After this period, candidates or candidate lists are no longer entitled to claim reimbursement for any expenses incurred during their electoral campaigns.

Additionally, they are not permitted to submit the campaign account if it shows a deficit; in such cases, the accounts must be settled at the time of submission, and this may require a contribution from the candidate[5].

The Committee for Monitoring Campaign Financing reviews the validity and credibility of the

transactions recorded in the campaign account and issues its decision within six (6) months, either approving, adjusting, or rejecting the account. If this period lapses without a decision, the account is considered approved by default[6].

Article 119 of Ordinance No. 21-01 states that the Committee for Monitoring Campaign Financing cannot grant reimbursement for any campaign-related expenses if the account is not submitted at all, is submitted late (i.e., after the two-month deadline as stated in Article 116), or if the account is rejected or exceeds the maximum allowable campaign expenditure. In such cases, the committee issues an official decision specifying the amount of the overrun that the candidate must pay to the public treasury without delay[7].

If there is a surplus or excess funds in the campaign account from resources allocated by organizations, this surplus must be transferred to the public treasury under the conditions specified by regulations.

Various decisions made by the Committee for Monitoring Campaign Financing can be appealed before the Constitutional Court within one month from the date they are notified.

The influence of money in electoral campaigns has increased as campaign-related expenses—such as publications, printed materials, advertisements, and transportation between electoral districts—have risen, leading to an unrestricted expansion. Not all candidates

have access to the same financial resources, resulting in inequality and a lack of equal opportunity among them[8].
A notable innovation introduced by Ordinance No. 21-01 is the state's assumption of various electoral campaign expenses to encourage independent youth participation in political life, particularly concerning their campaign costs:

- Expenses for printing documents.
- Expenses for publication and advertising.
- Expenses for renting venues.
- Transportation expenses.

The Organic Law on Elections also stipulates that members and agents of the Independent Election Authority are fully responsible for their duties under the supervision of the authority itself. These members must strictly adhere to neutrality toward political parties. Moreover, every agent involved in the electoral process must refrain from any behavior, stance, or action that could harm, contradict, or undermine the integrity or credibility of the election[9].

**2. Guarantees of the Integrity of the Electoral Process in Terms of Voting Method and Candidacy Requirements**

The tools and mechanisms of the electoral campaign are numerous and diverse, especially those related to ensuring the integrity of the process to achieve transparency and credibility in voting. Among the most important of these are:

the adoption of the proportional voting system based on open lists with preferential voting without

mixing, in addition to the implementation of new or revised candidacy requirements under Ordinance No. 21-01.

### 2.1 Adoption of the Proportional Voting System Based on Open Lists with Preferential Voting Without Mixing

List-based electoral systems are used in countries with large electoral districts, where a group of representatives is assigned to represent those districts. Voters choose from among names listed on electoral lists, which vary depending on the system.

There is the closed-list system, where voters are allowed to choose an entire list as it is; and the mixed-list system, which allows voters to select candidates they deem most suitable from one or more lists.

In addition, there is the open-list voting system, which uses preferential voting without mixing, and this is the system adopted by Ordinance No. 21-01.

Improving the responsiveness of the electoral process to citizens' aspirations requires reforming both the electoral system and the voting method to enhance levels of integrity in the electoral process.

Under the current format, the list-based system prohibits any modification or rearrangement of the lists, whether at the stage of filing candidacies or during the distribution of seats—except in exceptional cases such as death or a legal impediment. Consequently, voters are granted the freedom to rank candidates according to their personal preferences[10].

Ordinance No. 21-01 introduced new changes, replacing the proportional voting system based on the closed list—which did not allow voters to rank candidates within the list—with a completely different system: proportional voting based on the open list with preferential voting without mixing. This change is confirmed in Articles 169 and 191 of Ordinance No. 21-01, which pertain to the election of members of municipal and provincial popular assemblies as well as the National People's Assembly[11].

Articles 170 and 192 of Ordinance No. 21-01 state that in each polling station, once inside the booth, the voter selects one list and votes for one or more candidates from that same list, within the limit of seats allocated to the electoral district.

It would have been more appropriate for the Algerian legislator to adopt the open-list system with preferential voting earlier, instead of the former closed-list system, which did not allow voters to arrange the candidates. In the previous system, the voter voted for the list as it was, without change, which caused many problems and obstacles—particularly regarding corruption in the internal arrangement of candidates within the same list.

Today, voters can choose and rank candidates within the list according to their individual choices and personal preferences[12].

**2.2 Newly Introduced Candidacy Requirements Under Ordinance No. 21-01**

Candidacy is considered one of the most prominent forms of citizen participation in the political affairs of the country. It represents the other side of the freedom to engage in electoral life, as both voting and candidacy are complementary and interdependent rights; parliamentary life cannot function without either one.

The principle of freedom to run for office is an essential constitutional principle that all states strive to promote and establish in their various electoral processes. Candidacy is also one of the preparatory steps that occur shortly before the electoral process, and it is often regulated by the organic law on elections.

Article 176, in its second paragraph (2), stipulates the need to respect the principle of gender parity in the submitted electoral lists. It mandates that at least half (1/2) of the candidates must be under forty (40) years of age, and that at least one-third (1/3) of the candidates on the list must hold a higher education degree—that is, be university graduates[13].

What is new in paragraph three (3) of Article 176 is that it specifies that the gender parity requirements apply only in municipalities with a population of twenty thousand (20,000) or more.

It is worth noting that this article has amended the previous organic law, which aimed to enhance women's representation in elected councils by requiring that one-third (1/3) of the candidates be women. As a result, these new amendments have effectively increased the rate of women's participation in candidacy.

Nevertheless, it should also be noted that the adoption of the proportional voting system based on open lists with preferential voting—without mixing—has equalized representation opportunities for both men and women, leaving the choice to the people without favoring women over men.

With regard to the election of members of the National People's Assembly, Article 191 of Ordinance No. 21-01 stipulates that members are elected for a five (5)-year term through proportional voting based on open lists, applying a preferential voting system without mixing[14].

As stated in Paragraph 2 of Article 176, Paragraph 2 of Article 191 also requires that electoral lists comply with the principle of gender parity. Additionally, at least half of the candidates must be under the age of forty, and at least one-third of the candidates must hold a university-level education.

It is important to highlight the contents of Articles 184, 200, and 221 of Ordinance No. 21-01, which relate to the candidacy conditions for membership in the municipal or provincial people's councils, the National People's Assembly, and the Council of the Nation. A new condition was added, stating that candidates must not be publicly known for associations with suspicious financial or business circles (such as businesspeople involved in corruption) or for having any direct or indirect influence on the freedom of the electorate in their choices or the integrity and transparency of the electoral process[15].

The Constitutional Court issued its opinion on this matter while reviewing the constitutionality of Ordinance No. 21-01, stating the following[16]:

- Articles 184 (final paragraph), 200 (paragraph 07), and 221 (final paragraph) of Ordinance No. 21-01 should be considered together, as they share the same subject and rationale.
- These articles require that candidates for the municipal, provincial, national, and upper houses of parliament must not be publicly known for close or direct ties with suspicious financial or business sectors such as corruption, and must not directly or indirectly influence the electorate's freedom of choice or the integrity of the electoral process.
- Upon review, it is evident that these legislative provisions are ambiguous, both in terms of their practical application and their alignment with the principles stated in the final paragraph of Article 34 of the Constitution.
- The provision in these articles is unclear and difficult to prove, which could lead to violations of citizens' fundamental rights due to the absence of clearly defined legal mechanisms to establish such accusations. It should be taken into account that the legislator did not intend to exclude the guarantees stated in Article 34 of the Constitution.
- In this context, Articles 184 (final paragraph), 200 (paragraph 07), and 221 (final paragraph) are

considered constitutional, provided this reservation is respected. Accordingly, the Constitutional Court granted the Independent National Authority for Elections the discretion to determine which candidates are publicly known for their connections with suspicious business sectors or for exerting direct or indirect influence on voters' freedom of choice and the proper conduct of the electoral process[17].

Furthermore, Article 200 introduced an additional eligibility condition for candidacy to the National People's Assembly: a candidate must not have served two consecutive or separate parliamentary terms. This effectively excludes any candidate who has previously served two terms as a member of the National People's Assembly, thereby enhancing competitiveness among new candidates[18].

## CONCLUSION

From the above, it is clear that the electoral process constitutes the cornerstone of democratic practice, as it grants all individuals their political rights and freedoms, including the right to vote, to run for office, and to express opinions in various referendums. This process is the foundation upon which effective participation in political and parliamentary life is built.

The electoral campaign has become the primary means of achieving modern and genuine democracy by enabling every individual to choose their representatives in elected councils and leadership positions. However, this freedom can only be realized through the presence of

a set of effective guarantees that ensure transparent elections—guarantees that require various electoral regulations grounded in credibility and integrity.

These guarantees are both constitutional and objective, as they are enshrined in the latest Algerian Constitution and affirmed by various laws, foremost among them the electoral law that regulates all aspects of the electoral process. All of this aims to ensure fair and transparent elections that truly reflect the people's will and their free and honest choice.

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[12]- See: Khaled Boukouba and Noura Moussa, Op. cit., p. 59.

[13]- Ibid., p. 60.

[14]- See: Ahmed Mahrouk, Op. cit., p. 56.

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[16]- See: Constitution of the People's Democratic Republic of Algeria, Official Gazette, No. 82, dated December 30, 2020.

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