

"Towards the consolidation of electoral integrity during the preparatory phase in the election of members of parliament in light of Ordinance 21-01 on the electoral system"

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نحو تكريس النزاهة الانتخابية أثناء المرحلة التحضيرية في انتخاب أعضاء البرلمان
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Abstract:

This study aims to address the electoral provisions that enshrine transparency in the electoral process during the preparatory phase for the election of members of parliament To exercise representative, legislative and supervisory functions by addressing the provisions of Ordinance 21-01 on the electoral system, which included new provisions devoted to integrity, transparency and democracy of the electoral process through its various preliminary and subsequent stages and thus achieve the quality of parliamentary representation, One of the foundations of the democratic system that represents popular sovereignty, Through a democratic electoral system that enhances the quality of parliamentary representation and exercise of electoral appeals during this stage as a mechanism to embody electoral integrity.

Key words: Intégrité électorale, recours électorale, phase préparatoire, qualité de la représentation parlementaire, élections législatives.

Introduction:

Election is considered a democratic means of rotation of power, and thus the assignment of power to the representatives of the people This mechanism reflects the extent of good representation of the people's representatives under a political system based on democracy so that the election entitles the parties to political participation to exercise this right as a voter on the one hand, and as a candidate on the other hand, these two rights are inseparable to achieve the democratic process always through the election mechanism.

As the legislative elections are the pillar of parliamentary democracy, as they aim to form parliamentary councils that express popular sovereignty in a way that guarantees the voter his representation before parliament in a way that reflects the democracy of the electoral process and the quality of parliamentary representation, and in this context the electoral process passes through two stages, the preliminary stage and the subsequent stage, as the preliminary stage is the essential stage in the electoral process as it is the starting point and the basis of the electoral process, as it includes a number of procedures related to registration in the electoral lists and the right to run, In view of the importance of this stage in the elections and the defects that may affect the right to register on the electoral list and to stand for election, Ordinance 21-01 on the electoral system has provided it with legal guarantees represented in the mechanism for appealing decisions relating to

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the right to register on the electoral list and the right to stand for election, by appealing these decisions to the administration and the judiciary.

From this standpoint, we raise the following problem: How effective are the electoral appeals related to registration in the electoral list and the right to run for election to members of parliament in light of Ordinance 21-01 on the electoral system?

To address this problem, we adopted the descriptive approach and the analytical approach for various legal texts, especially Ordinance 21-01 on the electoral system Comparing it with previous laws, within two main themes:

- challenging the electoral list as a mechanism to establish integrity and transparency in the electoral process.
- protecting the principle of the right to run for election by devoting the right of appeal to elect members of parliament.

1- challenging the electoral list as a mechanism to establish integrity and transparency in the electoral process:

Registration in the electoral list is a guarantee for the exercise of the right to vote, so the voter must commit to registering his name in the electoral list of the electoral district to which he belongs, because registration in the electoral lists is necessary that results in the voter's exercise of his right to vote, and in the reverse case, that is, the voter's failure to adhere to his name in the electoral list, here his right to exercise the election is forfeited, as the electoral list on the one hand reflects the size of the electoral body bloc and the extent of its commitment to registration as an expression of the voter's electoral awareness.

On the other hand, it is a means of establishing the right to vote for every voter who meets the legal requirements to register his name.

1.1- Mandatory registration in the electoral list:

In view of the importance of registration in the electoral list, which is achieved by proving that the person registered in the electoral list met all the objective conditions of the voter, which entails the exercise of the right to vote, every citizen who meets the conditions of the voter and is not registered in the electoral list is not considered a voter, and if he wants to prove this, he only has to register his name in the electoral list.

The electoral list is defined as the document that counts voters and arranges their names in alphabetical order, and contains data related to their personal and family name, date and place of birth, and place of residence or residence in the district.⁽¹⁾

Through this definition, registration in the electoral list makes it easier for the administration supervising the electoral process to organize the work related to the distribution of polling stations to electoral districts.²

The electoral list is general and permanent, including all electoral entitlements, and is public and accessible to anyone.

1.1.1 -Procedures for Registration in the Electoral List for the Election of Members of the People's National Assembly

Registration in the electoral lists is a duty for every citizen who meets the legal conditions, according to Article 51 and 54 of Ordinance 21-01 on the electoral system, and in this context the law prevents the citizen from registering in more than one electoral list, and this is a positive thing brought by the legislator, as registration once provides a guarantee and protection from falsification of electoral lists, while registration in more than one electoral list opens the door to the use of the name of the registered voter and thus the fraud, and that Registration in a single list fulfills the principle of one vote per vote, for Algerians residing abroad and registered with the Algerian diplomatic and consular representations, they must request their registration, for elections to the

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municipal people's councils and the wilaya people's councils on the electoral list of one of the following municipalities:

- Municipality of the birthplace of the concerned .
- Municipality last domicile of the concerned .
- The municipality of the birthplace of one of the assets concerned.

For presidential and legislative elections and referendum consultations, registration is made on the electoral list of Algerian diplomatic and consular representations located in the voter's country of residence.³ In this context, a national card of the electoral college shall be established and maintained under the responsibility of the national authority.⁴

For Algerian men and women, anyone who enjoys civil and political rights and has not previously registered on an electoral list must request their registration.

- Conditions that must be met by citizens to register in the electoral list:

According to Article 50 of Ordinance 21-01 on the electoral system, "Every Algerian who has reached the age of eighteen (18) full years on the day of voting, who enjoys his civil and political rights, who is not present in one of the cases of disqualification specified in the legislation in force and who is registered in the electoral list, shall be considered a voter." In the electoral list, in the sense of violation, anyone who meets the legal conditions and does not register in the electoral list forfeits his right to vote, as registration in the electoral list is one of the formal guarantees for the exercise of the right to vote.

- Re-registration cases in the electoral list:

Anyone who regained electoral eligibility as a result of rehabilitation or lifting of the quarantine or as a result of a pardon shall be re-registered in the electoral list. A voter who has changed his place of residence shall also be re-registered by requesting re-registration within three (3) months following the change of residence, as a result of his removal from the list and re-registration in the municipality of his new residence.⁵

However, when a voter dies, the interests of his municipality of residence and the diplomatic and consular services must immediately remove him from the electoral list.

Article 61 of Ordinance No. 21-01 on the electoral system obliges the relevant services of the municipality of residence and the diplomatic and consular services to inform the Independent National Electoral Authority, which immediately removes him from the voters' list. Similarly, in the event of the death of a voter outside his municipality of residence, the municipality of the place of death must inform the municipality of residence of the deceased by all legal means, which in turn informs the Independent National Authority for elections.

Thus, the Algerian legislator has transferred the task of registering or canceling voter in the event of death to the Independent National Electoral Authority, in order to impart integrity and transparency to the electoral process by completely distancing the administration from this process, given its lack of commitment to neutrality and integrity through previous electoral experiences in the eyes of political parties.

1.1.2- Registration in the electoral list for the election of members of the National Assembly :

The electoral body for the election of members of the National Assembly is characterized by its narrow pot, as the electoral list for the election of members of the National Assembly includes members of municipal people's councils and state people's councils.

The list of voters shall be prepared by the coordinator of the state delegation of the independent authority in alphabetical order, in the form of a signature list that includes the names of the voters, their surnames and the council to which they belong, where the electoral college for

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the election of members of the National Assembly is distributed on the basis of four hundred (400) voters, at most, for each polling station, and the signature list prepared four (4) days before the date of the opening of the ballot is placed at the disposal of the candidates and the electoral college, and a copy of the signature list certified by a coordinator is deposited. The state delegation of the independent authority, at the polling station, for the duration of the ballot.⁶

Due to the specificity of the electoral list for the election of members of the National Assembly, the legislator did not authorize any party to challenge the electoral list, and this is of course due to the small number that can be counted and not changed, and the electoral body is of a political nature, as all of them belong to political parties, as the limitation of the electoral body prevents any fraud, which prompted the legislator to exclude the challenge to the electoral list.

1.2- Challenging the electoral list for the election of members of Parliament:

In order to preserve the integrity, integrity and credibility of the electoral lists, within the framework of strengthening control over them by the voter, whether it is administrative control, which takes place before the Independent National Authority for Monitoring Elections, or judicial control that takes place before the court, and on this basis and in order to control the electoral process within its legal framework, the legislator organized the process of challenging the electoral list in order to protect the right to vote, which is the essence of the electoral process and the basis for its continuity, credibility and integrity.

1.2.1- Administrative Appeal:

In front of the obligation to register in the electoral list to exercise the right to vote, and in order to enable all citizens who meet the legal conditions to exercise the right to vote, in the event that no citizen is registered in the electoral list as a result of the omission of the administration to register him despite the availability of legal conditions or that a person is registered unjustly, in this case the law allows every citizen who has the right to vote to appeal before the authority supervising the registration process. Ordinance 21-01 establishes the task of registering voters to the municipal commission created for this purpose.

- Composition of the Municipal Committee for the Review of Electoral Lists:

Ordinance 21-01 on the electoral system, under Article 63 thereof, entrusts the preparation and review of electoral lists to the Municipal Committee, which operates under the supervision of the independent authority, where the Municipal Committee for the Review of Electoral Lists consists of:

- A judge appointed by the President of the Regionally Competent Judicial Council, as President
- Three (3) citizens of the municipality selected by the state delegation of the independent authority from among the voters registered on the electoral list of the municipality concerned.
- The Municipal Electoral Roll Review Committee shall be placed at the disposal and control of a permanent secretariat managed by an experienced, competent and impartial municipal official.
- The Committee shall meet upon summons from its Chairman.

It is clear that the municipal committee is composed of people who are characterized by impartiality and integrity in the electoral process, and this is evidenced by the chairmanship of the committee by a judge, who is known for the judiciary to be characterized by efficiency and impartiality, as he does not represent any political party, and the composition of the committee is composed of voters chosen by the Independent National Authority for Elections is a guarantee and integrity in the performance of the committee's tasks.

What is wrong with the committee is that the members of the committee were supposed to be elected instead of being appointed by the authority, so that the latter organizes the process of

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nomination and election to the membership of the committee, in order to establish more integrity and transparency in the electoral process.

For residents abroad, electoral lists are prepared and reviewed in each diplomatic or consular department under the responsibility of the independent authority by an electoral list review committee consisting of:

- the head of the diplomatic mission or the head of the consular post or his representative, as president,
- Two (2) voters registered on the electoral roll of the diplomatic or consular department, appointed by the independent authority, as two members.
- officer consulat, member.

The Committee shall appoint a Secretary from among its members.⁷

It is clear that the composition of the committee in charge of reviewing the electoral lists abroad is of a purely diplomatic nature, as its composition is predominantly administrative and diplomatic, this may affect the credibility of the process, and for this the legislator had to appoint a judge at the head of this committee to head it at least to ensure integrity, impartiality and credibility in the electoral process.

- The competence of the Municipal Committee for the Review of Electoral Lists to decide on the appeal:

Ordinance 21-01 on the electoral system entrusted the task of considering grievances and objections to the municipal committee supervising the process of reviewing the electoral list. And The law allows any citizen who omits to register in an electoral list to submit his grievance to the head of the municipal committee to review the electoral lists within the legal forms and deadlines according to article 66 of Ordinance 21-01 on the electoral system.

Article 67 of Ordinance 21-01 on the electoral system stipulates that every citizen registered in one of the lists of the electoral district has the right to submit a reasoned objection to the deletion of an unjustly registered person, or to the registration of an anonymous person in the same constituency, within the legal forms and time limits. Accordingly, it is clear that the grievance is a right vested in every citizen whose name is not included in the electoral list, while the objection is the right of every citizen registered on the electoral list who objects to an illegal conduct issued by The Municipal Committee for the Review of the Electoral Lists, regarding the omission of registering or registering a person unjustly in the electoral list of the district to which the appellant belongs.

- Deadlines for submitting an appeal before the Municipal Committee for Reviewing the Electoral Lists:

To protect the right to vote and the electoral list, objections to registration or deletion must be submitted within the ten (10) days following the suspension of the announcement of the closure and closing of the electoral list review period,⁸ but the deadline of ten (10) days shall be reduced to five (5) days in the case of an extraordinary review.

On this basis, every citizen who meets the legal conditions has the right to be registered in one of the lists of the electoral district, and any failure on the part of the Municipal Committee to review the electoral lists in not registering any citizen or deleting a person registered unjustly, every citizen has the right to appeal the decision of the Municipal Committee for the Review of Electoral Lists, provided that the Committee decides on objections within a maximum of (3) days.

In this regard, the head of the municipal committee for the revision of the electoral lists or the head of the diplomatic or consular representation shall communicate the committee's decision within three (3) full days to the parties concerned by any legal means.⁹

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It is noted that the legislator under Ordinance 21-01 on the electoral system did not specify the exact legal means it adopts in informing the parties concerned, as it used the phrase "by any legal means" This procedure helps the administration and does not serve the person addressed by the decision, because the administration uses the means it deems appropriate to avoid the financial costs resulting from notification, unlike the repealed Ordinance 97-07,¹⁰ which specified the legal means of notification by informing in writing and in their home country, given the position of the electoral college in the electoral process.

1.2.2- Judicial Appeal against the Decision of the Municipal Committee for the Review of Electoral Lists

In order to strengthen the protection of the right to vote and ensure its exercise, the law enshrined the exercise of this right with a judicial guarantee represented in the judiciary's control over registration in the electoral lists, without which the citizen cannot exercise the right to vote and thus vote, so he entrusted the task of adjudicating objections to registration in the electoral lists to the ordinary judiciary.

According to article 69 of Ordinance 21-01 on the electoral system, the appeal shall be registered by mere declaration to the Registry of the Court of the Ordinary Judicial System regionally competent or, in the case of the Algerian community living abroad, the Court of the Ordinary Judicial System of Algiers, which shall decide on it within a maximum period of five (5) days without the costs of the proceedings and without the obligation to appoint a lawyer, with a re-notification sent to the parties concerned three (3) days in advance.

Thus, the interested parties can register the appeal within five (5) full days, starting from the date of notification of the decision, and in the absence of notification, the appeal can be registered within eight (8) full days, starting from the date of the objection, provided that the court's judgment is not subject to any form of appeal.

Due to the specificity of the electoral dispute, and the fact that the deadlines are very short, Ordinance 21-01 did not restrict the parties involved in the appeal to the same procedures to be followed in ordinary proceedings.

In order to facilitate the exercise of the right of appeal before the judiciary, the law exempted the parties concerned from the obligation to pay the expenses of the proceedings In this regard, Mr. Abdel Hakim Fouda confirmed that the property of exempting the electoral appeal from the requirement to pay fees is due to electoral appeals is different from the procedures before the annulment court, such as the requirement to pay fees,¹¹ He also stressed on the other hand that the petition to challenge the electoral materials does not require that it be signed by a lawyer, and this indicates that Order 21-01, gives The importance of the electoral process by granting the concerned parties the power to appeal according to easy and simple procedures, which every citizen can follow to challenge the process of registration in the electoral lists, and thus the legislator has considered electoral appeals as appeals of a special kind, completely different from ordinary appeals.

This is what encourages the citizen to resort to appeal in case of prejudice to his right, this is what devotes democracy in the electoral process and enhances integrity and transparency, and expands the principle of political participation in a way that makes the electoral body wide, which reduces boycott and electoral abstention as a result of awareness of the importance of the electoral process on the one hand and to strengthen judicial oversight on the other hand.

On the other hand, the inability to appeal the court's ruling in any form of appeal lies in the urgency of the electoral process, especially the stage of preparing the electoral lists, and thus completing them in a short period.¹²

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It should be noted that Ordinance 21-01 granted jurisdiction to the ordinary judiciary competent regionally to adjudicate appeals related to registration in the electoral lists, considering that the issue of registration is related to the civil status of the person, and therefore it is within the jurisdiction of the ordinary judiciary, but it was more appropriate for the legislator to grant the jurisdiction to appeal the registration in the electoral lists to the administrative judiciary, considering that the committee in charge of reviewing the electoral lists is of a purely administrative nature, and that the decision issued by it is an administrative decision according to the organic criterion, as The procedures related to the electoral process are all administrative procedures issued by the General Facility of the Independent National Authority for Election Monitoring.

Therefore, the legislator had to assign the jurisdiction to adjudicate appeals related to electoral lists to the administrative judiciary, as they are electoral lawsuits from an objective point of view and an administrative lawsuit of full judiciary.¹³

2- Protecting the principle of the right to run for election by devoting the right of appeal to elect members of parliament:

In order for candidacy to conform to the democratic concept, it must be available to all citizens of the State when they meet the legal requirements, this category refers to the body of candidates whose aim is to reach Parliament and represent its elected representatives in the best way.

Article 56 of the 2020 constitutional amendment states, "Every citizen who meets the legal conditions has the right to vote and be elected ".

According to the constitutional principle, every citizen who meets the legal conditions may vote or be elected, on this basis, the candidate for membership of parliament is required to meet the legal conditions necessary for candidacy, and the law also allows the candidate the right to appeal in the event of arbitrariness of the authority supervising the study of candidacy files, by resorting to the judiciary to demand the protection of his constitutionally guaranteed right.

2.1- Conditions for candidacy for membership of Parliament:

Every person enjoys the right to political participation, whether as a voter or elected, and legislative elections are considered as a democratic tool, through which membership in Parliament is achieved and thus representation of the people and an expression of the public will, and it is required to participate in legislative elections, that the candidate to exercise the representative function has a set of objective and formal legal controls specified by the Electoral Law.

2.1.1- Preservation of Ordinance 21-01 of the General Conditions for Candidacy for Parliament:

In order to exercise the right to run for membership of Parliament, the Electoral Law has established objective conditions that must be met by every candidate for membership of the People's National Assembly or the National Assembly, since the absence of these conditions results in depriving the citizen of the exercise of the right to run, and given the importance of these conditions, Ordinance 21-01 came with new conditions not stipulated in previous electoral laws, which came with the aim of protecting the right to run and excluding the owners of corrupt money from running in order to create public life.

- The candidate must be a voter:

It is recognized that the right to vote precedes the right to run, as a person cannot be a candidate and does not have the capacity of the right to vote, so the candidate for parliament before running for membership must be an eighteen (18) full year old voter on the day of voting, and to enjoy his full civil and political rights and did not exist in one of the cases of disqualification

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specified in the law, where the voter must register in the electoral list, and to organize Registration Process Ordinance 21-01 introduced a national card for the electoral college.

- The condition of reaching the legal age for candidacy:

Article 200 of Ordinance 21-01 sets the age of candidacy for membership of the People's National Assembly, that the candidate must be at least twenty-five (25) years of age on the day of voting, this is a new trend by the legislator towards the rejuvenation of the People's National Assembly, while Article 221 of Ordinance 21-01 sets the age of candidacy for membership of the National Assembly at thirty-five (35) full years on the day of voting, in an attempt by the legislator to give the youth an opportunity to participate in political life, and then This age opens the way for university youth, who have a degree of academic qualification that allows them to participate in politics, and this age also allows the expansion of the pool of the candidate body since the members of the National Assembly have the ability to study things and this is what achieves the long-term strategy in accomplishing the legislative and oversight function.¹⁴

- Condition of nationality:

A candidate for membership of the People's National Assembly is required to be an Algerian national, according to article 200 of Ordinance 21-01 on the electoral system, where the candidate must be of Algerian nationality, but what is wrong with this article is that it does not specify the nature of this nationality, whether it is original or acquired, since it is not possible to assign the parliamentary position to a foreigner who does not enjoy Algerian nationality due to its danger to the sovereignty of the state.

- Proof of performance of national service or exemption from it :

The law defines national service as the participation of citizens in national defense and is allocated to meet the needs of the People's National Army,¹⁵ In order to devote a member to the parliamentary mission, Ordinance 21-01 on the electoral system stipulates in Article 200 that the candidate has performed the duty of national service or be exempt from it, since it is unreasonable to summon a member of Parliament to perform the duty of national service during his parliamentary term,¹⁶ In return for that, he did not perform his personal duties before devoting himself to public duties. It is possible to accept a candidate who does not perform his personal duty while he accepts to run to represent his constituents.

- The condition of enjoying civil and political rights:

A candidate for membership of Parliament must enjoy civil and political rights, and thus must be of the age of civil majority, which is set at nineteen (19) full years, and must have full mental faculties free from all dementia, insanity, foolishness or negligence and have full capacity to act .

The candidate must also enjoy his political rights, including the right to vote and be elected, and due to its importance, the law stipulates that the candidate for membership of parliament should not be finally sentenced to a penalty of deprivation of liberty for committing a felony or misdemeanor and has not been rehabilitated, except for unintentional misdemeanors.

2.1.2- Introducing new conditions for candidacy for parliament:

The legislator added new conditions that were not in previous electoral laws, as this represents a qualitative progress with regard to setting the conditions for candidacy for membership of parliament, although these new conditions relate to the financial aspect of the candidate by proving his status towards the tax administration as a new condition, in addition to that the candidate is not known to the public for his connection with the financial and suspicious business circles, and his impact directly or indirectly on the free choice of voters, and the proper conduct of the electoral process, and that He shall not have exercised two consecutive or separate parliamentary terms.

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- Proof of the candidate's status towards the Tax Administration:

The tax is one of the duties of citizenship in the constitutional amendment of 2020, so it is considered one of the most important revenues that the state relies on to finance its public expenditures, and at the same time it is one of the burdens that fall on the shoulders of individuals (financiers), which requires establishing a balance between the interest of the state and the interest of the individual,¹⁷ as the owners of companies have the burden of paying the tax as an obligation to the state, and since it is a case linked to money, in some cases the obligor evades paying it, so the legislator obligated Every candidate for membership of Parliament may pay the tax incurred by him to the State, with proof of this by a certificate issued by the Tax Administration to the taxpayer, on the basis of which he is entitled to exercise the right to run .

Since the tax is a burden on the obligor, it is a fortiori, to pay it before he commits to any duty towards his state, according to the jurisprudential rule, what is not done is only a duty, serving the state and society through the representation of citizens is a duty, but it is not done and is not achieved in the eyes of the state and the citizen except through the candidate's duty to pay the tax, and the purpose of setting this condition by the legislator is to hold the people who practice Trade and they have money and it is their responsibility to abide by the tax burden, it is not reasonable for the candidate to exercise his representative function while he is in debt to the state, as a result of his inability to pay the tax or his refusal, which may open the door for the candidate to exploit his representative position and rely on it to bring money to pay his debts, this condition cut off the way for everyone who wishes to turn the functions of the state into a source of wealth, a condition enshrined in the Constitution in Article 24 of it by saying "... Jobs and assignments in state institutions cannot be a source of wealth, nor a means of serving vested interests..." From this standpoint, the legislator was keen to protect the electoral process by democratizing and creating the right to run for office by depriving opportunists and the wealthy from exploiting jobs.

- The candidate should not be known to the public about his connection with the financial and suspicious business circles and his direct or indirect impact on the free choice of voters and the proper conduct of the electoral process .

The law stipulated that the candidate for the elections must be of good reputation and good manners by staying away from everything that affects his person and reputation, especially those related to the owners of money and suspicious business, this category often affects the candidate and the voter, through the use of money as a tool to influence the will of the voter or through the use of money to impose one candidate without another, and this is what was witnessed in the previous elections, where the owners of money affected the general orientation of the electoral process in a way that The election was emptied of its function and objectives as a result of the penetration of money owners in the elections .

Therefore, Ordinance 21-01 on the electoral system came in its articles 200 and 221 to put an end to the financial and political abuses and corruption that was in the past by making a break with the past and rehabilitating the representative function through the democratization and ethics of elections, this essential condition came to distinguish between those who want to serve their country, state and representatives, and those who aspire to reach the elected councils for enrichment. The elections are final, by opening the way for people with white and clean hands to participate in free and fair elections far from the effects of corrupt money, which is what actually happened in the last legislative elections on June 12, 2021, where the Independent National Elections Authority worked within the framework of the law to reject many nominations that are marred by ambiguity and suspicion of corrupt money, and the same is true for the local elections on November 27, 2021 .

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However, what is noted on this condition is that it is loose and flexible, which the Independent National Elections Authority can implement, in a way that may affect the citizen's right to run and exclude him from the elections just because of doubt or similarity in his relationship with the owners of money and business, which may deprive many of those accused of this relationship from participating in the elections, where any individual or group can accuse a candidate for the elections of having a suspicious relationship with the owners of money and business, which deprives him of candidacy, so this condition must be adjusted Strictly in terms of its application.

This condition corresponds to the condition provided by Article 90 of the Electoral Law 12-01 "... That the candidate for the elections shall not be sentenced to a final judgment for committing a felony or misdemeanor depriving him of liberty unless he is rehabilitated without disturbing public order" and this is a broad phrase that the legislator may have liked to use to narrow the scope of candidacy for the elections, but he remedied the matter in Law 16-10 ¹⁸and deleted it .

- The condition of determining one parliamentary term to run for the People's National Assembly :

Ordinance 21-01 on the electoral system came in its article 200 with a new condition related to the parliamentary mandate, as Ordinance 21-01 prevented every deputy of the People's National Assembly from exercising more than two parliamentary terms, whether consecutive or separate, from running again for membership of the People's National Assembly, and this is for the purpose of protecting the parliamentary mandate and consecrating the principle of rotation of power, and thus giving the opportunity to every candidate for membership of the People's National Assembly to participate in the elections and win them on the one hand, and on the other hand, the exclusion of the parliamentarians who won With more than two parliamentary terms so that parliamentary councils do not turn to the ownership of certain parties or certain personalities, and thus the law has closed the door to parliamentarians who have exercised successive or separate parliamentary terms, which often resulted in the corruption of deputies and their acquisition of parliamentary representation, in a negative way as a result of party loyalty instead of the real representation of the will of the voter.

2.1.3- Formal Conditions Related to the List for Candidacy for Membership of the People's National Assembly

Article 191 of Ordinance 21-01 on the electoral system stipulates that the list of candidates for the election of members of the People's National Assembly must include:

- The list of candidates for the People's National Assembly shall include three (3) more candidates than the number of seats required to be filled in constituencies whose number of seats is odd and two (2) in constituencies whose number of seats is even.

- Observing the principle of parity between women and men:

Ordinance 21-01 on the electoral system came in Article 191 to enshrine the principle of parity for the first time in the electoral experience in Algeria, where the law stipulates that to accept the nominations of a certain list, the list must contain candidates equally women and men,¹⁹ This condition is a new trend by the legislator towards abandoning the quota system enshrined in Organic Law 12-03, and implementing the principle of parity between women and men in the lists of candidates. Obtaining seats through their role in the electoral campaign, under this condition, women no longer wait for their share of the list under the quota, but they must play their role in obtaining the votes of voters to win seats in the People's National Assembly, the parity system is in line with the open list system that leaves the voter the freedom to choose the best in the list, and this enshrines quality, quality and efficiency in the selection and eliminates the corrupt and unqualified who win parliamentary seats for which they are not eligible.

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- Taking into account the principle of rejuvenation in the lists of nominations:

Article 191 of Ordinance 21-01 on the electoral system stipulates that at least half (1/2) of the nominations be allocated to candidates under the age of forty (40) years, this is a positive and essential condition for strengthening participatory democracy and expanding the principle of the right to run for elections to the People's National Assembly by giving an opportunity to young people to participate in political life, this privilege came as a result of the absence of democracy within political parties in the selection of candidates, as a result of the marginalization and exclusion that was exposed to young people wishing to run, as the elections were In the previous electoral laws, this condition was devoid of this requirement, which opened the way for political parties to undertake the selection process according to loyalty, throne and finance, which emptied the electoral process of its content.

- Requirement of university educational level :

The Electoral Law stipulated for the first time in its article 191 to accept the lists of nominations that the list includes at least one third (1/3) of the candidates of the list, a university educational level, and thus the legislator has required the scientific competence of the membership of the People's National Assembly, a condition that we did not find in previous electoral laws, especially since most of the candidates in the past have a limited scientific level primary - intermediate - secondary, a level that does not allow them to exercise their duties with merit and efficiency, which resulted in the disruption of parliamentary performance is very weak, but it is in front of a development Experts in law stressed the need for scientific competence in those who assume the functions of prosecution, as they believe that the representation of society must be from the elite.²⁰

On the other hand, the requirement of scientific competence blocks the way for political parties to choose who suits them and is subject to their instructions and directives instead of choosing competence, and this is always due to the lack of competence within political parties,²¹ which is what was known in the previous elections, where the nomination was for those with party seniority and loyalty and not competence .

2.1.4- Special Conditions for the Candidate for Membership of the National Assembly :

The law stipulates for membership of the National Assembly special conditions that must be met by the candidate for membership of the National Assembly, these special conditions limit the number of candidates, which makes the body running for membership of the National Assembly characterized by non-breadth .

-The candidate must be an elected member of the local councils :

According to the text of Article 121 of the constitutional amendment of 2020, a member of a municipal or state people's assembly that meets the legal conditions can run for membership in the National Assembly,²² The existence of this condition is based on the justifications for the creation of the National Assembly, as the establishment of a second chamber - a second chamber - in the Algerian parliament aims to ensure the representation of local communities.

The electoral college of two-thirds (2/3) of the members of the National Assembly is characterized by its narrow pot compared to the members of the People's National Assembly, and therefore the deputy elected by the people is more representative of popular sovereignty, since he is elected by the people by direct and secret universal suffrage.

- He must have completed a full term of office as elected to a municipal or state people's assembly :

The law stipulates that the candidate for membership of the National Assembly must have completed a full electoral term in a municipal or state People's Assembly according to Article 221 thereof, and thus the legislator has done well to restrict the exercise of the right to run for election

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with this condition so that he can know the qualifications of the elected at the local level during the exercise of the electoral mandate in terms of the level of performance and integrity throughout the electoral term, so that the legislator has granted himself the opportunity to evaluate the local electors indirectly in order to accept their candidacy For membership of the National Assembly, and this condition was not stipulated in the previous laws, which opened the way for every new elected in the local councils to run for membership of the National Assembly, which affected the performance of the Council and abounded opportunists and careerists.

2.2- the electoral appeal as a mechanism to establish integrity in the process of candidacy for parliament :

In order to protect the constitutionally guaranteed right to candidacy, Ordinance 21-01 on the electoral system allowed any candidate for parliament who was deprived of the right to run by the Independent National Electoral Authority, and who met all the legal conditions required to run for membership of parliament, to resort to the judiciary to claim his right to run, since the decision of the Independent National Electoral Authority is not a final decision that does not accept appeal, but the law allows the candidate to exercise the right to appeal the rejection decision issued by the authority before the judiciary as the protector of rights. and freedoms.

2.2.1- Appeal against the Rejection of Candidatures for the Election of Members of the People's National Assembly

After filing the declaration of candidacy before the state delegation of the independent authority, which ends fifty (50) full days before the date of voting, and after studying the files and examining them by the state delegation of the independent authority and making sure that the legal conditions for candidacy are met, and then the delegation finds that the legal conditions for the candidate are not completed, in this case it issues a decision to reject the candidacy, which is subject to challenge before the judiciary.

- The quality of the appellant in the rejection decision:

Ordinance 21-01 did not specify the parties concerned with filing an appeal against the rejection decision, but left it to each interested party, and usually the appellant is the person whose candidacy was rejected, as it does not include all candidates, pursuant to the rule of "interest in the case" and the legislator did well when he left the matter at all so that each candidate whose candidacy was rejected can appeal the rejection decision, and this is to ensure the seriousness of the appeals.

- The competent authority to study nominations :

The law entrusts the coordinator of the state delegation of the independent authority or the coordinator of the authority to the diplomatic or consular mission abroad with the task of rejecting any candidacy or list of candidates, as the case may be, provided that the rejection decision is legally and explicitly justified.

- Deadlines for Notification of the Rejection Decision :

The rejection decision shall be notified under penalty of nullity, within eight (8) full days from the date of filing the declaration of candidacy, provided that the nomination is considered accepted by the expiry of this period, provided that the rejection decision is subject to appeal before the courts.

- The judicial authority competent to decide on the rejection decision :

Returning to Article 206 of Ordinance 21-01 on the electoral system, we find that the administrative judiciary alone is competent to consider candidacy disputes, where the rejection decision is subject to appeal before the regionally competent administrative court within three (3) full days from the date of notification.

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For candidates for electoral districts abroad, the rejection decision is subject to appeal to the Administrative Court of Algiers within four (4) full days, starting from the date of notification.

It is clear from this that the legislator has surrounded the candidacy process with a judicial guarantee, represented in the control of the regionally competent administrative court thanks to the nomination disputes, this mechanism promotes the principle of the right to run and protects it from the arbitrariness of the authority supervising the study of candidacy files, which may want to exclude candidates from a certain list, which actually happened in the June 12, 2021 legislatures, when the Independent National Electoral Authority excluded many people from running and after the appeal process, the judiciary returned them through Rulings were issued against them to run, as the Independent National Electoral Authority relied on the denial of them on the broad new conditions of Ordinance 21-01 .

- Deadlines for adjudicating the electoral appeal related to candidacy:

The regionally competent court shall decide on the appeal within four (4) full days calculated from the date of its filing, and in order to dedicate the principle of litigation at two levels, the judgment of the administrative court may be appealed before the regionally competent administrative court of appeal within (3) full days from the date of notification of the judgment .

The Administrative Court of Appeal shall decide on the appeal within four (4) full days from the date of its filing .

The decision of the Administrative Court of Appeal shall not be subject to any form of appeal, provided that the judgment or decision, as the case may be, shall be communicated immediately upon its issuance to the concerned parties and as the case may be.²³

2.2.2- Appeal against Refusal to Run in the Elections of Members of the National Assembly

The law allows every member of a municipal or state people's assembly, who meets the legal conditions, to run for elections to the National Assembly,²⁴ provided that the declaration of candidacy is made by the candidate's filing at the level of the state delegation of the independent authority. Two (2) copies of the candidacy declaration form received by the independent authority, which the candidate fills out and signs legally, provided that the declaration of candidacy is deposited within a maximum period of twenty (20) days before the date of voting,²⁵ After the declaration of candidacy is filed, the state delegation of the independent authority shall decide on Validity of nominations.

In the event that the candidate does not meet the legal conditions, the delegation shall issue a reasoned decision rejecting the candidacy, provided that the rejection decision issued by the delegation shall be communicated to the candidate within two (2) full days starting from the date of filing the candidacy declaration.

In order to protect the right to run and to establish integrity and transparency in the electoral process, the law allows the candidate to appeal the rejection decision issued by the delegation before the judiciary in accordance with Article 206 of Ordinance 21-01 on the electoral system, and thus the legislator has granted the candidate alone without political parties the right to appeal the rejection decision issued by the state delegation of the independent authority, and thus has excluded political parties,²⁶ and left the right of appeal only to the stakeholder, who is the candidate in accordance with the rule of "the interest entrusted to the case, This is normal as long as the candidacy is personal, and linked to the interest of the candidate affected by the rejection decision.

Conclusion:

At the end of this study on the consecration of electoral integrity during the preparatory phase in the election of members of parliament, under Order 21-01 on the electoral system, which

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came with guarantees to establish integrity and transparency in the electoral process through the electoral appeal mechanism, so we recorded some results with regard to the electoral appeal :

- The electoral appeal is a guarantee of the integrity and transparency of the electoral process, whether it comes to registration in the electoral list or candidacy.

- The establishment of a committee to review the electoral lists is a guarantee to protect the right to vote, especially since this committee consists of a judge as president and voters, which also gives the character of impartiality to the work of the committee .

- The competence of the ordinary judiciary to adjudicate on appeals related to registration in the electoral list .

- Not to enshrine the principle of the right to litigation at two levels with regard to appealing the decisions of the Electoral Lists Review Committee.

Recommendations:

- Granting the power to adjudicate electoral appeals related to registration in the electoral lists to the administrative judiciary instead of the ordinary judiciary .

- Devote the principle of litigation to two levels, with regard to appealing the decision of the Municipal Committee to review the electoral lists .

- The necessity of determining the conditions for membership in state delegations and delegations abroad.

- The need to expand the competence of the judiciary to consider the conditions for candidacy for membership of Parliament, in particular the new conditions provided by Articles 200 and 221 of Ordinance 21-01 on the electoral system .

- It is mandatory to stipulate the requirement of the scientific level of the candidate for parliamentary elections, instead of sufficiency with the availability of a certain percentage in the list to ensure the good principle of representation .

- Cancel the requirement of parity and leave the room for everyone to run.

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