

Guarantees for the Protection of the Right of the Candidate in the Parliamentary Elections between International Covenants and National Texts

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Abstract:

International conventions and national legislations have included the principle of freedom of candidacy and consider it as one of the guaranteed political rights, as candidacy is considered the basis of the electoral process, through the participation of political parties in elections with the aim of achieving the principle of rotation of power, which is one of the legal guarantees in this framework, and thus promoting political participation as one of the components of a democratic system based on competitive elections within the framework of integrity, transparency and true multi-partyism.

Keywords: Candidacy; Elections; International Covenants; Legislative Texts; Political Parties.

1. INTRODUCTION

The establishment of a genuine democratic system based on the principle of the rotation of power within the framework of popular sovereignty requires the state to guarantee, guarantee and protect political rights, foremost of which is the principle of freedom of candidacy through international conventions or their constitutions and electoral legislation, which is embodied through the electoral mechanism, which is the main tool for the people's self-governance, and thus the achievement of the essence of democracy through the contribution of the people to the conduct of public affairs. (Assaf et al, p. 118)

In order for candidacy to be in accordance with the democratic concept, it must be available to all citizens of the state whenever they meet the conditions, this category means the body of candidates that aims to reach the parliament and represent its elected representatives in the best possible way, (Remal, 2021, p. 43) so it was necessary to surround the right to run for elections in general, and parliamentary elections in particular, with a legal system according to which this right is guaranteed on the basis of equality between citizens, and this has already happened through international conventions and national texts set by the constitutional legislator and electoral to ensure the right of the candidate in the electoral process.

From this point of view, we raise the following problem: How effective are international conventions and national texts in protecting and guaranteeing the right of a candidate in the parliamentary elections?

In order to address this issue, we have relied in this intervention on the analytical method of legal texts and the study of their effectiveness in guaranteeing and protecting the right of candidates and candidates for parliamentary elections in Algeria, through the following methodological plan:

1-Dedication of the Law to the Right to Run at the International and National Levels.

2-Guarantees of Protecting the Right of the Candidate in the Elections.

2. Dedication of the Law to the Right to Run at the International and National Levels

Due to the importance of elections in the democratic construction of each country, by ensuring the embodiment of the principle of rotation of

power in accordance with free and fair elections. Whether they are presidential or parliamentary elections, it is necessary to exercise the right to vote, on the other hand, the right to run for office as an inherent democratic principle, and the electoral process cannot take place without it, (Keshha, 2021, p. 10) so we find that most countries have been keen to adopt this principle, whether at the international level through international conventions, or at the national level through the adoption of the principle of The right to run as a guarantee for the achievement of popular sovereignty through elected parliaments, and as an embodiment of the principle of the universality of candidacy, as one of the necessary conditions for the promotion of democratic principles that guarantee the general rights and freedoms of individuals, especially political rights, (Ouldahmed, 2020, p. 446) We have dealt with this topic in two demands: the first is related to the basis of the right to stand for office in international conventions, and the second is related to the basis of the right to stand for office in national laws.

2.1 The Basis of the Right to Stand in International Treaties

Referring to international conventions and declarations, we find that they have enshrined the principle of the right to stand for office by ensuring that this right is exercised in addition to ensuring that it is respected, as it is one of the political rights that deserve to be protected, and this is reflected in the attention of the United Nations Charter, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, in addition to the African Charter on Human Rights and the Arab Charter on Human Rights.

First: The right to stand for office in the Charter of the United Nations

The United Nations Charter for the Protection of Human Rights and Public Freedoms, including the right to be a candidate, referred to the General Assembly to discuss human rights issues and enable it to issue recommendations to guarantee human rights, as it is stated in Article 55 of this Charter that it is "satisfied with respect for human rights and fundamental freedoms...", and thus the Charter referred to the right to stand for office within the framework of human rights. (Abbassi, 2015, p. 54)

Second: The right to stand for office in the Universal Declaration of Human Rights

Article 21 of the Constitution states: "Everyone has the right to participate in the administration of the public affairs of his country, either directly or through representatives of free choice, and that every person has the same right as others to hold public office in the country, and that the will of the people is the source of the power of the government, and this will shall be expressed by fair elections held on the basis of secret ballot and on an equal basis for all, or in accordance with any similar measure guaranteeing freedom of voting."

It is clear from the text of this article that the exercise of the right to run for office is enshrined in the political rights of the citizen.

Third: The right to stand for office in the International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR) contains 53 articles divided into six (6) sections that address many civil and political rights.

Article 25 of the Constitution stipulates that "every citizen without any of the forms of discrimination mentioned in article 2 shall have the following rights, which he shall have the opportunity to enjoy without unreasonable restrictions:

- Participate in the management of public affairs either directly or through freely chosen representatives.
- To be elected and elected in fair elections held periodically by universal suffrage and on an equal basis among the voters, and by secret ballot, which shall guarantee the free expression of the will of the electorate.
- That he shall have an equal opportunity to hold public office in his or her country."

The International Covenant on Civil and Political Rights (ICCPR) is thus a guarantee of the protection of the right to stand for office, just like the Universal Declaration of Human Rights.

Fourth: In the African Charter on Human and Peoples' Rights

Article 13 of the Charter provides that:

- "All citizens have the right to participate freely in the administration of the

public affairs of their country, either directly or through freely chosen representatives, in accordance with the provisions of the law.

- All citizens also have the right to assume senior positions in their country."

Article 13 of the African Charter on Human and Peoples' Rights guarantees the right to stand for elections as a political right enjoyed by every citizen as long as the legal conditions are met.

Fifth: The right to run for office in the Arab Charter on Human Rights

Article 24 of the Constitution states: "Every citizen has the right to:

- Freedom of political practice,
- Participate in the management of public affairs either directly or by freely chosen representatives
- Running for office or choosing his representative in a free, fair and equal manner among all citizens, as it guarantees the free expression of the will of the citizen.
- To have the opportunity to hold public office in his country on an equal basis with all."

2.2 The Basis of the Right to Stand for Candidates in National Laws

The Algerian constitutional and electoral legislature regulated the right to run for office, starting with the electoral system based on unilateralism under the 1963 and 1976 constitutions, and then during the era of multi-party politics since the 1989 constitution.

First: The Constitutional Basis for the Right to Run

Returning to Algerian constitutions from the 1963 constitution until the last constitutional amendment of 2020, we find that the legislature has approved the principle of the right to run for office, but this is different in the era of unilateralism from the right to run for office in light of multi-partyism.

A. The 1963 Constitution

It is the first constitution of the Algerian Republic, as Article 27 stipulates that: "The national sovereignty of the people shall be exercised by their representatives in a national assembly, nominated by the National Liberation Front and elected by direct and secret universal suffrage for a period of 5 years."

It can be concluded from the content of the article that the 1963

constitution enshrined the principle of popular sovereignty, but it kept the door closed regarding candidacy for elections, whether presidential or deputal, and left the matter only to the FLN with regard to organizing the nomination process, and even went so far as to issue a decree dated 14/08/1963, which stipulated at that time the prohibition of the formation or establishment of an assembly of a political nature, (BenAli, 2010, p. 199) as the FLN found itself alone in the political arena, which made the right to run lose its meaning At that point.

B. The 1976 Ordinance

Article 58 of the Constitution states: "Every citizen who meets the legal conditions shall be considered a voter and can be elected."

Thus, article 58 has explicitly guaranteed the right of citizens to stand for election on the basis of the principle of equality in elections.

C. The 1989 Constitution

Article 47 of the 1989 constitution stipulates that "every citizen who meets the legal requirements shall elect or be elected."

The 1989 constitution enshrined multi-party for the first time in Algeria, thus opening the way for candidates in a way that guarantees citizens to exercise this constitutional right, (Belmahdi, 2022, p. 268) under general conditions that allow every Algerian citizen on the basis of equality to stand in elections, whether presidential or legislative.

D. Order 1996

Article 50 of the Constitution states: "Every citizen who meets the conditions shall be elected and run."

Thus, the 1996 constitution retained the right to run for office and ensured that it was exercised primarily by opening the way for political parties to participate in power on the basis of free choice based on representative democracy. (Saidani, 2012, p. 21)

E. The Constitutional Amendment of 2016

Article 62 of the constitution includes the principle of the right to run for office, stating that "every citizen who meets the legal conditions shall be elected and elected."

F. The Constitutional Amendment of 2020

Referring to the text of Article 56 of the last constitutional amendment

of 2020, we find that it stipulates the right to run for office, stating, "Every citizen who meets the legal conditions has the right to vote and be elected."

Second: The Legislative Basis for the Right to Stand

The right to run for office was enshrined under the 1963 constitution by a legislative decree that included the election law, and then came the 1976 constitution, where the right to run was regulated by the election law of 1980, which defined the one-party system, where the right to run was linked to the National Liberation Front party, until the 1989 constitution came, which approved multi-party through the right to run for office brought by the election law 89-13, The 1996 constitution came with something new, where it stipulated the organic laws for the first time in the Algerian legal system, and in this regard, Decree 97-07 on the electoral system was issued.

This was followed by Law No. 12-01 on the electoral system, followed by Organic Law No. 16-10 on the electoral system, and Organic Law No. 19-08 on the electoral system.

The recent constitutional amendment of 2020 also guaranteed the right to run for office under Decree No. 21-01 on the Organic Law on Elections.

In this context, Decree 21-01, in addition to the right to stand for office, stipulates conditions for candidacy that the candidate for the National People's Assembly and the National Assembly shall meet.

3. Guarantees of Protecting the Right of the Candidate in the Elections

The electoral legislator has surrounded the process of candidacy for the parliamentary elections with a set of restrictions and conditions that draw limits on its practice so that the regulation of the freedom of candidacy does not result in detracting from it or emptying it of its content, (Benhamoud, 2015, p. 290) through which every citizen has the right to run for elections, and these conditions are usually general related to age, nationality, eligibility and performance of national service, and on this basis, after ensuring that the candidate meets the conditions of candidacy, where the candidate acquires a legal guarantee, represented in his right to be a party Article 121 of the 2020 Constitutional Amendment stipulates that "the members of the National People's Assembly shall be elected by direct and secret public suffrage, two-thirds of the members of the National Assembly shall be elected by indirect

and secret ballot with two seats for each state from among the members of the municipal and state People's Assemblies", where the constitution limited the parliamentary term to five years for the deputies of the National People's Assembly, and the term of office of the members of the National People's Assembly was set at 6 years according to the article 122 of the Constitutional Amendment of 2020, and we have dealt with this topic in two demands: the first includes the protection of the candidate's right before the voting process, and the second requires the protection of the candidate's right after the voting process.

3.1 Protecting the candidate's right before the voting process

The law on elections guarantees the candidate the right to ensure the exercise of this right, before the voting process, where he has the right to review the electoral lists, as well as the right to challenge the lists of candidates, the equality of candidates in the electoral campaign, the right of candidates to participate in the monitoring of the electoral process as representatives of the Independent National Election Observation Authority, as well as the right to equal conditions for candidacy, as Article 37 of the 2020 Constitutional Amendment states: "All citizens are equal before the law; They are entitled to equal protection and no discrimination on the basis of birth, race, sex, opinion or any other personal or social condition or circumstance can be invoked."

Article 56 of the 2020 Constitution stipulates that: "Every citizen who meets the legal conditions has the right to vote and be elected", (Official Gazette, constitutional Amendment of 2020) as Article 200 of Decree 21-01 specifies the conditions for candidacy by stating: "A candidate for the National People's Assembly shall be subject to the following conditions:

- Meet the conditions stipulated in Article 50 of this Organic Law and be registered in the electoral district in which he is a candidate;
- Be an adult of twenty-five (25) years, at least on the day of voting;
- The applicant must not be known to the public about his connection with the financial circles and suspicious businesses and his direct or indirect impact on the free choice of voters and the proper conduct of the electoral process.
- The applicant must not have exercised two consecutive or separate

parliamentary terms.

Article 221 specifies the conditions for candidacy for membership of the National Assembly, as it sets the age at thirty-five (35) full years on the day of voting.

- He must have completed a full term as an elected member of the local or provincial People's Assembly..."

The dominant trend in contemporary democratic thought aims to expand the base of popular participation in elections, in application of the principle of universal suffrage, (AitChaaban, 2018, p. 291) but this does not prevent the right to run for office and control it. (Kaddouma, 2018, p. 254)

First: The right of the candidate to view the electoral list

The electoral list includes the registration of the names of voters, which are the names that political parties and independents bet on, and therefore the candidate has the right to protect the electoral list in the event that any action is proven that would affect the electoral list, through his right to view it, and therefore registration in the electoral lists is a condition for exercising political rights, as the registration is not a creator of the right to vote or candidacy, but rather it is a decision and reveals a right that already existed on this basis, (Belwad, 2019, p. 174) article 70 of Decree 21-01 obliges the Independent Authority to draw up the municipal electoral list or the electoral list of diplomatic and consular posts abroad, on the occasion of each election, at the disposal of legally qualified representatives of political parties and free candidates.

Second: The right of the candidate to challenge the nomination lists

The Election Law gives the candidate the right to appeal to the administration and the judiciary on the nomination lists, in accordance with the following:

A.Right of Administrative Appeal

This refers to the lists that are deposited with the state, after examining and studying these lists by the competent authority in the state or the diplomatic or consular representation, and it is found that these lists are flawed, such as if one of the candidates has been issued a court ruling against

him or does not meet the legal age of candidacy set at 25 years for the legislative elections and 35 years for the election of members of the National Assembly.

B.The right of judicial appeal

The law entitles the candidate the right to appeal against the administrative decision issued by the governor within a period of three (3) full days from the date of notification of the decision to the concerned person.

Accordingly, if a court decision is issued rejecting the nominations of a list, in this case, the list concerned can replace the rejected nominations with new nominations within a period not exceeding one month prior to the date of voting. (Organic Law No.16-10 on Elections, Article 99)

Third: Equality of Candidates in the Electoral Campaign

The principle of equality is a guarantee of the integrity and impartiality of the electoral campaign, as it is through this principle that equality is achieved between candidates in the electoral campaign, and this principle is embodied by giving candidates the same opportunities and equally between candidates, whether they are candidates for parties or free people to express their ideas and programs through legitimate means of expression It is considered as a legal means for candidates to present their programs. (Helmy, 1998, p. 230)

This principle also guarantees candidates a fair opportunity in the national media to present their programs, in accordance with article 77 of Decree 21-01 on the electoral system, since the intervention of the state in the control of the electoral campaign would achieve equality among the candidates, especially in the use of the media. (Duverge, 1992, p. 92)

The law also guarantees the principle of the administration's impartiality in the electoral campaign, thus achieving equality between candidates, as the administration, as a holder of a strong position, must adhere to impartiality in the electoral process during the electoral campaign, as stated in Article 41 of Ordinance 06-03: "The official shall exercise his duties honestly and impartially".

The law also guarantees the right of equal candidates to receive state financial aid, which is distributed among them on a fair basis, as the state, with the funds it owns, can deduct funds from its budget and allocate them to

aid directed to political parties to manage their electoral campaigns, in accordance with the text of article 87 of Decree 21-01 on the electoral system, where the financing of political parties by the state is based on the idea of assistance for activities of public interest, given the importance of political parties in political life (Ghawas, 2022, p. 618) with regard to the right to be compensated for the expenses of the electoral campaign for the legislative elections, the law obliges the candidates to prepare an account for the electoral campaign that includes the nature and source of the legally justified wills in order to compensate the candidates for the expenses of the electoral campaign in accordance with Article 95 of Decree 21-01.

It should be noted that the legislator was not exposed to the expenses paid by the candidates for the National Assembly, due to the lack of an official election campaign, since the members of this body are elected from among and by the members of the municipal and state people's councils. (Raddad, 2022, p. 416)

Fourth: The Right to Participate in the Monitoring of the Electoral Process

Decree 21-01 on the electoral system assigned the Independent National Electoral Authority (INEA) with the task of preparing, organizing, managing and supervising the entire electoral process, by appointing candidates' representatives to monitor the voting process at polling stations and offices. In order to strengthen the monitoring of the electoral process, the Independent Authority receives any petition or protest related to the electoral or referendum process received by political parties, candidates or voters. (Decree 21-01 on the electoral system, Article 14)

3.2 Protecting the right of the candidate after the voting process

The voting process is the essence of the electoral process in the parliamentary elections, as it is the decisive factor in the electoral results, through the voters casting their votes in choosing the best candidate, and due to the importance of this stage, the legislator has surrounded it with a set of legal guarantees to protect the right of the candidate, starting from voting to the announcement of the final results.

First: The right of the candidate to challenge the composition of the

voting station

In view of the importance of the voting process in the elections and in order to impart neutrality and integrity to the electoral process, the law has guaranteed at this stage, means., the voting process, with guarantees, and here it is related to the right of anyone who has an interest in the electoral process to object to the decision of the governor regarding the composition of the members of the voting station, as the legislator empowers every interested party who is related to the electoral process, whether a voter or a candidate, to object to the governor's decision, and this is stipulated in article 129 of Decree 21-01.

Second: The right of the candidate to attend the screening process

The counting committee shall be composed of two counters from among the voters registered at the polling station, in the presence of the candidates' representatives. Thus, Decree 21-01 in its article 143 guarantees the candidates' representatives the right to participate by attending the vote counting process, as the presence of the candidates' representatives in this process gives control to the process, and on this basis, the counting process is defective without the presence of voters and candidates, especially if it is done in secret and in secret therefore, (Zarif, 2020, p. 375) it is necessary to involve party oversight or opposition oversight through representatives of the candidate political parties, in order to enhance integrity. (Boularas & Driss, 2020, p. 181)

Third: The right of the candidate to receive copies of the counting minutes

The legislator assigned the process of counting the results obtained at the polling stations to the municipal electoral committee in relation to the local elections, as well as the state electoral committee with regard to the legislative elections, in addition to the electoral committee of the diplomatic or consular department abroad, for the election of members of the National People's Assembly, the work of the state election committee or the electoral district must be completed within 72 hours following the conclusion of the voting at the latest, an original copy of the minutes shall be delivered immediately to the representative of the governor and the headquarters of the committee to The legally qualified representative for each candidate in

exchange for a receipt, as stipulated in Article 236 of Decree 21-01.

Fourth: The right of the candidate to challenge the results of the parliamentary elections

In order to exercise the right to challenge the electoral results, the law has specified for the appellant a set of legal conditions and controls that the appellant and the party to whom the appeal is filed must respect, and the determination of these controls is due to the specificity of the electoral dispute, as it is a dispute of a special type of dispute of a distinct nature, whether in terms of the appellant as a party to the electoral process or in terms of the competent authority to consider the appeal, represented by the Constitutional Court in its capacity as an electoral judge, and in this context, some jurists in France believe The competence to monitor the validity of presidential and legislative elections and related appeals has nothing to do with the control of the constitutionality of laws, but rather rises to the control of the composition of constitutional authorities in the State, and this oversight is undoubtedly of a judicial nature, and this function is very important related to the public life of the State. (Rehab, 2021, p. 78)

The law stipulates that the appellant has the capacity, as some believe that the status is the considered interest, and it is not any interest, but the one approved by the law, (Yacoubi, 2011, p. 19) The status requirement is an essential element and therefore those who have the right to challenge the results of the parliamentary elections:

- Each list of candidates for the legislative elections,
- Each candidate,
- Any party participating in the elections for the election of deputies to the National People's Assembly, in accordance with article 209 of Decree 21-01 on the electoral system;
- Any candidate for the elections of members of the National Assembly in accordance with Article 240 of Decree 21-01.

Thus, the Algerian legislator has focused on the legal status of the appellant because it reflects his direct or indirect interest in protecting the electoral process and ensuring its validity. (BenZiane, 2022, p. 10)

4. CONCLUSION

Finally, the right to run for office is one of the political rights that are guaranteed by international conventions and national legal texts, given the importance of this right in the electoral system, as the value of electoral programs is measured by the value of their candidates and their status in society, so the constitutions were keen to elevate this right to the ranks of the constitutional rights guaranteed, which is already enshrined in the Algerian constitutions and electoral laws.

1. Protect the candidate's right by setting conditions that guarantee the exercise of this right, by reformulating the content of Article 221 of Decree 21-01.
- 2- The need to expand the representatives of political parties at the polling stations to ensure integrity and credibility in the electoral process, whether during voting or counting.
3. Exclude the administration from the process of examining the nomination lists and leave room for the Independent National Electoral Authority to do so.
- 4- Protecting the right of the candidate during the electoral campaign by criminalizing everything that would harm the principles of the electoral campaign and the reputation of the candidates, especially during the indiscriminate use of social media during this stage.

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