

## The legal System for Electoral Campaigns in Algeria in the Light of the Ordinance No. 21-01, containing the Organic Law on the Electoral System

النظام القانوني للحملة الانتخابية في الجزائر على ضوء الأمر رقم 01-21 المتضمن القانون العضوي المتعلق بنظام الانتخابات

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### Abstract:

Electoral campaigns constitute a fundamental legal framework through which candidates present themselves and their political platforms to the public. They play a crucial role in determining the outcome of elections, as they are a key factor in assessing a candidate's visibility, credibility, and appeal to voters. Recognizing their importance, the Algerian legislator has established a comprehensive set of legal provisions regulating the entire electoral process.

These provisions cover various aspects, including the content and form of the campaigns, as well as the timeframes, locations, and methods used in conducting them. Additionally, the financial aspect is carefully regulated, specifying the sources of campaign funding, the procedures for obtaining it, and the methods of monitoring its use. The law also provides guarantees for reimbursements of campaign expenses, especially in presidential and legislative elections. These legal measures seek to safeguard fairness, enhance transparency, and reinforce accountability, thereby guaranteeing equitable access to resources for all candidates.

**Keywords:** electoral campaign, equality, impartiality, funding, control.

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## Introduction

Elections constitute the foundation of the democratic process. They serve as the main instrument through which citizens exercise their political will. Elections, in this sense, are not limited to the nomination and election processes alone. Rather, they encompass all the controls, procedures, practices, and institutions associated with the election, from its inception to the announcement of the final election results, including the associated financial compensation, legal proceedings, and other matters.

The electoral campaign represents one of the most significant stages within the electoral process, as it provides the legal framework that enables candidates to introduce themselves and their programs. At the same time, it serves as the mechanism through which the electorate becomes familiar with the candidates' programs, thus allowing voters to form informed choices based on these programs.

The electoral field in Algeria has witnessed a new legal framework in line with the 2020 constitutional amendment. Ordinance No. 21-01, containing the Organic Law on the Electoral System<sup>1</sup>, as amended and supplemented, was issued to regulate the electoral process. This law includes all the substantive and procedural rules related to elections, including those related to the various bodies involved in this process, both in terms of organization and oversight.

The study of the legal system of the electoral campaign comes in the context of the fundamental amendments that the electoral system in Algeria has witnessed. The subject is of great importance in managing the electoral process according to objective standards that achieve the supposed transparency therein. It aims to identify the content of the legal text governing this stage, and the extent of its compatibility with those standards, especially with regard to the financial aspect thereof. Accordingly, the problem of the study will be as follows: **How did the Algerian legislator organize the electoral campaign in the amended and supplemented Ordinance No. 21-01?**

To answer this question, we will adopt an analytical approach to study and analyze the legal provisions regulating the electoral campaign in Algeria. We will divide the study into two axes. The first axis will address the legal provisions pertaining to the management of the electoral campaign, and the second axis will address the financial provisions of the electoral campaign.

### **Firstly Legal Provisions for Managing the Electoral Campaign**

The legal regulation of the electoral system in Algeria falls within the scope of organic laws, in accordance with Article 140 of the Constitution. However, the necessity of enacting a new electoral law consistent with the 2020 constitutional amendment, and of establishing the constitutional institutions created under it,

prompted the President of the Republic to issue the law by Ordinance on March 10, 2021, following the dissolution of the National People's Assembly on February 21, 2021<sup>2</sup>.

The organic law on the electoral system included a set of definitions for some concepts related to elections, but it did not include a definition of the electoral campaign, which was devoted to a separate chapter in Ordinance No. 21-01. The Ordinance divided it into two chapters, and included approximately 50 articles, from Articles 73 to 122 of the same Ordinance, in addition to penal provisions related to violations of electoral campaign regulations.

The legal provisions specific to the conduct of the electoral campaign relate to two basic elements: electoral campaign rules and electoral campaign methods.

### **1. Electoral Campaign rules**

Ordinance No. 21-01 includes a set of legal rules governing the electoral campaign, categorized into three main types: substantive rules, temporal rules, and spatial rules.

#### **a- Substantive rules**

The management of the electoral campaign is based on the content of each candidate's special capabilities, which results in significant disparities between candidates in conducting their campaigns. Therefore, the law intervenes to achieve a set of principles that enhance the integrity of this phase through equality and obligating the administration to be impartial<sup>3</sup>.

The principle of equality in the context of the election campaign implies that all candidates should have equal access to available means and resources. A balance is achieved between them in the use of permitted advertising methods, and efforts are made to achieve equality between candidates in benefiting from advertising space and audio-visual media, regardless of their financial capacity.<sup>4</sup>

In this context, Article 77 of Ordinance No. 21-01 stipulates that every candidate for the elections shall have equitable access to audio-visual media licensed to operate in accordance with applicable legislation and regulations<sup>5</sup>.

Moreover, Article 83 of the same Ordinance stipulates that public spaces shall be allocated within electoral districts for posting nomination papers, with their area distributed equally, and the independent authority shall ensure their implementation.

As for the principle of administrative impartiality, it applies to all stages of the electoral process. Entrusting this task to the National Independent Election Authority (ANIE) ensures its fulfillment, given its status as an independent constitutional body equitably aligned with all competitors. However, when this principle relates to the electoral campaign, it may extend beyond this body to the administration, as it is

responsible for authorizing electoral rallies, within the framework of its original mandate in this area.

Ordinance No. 21-01 includes another set of objective controls that candidates must adhere to during the electoral campaign, primarily relating to the following:

- Refraining from disseminating hate speech and all forms of discrimination<sup>6</sup>.
- Refrain from using foreign languages in the electoral campaign<sup>7</sup>.
- Refrain from using any commercial advertising method for the purpose of electoral propaganda<sup>8</sup>.
- Every candidate must refrain from any violent, unlawful, offensive, disgraceful, or immoral act, gesture, or behavior, and shall ensure the smooth and orderly conduct of the electoral campaign<sup>9</sup>.
- The misuse of state symbols during the election campaign is prohibited<sup>10</sup>.

Violation of the foregoing legal provisions shall result in criminal prosecution, as stipulated in Articles 289, 292, 293, 304, 306, and 307 of the aforementioned Ordinance No. 21-01.

#### **b - Temporal rules**

By Temporal rules, we mean the period during which the electoral campaign is conducted, as defined by Article 73 of Ordinance No. 21-01. This stipulates that, except in the cases provided for in Article 95-3 of the Constitution, the electoral campaign shall commence 23 days prior to the election date and shall conclude 3 days before the election date.

In the event of a second round of voting, the electoral campaign for the second-round candidates shall begin 12 days before the election date and shall conclude two days prior to the election.

It is prohibited for any person, regardless of the means or form, to conduct an electoral campaign outside the period previously prescribed. Such acts shall be subject to criminal prosecution in accordance with Articles 290 and 291 of the same Ordinance.

Within the framework of temporal regulations, the publication and broadcasting of opinion polls and voter intention surveys is prohibited within 72 hours preceding the election date on national territory, and within 5 days preceding the election date for the national community residing abroad<sup>11</sup>.

#### **c- Spatial rules**

As for spatial rules, Ordinance No. 21-01 stipulates that public gatherings and meetings for elections and referendums shall be organized in accordance with the provisions of the Organic Law relating to the electoral system, taking into consideration the provisions of the Law on Public Demonstrations and Meetings.

Namely, Law No. 89-28 relating to public meetings and demonstrations, as amended and supplemented by Law No. 91-19.

The authority of the administration in this context is demonstrated by granting a permit to organize a meeting<sup>12</sup>. Although Articles 4 and 5 of Law No. 89-28 do not explicitly stipulate a permit, they refer to the prior authorization submitted by the concerned parties to the administration, which includes a set of information about the meeting. However, this authorization is linked to obtaining a receipt that effectively embodies the authorization system, as this meeting cannot be held without obtaining it. It is presented upon every request issued by the authority<sup>13</sup>. Furthermore, the competent administrative authority also has the power to change the location of the meeting, prohibit its organization, or send an employee to attend, as stipulated in Articles 6, 8, 9, and 11. From Law No. 89-28, as amended and supplemented.

The National Independent Election Authority sets the legal rules for the identification and allocation of halls and meeting places. This task is entrusted to the coordinators of the provincial delegations, while ensuring security protection, respecting the controls on the use of loudspeakers, and allocating halls through agreement between political parties or through a lottery<sup>14</sup>.

Within the framework of spatial rules, and pursuant to Articles 83 and 84 of Ordinance No. 21-01, it is prohibited to use assets or means owned by any private or public legal person, institution, or public body for the purposes of an electoral campaign.

It is also prohibited to use places of worship, public institutions and administrations, and educational and training institutions, regardless of their type or affiliation, for electoral campaign purposes in any form. This shall be subject to the criminal prosecutions stipulated in Article 305 of the same Ordinance.

## **2. Electoral campaign methods**

The effectiveness of election campaigns relies on a range of methods and techniques used to publicize candidates and their electoral platforms. This issue has witnessed significant developments recently. In addition to traditional methods, a number of modern methods are currently being used to carry out this process.

### **a- Traditional Methods**

These are evident through the following:

- Electoral rallies and demonstrations: These are subject to the spatial rules mentioned above.
- Hanging posters: These are subject to a decision by the President of the Independent National Elections Authority<sup>15</sup>, This decision specifies the number of

places allocated for hanging posters based on population density in municipalities, the deadlines for their distribution, and those related to diplomatic missions abroad<sup>16</sup>.

- Distributing leaflets: The decision by the President of the Independent National Elections Authority included the possibility of using brochures and correspondence as one of the methods of electoral advertising<sup>17</sup>.

- Audiovisual media: Article 77 of Ordinance No. 21-01 stipulates that every candidate for the presidential elections or list for the legislative or local elections benefit fairly from access to licensed audio-visual media to operate in Algeria.

The duration of airtime quotas shall be equal among presidential election candidates, whereas for legislative and local elections, as well as referendums, they shall vary depending on the number and significance of party lists and independent bloc lists.

### **b- Modern Methods**

The electoral legislature has delegated to the President of the Independent Authority the responsibility to organizing electoral advertising methods not included in the electoral law.

This was established through Article 8 of the decision issued by the President of the Independent Authority, which allows for the promotion of candidacies via modern electronic means, in accordance with the legislation and regulations in force. The article grants candidates the freedom to choose the means most suitable and accessible to them within this framework, a provision that may reinforce disparities among candidates based on their respective financial and technical capacities.

Opinion polls and surveys are an important and innovative method of electoral campaigning, due to their ability to influence voters' decisions and guide their electoral will<sup>18</sup>. Accordingly, the electoral legislator implicitly approved them through Article 81 of Ordinance No. 21-01. However, it prohibited the publication and broadcast of their results 72 hours before the voting date on national territory, and 5 days before the voting date abroad.

Television debates are also a sophisticated means of electoral advertising. They have become a mandatory tradition in election campaigns in many countries, especially at the presidential level. An example of this is the Algerian presidential election of December 12, 2019. This greatly reinforces the idea that every election is driven by the media, and that an essential part of any election campaign takes place in the media. The media has become a source of information about politics and its events, and it has also become an active participant in the electoral process. Elected officials have increasingly relied on the media to communicate with voters. At the same time, voters receive most of their information about candidates through the

media, which has given television debates a great deal of importance during election campaigns<sup>19</sup>.

### **Secondly: Financial Provisions of the Electoral Campaign**

An effective electoral campaign requires the mobilization of adequate material and financial resources to cover its associated costs. Recognizing this necessity, the Algerian electoral legislator has placed significant emphasis on the issue by establishing clear legal provisions governing the financing and oversight of electoral campaigns. These provisions are designed to ensure transparency and fairness in the electoral process by regulating the sources of campaign funding, imposing limits on contributions, and specifying acceptable expenditure categories. Furthermore, they outline the responsibilities of oversight bodies, such as the Election Campaign Finance Oversight Committee, tasked with monitoring campaign finances to ensure compliance with legal requirements. The provisions also establish detailed procedures for the reporting, auditing, and approval of campaign accounts, ensuring that funds are used properly and preventing any form of electoral misconduct. Through these measures, the Algerian legal framework aims to preserve the integrity of the electoral process and ensure that all candidates have equal access to resources, thereby promoting a level playing field

In this section, we will examine the financing of electoral campaigns and the mechanisms in place for their oversight and monitoring.

#### **1. Financing the Electoral Campaign**

The sources from which campaign funding can be obtained are as follows:

- Contributions from political parties, which consist of membership fees and revenue generated through party activities.
  - Personal contributions made by the candidates themselves.
  - Monetary or in-kind contributions from individual citizens in their capacity as natural persons, which the electoral law sets at 400,000 DZD per natural person for legislative elections and 600,000 DZD for presidential elections. Any donation exceeding 1,000 DZD must be paid by check, transfer, automated teller machine (ATM), or bank card<sup>20</sup>.
  - Potential assistance that the state may grant to young candidates on independent lists for legislative and local elections, as stipulated in Article 122 of Ordinance No. 21-01, Necessary to cover basic expenses such as document printing, media and advertising, hall rental fees, and transportation dues.
  - The potential for the state to cover a portion of the election campaign expenses.
- In this regard, the allowable electoral campaign expenses for the presidential

elections are fixed at 120,000,000 DZD for the first round and 140,000,000 DZD for the second round. In this context, these compensations are as follows:

Each candidate is compensated 10% of their campaign expenses. This compensation increases to 20% of the actual expenses incurred if the candidate receives more than 10% and less than or equal to 20% of the votes cast. In addition, this compensation increases to 30% for a candidate who receives more than 20% of the votes cast.

These compensations may only be disbursed following the announcement of the final results of the election by the Constitutional Court, and the approval of the campaign accounts by the Committee for the Oversight of Electoral Campaign Financing<sup>21</sup>.

For legislative elections, the electoral campaign expenses of each list in the legislative elections may not exceed a maximum of 2.5,000,000 DZD for each candidate. Electoral lists that have obtained at least twenty percent (20%) of the votes cast may receive compensation of twenty percent (20%) of the expenses actually paid within the maximum authorized limit.

This compensation shall be paid to the political party that placed the candidate under its sponsorship or to the list of independent candidates.

Compensation shall not be disbursed until the Constitutional Court has announced the final results and the campaign accounts have been approved by the Committee for the Oversight of Electoral Campaign Financing.

As for the regulations governing campaign financing, they were defined by Ordinance No. 21-01 through the following provisions:

- The financing of election campaigns from foreign sources is prohibited, including contributions from foreign states and from individuals or entities of foreign nationality<sup>22</sup>.

- Each presidential candidate and every list of candidates for legislative elections must open and maintain an election campaign account<sup>23</sup>.

- When campaign funding consists of donations or contributions from the state, every presidential candidate and every list of candidates for legislative elections must appoint a campaign financial secretary, pursuant to a written authorization from the concerned party, which must be deposited with the independent authority. The Campaign auditor or a candidate on the candidate list cannot serve as the campaign financial secretary<sup>24</sup>.

- The campaign financial secretary shall open a single bank account for the purpose of financing the election campaign<sup>25</sup>.

- The campaign financial secretary shall prepare the campaign account, which includes all revenues, by source, and all expenditures, by nature, incurred<sup>26</sup>.

- The electoral campaign account is submitted to the Election Campaign Accounts Finance Oversight Committee by the auditor, who places this account under examination after reviewing the supporting documents. Submission of the account is not mandatory when the candidate or list of candidates does not receive donations from natural persons or subsidies from the state<sup>27</sup>.

## **2. Oversight of Campaign Financing**

Ordinance No. 21-01 established the Committee for the Oversight of Electoral Campaign Financing, This committee is located within the Independent National Election Authority, and is tasked with reviewing the validity and credibility of transactions recorded in the election campaign account. It consists of:

- A judge appointed by the Supreme Court from among its judges as president,
- A judge appointed by the Council of State from among its judges,
- A judge appointed by the Court of accounts from among its advisory judges,
- A representative of the High Authority for Transparency, Prevention, and the Fight Against Corruption,
- A representative of the Ministry of Finance.

The campaign account must be deposited with the Committee for the Oversight of Electoral Campaign Financing no later than two months from the date of the announcement of the final election results.

Upon the expiration of this period, the candidate or the list of candidates shall no longer be entitled to reimbursement of their campaign expenses<sup>28</sup>.

Furthermore, the electoral campaign account may not be submitted if it is in a state of deficit. In this case, the account must be settled at the time of deposit, and, if necessary, with a contribution from the candidate<sup>29</sup>.

The Committee for the Oversight of Electoral Campaign Financing shall issue an adversarial decision either approving, amending, or rejecting the campaign account, within a period of six months. Upon the expiration of this period, the account shall be deemed approved by default<sup>30</sup>.

The Committee for the Oversight of Electoral Campaign Financing shall not grant reimbursement for electoral campaign expenses in the following cases:

- Failure to deposit the campaign account.
- Depositing the campaign account outside the deadlines (two months from the date of announcement of the final results).
- Rejecting the account.
- Exceeding the maximum authorized limit for campaign expenditures.

Rulings rendered by the Committee for the Oversight of Electoral Campaign Financing may be appealed to the Constitutional Court within a period not exceeding one month from the date of their notification<sup>31</sup>.

### **Conclusion**

This study concludes by presenting a set of findings, which are as follows:

- Ordinance No. 21-01, containing the organic law related to the electoral system, did not provide a definition of the electoral campaign, unlike other more clearly defined terms.
- The organic law on the electoral system guarantees all candidates the right to conduct their electoral campaigns in accordance with the substantive, temporal, and spatial rules it sets forth.
- Electoral campaigns are based on the principles of equality and administrative impartiality, and candidates are required to comply with legal and ethical rules during the conduct of their campaigns.
- Candidates utilize legally authorized means to conduct their electoral campaigns, including traditional methods such as in-person rallies, audiovisual media, posters, and modern tools such as opinion polling, surveys, and debates.
- Electoral campaign financing represents a crucial component of the electoral process, with legal provisions outlining the sources and modalities of such funding.
- The Algerian electoral legislator, through Ordinance No. 21-01, established the procedures for preparing and submitting the electoral campaign account.
- Electoral campaign accounts are subject to oversight and approval by the Committee for the Oversight of Campaign Financing, which grants campaign reimbursements to candidates based on the final results obtained in presidential and legislative elections.
- The rulings issued by the Committee overseeing campaign financing may be appealed before the Constitutional Court.

At the end of this study, a set of recommendations can be proposed as follows:

- Take the necessary measures to simplify the procedures for obtaining permits related to the electoral campaign by allowing requests to be exceptionally submitted to the provincial delegations of the Independent Authority, which shall forward and follow them up with the competent administrative bodies.
- Establishing and clarifying the mechanisms for the National Independent Authority for Elections to control the content and conduct of electoral campaigns.
- Organize and define the rules for monitoring the financing of campaigns for local elections, and establish reimbursement mechanisms for such campaigns.

- Broaden the membership of the Committee responsible for overseeing campaign financing, allowing for the inclusion of accounting professionals to assist in its work.
- Set a ceiling for private financing of electoral campaigns, especially considering that the use of modern electronic means during campaigns still requires clarification and regulation.
- Make it mandatory for all candidates to submit their campaign accounts to allow the Committee for the Oversight of Campaign Financing to monitor compliance with the maximum campaign expenditure limits.

### **Margins:**

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  - 29 Article 117 of Ordinance No. 21-01.
  - 30 Article 118 of Ordinance No. 21-01.
  - 31 Article 121 of Ordinance No. 21-01.