



THE LIMITS OF ADMINISTRATIVE JUDICIAL REVIEW IN ELECTORAL DISPUTES UNDER ALGERIAN LEGISLATION

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Abstract:

The Administrative judicial review of electoral disputes is relatively limited in scope, as it relates mainly to decisions on the admission or rejection of candidacies, the composition of certain electoral bodies, and the proclamation of final results, in accordance with the provisions of Organic Law No. 21-01 on the electoral system. Although the administrative judge has the power to annul unlawful decisions and to correct results where it is established that irregularities have affected the integrity of the ballot, this review is activated only at the initiative of the parties and is constrained by short time limits and stringent procedural requirements. Within this framework, the judge confines his intervention to a review of legality, without extending it to an assessment of expediency, and the legislator has moreover excluded certain types of disputes from the purview of the administrative courts, which has adversely affected the overall effectiveness of this form of judicial review.

key words: Administrative electoral dispute; Legality review; Procedural formalities; Scope of judicial review.

Introduction:

It goes without saying that the electoral system in any country is based on standards that are an extension of the constitutional principles enshrined in the forms through which positions are distributed in the state. Therefore, elections constitute the most important modern mechanism for supporting power in democratic countries, to the point that most jurisprudence links democracy to the electoral process, which allows the people to participate in decision-making, to the point of linking democracy to the term “participatory,” considering elections as an opportunity for citizens who

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meet the legal requirements to participate in choosing rulers according to what they deem best for them.

Accordingly, legislation works to establish a set of legal controls in order to formulate a framework that guarantees the principles related to respecting the general direction of the state by enabling citizens to freely express their opinion in accordance with the principles of equality and legitimacy. In this context, the Algerian legislator sought to create a set of guarantees for the integrity and protection of the electoral process, which is a complex process that includes a set of procedures, some of which precede the voting process, others are contemporary with it, and others are subsequent to it. In general, it begins with summoning the electoral body and registration in the electoral lists, through the electoral campaign, then voting, and ends with the announcement and confirmation of the results. Therefore, the integrity and validity of the electoral process depends on the validity and non-invalidity of these procedures, regardless of the type of electoral process, whether local, legislative, presidential, or even referendum operations.

Considering that the judiciary is one of the most important constitutional institutions that ensures the legitimacy of the electoral process, and the administrative judiciary in particular, which works to monitor the electoral process by monitoring all the stages it takes - except what is excluded by a special text - to protect the legality and integrity of electoral competition and to guarantee the birth of elected representative institutions that reflect the true will of the electorate, in accordance with what the constitution and the laws related to the same matter have framed for them, and this is based on the provisions of Article 12 of the Algerian Constitution after its amendment in 2020, «**The people are free to choose their representatives** ».(2020, Constitutional Amendment)(Law No. 26-04 containing the constitutional amendment of 26 March 2026)

There are no limits to the representation of the people, except what is stipulated in the Constitution and the Election Law.

Judicial oversight of the electoral process is one of the determinants of the rule of law. The Algerian legislator has granted the administrative judiciary a set of powers that allow it to oversee the electoral process. This is the result of stages and experiences that have sometimes proven effective in practice and sometimes deficient, depending on the stages the country has gone through in this regard. It is not enough for texts to recognize and regulate rights, but rather it is necessary to find mechanisms that embody

them in reality by surrounding the stages of this process with a set of guarantees to ensure its realization with complete integrity and transparency, especially given the multiplicity of parties involved in the electoral process, whether the National Independent Election Authority, voters, or candidates.

After adopting judicial duality following the 1996 constitutional amendment, the legislature continued to amend the laws related to the electoral system in accordance with what the state adopted and what politicians called political reforms. It can be noted that the amendment or issuance of a new text related to the electoral system occurs in every electoral process, as proven by practical reality. Successive amendments began with Order 97-07, which included the Organic Law on Elections amended in 2004 and repealed in 2012 following the issuance of Organic Law 12-01. Organic Law 16-10 followed the 2016 constitutional amendment, and finally, Order 21-01 included the Organic Law on the Election System following the 2020 constitutional amendment. The latter introduced profound reforms to the electoral system, perhaps the most important of which is the adoption of the open list system, a significant shift that aims to eliminate the negatives of the closed list. This requires strengthening the guarantees of the electoral process to ensure the seriousness and integrity of the electoral process, and we note that an organic bill amending the previous ordinance has been approved, in an effort to improve the electoral system and to address the shortcomings revealed by practical application.

Accordingly, this study seeks to highlight the role of the administrative judge in local elections in light of the developments introduced by Ordinance No. 21-01 and the various legal provisions governing the intervention of the administrative judiciary in the electoral process, its powers, and the mechanisms available to it in the context of the recent political and legal changes witnessed by the State. This is particularly relevant given the transformations affecting the administrative judiciary, both in terms of its organization and in terms of its jurisdiction and powers in the electoral process, in line with the approach adopted by the constitutional amendment to complete the construction of a precise system of judicial dualism and to entrust the supervision of the electoral process to an independent constitutional body. We will therefore examine the position of the administrative judiciary in resolving the numerous and diverse, including newly emerging, electoral disputes, and determine its supervisory role at each stage of the electoral process.



The subject further requires defining the role of the administrative judiciary vis-à-vis the various participants in the composite electoral process, identifying the disputes over which the administrative judge has jurisdiction and the matters excluded from his competence, as well as the different procedural and substantive rules applicable to electoral disputes falling within the remit of the administrative judiciary. It is also necessary to delineate the specific nature of this category of disputes and to highlight the most important recent developments in this regard, so that the objective of this judicial review may be achieved, on the one hand, and, on the other hand, so that its real effects may be realized in contributing to guaranteeing the integrity of the electoral process. This is achieved through the powers of the administrative judge, who plays a major role in balancing the position of the independent national authority supervising the electoral process and that of candidates or any person whose legally protected interests are recognized and safeguarded by law and the courts. There is no doubt that the impartiality of the administrative judge is the true guarantee for upholding citizens' right to accede to public office on an equal footing and for affirming the principle of free competition among candidates.

Therefore, the administrative electoral dispute constitutes the most important model of the complex processes that the administrative judiciary specializes in in general, and through which the effectiveness of the lawsuits exercised within it is measured, which impact the integrity and credibility of this process. This requires evaluating the role of the administrative judiciary during each of its stages. This necessitates answering the question: How effective is the administrative judge's oversight of electoral disputes in light of the legislative developments related to this matter? To answer this problem, we decided to divide the topic into two parts, in the first of which we address the specificity of the administrative electoral dispute, and in the second, the electoral lawsuits that fall within the jurisdiction of the administrative judiciary bodies.

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them in reality by surrounding the stages of this process with a set of guarantees to ensure its realization with complete integrity and transparency, especially given the multiplicity of parties involved in the electoral process, whether the National Independent Election Authority, voters, or candidates.

The topic also requires defining the role of the administrative judiciary for the various participants in the complex electoral process, identifying the disputes in which the administrative judge intervenes, the issues excluded from his jurisdiction, as well as the various procedural and substantive laws applicable to electoral disputes within the jurisdiction of the administrative judiciary, as well as defining the specificity of this type of dispute and highlighting the most important developments related to this matter, so that the goal of this judicial oversight is achieved on the one hand and, on the other hand, embodying its true effects in contributing to ensuring the integrity of the electoral process, through the powers of the administrative judge, who plays a major role in the field of balancing between the independent national authority supervising the electoral process and the candidates or anyone with an interest that the law and the judiciary have guaranteed the right to protect. There is no doubt that the impartiality of the administrative judge is the true guarantee that enshrines the right of citizens to hold public office in the state on an equal footing, and confirms the principle of free competition between candidates.

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1- THE SPECIFICITY OF THE ADMINISTRATIVE ELECTORAL DISPUTE:

Judicial oversight of the actions of the administration organizing the electoral process is that oversight that is characterized by objectivity and neutrality, by specific persons



who have been chosen and officially assigned to adjudicate electoral appeals raised regarding the procedures for the conduct of the electoral process through the application of the constitution and the laws and regulations in force in this field. Based on that, the electoral dispute is in its origin an administrative dispute, due to the bodies organizing it. However, the subject of the dispute can be considered to grant jurisdiction to the administrative judiciary, with the exception of some disputes that have been subject to the ordinary judiciary.

1.1- The Jurisdiction of the Administrative Judge in Electoral Litigation:

The administrative courts are considered to have general jurisdiction to adjudicate electoral disputes. By referring to Order 21-01, which includes the organic law related to the amended and supplemented electoral system Preface on the first requirement and the issues to be addressed. (Ordinance No. 21-01 of 10 March 2021 containing the Organic Law on the Electoral System, as amended and supplemented by Ordinance No. 21-05 of 22 April 2021 and Organic Law No. 21-10 of 25 August 2021, Official Gazette Nos. 17, 30 and 65, p. 5).

we find that it stipulates granting the administrative courts the authority to adjudicate some electoral disputes, as it is the body competent to adjudicate disputes of an administrative nature. It has been established the legislator, the organic standard in electoral disputes, the first section: the establishment of the organic standard in electoral disputes. The Algerian legislator was keen to ensure the integrity of the electoral process, which is considered a mechanism for citizens to exercise their constitutional right to participate in political work, through candidacy and election, to embody and deepen the meanings of constitutional democracy, and this can only be achieved through activating the oversight of the administrative judiciary, which is responsible for monitoring the electoral process from its first stages until the announcement of the results.(Khalif, 2017, p. 100)

By reference to the bodies entrusted with organizing the electoral process, one finds the National Independent Authority for Elections, established by Article 194 of the 2016 constitutional amendment and, pursuant to Article 200 of the 2020 constitutional amendment as

amended and supplemented, classified as an independent institution enjoying legal personality and administrative and financial autonomy (Ordinance No. 21-01 art.8). It exercises its powers in relation to elections in terms of preparing, organizing, managing, supervising and monitoring all electoral and referendum operations.

In view of its legal personality and administrative and financial independence, it may be a party to legal proceedings, and, consequently, its administrative acts may be challenged in accordance with the organic criterion. Jurisdiction over challenges brought against its acts lies with the administrative judiciary, on the basis that it is a public body exercising powers at the national level, such that review of challenges to its administrative acts falls to the organs of the administrative judiciary. (Baali, 2005 , p. 231).

The National Independent Authority for the Supervision of Elections is composed of a deliberative body, represented by the Council of the Authority, and an executive body, represented by the Bureau of the Authority, in addition to the President of the Authority. It has coordinators at the local level, as well as coordinators and delegates assigned to diplomatic and consular missions abroad. (Arts. 19, 20, 32 and 32 bis of the draft law amending Ordinance No. 21-01).

In addition to these coordinators, it is supported by provincial committees that assist it in the performance of its functions. It is a supervisory authority of an administrative nature, capable of issuing administrative decisions for the purpose of managing the electoral process. Accordingly, the administrative courts may have jurisdiction over certain administrative disputes relating to its structurally organizational acts of a national dimension, by way of exception to the previous criterion and under specific conditions, as provided for in Section III of Chapter I, Part Two of Ordinance No. 21-01, as amended and supplemented, which is itself to be amended and supplemented by the draft law referred to above. (Art. 32 of the draft law amending Ordinance No. 21-01).

The Independent National Authority for Election Monitoring consists of a deliberative body represented by the Council of the Independent Authority, and an executive body represented by the President of the Independent Authority. It has branches at the state and municipal levels, and at diplomatic and consular representations



abroad (Articles 19 and 20) of (Ordinance No. 21-01, 2021), such that its local supplies consist of state delegations that assist it in performing its duties by municipal delegations. It is a supervisory authority of an administrative nature, despite the fact that half of its composition is made up of judges. However, it can issue administrative decisions with the aim of managing the electoral process. Therefore, administrative courts may have jurisdiction over some administrative disputes related to structural organization with a national dimension, as an exception to the previous standard according to specific conditions as stipulated in the third section of Chapter Two of the amended and supplemented Order 21-01, which came under the extensions of the Independent National Authority at the local level (Articles 3) of (Ordinance No. 21-01, 2021).

In this context, we cite an example of the application of the organic standard, as stipulated in the second paragraph of Article 129 of Order 21-01, which established the authority to coordinate, appoint and mobilize members of the voting offices by decision, obligating it to publish the list of office members at the headquarters of the state, the administrative district, the relevant districts and municipalities, and to deliver copies thereof to legally qualified party representatives, provided that they may object to this list with the coordinator of the state delegation of the independent authority within five days following the date of posting and first publishing the list, provided that the refusal to amend the list is by decision notified to the parties concerned within three days from the date of filing the objection, and the refusal decision is subject to appeal before the regionally competent administrative court within three days from the date of notification of the decision.

Authority, independence and administrative character are among the most important features inherent in these bodies (Mouassa, 2020, p. 184 ff), which give them a special character that makes them a new and distinct type of state administration subject to the supervision of the administrative judiciary, where they can be included within the category of national public bodies stipulated in Article 9 of Law No 98-01 relating to the powers of the State Council, its organization and work, amended and supplemented by Organic Law No. 11-13 «**It stipulates that: The State Council is competent, as a first and final**

instance, to adjudicate claims for annulment, interpretation, and assessment of the legitimacy of administrative decisions issued by the central administration authorities, national public bodies, and the national professional organization

It is also responsible for adjudicating cases assigned to it by special texts»Organic Law No. 11-13 (11-13, 2011), Organic Law No. 18-02 (18-02, 2018), and Organic Law No. 22-11(22-11, 2022), all amending Organic Law No. 98-01(Organic Law No. 98-01, 1998).

The right to appeal the actions of the National Independent Authority for Election Monitoring also derives its legal basis from Article 6 of Organic Law 21-01, as amended and supplemented, which is a special text of an organic nature that can add additional powers to the Council of State.

The special capacity to litigate also appears for the provincial and municipal delegations, which are authorized by the head of the independent authority. The ruling of the administrative court may be appealed before the regionally competent administrative court of appeal within a period of three full days from the date of notification of the ruling, provided that the latter decides on the appeal within a period of fifteen full days from the date of its registration with the registry, and its decision is not subject to any form of appeal.

The ruling or decision, as the case may be, shall be communicated immediately upon its issuance to the concerned parties and to the coordinator of the provincial delegation of the independent authority, with the aim of implementing it. As for the matters of accrediting candidates and their lists for local elections, Article 183 of the same organic law stipulates the rejection of any candidate or list of candidates, pursuant to a decision with an explicit legal justification from the coordinator of the provincial delegation of the independent authority, which shall be notified within a full period of eight days starting from the date of filing the declaration of candidacy, under penalty of nullity, as the candidacy is considered accepted upon the expiration of this period(Rabi, 2008, p. 27).

The decision to announce the voting results is subject to appeal before the same judicial authorities, according to Article 186 of the



amended and supplemented Decree 21-01. On the other hand, it enabled the provincial delegation of the independent authority to decide on the objections submitted to it, and to announce the provisional results of the municipal and provincial people's council elections, and granted each party and each list of candidates for the local elections the right to appeal the provisional results of the elections before the regionally competent administrative court within the deadlines specified in Article 186 of the amended and supplemented Organic Law 21-01.

It is noteworthy that the legislator has resorted to the principle of suitability in determining the competent judicial authority because he believes that adopting the organic criterion absolutely does not conform to the specificity of some disputes that he has made subject to the supervision of the ordinary judge, even though one of the parties is one of the bodies mentioned in Article 800 of the Code of Civil Procedure (Labbadi, 2013, p. 53)

1.2- Electoral Disputes Excluded from the Jurisdiction of the Administrative Judiciary:

The jurisdiction to adjudicate electoral disputes is a jurisdiction shared by the administrative judiciary with other bodies. Therefore, determining the scope of jurisdiction of the administrative judiciary in accordance with the provisions of Organic Law 21-01, as amended and supplemented, requires addressing the scope of jurisdiction of other bodies in some disputes that the legislator has excluded from their jurisdiction, starting with the participation of the ordinary judiciary in adjudicating some electoral disputes (1.2.1), then the jurisdiction of the Constitutional Court and local electoral committees (1.2.2), which are among the disputes excluded from the scope of the administrative judiciary by force of law.

1.2.1- The jurisdiction of the ordinary judiciary in some electoral disputes:

The ordinary judiciary participates with its administrative counterpart in monitoring local elections, and this is evident when it adjudicates appeals related to electoral lists, as well as the participation of the criminal judiciary when it comes to electoral crimes such as falsifying counting reports, for example, Registration

on the electoral list constitutes the basic link in the electoral process(Yosra, 2021, p. 351), as the validity and integrity of the electoral process depends on the credibility and accuracy of the electoral lists(Farida, 2010, p. 73).The electoral lists are subject to a regular annual review, and they can also be subject to an exceptional review on the eve of the elections. The review of the electoral lists generally goes through three successive stages. The first stage begins with the opening of the list review period, passing through the second stage, which witnesses the submission of objections to the content of the corrective list before the municipal committees, and concluding with the third stage, in which the opportunity to resort to the judiciary is provided to dispute the validity of the municipal committee's decisions(Mohand, 2012, p. 21)

With regard to appeals against decisions issued by the committees responsible for organizing and controlling electoral lists, the procedures that must be followed before the competent court have been precisely determined, and this appeal can only be made by filing a grievance before the electoral administrative committee(Mohand, 2012, p. 21), and then by heading to the judicial appeal, and the appeal is registered as soon as it is declared before the court registry of the regular judicial system.(Ordinance No. 21-01, p. Art 69.)

Thus, the legislator has removed the ambiguity surrounding the jurisdiction of the ordinary judiciary in disputes related to the electoral field, which was present in previous laws, where it was satisfied with mentioning the term “**the regionally competent court**,” without specifying the competent authority.(Ordinance No. 21-01, p. Art 69.)

As for the jurisdiction of the criminal judiciary, we find that the criminal judge plays a fundamental role in combating electoral crimes. The legislator has provided the necessary legal protection to ensure the electoral process(Mujahid, 2016, p. 141)

All electoral crimes were mentioned in Chapter Eight of Order 21-01, which includes the amended and supplemented organic law. Electoral crimes, like other crimes, are divided into two types: positive crimes, such as the use of violence and threats, etc., and negative crimes, such as violating the requisition order by not appearing at the polling station without an acceptable excuse.(Zawawi, 2020, p. 545)Regarding the organization of the electoral process, we find that



both the criminal judge and the special election judge, whether affiliated with the ordinary or administrative judiciary, have their distinct role in deterring acts of fraud and deception that occur during the electoral process, ensuring that each of them has a kind of independence from the other party.

The Algerian legislator's dedication to the principle of independence of both parties is evident through the fact that each of them has the authority to exercise control over the validity of the voting process. However, it is noted that despite this independence, there is a solidarity relationship between the work of the administrative judge and the criminal judge, which ensures the unification of their efforts in order to combat criminal acts that disrupt the proper conduct of the electoral process. In addition, this procedural connection between the electoral and criminal disputes extends to the substantive aspect according to the text of Article 310 of the amended and supplemented Order 21-01¹.

1.2.2- The jurisdiction of other bodies in electoral disputes:

A-The Constitutional Court's jurisdiction over some electoral disputes:

The Algerian constitutional founder entrusted the Constitutional Court with the task of adjudicating appeals related to the election of the President of the Republic, as well as legislative elections. This was confirmed by Article 191 of the 2020 constitutional amendment (Zawawi, 2020, p. 361). These disputes fall outside the scope of our study, but they are excluded by force of law from the jurisdiction of the administrative judiciary.

The Constitutional Court is competent to adjudicate appeals related to the three types of elections (presidential, legislative and referendums). Here the role of the administrative judge in the electoral process becomes clear, which, according to law professors, is more important than the Constitutional Court in adjudicating these disputes, as long as they relate to monitoring the legitimacy of decisions issued by administrative authorities in the electoral process. However, on the

¹Upon careful examination, we find that this independence has two aspects, which are:

A- The voting process may not be invalidated unless the administrative judicial authority proves its validity despite the issuance of a conviction by the criminal judicial authority.

B- The criminal judicial authority is not obligated to issue a conviction, unless the administrative judicial authority rules to invalidate the voting process

other hand, the monitoring exercised by the Constitutional Court is no less important than others, as long as it is the body charged with protecting the basic rights and freedoms stipulated in the Constitution, and related to the right to vote, as it is linked to expressing the will of the voters, especially since this type of monitoring is monitoring legitimacy, which makes it legal monitoring.(Souhila, 2013, p. 100)

B-The jurisdiction of local electoral committees in electoral disputes:

The electoral committees at the electoral district level are responsible for implementing programs related to organizing the electoral process, as well as providing all services to voters, candidates, observers, media personnel, and civil society institutions, with the aim of presenting statistics related to the electoral process on the basis of transparency and integrity.(Ali, 2019, p. 170) The amended and supplemented Order 21-01 organized the most important electoral committees, as it addressed the municipal electoral committee in Chapter Seven organizing the elections under the title “Electoral Committees.” What can be noted in this context is that the composition of this committee did not differ from what it was under the Organic Election Law 16-10, As for the provincial electoral committee, based on Article 266 of Law 21-01, as amended and supplemented, it aims to ensure the smooth running of the electoral process in its various stages. These committees are responsible for electoral appeals stipulated by law and excluded from the jurisdiction of the administrative judge.

2- ELECTORAL ACTIONS FALLING WITHIN THE JURISDICTION OF ADMINISTRATIVE JUDICIAL BODIES:

Bodies As previously mentioned, the legislator relied on the organic criterion as a basis for distributing jurisdiction pursuant to Article 800 of the Code of Civil Procedure, which grants administrative courts general jurisdiction to hear electoral disputes, given the administrative nature of the bodies regulating the electoral process. The Council of State is an exception in administrative disputes, which also applies to electoral disputes. The same applies to the Council of State, which has jurisdiction pursuant to special provisions, as stipulated in Organic Law 21-01, as amended and supplemented.



2.1.-The scope of jurisdiction of the administrative judiciary in electoral disputes:

Returning to the matter contained in the organic law on elections, we will attempt to highlight the jurisdiction of the administrative courts in electoral disputes, especially what relates to the preparatory phase (2.1.1), then their jurisdiction in the voting phase and beyond (2.1.2).

2.1.1-The jurisdiction of the administrative judiciary over disputes related to the procedures paving the way for the electoral process:

The preparatory work for the elections represents the main axis of the entire process, because it has an effective impact on the subsequent stages. Therefore, it must be controlled in order to achieve the desired goal of oversight, which is to embody electoral integrity and transparency. This stage concerns disputes related to the lists of members of the voting offices, and disputes related to the stage of candidacy and financing the electoral campaign.

A- Disputes related to the lists of members of the voting offices:

The process of preparing the list of members of the voting offices is one of the basic tasks that precede the voting process, and it is necessary for the smooth running of the electoral process (Fatima, 2012, p. 103), as the electoral law gave the coordinator of the provincial delegation of the independent authority the authority to determine the voting offices, and he also has the authority to establish new voting centers when there are offices or in the same place, so that the legislator stipulated in Article 128 of Order 21-01, which corresponds to Article 29 of the repealed Organic Law 16-10, the composition of the voting office, which consists of five basic members and two additional members.

After the last amendment to the electoral law, members of the polling stations are appointed by the coordinator of the provincial delegation of the Independent National Authority for Election Monitoring. In the event of a dispute, the concerned party must, before resorting to the judiciary, submit his objection against the composition of the polling station to the coordinator of the provincial delegation of

the independent authority, according to specific procedures and deadlines, as this appeal is considered an administrative grievance before the same body that issued the decision that is the subject of the grievance.(Rahmani, 2021, p. 163) As for the procedures and deadlines for deciding on administrative appeals, they are stipulated in Article 129 of the amended and supplemented Organic Law 21-01.

In the event that the decision issued by the provincial delegation coordinator is not accepted, the appellant can resort to the administrative judiciary. The appeal against the validity of the membership of the voting offices is determined before the regionally competent administrative court, within whose jurisdiction is the electoral district in which the voting office in question is located.(Rahmani, 2021, p. 168) Regarding the deadlines, according to Article 129 of the amended and supplemented Organic Law 21-01, the decision including the rejection of the grievance is subject to appeal before the regionally competent administrative court within a period of three full days starting from the date of notification of the decision, and the administrative court decides on the appeal within a period of five full days starting from the date of its filing, and the ruling of the administrative court is subject to appeal before the courts of appeal.

B- Disputes over the nomination stage and financing of the electoral campaign:

As nomination is a political right granted to persons who meet the legally required conditions, and a legal act in which the individual expresses his will in an explicit and official manner to enter the elections and acquire the status of a candidate, after which comes the beginning of the electoral campaign stage, and each of the two stages may experience disputes when the procedures specified for each of the two stages are affected.(Kashha, 2021, p. 303)

•Disputes during the nomination stage:

In order to ensure the success of this phase, the legislator surrounded it with broad oversight, including administrative oversight exercised by the provincial delegation of the National Independent Election Authority, which was previously the responsibility of the governor. Administrative oversight of the files is a restricted oversight



in which the legislator did not leave these bodies discretionary power when deciding on candidacy files.

The provincial delegation of the National Independent Election Authority examines each file individually, checking that the legal requirements are met by each candidate or electoral list, and the extent to which they comply with the required deadlines and formal and substantive conditions. Whenever the candidacy file complies with the law, it is accepted. Otherwise, the file is deemed rejected.

Regarding judicial oversight of the candidacy process, administrative courts are competent to hear appeals related to the rejection by the competent administrative authorities of any candidacy or list of candidates. The candidate has the right to file a judicial appeal against the rejection decision. This is stipulated in Article 183 of Organic Law 21-01, as amended and supplemented. Through this article, the legislator explicitly defines who has the right to file a judicial appeal against decisions including the rejection of candidacy files issued by the provincial delegation of the Independent National Electoral Authority. (Rahmani, 2021, p. 125) In this regard, a group of judicial decisions issued by administrative judiciary bodies can be cited, which are decisive in appeals directed against decisions of the provincial delegation of the National Electoral Authority, including the rejection of election candidacy files. We include them in this appendix. The law does not specify who has the right to file a judicial appeal against decisions issued by the independent provincial delegation. Rather, it is limited to referring the parties to the administrative judiciary, as it has general jurisdiction to adjudicate this type of appeal. This necessitates referring to the general rules established in the Code of Civil Procedure. (Rahmani, 2021, p. 125)

According to Article 183 of Organic Law 21-01, as amended and supplemented, the territorially competent administrative court shall decide on the appeal submitted to it within four full days from the date of filing the appeal. The court's ruling may be appealed before the administrative courts within the legally specified time limits.

Perhaps the reason for this is due to the fact that the nature of the administrative judicial decision issued by the administrative courts in

the matter of local elections is classified as a preliminary judicial decision, which embodies the principle of litigation in two stages, unlike what was the case in previous election laws, where this type of decision was preliminary and final and not subject to any form of appeal.(Siham & Jedidi Nahla, 2018, p. 25)

●**Election campaign financing disputes:**

The legislator has paid great attention to the issue of financing the electoral campaign. For elections of a national nature, such as presidential and legislative elections, he has set a specific financial ceiling for them (For the presidential elections, the expenditure ceiling was set at 120,000,000 DZD in the first round, and this amount was raised to 140,000,000 DZD in the second round. For the legislative elections, the expenditure ceiling was set at 2,500,000 DZD for each candidate. See: Articles 92 and 94 of the amended and supplemented Order 21-01, mentioned above), without setting a ceiling for spending regarding local elections.(Hamla, 2018, p. 94)Consequently, several violations may occur on the part of candidates during the course of this process. For this reason, the legislator has organized the course of the electoral campaign by devoting a group of procedures and means, and clarifying its obstacles. However, we find that this is not sufficient if there is no effective follow-up and strict supervision of the candidates. Therefore, its forms differ, as there is external supervision, which is carried out by international organizations and foreign countries, as well as the press affiliated with them.(Rahmani, 2021, p. 125)

There is internal oversight represented by the oversight of the electoral committees represented by the Election Campaign Finance Monitoring Committee established by the Independent National Elections Commission, in addition to the oversight of the judiciary, which can only exercise oversight through notifications to the candidates during their election campaign on the one hand, and on the other hand they exercise oversight over their competitors. This oversight ensures the validity of the methods and procedures adopted in the election campaign, and the oversight of the candidates is under the cover of the political party to which they belong, or by assigning their representatives to collect information, record violations and



report them to the bodies organizing the election process and the judicial authorities, which intervene by force of law to limit those violations.(Arafa, 2021, p. 107)

2.1.2-The jurisdiction of administrative courts in disputes during and after the voting stage:

After the completion of supervision of the preparatory processes for the local elections, from preparing the electoral lists and voting offices, until reaching the second stage, which is the voting stage, which is the contemporary stage of the electoral process. As a result, we will address the jurisdiction of administrative courts in this regard (A), then their jurisdiction in the process of counting votes and announcing the results (B).

A- Administrative judiciary supervision of the voting stage:

The electoral process may be marred by several violations, including those related to the means and procedures of voting, such as not providing the material means for the voting process, such as not providing ballot boxes, envelopes, and locks, and those related to violating the provisions related to voting agencies, and violations related to the procedural aspect of organizing the voting process, such as not proving identity upon entering the voting office, and inserting two envelopes into the ballot box(Executive Decree No 17-23, laying down the rules governing the organization of the polling centre, 2017, p. arts 5 and 6)as well as147–163 of amended and supplemented Ordinance No. 21-01

This supervision is exercised through the supervision of administrative courts over the voting process, and challenging the legitimacy of this process.

- Administrative courts' control over the voting process:

The provincial delegations, as they organize the electoral process, are administrative bodies in that they carry out activities similar to administrative work. The administrative courts are competent to consider their disputes. Article 186 of the amended and supplemented Order 21-01 stipulates that the decisions issued by the provincial delegations of the National Independent Election Authority may be appealed before the regionally competent administrative court within 48 hours following the announcement of the provisional results. Thus, every candidate or list of candidates for the municipal or

provincial people's council elections, and every party participating in the elections, has the right to appeal before the administrative courts.

Administrative courts are also competent to adjudicate disputes involving the State Electoral Commission regarding voting disputes. This is due to the administrative nature of this body, which compiles results at polling stations and operates under the supervision of the Independent National Electoral Authority.

- Challenging the legitimacy of voting processes:

It is possible to lodge an appeal before the administrative authorities as a preliminary stage and, if this does not provide a remedy for the voter, he may then bring the matter before the administrative courts as a second stage by challenging the legality of the voting operations conducted at the polling station in which he cast his vote. In this respect, the voter records his objection in the minutes of the polling station where he voted, and these objections are transmitted together with the minutes to the wilaya electoral committee, in accordance with Article 185 of the amended and supplemented Organic Law No. 21-01. For the appeal brought before the wilaya electoral committee to be admissible, a number of formal and substantive requirements must be satisfied. Formally, the complainant must have the status of voter. Substantively, the complainant must support his objection with evidence and proof substantiating his claim. The objection is filed with the secretariat of the wilaya delegation of the Independent Authority within a maximum period of 48 hours from the date on which the Independent National Authority receives the minutes.(Rahmani, 2021, p. 182)

B-The stage of counting votes and proclaiming results

If the voting process is based on a degree of importance and the role of the election administration body is evident in it, and the necessity of its dealing with neutrality and independence in order to ensure the integrity of the election, then the next stage, which is the vote counting process, is no less important than the previous one. If the voters have been informed and expressed their will in secrecy on the ballot cards, then the vote counting process reveals the popular will expressed through these cards, and then the results are announced



with the victory of the candidate or candidates who were accepted by the popular will as representatives of the people and representatives of its will.(Hamla, 2018, p. 118)

Electoral disputes differ from other public law disputes in several respects, given their specificity in terms of procedures and the law regulating them. In order to ensure the smooth running of the electoral process, the legislature has authorized the judiciary to exercise oversight over the actions of the administration running it, in order to achieve the desired integrity and transparency.

In accordance with the organic standard stipulated in Article 800 of the Code of Civil Procedure, electoral disputes are of an administrative nature due to the bodies organizing them, represented by the Independent National Authority for Election Monitoring, which is distinguished by its administrative nature and is authorized to manage the electoral process through its various stages. Therefore, the administrative judiciary is competent to resolve electoral disputes in the event that they arise in connection with local elections. This embodies the Algerian legislator's adoption of a system of judicial duality, which requires it to regulate the rules of judicial jurisdiction between the ordinary and administrative judiciary bodies. However, defining the scope of jurisdiction of the administrative judiciary to consider local electoral appeals does not mean that other bodies are not involved in resolving their appeals, especially those related to the preparation of electoral lists, or with regard to crimes that may occur during them.

In accordance with the establishment of the principle of two-level litigation in the field of local electoral disputes in accordance with the provisions of Organic Law 21-01 relating to elections, as amended and supplemented, the rulings of the administrative courts may be appealed before the administrative courts of appeal that were recently established in Algeria pursuant to Law 22-07 relating to judicial division (Law 22-07 relating to judicial division, 2022)

2.2 Electoral appeals between the annulment suit and the full judicial suit:

As long as the Algerian legislator has assigned jurisdiction in the administrative dispute to the administrative judiciary, similar to the French legislator, who also assigned jurisdiction to consider electoral appeals and against their results to the administrative judiciary.(D'Antonelle, 2007, p. 117)However, the legislation did not specify the nature of electoral suits, which led to a difference in jurisprudence in determining the nature of electoral appeals that are raised on the occasion of the local electoral dispute.A side of jurisprudence considered it a full judicial suit, and their justification for that is due to the broad authority of the administrative judge, whose authority exceeds the annulment suit, which stops at ending the legal effects of the administrative decision tainted with illegality.

There is another aspect of jurisprudence, the jurisdiction of the judge, which includes it in the core jurisdiction of the annulment judge. This type of appeal is of a judicial nature, and the courts are competent to decide on it in accordance with exceptional and final provisions that are not subject to any of the legally established forms of appeal.(Khalif, „Judicial Oversight of the Electoral Process, (PUBLISHED DOCTORAL Thesis), 2017, p. 187), Perhaps this difference is due to the electoral process being a complex process that does not accept division, because it is not possible to separate the electoral process from the procedures that prepare for it and the procedures that accompany it or even follow it(A. De Laubadère, 1984, p. 592), just like the process of expropriation for the public benefit.

Professor Rachid Khaloufi classified lawsuits related to elections as administrative lawsuits, especially after the issuance of Organic Law 97-07 related to elections, amended by Organic Law 04-01 (repealed), (Khaloufi, 2011, p. 20), and Professor Masoud Chihoub described it as a type of intermediate judiciary between urgent judiciary and substantive judiciary, as it is urgent judiciary with quick procedures that do not tolerate postponement, and substantive judiciary in terms of requests related to the origin of the right,



especially when the legal texts do not specify the nature of the jurisdiction of the administrative judge.(Chihoub, 1999, p. 484)

The Algerian legislator has been keen to mention the appeals related to the electoral process, which are the jurisdiction of the judicial authorities, through Organic Law 21-01, as amended and supplemented, to emphasize the difference in the nature of the electoral appeal from the annulment suit filed by individuals against the administrative decisions issued by the bodies stipulated in Article 800/02 of the Code of Civil Procedure. This is due to the difference in the content of each of the two appeals, as the electoral appeal relates to the electoral process and its expressed results, while the final decision issued by the public administration and subject to the authority of the judge of the subject matter represents an annulment suit.(Khalif, „Judicial Oversight of the Electoral Process, (PUBLISHED DOCTORAL Thesis), 2017, p. 276)

However, the majority of jurisprudence, supported by most researchers, considers it a suit similar to an annulment suit, because the judge's role in it is focused on investigating and verifying the legitimacy of the electoral process, or monitoring its procedural framework, as long as the appeal in the electoral dispute focuses on administrative decisions issued by an administrative authority, such as the decision to reject the candidacy file.(Souhila, 2013, p. 20)& (Ouchan, 2021, p. 345)

Therefore, the electoral legislator gave the judicial authorities the right to adjudicate electoral appeals starting from the date of opening the review of the electoral lists until the announcement of the results, with some differences due to the nature of each electoral process individually.(Baali, 2005 , p. 200)However, some jurisprudence considered the electoral appeal as a full judicial claim, following the example of Professor Muhammad al-Saghir Baali - may God have mercy on him - while others went so far as to say that the jurisdiction of the administrative judge to adjudicate appeals related to the legitimacy of voting operations for local elections is an exceptional jurisdiction as long as it is not intended to monitor the legitimacy of administrative decisions and thus cancel them when necessary, (Boujadi, 2011, p. 21), or the compensation decision as a result of the

civil liability of the administrative authorities being proven, and administrative jurisprudence usually classifies this jurisdiction among the full judicial disputes assigned to the administrative judge.

The French State Council has settled this controversy surrounding the nature of electoral litigation, by distinguishing between two types of electoral litigation: claims of disputes related to the preparatory stages of the electoral process, which it considers to be claims of abuse of power, i.e. a claim of annulment filed against the decree specifying electoral districts, and claims of electoral disputes that arise during the voting process, which it considers to be a claim of full judicial authority, the subject of which lies in examining the legitimacy of the voting process.(Macera, 2002, p. 78)This is the position adopted by administrative law scholars in Algeria, headed by “Masoud Chihoub” and “Mohamed Saghir Baali” - may God have mercy on him - who considered electoral judicial appeals to be a type of full judicial authority after the reforms that electoral disputes witnessed, where the administrative judge had the ability to seek a complete solution to the dispute, and not just nullify or amend the administration’s decision. (Khalif, Judicial Oversight of the Electoral Process, 2017, p. 188)It is noted through reviewing the various characteristics related to electoral appeals brought before the judiciary in the field of electoral disputes, that this type of appeal is considered one of the lawsuits that aim to protect the substantive right, which derives its existence from general laws and rules. They are lawsuits of a special nature that combine elements of the two lawsuits of cancellation and complete elimination.

The electoral administration, represented by the Independent National Authority for Election Supervision and the electoral committees, plays a major role in organizing elections of all types and levels, whether those with a national or local dimension. This is achieved through the powers it enjoys to issue decisions of an administrative nature, in order to ensure the smooth running of the electoral process throughout all its stages, starting from the summoning of the electoral body, up to the announcement of the final election results. In return, the legislator has established the right to resort to the judiciary in general and the administrative judiciary in



particular, for the purpose of challenging the decisions of the electoral administrative bodies.

The electoral appeal is an effective means resorted to by every person with a right to claim his right, such as requesting the cancellation or amendment of the decision. The specificity of electoral appeals makes them distinguished by their own characteristics that distinguish them from other types of appeals, the most important of which are exemption from paying court fees, the appointment of a defense team, and short deadlines, given that the electoral dispute is an urgent dispute. Jurisprudence differed in determining its nature. Some classified it as annulment judiciary, but this trend limited it to what concerns the electoral results, excluding the other preceding stages. Some jurisprudence classified it as full judiciary, which is the most correct opinion, given the broad powers that the administrative judge enjoys over the electoral administration throughout all stages of the electoral process.

In order for the competent judicial authorities to accept and adjudicate electoral appeals, the legally stipulated conditions must be met, whether these conditions relate to the appellant himself, by requiring the presence of the capacity, interest, and legal capacity to initiate the lawsuit, or in terms of conditions related to formal conditions, while respecting the deadlines set for them.

The administrative judge's ruling on an election appeal has several implications. Here, the administrative judge's powers over the parties to the appeal become clearly evident. These powers include rejecting the appeal, amending the election results, or even annulling them and ordering a new election. However, his decisions in this regard are absolutely binding on the electoral administration.

Conclusion

From the above, it is clear that elections in Algeria are a complex legal process that goes through several successive stages that the legislator has attempted to organize by virtue of Order 21-01, which includes the Organic Law on Elections, in order to organize them in a way that guarantees the integrity of these elections and enshrines the most important constitutional principles related to this matter,

especially after the recent constitutional amendment that came as a result of special circumstances. Perhaps one of the most important mechanisms for protecting the electoral process is to assign oversight of it to an independent national authority with the aim of achieving the desired integrity and transparency in the exercise of the most important rights and freedoms of citizens.

Perhaps enshrining the principle of judicial oversight of elections, and administrative judicial oversight in particular, constitutes the most important guarantees for gaining legitimacy. Therefore, the role of the original administrative judge in the process of interpretation and the formulation of the legal basis remains one of the most important guarantees for preserving the foundations of the electoral process, particularly with regard to adjudicating appeals related to objections to members of polling stations, disputes over candidacy, or appeals related to objections to the validity of voting processes. The legislature has attempted to regulate these appeals in a manner that allows for the highest possible electoral integrity by granting this type of dispute a special status, whether in terms of nature, principles, deadlines, or by simplifying some procedures. This is because the electoral process itself is governed by strict procedures and deadlines. Perhaps the legislature is moving towards enshrining the judicial duality introduced by the 2020 constitutional amendment by amending most of the substantive and procedural laws related to the same matter, and establishing administrative appeal courts after assigning them some jurisdictions in the matter related to the organic law on elections.

Accordingly, it can be said that efforts to reform the electoral system must take into account the flaws that plagued the administrative judiciary in previous experiences during election oversight, as it provides maximum protection to the legitimacy of the electoral process if it is breached. Therefore, it was logical to strengthen this oversight in particular and to bolster its independence and autonomy in general.

Based on the above, we have reached a set of results through this study, the most important of which we mention:



- The legislator has attempted to precisely regulate electoral disputes referred to the administrative judiciary in the matter related to the organic law on elections, by attempting to overcome the various legal problems previously proven by practical reality.
- The legislator, in the matter relating to the organic law on elections, enshrined the judicial duality established by the 2020 constitutional amendment in terms of structures and procedures, which is what was implemented in the laws relating to the administrative judiciary.
- The legislator attempted to define the disputes that fall within the jurisdiction of the administrative judiciary in general, but did not define this jurisdiction precisely in line with the specificity of electoral disputes, considering that they fall within the jurisdiction of the subject-matter judiciary and are close to the jurisdiction of the urgent judiciary. He also did not define their nature, whether they are cases of full jurisdiction or of annulment jurisdiction.
- The legislator has established judicial duality by strengthening the role of the administrative judiciary in electoral disputes through his keenness to grant it broader powers, but he has retained the assignment of some local electoral disputes to the ordinary judiciary.
- The legislator did not address the issue of judicial oversight of the actions of the Independent Election Authority, despite the disputes that may arise from those involved in the electoral process, whether elected officials, candidates, or legal representatives, in the exercise of its powers with regard to the electoral process at its various stages.

Based on the above, a set of suggestions can be included.

1. The necessity of including procedural provisions specific to electoral disputes in the laws relating to administrative judiciary, which are subject to amendment by the competent authority, through which the nature of local electoral appeals and the powers of the administrative judge are precisely defined.
2. Not being satisfied with referring to general rules in cases that require an explicit text from the legislator.

3. Determining the authority competent to consider disputes in which the Independent Election Authority is a party and which relate to local elections.

4. The need to establish mechanisms capable of implementing orders, rulings, and decisions issued by administrative judges related to local electoral disputes, and to grant the administrative judge broader powers in this area.

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