

## Order No. 21-01: Administrative and supervisory role of the National Independent Election Authority

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### Abstract:

The Algerian legislator has focused on the bodies that organise the electoral process in order to strengthen constitutional democracy and improve the electoral system. This led to the creation of the Independent National Electoral Authority by Organic Law No. 19-07, which is responsible for supervising, monitoring and organising the electoral process. Subsequently, the new constitutional amendment included provisions relating to this authority, giving it the task of preparing, managing and organising presidential, legislative and local elections, as well as referendums, and supervising these processes. In addition, the legislature enacted Decree No. 21-01, which contains the Organic Law on the Electoral System, which establishes the framework for the legal status of the Independent Electoral Authority in terms of the management and supervision of the electoral process, the organisation of its structure and the administrative and supervisory functions exercised by this authority.

**Keywords:** Supervisory role, electoral process, Independent National Authority, Decree No. 21-01.

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### Introduction

The legislator has consistently sought to create a new electoral body, represented by the Independent National Electoral Authority, in accordance with Organic Law 19-07 on the Independent National Electoral Authority. This authority has extensive powers and independence that contribute to its effectiveness in ensuring the transparency and

integrity of the electoral process, thereby achieving constitutional democracy and strengthening the electoral system of the Algerian state.

The Algerian legislator has sought to guarantee the electoral process and the neutrality of the competent authorities that manage and organise elections. This is considered to be the best mechanism for delegating power in modern democratic systems and the most appropriate instrument for expressing the will of the people. In order to preserve the people's freedom of choice and enable them to make choices, these authorities must ensure the transparency and integrity of the electoral process and remain impartial towards the candidates.

Recently, our legislature issued Decree 21-01, which includes the Organic Law on the Electoral System and establishes the legal framework for the Independent National Electoral Board by providing the legal texts that regulate its structure and its responsibilities in the management and supervision of elections.

#### **Significance of the research:**

The importance of the research topic at hand lies in the embodiment of Decree 21-01, which includes the Organic Law on the Electoral System, which highlights the role of the Independent National Authority in the management and supervision of electoral processes. This is particularly important considering that this law is new, having been issued on 10 March 2021, which shows the commitment of our legislator to activate the constitutional principles related to the independence, neutrality and impartiality of the authority in charge of managing, organising and supervising electoral and referendum processes.

#### **Objectives of the study:**

Through this study, we aim to determine the strategy of Decree 21-01 on the Organic Law on the Electoral System, shed light on the legal organisation of the Independent National Electoral Authority, identify the objectives introduced by the Organic Law, determine the extent to which the management and supervisory role of the Independent Authority is realised, and assess its compatibility with Organic Law 19-07 on the Independent National Electoral Authority and the new constitutional amendment.

#### **Research problem:**

The research question is To what extent is Decree 21-01 effective in establishing the legal framework for the role of the Independent Authority in the management and supervision of the electoral process?

#### **Research Methodology:**

In order to address this problem, we have chosen to use an analytical method to analyse the legal texts related to the subject, as well as a descriptive method to familiarise ourselves with the subject of the study and to provide details about its main aspects.

### **Research plan:**

In order to achieve the objectives outlined above, we have adopted a dual plan consisting of two axes. The first axis deals with the legal organisation of the Independent National Electoral Authority, while the second axis focuses on the powers of the Independent National Electoral Authority in managing and monitoring the electoral process.

### **Axis One: The legal organisation of the Independent National Electoral Authority**

The second chapter of Decree 21-01 deals with the organisation of the Independent National Electoral Authority. This authority consists of a deliberative body, represented by the Council of the Independent Authority<sup>1</sup>, and an executive body, represented by the President of the Independent Authority. It also has branches at provincial and municipal level and at diplomatic and consular missions abroad<sup>2</sup>.

### **First: Council of the Independent Authority**

#### **1. Composition of the Council**

The Council shall be composed of twenty (20) members appointed by the President of the Republic from among independent personalities, including one (1) member from the Algerian community living abroad, for a non-renewable term of six (6) years<sup>3</sup>.

The Council shall draw up its rules of procedure, which shall be published in the Official Gazette of the Independent Authority at the time of its establishment<sup>4</sup>. It shall meet at the invitation of its President or at the request of two thirds of its members<sup>5</sup>. Decisions are taken by majority vote, and in the event of a tied vote, the President has the casting vote<sup>6</sup>.

These proceedings shall be recorded in a numbered register signed by the President of the Independent Authority and kept in accordance with the applicable legislation, with publication in the Official Gazette of the Independent Authority<sup>7</sup>.

#### **2. Powers of the Council:**

The Council shall exercise the following powers:<sup>8</sup>

- Approves the work programme of the Independent Authority submitted by its President.

- To draw up lists of members for the provincial and municipal delegations and for the diplomatic and consular representations abroad.

- Without prejudice to the provisions of paragraph 3 of Article 121 of the Constitution, it shall receive the candidature files for the Presidential elections and decide on them in accordance with the provisions of this Organic Law.

- It shall draw up the programme and methods for the use of the national audiovisual media during the election and referendum campaigns and shall allocate meeting rooms and advertising space.

- Receives appeals and complaints related to the electoral and referendum process.
- Approves the report drawn up by the Committee for the Supervision of the Financing of Election and Referendum Campaign Accounts.
- Approves the report on the conduct of elections and referendums submitted by the President of the Independent Authority.
- Approves the internal regulations for the staff of the Independent Authority.
- Gives opinions on all matters related to draft laws and regulations on elections.
- Develops a code of ethics for electoral practices and works to promote it among all stakeholders in the electoral process.

## **Second: President of the Independent Authority**

### **1. Appointment of the President :**

The President of the Independent Authority is appointed by the President of the Republic for a non-renewable term of six years<sup>9</sup>. A presidential decree defines the status of the members of the council and the administrative staff of the independent authority, as well as their remuneration system<sup>10</sup>.

### **2. Powers of the President:**

The President of the Independent Authority shall have the following powers:

- To chair the Board and implement its decisions.
- To convene and chair the meetings of the Council.
- Directs and coordinates the work of the Council.
- Represents the Independent Authority before various public bodies and other participants in the electoral process.
- Represents the Independent Authority in court in all civil and administrative matters.
- Appoints members of provincial and municipal delegations and members of diplomatic and consular missions abroad, in accordance with the decisions of the Council.
- Mobilizes members of provincial and municipal delegations and members of diplomatic and consular missions abroad during election and referendum operations and during the verification of electoral lists, and disseminates them throughout the country and abroad.
- Appoints and deploys staff to polling stations and offices.
- Coordinates with the relevant authorities on the reception, deployment and accompaniment of international election observation missions.

- Announces the provisional results of presidential and legislative elections and the results of referendums, without prejudice to the provisions of Article 186 of this Organic Law.

- It shall draw up and publish, after approval by the Council, the report on the conduct of elections and referendums.

- Acts as the financial authority for the budget of the Independent Authority.

- Appoints and dismisses the Secretary General of the Independent Authority.

- Appoints and dismisses the administrative and technical staff of the Independent Authority.

- Exercise presidential authority over all administrative and technical staff of the independent authority.

- He signs the minutes of the decisions and resolutions of the independent authority, ensures their communication and follows up their implementation<sup>11</sup>.

The President of the Independent Authority shall also take all the necessary measures to ensure the smooth running of elections and referendums and to guarantee the credibility, transparency and accuracy of their results, in accordance with the laws and regulations in force<sup>12</sup>.

### **Third: Strengthening local self-government and diplomatic representation abroad**

#### **1. Provincial and Municipal Delegations**

The local branches of the Independent Authority consist of provincial delegations<sup>13</sup>, supported by municipal delegations. The provincial delegations are composed of three to fifteen members, taking into account two criteria: the number of municipalities and the distribution of the electoral body<sup>14</sup>.

The provincial delegation is headed by a provincial coordinator who works under the authority of the head of the Independent Authority<sup>15</sup>, while the municipal delegation is coordinated by a municipal coordinator who works in coordination with the respective provincial delegation. The Head of the Independent Authority determines the composition of the provincial and municipal delegations by decision for each electoral consultation<sup>16</sup>. Municipalities and provinces shall provide the Independent Authority with the necessary staff for the preparation, organisation and conduct of the electoral and referendum processes, and such staff shall act under the full authority of the Independent Authority<sup>17</sup>.

#### **2. Delegations at diplomatic and consular missions abroad:**

The Head of the Independent Authority shall appoint coordinators for the delegations at diplomatic and consular missions abroad<sup>18</sup> and shall determine their composition, organisation and operation in consultation with the competent authorities<sup>19</sup>.

## **Second axis: powers of the independent authority in the management and supervision of the electoral process**

### **1. Supervision and preparation of elections**

The National Independent Electoral Authority has a wide range of powers, in addition to those related to the electoral process, which enable it to carry out its functions in a manner that ensures the highest level of integrity and transparency. These powers include the embodiment and deepening of constitutional democracy, the promotion of an electoral system conducive to peaceful and democratic transitions of power, and the provision of opinions on all matters relating to draft laws and regulations on elections<sup>20</sup>. In addition, its expanded powers aim to support the electoral system by raising awareness of elections and promoting a culture of voting. It contributes to the improvement of scientific research on electoral issues in cooperation with research centres and specialised bodies, prepares a charter of good electoral practices and works to promote it among all actors in the electoral process. It also trains and improves the performance of officials in the electoral process, provides documentation and electoral equipment in accordance with the Organic Law on Elections, and gives its opinion on all draft electoral laws<sup>21</sup>.

The authority guarantees the right to vote freely and without discrimination to any citizen who meets the legal criteria for voting, and it has the power to intervene automatically in the event of violations of the provisions of Organic Law 19-07<sup>22</sup>.

The Independent Authority shall inform the competent public authorities of any observations, irregularities or shortcomings within its jurisdiction that may affect the organisation and conduct of the electoral processes, and shall require those authorities to act expeditiously to remedy the reported shortcomings. It shall also inform the participating political parties and candidates of any violations observed at the various stages of the electoral process, requiring them to remedy the reported deficiencies immediately and to communicate in writing the measures taken<sup>23</sup>.

The authority may use public force to enforce its decisions and take the necessary measures in response to any violation observed in the audiovisual sector, recognising the important role it plays during the electoral process. Since the National Independent Authority is responsible for the fair and equitable allocation of time slots to candidates in the national audiovisual media, it coordinates with the audiovisual regulatory authority to ensure compliance. The legislator mandates all the necessary measures to be taken in case of infringements in the audiovisual field, allowing the National

Independent Authority to use the national audiovisual media to exercise its powers, with such notifications being made by the head of the Authority<sup>24</sup>.

If the Independent Authority finds that the actions registered or reported to it are of a criminal nature, it will immediately inform the competent public prosecutor<sup>25</sup>.

## **II. Management and supervision of elections**

The National Independent Electoral Authority is responsible for the preparation, organisation, management and supervision of presidential, legislative, local and referendum elections<sup>26</sup>. The Independent Electoral Board upholds the principle of popular sovereignty through free, transparent, pluralistic and fair elections that reflect the will of the people<sup>27</sup>.

### **1. Preparation of the electoral process**

The first manifestations of democracy begin with the preparation and verification of electoral lists, which are crucial to the electoral process, since the electoral list is central to it. The law therefore emphasises the transparency of this stage by entrusting it to an independent committee made up of judges, experts and citizens<sup>28</sup>. According to this law, the national electoral register is the responsibility of the National Independent Electoral Authority<sup>29</sup>.

Historically, under successive electoral laws, the Constitutional Council and various committees responsible for supervising and monitoring the electoral process have had the authority to receive presidential candidacy files. This authority has now been transferred to the Independent Authority, where candidates must submit their candidacy files in person to the President of the Authority and receive a receipt<sup>30</sup>.

In preparation for the electoral process, the Independent Authority maintains the national electoral register<sup>31</sup> and the electoral lists for municipalities and diplomatic and consular missions abroad, which it updates continuously and publishes, in particular on the Authority's official website, within the time limits laid down by law. It also appoints supervisors for polling stations and offices.<sup>32</sup>

The authority prepares voter cards and distributes them to their owners with the help of public services and diplomatic and consular missions abroad<sup>33</sup>. It also monitors the financing of electoral campaigns and ensures compliance with the legislation in force. It facilitates the work of media institutions and journalists to cover the various stages of the electoral process, providing essential documents and electoral materials to systematically ensure the success of the electoral process. It draws up a list of polling stations and distributes the electoral register to them after each pre-election verification<sup>34</sup>.

The Independent Authority shall ensure the protection of the personal data of voters and candidates<sup>35</sup> and shall coordinate with the competent authorities all security measures related to the electoral process to ensure its smooth conduct<sup>36</sup>.

## **2. Start of the electoral process**

At the start of the electoral process, the National Independent Authority has several powers, including the accreditation of candidates' representatives as observers of the electoral process at polling stations and offices, including mobile offices, at all stages. They are provided with copies of the election reports in accordance with the provisions of the applicable law. The authority shall coordinate with the relevant bodies for operations within the framework of international election observation missions, receiving and accompanying them throughout the electoral process, in particular during the voting phase<sup>37</sup>.

Voting is one of the most critical stages of the electoral process, as it is a fundamental pillar of democracy and embodies the participation of the public will in decision-making. The independent authority has several powers to regulate this sensitive phase, allowing the candidates' representatives to monitor the electoral process and receive copies of the counting reports. It appoints legally qualified representatives to monitor the voting and counting process and allows them to obtain copies of the certified reports at polling stations and offices, as well as at municipal and provincial electoral commissions. The list of legally qualified representatives must be submitted to the provincial delegation of the independent electoral authority twenty (20) full days before the election date<sup>38</sup>.

For each election, the independent authority ensures that all equipment, materials, papers and ballot boxes are available at polling stations and offices, including mobile offices, at all stages. It also publishes the list of essential and additional polling station staff on election day, ensures that the legal times for opening and closing polls are observed and allows media access to cover the electoral process<sup>39</sup>.

## **3. Conclusion of the Electoral Process**

After the voting ends, the function of overseeing the counting of votes begins, ensuring their integrity with the supervision of its representatives and the presence of members from polling stations. Candidates' observers and representatives are also allowed to attend, as well as voters and media representatives, to announce the results of the vote-counting process immediately after its completion. The municipal and provincial electoral committees, as well as the committees of diplomatic and consular missions

abroad, are responsible for monitoring, compiling, and counting the voting results at their levels. They also provide candidates' representatives with certified copies of the minutes, to be submitted to the independent authority within the specified deadlines<sup>40</sup>. The official results of the presidential and legislative elections are forwarded to the Constitutional Council. The independent authority then announces the preliminary results of the elections or referendums, while the final announcement of the results of the presidential election or legislative elections remains the responsibility of the Constitutional Council<sup>41</sup> after reviewing electoral challenges related to the voting results. Thus, the independent authority is empowered to announce the preliminary or provisional results of elections<sup>42</sup>, a responsibility that was previously held by the Minister of the Interior<sup>43</sup>.

### **Conclusion**

The Algerian legislator created the National Independent Electoral Authority by Organic Law 19-07, granting it a specific system, special provisions and new powers, distinct from those of the High Independent Authority. This authority aims to promote the electoral system and embody constitutional democracy based on the will of the people. The new constitutional amendment of 2020 recognises the independence of this authority and entrusts it with the preparation, organisation and management of presidential, legislative and local elections, as well as the supervision of referendums, within a framework of transparency, neutrality and impartiality. The legislator has defined the administrative and supervisory role of the National Independent Electoral Authority through Decree 21-01 on the Electoral System.

### **Results achieved:**

- The National Independent Electoral Authority is an independent institution that carries out its tasks with complete neutrality and transparency.
- It aims to achieve constitutional democracy and promote the constitutional system.
- It enjoys administrative and financial independence and has legal personality.
- It is responsible for announcing the provisional results of the elections, a power previously vested in the Minister of the Interior.
- Independent verification of electoral lists was previously the responsibility of the public administration.
- The authority receives the candidacy files for the presidency, a responsibility that has been taken away from the Constitutional Council.
- The legal and constitutional establishment of the National Independent Electoral Authority.

### **Recommendations:**

- Ensure that a majority of the members of the National Independent Electoral Commission are legally qualified.
- Reconsider the mandatory requirements for members of local and foreign delegations.
- Evaluate the effectiveness of the National Independent Electoral Authority in ensuring transparency, integrity and neutrality in its functions.
- Address the limitations of its resources and seek to address them in order to enhance its effectiveness in achieving democracy and integrity.

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#### **Articles:**

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2. Samir Ahfaiziya, Ammar Kousa: “Supervision of presidential elections in Algeria under Organic Law 16-10 as amended by Organic Law No. 19-08,” *Voice of Law Journal*, Volume 7, Issue 1, May 2020.
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6. Yassine Chami: “Judicial Oversight of the Actions of the Independent National Authority for Elections”, *Al-Nibras Journal for Legal Studies*, Volume 5, Issue 2, October 2020.

## Footnotes

- 1- Article 19 of Order 21-01 dated 26 Rajab 1442, corresponding to March 10, 2021, includes the organic law relating to the electoral system.
- 2- Article 20 of Order 21-01 concerning the electoral system.
- 3- Article 21 of Order 21-01 concerning the electoral system.
- 4- Article 22 of Order 21-01 concerning the electoral system.
- 5- Article 23 of Order 21-01 concerning the electoral system.
- 6- Article 24 of Order 21-01 concerning the electoral system.
- 7- Article 25 of Order 21-01 concerning the electoral system.
- 8- Article 26 of Order 21-01 concerning the electoral system.
- 9- Article 27 of Order 21-01 concerning the electoral system.
- 10- Article 29 of Order 21-01 concerning the electoral system.
- 11- Article 30 of Order 21-01 concerning the electoral system.
- 12- Article 31 of Order 21-01 concerning the electoral system.
- 13- Article 32 of Order 21-01 concerning the electoral system.
- 14- Article 33 of Order 21-01 concerning the electoral system.
- 15- Article 35 of Order 21-01 concerning the electoral system.
- 16- Article 36 of Order 21-01 concerning the electoral system.
- 17- Article 38 of Order 21-01 concerning the electoral system.
- 18- Article 34 of Order 21-01 concerning the electoral system.
- 19- Article 39 of Order 21-01 concerning the electoral system.
- 20- Rida Shallali, Ahmed Abdel Rahman Ben Salem, Mohamed Amin Hashi, "The Independent National Authority for Elections in Algeria (The Electoral Process from Oversight Bodies to the Authority of Organization and Supervision)," *Journal of Legal and Social Sciences*, Volume 5, Issue 1, March 2020, p. 213.
- 21- Article 8 of Law 19-07 concerning the Independent National Authority for Elections.
- 22- Articles 6-11 of Law 19-07 concerning the Independent National Authority for Elections.
- 23- Articles 13-14-15 of Law 19-07 concerning the Independent National Authority for Elections.
- 24- Rida Shallali, Ahmed Abdel Rahman Ben Salem, Mohamed Amin Hashi, *op. cit.*, p. 214.
- 25- Article 17 of Law 19-07 concerning the Independent National Authority for Elections.
- 26- Article 202 of the new constitutional amendment of 2020.
- 27- Article 6 of Law 19-07 concerning the Independent National Authority for Elections.
- 28- Samir Ahfaithia, Ammar Kousa, "Oversight of Presidential Elections in Algeria under Organic Law 16-10 amended by Organic Law No. 19-08," *Journal of Law Voice*, Volume 7, Issue 1, May 2020, pp. 517-518.
- 29- Article 13 bis of Law 19-08 concerning the electoral system.
- 30- Slimani Lakhamsi, "Supervision and Oversight Mechanisms to Ensure Integrity and Transparency of Elections in Algeria," *Researcher Journal for Academic Studies*, Volume 7, Issue 2, 2020, p. 447.
- 31- Article 202, paragraph 2 of the 2020 constitutional amendment states: "The Independent National Authority for Elections exercises registration operations in the electoral lists and their review and the preparation of the electoral process."
- 32- Rida Shallali, Ahmed Abdel Rahman Ben Salem, Mohamed Amin Hashi, *op. cit.*, pp. 215-216.
- 33- Article 72 of Order 21-01 concerning the electoral system.
- 34- Nabila Ben Aicha, "The Legal System of the Independent National Authority," *Journal of Law Voice*, Volume 7, Issue 2, November 2020, p. 113.
- 35- Article 8 of Law 19-07 concerning the Independent National Authority for Elections.
- 36- Article 9 of Law 19-07 concerning the Independent National Authority for Elections.
- 37- Shallali, Ahmed Abdel Rahman Ben Salem, Mohamed Amin Hashi, *op. cit.*, p. 217.
- 38- Dhrif Kadour, "The Independent National Authority for Elections: Its Legal System, Tasks, and Organization," *Journal of Rights and Political Sciences*, Issue 13, January 2020, p. 248.
- 39- Rachid Atoo, "Oversight of the Independent Electoral Authority in Algeria: A Guarantee of Election Integrity," "Presidential Election as a Model," *Journal of Comparative Legal Studies*, Volume 6, Issue 1, 2020, p. 195.
- 40- Rachid Atoo, *op. cit.*, pp. 195-196.
- 41- Rachid Atoo, *op. cit.*, p. 196.
- 42- Article 8 of Law 19-07 concerning the Independent National Authority for Elections.
- 43- Shami Yassine, "Judicial Oversight of the Actions of the Independent National Authority for Elections," *Journal of the Beacon for Legal Studies*, Volume 5, Issue 2, October 2020, p. 97.