

Legal Regulations for the Integrity of Electoral Campaigns in Algerian legislation

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Abstract

When presenting their electoral programs, candidates may rely on advertising and financial means, which may affect the integrity and credibility of this process. Therefore, we wondered about the legal mechanisms that guarantee equality between candidates and their credibility directing the electoral to establish transparency in the electoral campaign. We concluded that the Algerian legislator intervened to organize the electoral propaganda phase by setting a set of conditions and mechanisms to establish transparency and equality between candidates at this stage are subject to an arsenal of legal texts, the latest which is Order N°21-01 it includes. The organic law related to elections and the texts implementing it while approving deterrent aspect in the event of violation of these texts.

Keywords Electoral campaign; Transparency; Equality; Electoral crimes

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Introduction:

The legal texts governing elections aim to ensure citizens' right to vote and choose their candidates, as well as candidates' right to conduct electoral campaigns with integrity, transparency, and respect for the fundamental principles of the electoral process. The electoral campaign stage is considered the most crucial phase of the electoral process, as it serves as the legal means through which candidates present and explain their programs on an equal footing.

This research paper highlights the importance of electoral campaigns, which have a dual impact: first, among the candidates themselves, as they share the same goal of winning the campaign; and second, between the candidates and the electorate, with the aim of convincing voters and securing their support on election day. This dynamic may lead candidates to rely on promotional and financial means to present their programs, potentially compromising the integrity and credibility of the process.

In response, the Algerian legislator has introduced a set of legal provisions to regulate the electoral campaign phase¹. The most recent of these is Ordinance No. 21-01, containing the Organic Law on Elections and its implementing texts. This ordinance establishes a range of conditions and mechanisms to promote transparency and equality among candidates during this stage, alongside punitive measures for any violations.

The objective of this study is to raise awareness about the importance and sensitivity of this stage and its impact on the integrity of elections. It also aims to highlight the shortcomings of Ordinance No. 21-01, particularly concerning the Organic Law on Elections.

Based on the above, the central question of this study is: To what extent are the conditions outlined in Ordinance No. 21-01 effective and efficient in ensuring equality among candidates, their credibility with the electorate, and, ultimately, transparency during this critical phase?

To address this issue, the analytical deductive method will be used by examining and analysing the legal provisions relevant to the topic. This will be structured into two sections as follows:

Section I : Legal Regulations Governing Electoral Campaign Tools and Scope

Section II : Legal Regulations Governing Electoral Campaign Financing

Section I: Legal Regulations Governing Electoral Campaign Tools and Scope

During the period leading up to the elections, candidates use various tools to explain and clarify their electoral programs to gain the largest possible number of votes. However, the Algerian legislator has established restrictions and conditions to ensure fairness and equality among candidates². These regulations pertain to the tools used for promoting electoral campaigns, and the spatial, temporal, and thematic scope of the campaign.

A) Conditions Related to Electoral Campaign Tools :

The legislator has permitted candidates and political parties to rely on a range of tools for electoral publicity to attract the highest number of votes on Election Day³. Simultaneously, the use of unlawful tools has been prohibited to ensure fair competition among candidates .

1 - Legitimate Electoral Campaign Tools :

The legal texts related to elections require both candidates and political parties to use legitimate methods for electoral campaigning, given the influence these tools have on voters in securing their electoral support.

These tools are divided into traditional and modern categories. Traditional electoral campaign tools include banners, posters, rallies, and field visits. Modern campaign tools, on the other hand, consist of radio, television, and social media platforms. While traditional electoral advertising tools are characterised by their simplicity and ease of use, modern tools dominate electoral campaigns due to their ability to provide voters, whether viewers or listeners, with comprehensive information about candidates' programs through images and sound.

The Algerian legislator has defined these tools as those related to licensed audiovisual media, in addition to posters⁴. Referring to Article 2 of Decision No. 20 issued by the Independent National Election Authority regarding the methods of announcing candidacies for partial elections of certain local councils, it allows for publicity through electronic media in addition to printed media.

To ensure equality among candidates in using legitimate campaign tools, the legislator explicitly stated that every candidate should have equitable access to licensed media outlets. The state is responsible for covering the costs of publication and publicity if the candidate is young and independent, according to Article 122 of the same law, to encourage this group to participate in political life.

2 - Illegitimate Electoral Campaign Tools :

To ensure the legitimacy of electoral publicity, the Algerian legislator prohibits candidates and political parties from using unethical methods or behaviours against their competitors to incite hatred among voters, undermine the advertising objective, or defame a candidate⁵. These include:

- Prohibition of rumours, hate speech, any form of discrimination, and the tearing or improper placement of posters: The legislator considers these actions as prohibited tools in electoral campaigning, in accordance with Articles 75 and 85 of Ordinance No. 21-01 on the Organic Law on Elections. Furthermore, hate speech, discrimination, and the tearing or improper placement of posters are considered electoral crimes punishable by law.⁶

- Prohibition of using commercial advertising as a method for electoral publicity: According to Article 80 of the 2021 Election Law, a candidate cannot use advertisements from their own

commercial business for electoral campaigning, under the threat of criminal penalties as per Article 292 of the same law.

- Prohibition of Using Public Property or Resources for Electoral Campaigning: According to Article 83 of the same law, the use of public property or resources for electoral campaigning is prohibited. Examples include using administrative tools to publicise administrative decisions for election publicity or using university radio as a promotional tool for the electoral campaign. However, it is observed that the legislator, under the same article, has made exceptions for cases explicitly stipulated by legislative provisions.

- Prohibition of the Misuse of National Symbols.

B) Conditions Related to the Scope of the Electoral Campaign :

The scope of the electoral campaign refers to the time frame, the location, and the subject matter and language of the electoral campaign .

1 - Temporal Scope of the Electoral Campaign :

In order to achieve the principle of equality among candidates, the Algerian legislator has defined a specific time frame for electoral campaigning, which cannot take place outside this period⁷ . Accordingly, the electoral campaign opens 23 days before the election and ends 3 days before the election date. For a second round of voting, the campaign period begins 12 days prior and concludes 2 days before election day.. The campaign cannot take place outside these periods, regardless of the methods used by the candidate in the electoral campaign⁸.

All candidates in presidential elections are entitled to the same duration of allocated air time, equally. However, this may vary in local and legislative elections depending on the number of lists of candidates nominated by a political party or coalition of political parties, as stated in Article 77, Paragraph 2 of the same law.

2 - Spatial Scope of the Electoral Campaign :

The electoral legislation has focused on organising and defining the legal frameworks for spaces designated for the electoral campaign to ensure the principle of equality among candidates. It allocates spaces and areas for placing posters and electoral advertisements equally for all candidates to carry out their promotional activities.⁹

This was emphasised by the Algerian legislator in Article 82 of the 2021 Electoral Law, which stipulates the allocation of public spaces within electoral districts for posting candidacy materials and distributing their areas equally, while prohibiting publicity outside these spaces under penalty of criminal sanctions. Additionally, the use of places of worship, public institutions, administrative buildings, and educational and training institutions for electoral campaign purposes is forbidden in accordance with Article 84 of the same law.

3- The Substantive Scope of the Electoral Campaign :



The substantive scope of the electoral campaign refers to the campaign's subject and language, both of which are primarily based on constitutionally guaranteed freedom of expression. This freedom enables candidates to convey their ideas and explain their programs to the public. However, such freedom is not absolute to avoid infringing on the rights of others. For this reason, the Algerian legislator has defined the subject of the electoral campaign and regulated the language of discourse.

In this regard, the Electoral Law considers the electoral program to be one of the essential components that must be included in the candidacy declaration file, whether for local or legislative council elections, as stipulated in Articles 177 and 201 of the same law. Regarding presidential elections, Article 249 obligates every candidate to include a written pledge within the candidacy declaration, detailing a set of commitments to be adhered to during the electoral campaign and implemented if elected.

This obligation imposed by the legislator reflects the credibility of the candidate when addressing voters. Therefore, failure to adhere to this obligation or comply with it in case of winning is linked to criminal sanctions.¹⁰

In line with the provisions of the 2020 Algerian Constitution, as outlined in Articles 3 and 4, which recognise Arabic and Amazigh as national and official languages, the Electoral Law prohibits the use of foreign languages in electoral campaigns under penalty of criminal sanctions, as stipulated in Article 76.

Section II: Legal Regulations Governing Electoral Campaign Financing

Electoral campaign financing refers to the funds collected and spent to promote candidates, political parties, policies during elections, referendums, initiatives, and party activities.¹¹

To ensure the legitimacy of funding, the Algerian legislator has introduced a set of conditions and regulations governing electoral financing, thus providing a safeguard for the integrity of the electoral process. Ordinance No. 21-01, which includes the Organic Law on Elections, dedicates Chapter Two of Part Three to the financing and monitoring of electoral campaigns.

Based on this framework, we will address the legal regulations related to the source of revenues and expenditure ceilings, followed by the financial accounting of expenditures and their accuracy.

A) Legal Regulations on Sources of Revenues and Expenditures :

To ensure the fairness of electoral campaigns, the Algerian legislator, through the Electoral Law, has defined the sources of revenues for campaign financing and set a ceiling for expenditures.

1- Sources of Revenues for Electoral Campaign Financing:

Article 88 of Ordinance No. 21-01, which includes the Organic Law related to the Electoral System previously mentioned, prohibits any candidate for any national or local election from

receiving, directly or indirectly, monetary or in-kind donations or any other contribution, regardless of its form, from any foreign state, any individual, or any legal entity of foreign nationality. It also defined the sources of revenues for financing electoral campaigns as the contributions of political parties, the personal contribution of the candidate, state assistance, and donations from citizens.

– Contributions of Political Parties to Financing : Article 87 of Ordinance No. 21-01, which includes the Organic Law related to the Electoral System previously mentioned, affirmed that the resources of a political party for election financing are composed of membership fees, revenues generated from the party's activities, and monetary or in-kind donations provided by citizens as natural persons to the party. However, political parties do not benefit from state assistance for financing these elections.

– The Candidate's Personal Contribution: The candidate's personal contribution consists of their own private funds obtained legally¹². Article 5 of Executive Decree No. 17-118, which specifies the methods for financing electoral campaigns previously mentioned, defines it as the candidate's monetary funds and revenues derived from their movable and immovable properties.

– Assistance Provided by the State : The assistance provided by the state refers to the financial support granted to candidates to ensure balance, equality, and fairness among them in accordance with precise and defined legal regulations¹³. According to Article 87 of the Electoral Law, the state's assistance for financing electoral campaigns is allocated to young candidates on independent lists in legislative and local elections. If the candidate is independent and under 40 years old on election day, the state bears their campaign expenses to encourage independent youth candidacies and their participation in political life. This support specifically includes expenses for printing documents, publishing and advertising costs, hall rentals, and transportation costs, as outlined in Executive Decree No. 21-190, which defines the methods for the state's coverage of campaign expenses for young independent candidates¹⁴.

– Donations Provided by Citizens as Natural Persons : Candidates, whether independent or political parties, may receive donations, whether monetary or in-kind, from citizens as natural persons, provided that the source of these donations is national¹⁵, to finance their electoral campaigns.

If the donations are granted to political parties, the donated funds must be deposited into the party's specific account, which should be opened at a national banking or financial institution, either at its headquarters or at its branches across the country¹⁶.

As for donations from Algerians residing abroad to finance the electoral campaign, the Algerian legislator does not consider them as foreign financing, provided that the financing pertains to candidates or lists of candidates in constituencies abroad¹⁷.

2- Capping Expenditures:

The Algerian legislator has set a specific ceiling for electoral expenditures as a mechanism to ensure the credibility and integrity of the electoral process ¹⁸ . Regarding donations, the maximum amount for each natural person is set at 400,000 Algerian Dinars for legislative elections and 600,000 Algerian Dinars for presidential elections, in accordance with Ordinance No. 21-01, which includes the Organic Law related to the Electoral System, previously mentioned ¹⁹. Any donation exceeding 1,000 Algerian Dinars must be paid by cheque, automatic deduction, or a bank card, according to Article 91 of the same ordinance.

As for capping the candidate's campaign expenses, if it concerns presidential elections, the candidate's campaign expenses cannot exceed 120 million Algerian Dinars in the first round, and this amount increases to 140 million Algerian Dinars in the second round, according to Article 92 of Ordinance No. 21-01, which includes the Organic Law related to the Electoral System. If it concerns legislative elections, the expenses for each list cannot exceed 2,500,000 Algerian Dinars per candidate, according to Article 94 of the same ordinance.

B) Financial Accounting for Electoral Expenditures as a Mechanism for Ensuring the Integrity of Electoral Campaigns :

The Algerian legislator has required every presidential candidate and every list of candidates in legislative elections to prepare a report on the electoral campaign that includes a set of revenues obtained and actual expenditures, detailing their sources and authenticity²⁰ . The Electoral Campaign Financing Monitoring Committee is responsible for reviewing the accuracy and credibility of the entries in the electoral campaign account.

To provide further details on this, we will address the financial accounting procedures, and then the oversight of the accuracy of electoral campaign financing accounts.

1- Financial Accounting Procedures for Electoral Expenditures :

The campaign's financial secretary is tasked with preparing the electoral account and must adhere to the following procedures:

-Opening a single bank account for campaign financing, with the Bank of Algeria ensuring that each candidate or list of candidates holds only one account. The campaign's financial secretary must send the bank account details to the Electoral Campaign Financing Monitoring Committee²¹.

-The campaign's financial secretary collects the campaign funds and settles the related expenditures. They act as the sole intermediary between the candidate and the contributors who funded the campaign²².

-The financial secretary prepares the campaign account, signed by the candidate or the authorised representative, depending on the case²³, following a daily register they maintain and retain throughout the campaign. This register includes all revenues, according to their source, and all expenditures, according to their nature, whenever the source of funding is donations or state assistance²⁴.

-Verifying the supporting documents as well as the accuracy and credibility of the data recorded in the account.

-Submitting the electoral campaign account to the Electoral Campaign Financing Monitoring Committee. However, the submission of accounts is not mandatory by the auditor if the candidate or list of candidates did not receive donations from natural persons or grants from the state. Additionally, campaign accounts showing a deficit are not submitted to the monitoring committee unless the account is settled²⁵. In cases where the campaign financing revenues consist of donations received by the candidate or the list from natural persons and the account shows a surplus, the electoral campaign account submitted to the Electoral Campaign Financing Monitoring Committee must indicate the surplus resulting from the donated funds, as per Article 2 of Executive Decree No. 21-191, which specifies the conditions for transferring the surplus from donations under the campaign account to the Public Treasury²⁶.

2- Monitoring the Accuracy of Electoral Campaign Financing Accounts :

The campaign account must be submitted to this committee within two months from the date of the final results' announcement to review the accuracy and credibility of the operations recorded in the account, aiming to grant reimbursement for campaign expenses²⁷. The committee has six months to issue a decision to approve, amend, or reject the account. If this period expires, the account is considered approved²⁸.

In cases where electoral expenses exceed the authorised maximum limit, the committee determines the excess amount that the candidate must pay to the Public Treasury through a formal decision²⁹.

The committee also verifies the surplus related to resources originating from declared donations in the campaign financing accounts and determines the amount by issuing a decision notified to the candidate's financial secretary or the legally authorised representative of the list of candidates. The campaign's financial secretary must transfer this surplus to the Public Treasury within 30 days from the date of notification of the decision concerning the surplus by the Electoral Campaign Financing Monitoring Committee. The financial secretary must also provide proof of this payment to the committee³⁰. Additionally, a copy of this decision is sent to the National Independent Authority for Elections and the Public Treasury, as per Article 3, paragraph 2, of Executive Decree No. 21-191, which specifies the conditions for transferring the surplus resulting from donations under the electoral campaign account to the Public Treasury, previously mentioned.

Conclusion:

Through our study of this topic, we concluded that the electoral campaign is the phase proceeding Election Day, where real competition begins among candidates, each striving to convince the electorate of their electoral program as the primary goal of the campaign. This makes the campaign vulnerable to corruption and a lack of integrity.

In response, the legislator intervened through Ordinance No. 21-01, containing the Organic Law on the Electoral System, to regulate the electoral campaign phase. This is summarised in the following findings and recommendations:

Findings:

- The candidate presents their electoral program by utilising both traditional and modern media.
- The restriction of the place, time, subject, and language of the electoral campaign ensures the principle of equality among candidates and the candidate's credibility before the electorate.
- The limitation of electoral campaign revenues and the capping of spending.
- Subjecting the electoral campaign financing process to financial accountability.
- The legislator imposes criminal sanctions for violations of electoral campaign regulations, categorising them as electoral crimes.

Recommendations:

- The necessity of enacting explicit and specific legal provisions concerning electronic electoral propaganda, especially on social media platforms.
- Expanding the scope of criminalisation to include prohibited actions during the electoral propaganda phase, not limited to the use of public state property but also private property.
- The need to cap the total revenues of financing for each candidate.

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