

RESEARCH  
ARTICLE**Electoral Crime in Algerian Legislation: Between Substantive Provisions and the Challenge of Achieving Community Security Requirements****Sameut Amina**

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**Abstract**

Elections are the legitimate means of expressing the popular will of the people in the selection of their rulers. The right of every individual to participate in choosing those who govern or represent them in the ruling authorities of their state has been enshrined in many international instruments and national legislations, primarily through the rights to vote and run for office. Legal systems have established regulations to govern the electoral process, ensuring safety, integrity and transparency, and thereby guaranteeing the validity and authenticity of the results. These systems grant constitutional and administrative protection and have introduced criminal protections to enhance safeguarding against electoral crimes at all stages, from registration on electoral lists to the announcement of results. Researchers have highlighted the importance of this topic by shedding light on electoral crime due to its exacerbation in the social environment and its harmful effects on community security. In light of the prevalence of these violations and their repercussions, the following legal issue can be raised: To what extent are the criminal provisions in Algerian legislation sufficient to address electoral crime? This research paper first addresses the definition of electoral crime subject to criminal prosecution, then the substantive provisions of electoral crime and the challenges in achieving community security requirements.

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**Introduction:**

Elections and candidacy are fundamental to the democratic process and to achieving community security, as they enable citizens to elect their representatives at local, national and other levels. Elections are significant political events and crucial democratic choices for peoples and states alike, enabling citizens to exercise their constitutionally and legally guaranteed political rights. For elections to be free and fair, they must take place within a legislative and organisational framework that is free from political influence. Ensuring the integrity of the process and the credibility of the results is not enough; monitoring the proper application of these regulations is also essential.

From this perspective, diverse legislation has aimed to organise the electoral process and protect it from various violations, including abuses affecting electoral list registration, election conduct, threats to those overseeing the process and even registration itself, as well as candidacy and electoral campaigning. This includes identifying actions that undermine the integrity of the voting process and its ability to express true results, such as illegal voting, ballot box tampering, manipulation of voting papers and counting records, and coercing voters through unlawful intimidation and bribery, as well as attacks on those involved in the voting process.

As with other crimes, electoral crimes must have elements

that are defined by the legislator; if these elements are absent, the crime does not exist. These elements consist of material, legal and moral components. Electoral crimes have characteristics relating to both substantive and procedural aspects.

Elections are of great importance in the modern era as they are the most effective democratic means of assuming power and gaining access to legislative councils. Therefore, states are keen to adopt elections, allowing the popular will to choose those deemed fit to assume power on their behalf. The Algerian constitutional charter guarantees all citizens who meet the legal requirements the right to participate in political life, as set out in Article 56 of the 2020 constitutional amendment: 'Every citizen who meets the legal conditions has the right to vote and be elected.'

However, organising the electoral process is not a democratic act in itself unless it is accompanied by guarantees that enable voters to exercise their rights freely and democratically, free from influences that could compromise their will and freedom of choice.

To achieve this, the Algerian legislator has surrounded the electoral process at various stages with numerous legal guarantees that ensure its integrity against any forgery or falsification<sup>1</sup>. One of the most important of these is addressing anything that could disrupt the electoral process by criminalizing behaviors and acts that infringe upon and falsify the popular will.

The importance of delving into this topic lies in its role as legal awareness for the electorate, as any violation of the integrity and transparency of the electoral process constitutes an electoral crime warranting punitive measures against the perpetrator.

Thus, the objective behind the legislator incorporating criminal provisions in electoral laws that penalize behaviors posing a threat to the integrity of the electoral process is to preserve the principles governing the electoral process from any deviation or infringement<sup>2</sup>.

In light of the prevalence of these violations against elections and their repercussions on community security, the following legal issue can be raised: To what extent are the substantive criminal provisions sufficient to address electoral crime in Algerian legislation?

Additionally, the main issue raises the following question: How successful has the Algerian legislator been in curbing manipulation

n of the popular will through the criminalization of various acts that threaten the integrity of the electoral process?

To address this issue, we will use a range of scientific methods, including descriptive, analytical and comparative

approaches. The descriptive method will consider various opinions and legal theories relating to the phenomenon under study and its associated perspectives. The analytical method will involve studying and analysing various legal texts related to the substantive criminal protection of the electoral process, after they have been gathered and referenced, in accordance with the Organic Law on Elections (Order No. 21/01).

The comparative method will highlight the distinctive features of Algerian legislation, comparing it with provisions from other legal systems to identify deficiencies or shortcomings in Algerian electoral law.

This research paper is structured in two parts. First, it defines the concept of electoral crime subject to criminal confrontation. Second, it discusses the substantive provisions of electoral crime and the challenges of achieving community security requirements.

Finally, the research will conclude with a set of results and recommendations derived from this study.

**Section One: Defining the Concept of Electoral Crime Subject to Criminal Consequences**

This section will first discuss the concept of electoral crime, then address electoral forgery and its legal nature. Finally, it will examine the elements of electoral forgery.

### **First: the concept of electoral crime.**

The concept of electoral crime is a modern phenomenon that was not recognised previously. Consequently, there is no consensus on the terminology; some refer to it as electoral crimes, while others call it electoral violations. Regardless of the terminology used, unlawful acts that distort the results of the electoral process or pressure voters through inducement or intimidation fall under the category of electoral crimes or violations. Legal texts, whether electoral or punitive<sup>3</sup>, clarify the concept and define its general and specific elements. The seriousness of electoral crimes and violations lies in their aim to harm the electoral process, alter its results, obstruct its conduct and produce outcomes contrary to the true will of the voters. This ultimately undermines trust in the election results and their effectiveness<sup>4</sup>.

The Algerian legislator has opted for the more commonly used term 'electoral crimes'<sup>5</sup>, as set out in Chapter Eight of

<sup>1</sup> Khalaf, Muhammad Raef, "Electoral Crimes According to the Election Law: A Comparative Study Between Jordanian and Iraqi Law," a thesis submitted in partial fulfillment of the Master's degree in Public Law, College of Law, University of the Middle East, 2020, p. 12.

<sup>2</sup> Al-shammari, Munif Haws Al-Falah, previous reference, p. 186.

<sup>3</sup> If the acts that disrupt the electoral process fall under the category of voting crimes, electoral propaganda crimes, or crimes affecting the integrity and neutrality of the electoral process, some legislations prefer not to use the term "crime" in the electoral context and instead use similar phrases such as "acts related to elections" or "election-related crimes" or expressions like "manifestations of fraud in electoral processes." This may reflect a desire to lessen the impact of the word "crime" on people's perceptions. For more details, see: Dawood Al-Baz, *The Right to Participate in Political Life*, Cairo, Arab Renaissance House, 2002. Said Al-

<sup>1</sup> Algerian Constitution issued on 15 Jumada al-Awwal 1442 AH, corresponding to December 30, 2020, Official Gazette, No. 82.

<sup>2</sup> Order No. 21/01 dated 26 Rajab 1442 AH, corresponding to March 10, 2021, includes the organic law related to elections, Official Gazette, Algeria, No. 17.

<sup>3</sup> Al-Shammari, Munif Haws Al-Falah, *Electoral Crime*, Journal of Legal Sciences, College of Law, University of Baghdad, No. 1, 2021, p. 187.

the Organic Law on Elections, Order No. 21/01. The law also defines electoral crimes in the final paragraph of Article Two, considering them to be 'any act punishable by law, regardless of its nature, committed by any means that may affect or obstruct electoral or referendum processes'. Various doctrinal definitions link electoral crime to the integrity of the electoral process. They define it as 'any act or omission intended to harm the integrity of electoral processes at any stage, in a way that changes or alters election results in a way that is contrary to the truth, for which the law prescribes a criminal penalty'<sup>1</sup>.

While these definitions are important in highlighting the concept of electoral crime, they are not precise enough. The phrase 'assault on electoral processes' in the second definition is vague and requires clarification of when the electoral process begins and ends<sup>2</sup>.

Consequently, some doctrinal approaches have defined electoral crime based on the time period in which it is committed. These approaches state: 'It is a temporary crime with a unique and distinctive nature, committed in relation to the electoral process at all stages, from registration on electoral lists and campaign activities to voting, counting and announcing results.'<sup>3</sup> Others have derived an appropriate definition from the nature of electoral crime itself, identifying it as 'political crimes targeting the normal and proper conduct of the electoral process, which is the source of authority for rulers and elected officials'<sup>4</sup>.

From the above, a suitable definition of electoral crime can be formulated as follows: 'Any positive or negative act aimed at undermining the proper conduct of the electoral process by violating the freedom, legitimacy, integrity or secrecy of elections, whether before, during or after voting, for which the law prescribes a corresponding penalty.'<sup>5</sup>

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Sayed Ali, "Fundamental Principles of Political Systems and Contemporary Governance," Cairo, Dar Al-Kitab Al-Hadith, 2002.

<sup>1</sup> - Imad Al-Din Wadi "Electoral Crime in Algeria: A Study in Light of Order No. 21/01 on the Organic Law Related to the Electoral System," Journal of Rights and Freedoms, Vol. 10, No. 01, April 2022, p. 1528. Suleiman Al-Ghuwail, "Elections and Democracy: A Comparative Study," 1st Edition, Tripoli, Publications of the Higher Academy of Studies, 2003.

<sup>2</sup> - Hasni Shakir Abu Zaid, "Criminal Protection of Political Rights," PhD thesis, College of Law, University of Cairo, 1998, p. 201.

<sup>3</sup> - Mounir Mohammad Al-Afishat Al-Ajarmah, Akram Tarad Muhammad Al-Fayez, and Sara Mahmoud Abdullah Al-Irasi, "Electoral Crimes in the Election Law for the House of Representatives No. 6 of 2016," Studies in Humanities and Social Sciences, College of Law, Al-Zaytouna University, Jordan, Vol. 46, No. 02, 2019, Supplement 01, p. 354.

<sup>4</sup> - Al-Wardi Brahimi, "The Legal System of Electoral Crimes: A Comparative Study," Alexandria, University Thought House, 2008, p. 112.

<sup>5</sup> - Fair, R. C. (1978). The effect of economic events on votes for president. The Review of Economics and Statistics, 159-173.

Fiorina, M. P. (1978). Economic Retrospective Voting in American National Elections: A Micro Analysis. American Journal of Political Science, 22(2), 426-443.

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## Secondly, the definition of electoral forgery is as follows:

Based on the definition of electoral crime, an appropriate definition of electoral forgery can be formulated as follows: 'Any positive or negative act that undermines the proper conduct of the electoral process by affecting the credibility, legitimacy, integrity or transparency of elections, through forgery, before, during or after voting, for which the law prescribes a corresponding penalty.'<sup>6</sup>

## Thirdly, the legal nature of electoral crime:

This section will address the significant doctrinal debate surrounding the determination of the legal nature of electoral crime. It will then explore the criteria used by legal scholars to classify this crime.

### 1. Doctrinal debate on the legal nature of electoral crime:

There has been intense scholarly debate as to whether electoral crime should be classified as a regular crime or a political crime. In this context, scholars have divided into two groups: one considers electoral crime to be of a regular nature, while the other views it as inherently political.

#### A. Electoral crime as a regular crime:

One perspective views electoral crime as similar to ordinary crimes, often referred to as public offences. It is characterised as a crime that occurs within a specific timeframe during the electoral process. Proponents of this view argue that electoral crime is committed to achieve personal benefit, with the political motive or context merely disguising this interest. Such crimes are committed by individuals with a pre-existing criminal inclination; the political context merely facilitates this inclination<sup>7</sup>.

However, this perspective has faced criticism for several reasons. It has been argued that the nature of a crime should be determined according to general rules based either on the motive for committing it or on the nature of the right being violated. This perspective does not consider either of these criteria, yet the right violated in electoral crimes is inherently political. This, in turn, attributes the same political nature to the acts that constitute an infringement, rendering the political context — viewed by proponents of this perspective as merely a facilitating factor — irrelevant<sup>8</sup>.

#### B. Electoral Crime as a Political Crime:

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Fiorina, M. P. (1981). Retrospective Voting in American National Elections. Yale University Press.

Griffin, J. D., & Newman, B. (2005). Are Voters Better Represented? The Journal of Politics, 67(4), 1206-1227.

<sup>6</sup> - Mohammed Mounir Hijab, "Campaign Management: Your Path to Winning Elections, Cairo, Dar Al-Fajr for Publishing and Distribution, 2007.

<sup>7</sup> - Khalaf Mohammed Rafik, Previous Reference, p. 6.

<sup>8</sup> - Nolan Siegel, "Crime and (Electoral) Punishment: Violence and Voting in the United States," Thesis, Faculty of the Graduate School of Vanderbilt University, 2023. Carmines, E.G., & Stimson, J.A. (1980). The Two Faces of Issue Voting. The American Political Science Review, 74(1), 78-91.

Proponents of this view argue that electoral crimes are political crimes because their motive or purpose is political<sup>1</sup>. Additionally, the right infringed is also political, since electoral crimes are committed by offenders influenced by altruism and devotion to their country in moments of emotional upheaval<sup>2</sup>.

While supporters of this perspective agree that electoral crime has a political nature, they differ in the criteria they use to define it<sup>3</sup>, which we will detail in the following section.

### C. Criteria for distinguishing between ordinary crimes and political crimes:

Legal scholars typically use two main criteria to differentiate between political and ordinary crimes: the objective and subjective or personal criteria.

#### Objective criterion:

A significant proportion of legal scholarship favours the objective criterion, which is based on the nature of the crime itself – specifically, the type of interest that the law seeks to protect – to determine the crime's legal nature. Therefore, any crime that affects the entity of the state or its political and constitutional system is considered political. Examples include assaults on the constitution, state security, political rights and freedoms guaranteed by the state to citizens in various areas, such as freedom of the press, freedom of belief and worship, and the right to assemble and establish associations.

One advantage of this criterion is that it derives from the nature of the right being infringed. This consideration determines the severity of the crime and the location of the resulting harm, as the right to vote is a political right that allows its holder to seek judicial protection against infringements that prevent its exercise or diminish that exercise. Therefore, electoral crime is classified as a political crime due to its attack on a political right<sup>4</sup>.

This is the criterion adopted by the Sixth International Congress for the Unification of Criminal Law held in Copenhagen in 1935, which defined political crimes as those committed against the state's system or its constitutional institutions, as well as crimes against citizens' political rights<sup>5</sup>.

#### - Subjective or personal criterion:

<sup>1</sup> Political crime is based on several considerations, including that the political criminal is stripped of the types of criminality that lead an ordinary criminal to commit a crime, being driven by a noble and lofty goal aimed at serving the public good.

<sup>2</sup> Al-Shar' Talib, "Electoral Crime," *Karbala Journal*, Iraq, Vol. 7, No. 03, 2016, p. 184

<sup>3</sup> Khalaf Mohammed Rafik, Previous Reference, p. 21.

<sup>4</sup> Al-Shammari, Munif Hwas Al-Falah, Previous Reference, p. 193.

<sup>5</sup> Cummins, J. (2009). Issue Voting and Crime in Gubernatorial Elections. *Social Science Quarterly*, 90(3), 632-651.

Dennison, J. (2019). A Review of Public Issue Salience: Concepts, Determinants, and Effects on Voting. *Political Studies Review*, 17(4), 436-446.

Supporters of this criterion determine the legal nature of the crime based on the perpetrator's internal motive for committing it. A crime is considered political if the purpose or motive behind committing it is to indirectly harm the political interests of the state. This could involve manipulating voting results in favour of the ruling party's candidate to ensure their victory and maintain the political system, or conversely, manipulating results to favour a candidate from the opposition party to enable them to take power and change the current political system.

Additionally, if a candidate or party receives electoral campaign funding from a foreign entity or buys votes to alter election results<sup>6</sup> and thereby change the system of governance, these actions are deemed political crimes.

However, if a crime is committed for political reasons after the electoral process has ended and the results have been announced, for example due to dissatisfaction with the outcomes, or as an act of revenge or spite by electoral opponents, the motive is not considered political<sup>7</sup>. Proponents of this view argue that electoral crimes are political in nature due to their characteristics, which are based on the following elements:

The motive for these crimes is political.

The perpetrator's aim is to change the political system of the state.

The right being infringed upon is a political right: specifically, the violation of individuals' general political rights.

However, it is important to note that this criterion is broad and vague, meaning that ordinary crimes or public offences can be classified as political crimes simply because the motive or purpose behind them is political.

In this regard, French legal scholars generally consider electoral crimes to be political, as they constitute an assault on the right to vote, which is a political right guaranteed to citizens. Moreover, these crimes are inherently political and their political nature is beyond dispute, regardless of the perpetrator's motive.

The French Court of Cassation supports this perspective, regarding offences committed in electoral matters as political crimes that cannot be compared to ordinary public offences. In contrast, the Egyptian Court of Cassation prioritises the subjective criterion over the objective one when classifying electoral crimes as political crimes.

#### Third: types of electoral crimes.

The types of electoral forgery are as varied as the stages of the electoral process. This section will first discuss the types of electoral crimes stipulated by the legislator to combat manipulation of the electoral process during the preliminary phase, and then address those during and after voting day.

#### 1. Types of electoral crimes during the preliminary phase:

The smooth and orderly conduct of the electoral process requires sound, accurate and error-free procedures, as well

<sup>6</sup> Khalaf Mohammed Rafik, Previous Reference, p. 22.

<sup>7</sup> Al-Shammari, Munif Hwas Al-Falah, Previous Reference, p. 193.



as compliance with the relevant standards and controls. If these standards are violated, the entire electoral process is inevitably compromised. The crimes in this phase vary according to which rights are infringed, and we will discuss them as follows:

#### **A. Crimes related to improper registration or removal from the electoral list:**

Registration on electoral lists is mandatory for exercising the right to vote. Even if they meet all the legal requirements to exercise this right, no citizen can vote in general elections or referendums unless their name is included on the electoral list. This list contains the names of eligible voters and is known as the national voter card. It is prepared, maintained, updated and periodically reviewed by the Independent National Authority for Elections for each electoral occasion.

Thus, the accuracy and freedom from defects of electoral lists, as well as their immunity from fraud, forgery and manipulation, are crucial to any electoral system. Various methods are employed by legislation to achieve this, one of the most important being the criminalisation of actions that affect the integrity of these lists or alter their content through forgery or fraud, such as the deliberate addition, removal, or double registration of individuals.

The Algerian legislature has adopted this approach by criminalising a range of acts relating to electoral list tampering, without distinguishing between single and repeated registrations. They have chosen to criminalise actions that violate the registration rules on electoral lists indiscriminately. This includes anyone who registers themselves on more than one electoral list under false names or identities, conceals a disqualifying condition as stipulated by law during registration, or forges the issuance or presentation of a registration or removal certificate.

Additionally, obstructing the processes for maintaining these lists, destroying voter cards, hiding them, transferring them or forging them is also included.

Crimes relating to electoral registration are intentional offences that require criminal intent. This means that the perpetrator must have fraudulent intent, for example, knowing that their name is already on one electoral list but deliberately registering again on another. Therefore, these crimes cannot be committed if a person is unaware that they have already been registered in another electoral district.

Electoral crimes include registering or attempting to register someone, or removing a person's name from an electoral list without justification, using false statements or forged certificates.

Such actions also constitute electoral crimes if they affect or attempt to tamper with automated electoral data processing systems. Additionally, anyone who votes based on a registration obtained under the conditions specified in Article 278 of this Organic Law; anyone who impersonates registered voters; and anyone who takes advantage of multiple registrations to vote more than once is also considered to have committed an electoral crime.

#### **B. Crimes Related to Candidacy:**

Article Two, paragraph four of Order 01/21 defines a candidate as "any person who runs for election under the banner of a political party or as an independent." This implies that the candidate is the second key party in the electoral process after the voter, whose role is to compete with other candidates, whether they are independents or part of party lists. Individuals wishing to run for office must submit their candidacy after the presidential decree calls the electorate to vote, which also specifies the date for these elections, whether presidential, legislative, or local.

The right to candidacy is defined as a legal act through which a person explicitly and officially expresses their desire to run for election, either individually or as part of an electoral list, while meeting all the required conditions for each type of election. Constitutions strive to guarantee the right to candidacy for all citizens equally, provided they meet the necessary legal requirements. Article 56 of the 2020 constitutional amendment states: "Every citizen who meets the legal conditions has the right to vote."

Electoral legislation criminalizes actions that violate the right to candidacy, such as running in more than one list or in multiple electoral districts in a single election, to protect the rules of fair competition and the voter's freedom of choice. The Algerian legislator has also criminalized the act of a voter signing or marking more than one list; in the case of violation, the signature is considered null and void.

#### **C. Crimes Related to the Electoral Campaign:**

The electoral campaign is an important stage in the electoral process, as exercising political rights through referendum or election requires it. Candidates use various methods to promote their political programmes to as many citizens as possible. It is important to recognise that candidates have the right to contact voters in a variety of ways that fall under the umbrella of electoral campaigning or advertising.

However, electoral campaigns can lead to legal violations by candidates and parties. These include failing to adhere to designated campaign locations, exceeding the permitted campaigning duration, engaging in misconduct regarding advertisements or campaign spending limits, spreading false or misleading information, and inciting regional, ethnic or religious tensions against other candidates, parties or institutions.

Due to the serious impact of these actions on the electoral campaign and process, electoral legislation pays significant attention to them by imposing restrictions to provide the greatest possible guarantees for candidates, their opponents and voters. These restrictions ensure the regularity and integrity of the electoral campaign, striving to achieve the greatest degree of equality among candidates and thereby promoting the integrity and transparency of the electoral process.

#### **2. Types of Electoral Crimes During the Current Voting Day:**

Voting is the physical process through which voters exercise their political participation, essentially manifesting the will of individuals who are eligible to vote in a specific

form, expressing their choice among competing candidates based on certain convictions and reasons.

Electoral crimes can be committed during the voting process or afterward when the counting and announcement of results begin. This stage is particularly fertile for various electoral crimes, as its impact on the results is significant, making it a critical phase in determining the outcomes of the electoral contest.

This occurs when individuals in positions of responsibility intentionally record and announce false numbers, either by adding or deleting them. A review of the Algerian legislature's stance reveals that crimes committed at this stage fall into two categories: the first relates to the voting process itself and the second to the counting of votes.

#### **A. Crimes affecting the voting process:**

Election day is momentous and decisive, determining the fate of candidates and distinguishing winners from losers. It also clarifies the results for political blocs and parties, distinguishing between majorities and minorities. Therefore, electoral crimes committed on this day are the most serious type of electoral offence, given their direct impact on the final results of the electoral process and the share allocated to each candidate.

The Algerian legislator has indicated several actions that may constitute crimes related to this phase, such as voting by impersonating another person.

#### **B. Crimes Related to the Counting Process:**

Once the voting process has concluded and the polling station has closed, the next important phase of the electoral process begins: counting the contents of the ballot boxes in preparation for announcing the results. Various actions and behaviours may emerge here that constitute an assault on the transparency and integrity of the electoral process, with the aim of altering the results in favour of a particular candidate or list. This includes intentional alterations by those responsible for counting the votes, such as misrepresenting the names on ballots cast by voters or incorrectly receiving ballots containing voters' votes.

These actions are criminalised because they represent a clear violation of the electorate's freedom of choice.

### **Section Two: Substantive Criminal Provisions for Electoral Crimes and Challenges in Achieving the Requirements for Community Security**

As with other public law crimes, electoral crimes result in a public lawsuit, initiated by one of the parties involved in the electoral process. This could be a candidate or a voter whose right to stand for election or vote has been infringed. The Independent National Authority for Elections must notify the competent public prosecutor immediately when it believes that any recorded or reported actions have a criminal nature<sup>1</sup>.

If the criminal judge is convinced that the defendant committed the electoral crime charged, they will impose the appropriate penalties stipulated in Order No. 21-01, the

organic law on the electoral system, or one of its supplementary laws.

Ensuring community security is one of the most significant challenges facing the Algerian state. In order to combat electoral crime, substantive criminal provisions must be applied.

Before discussing the penalties for electoral crimes, it is essential to outline the elements that constitute these crimes. These are detailed as follows:

#### **First: the necessary elements for electoral crimes.**

Like other crimes, electoral forgery requires a set of elements, including the legal, material and moral elements.

#### **1. The Legal Element of Electoral Crime:**

For an electoral crime to exist, the legal element must be present, which means that the behavior must conform to a prohibitory legal text, and the action must not be accompanied by any of the justifications outlined in Articles 39 and 40 of the Algerian Penal Code<sup>2</sup>, so that liability does not cease and the act does not become permissible.

The principle of legality in criminal law means that there must be a legislative text that criminalizes the criminal behavior constituting the crime. This is an application of the general rule that there is no crime without law, and that the law has a single source: written law. This distinguishes it from other branches of law, which may include other sources such as custom or Islamic law; in criminal law, supplementary sources are not consulted.

As defined by legal scholars, the principle of legality refers to the applicable criminalisation text for an act, which specifies the act constituting the crime and the punishment imposed on its perpetrator.

This concept relies on the existence of legislative texts that criminalise behaviour affecting the electoral process, whether positive (an action that is criminalised by law) or negative (the omission of an action that is required by law and carries a criminal penalty).

In the context of electoral crimes, legality means that there is a legal system which clearly defines and includes all actions that disrupt the proper conduct of the electoral process. These actions can be carried out by parties involved in the electoral process or by others throughout the various phases of the electoral process.

In Algerian legislation, this principle is enshrined in all Algerian constitutions; the most recent of these is the 2020 amendment, which states the following in Article 43: 'No conviction shall be made except under a law enacted before the commission of the criminal act', and Article 44: 'No one shall be prosecuted, detained or arrested except under the conditions specified by law and in accordance with the procedures provided for...'

The Algerian Constitution protects individuals and society by ensuring that no citizen can be condemned by public authority unless it is based on a legal text that clearly indicates what is prohibited. This principle safeguards individ-

<sup>1</sup> See: Article 49 of Order No. 21-01 mentioned above.

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<sup>2</sup> Law No. 06-24 dated April 28, 2024, amending and supplementing Order No. 66-56 regarding the Algerian Penal Code.

uals against the arbitrary actions of public authorities and protects society from crime. The prohibited acts and their associated penalties are clearly defined, embodying the principles of the rule of law and the separation of powers, both of which are fundamental to modern states.

Law No. 21-01 defines electoral crimes and the associated penalties in Articles 276 to 313 of Chapter Eight, which is titled 'Electoral Crimes'. This law specifies electoral crimes and their elements, as well as the legal penalties assigned to them. The legal element forms the basis for a conviction. Some scholars argue that the distinguishing feature of the legal element is that it is not subject to proof, based on the general principle that judges know the law. The burden of proof does not lie with the parties and ignorance of the law by the judge cannot be invoked as a defence. It is the judge's duty to seek and correctly interpret the applicable legal text relevant to the case presented.

A criminal judge must interpret the legal text strictly and cannot criminalise an act that is not explicitly prohibited by law, as they cannot assume the role of legislator. Legislation is the prerogative of the legislative authority, thus ensuring the separation of powers principle, whereas the role of the judge is to apply the law and not to create legal texts.

In electoral crimes and other offences, the criminal rule restricts the sources of criminalisation and punishment to legislative texts only, i.e. written laws, to ensure justice. Judges are obligated to interpret these texts, revealing their meanings and seeking the legislator's intent, without creating new crimes or penalties. Therefore, analogies are prohibited, as the judge's role is to apply the law, not to invent new offences.

## 2. The material element of electoral crime:

The law does not punish thoughts or intentions unless they manifest as criminal behaviour. The material element is the practical expression of criminal intent. From a legal standpoint, it marks the transition from the realm of thought, planning and preparation to execution, representing the birth of the crime. It encompasses the physical aspects of the crime and its manifestation, including the tangible acts committed by the perpetrator that violate electoral law and affect the integrity and transparency of elections. This element consists of three components: criminal behaviour; the result; and the causal relationship.

The material element is divided into three components. The first is the positive or negative act (omission), which must be voluntary. The second is the result, which is a necessary condition for the existence of the material element. The third is the causal relationship, which links the criminal behaviour to the criminal result.

Thus, the elements of the material component in electoral forgery are embodied in the criminal behavior of a rational individual, whether it is positive or negative, leading to a result that harms the electoral process and affects its proper conduct, legitimacy, and integrity.

A positive act may involve the perpetrator taking a voluntary physical action, such as registering in multiple electoral lists, forging electoral lists, unlawfully removing a person from an electoral list, intentionally reading a name not

registered on the ballot, or altering voting papers to render them invalid in order to reduce the number of votes for a specific candidate or list. This may also include deleting votes intended for a candidate to prevent their victory or increasing the count in the results to assist a candidate or party in winning.

Conversely, a negative act is the perpetrator's failure to fulfil a legal obligation. Examples include a candidate refusing to submit an account of their campaign expenses, failing to remove their campaign posters from a location designated for another candidate, or a person refusing to comply with a directive to set up a polling station or participate in organising an electoral consultation.

The criminal result is the material effect of violating the integrity and transparency of the electoral process, which impacts its credibility and alters the true outcome of the vote. This result is a necessary condition for the existence of the material element: a crime cannot occur without a result being achieved.

The causal relationship is the link between criminal behaviour and the criminal result, attributing the outcome to the crime. The law punishes attempts in the same manner as completed crimes and the presence of the material element is an objective matter, subject to the trial judge's discretion, with the burden of proof on the prosecution.

Some scholars argue that the prosecution must prove the material element of the crime, whether it is a positive act, an omission, or aggravating circumstances, and whether it is a completed act, an attempt, or complicity. They must provide evidence that this act or omission occurred and that the accused committed it.

## 3. The Moral Element of Electoral Crime:

For a crime to be constituted, both material and legal elements must be present. However, the act must be carried out of the free will of the accused and the offence must be committed intentionally and purposefully. This means that the perpetrator intends to commit the criminal act, reflecting the psychological relationship between the perpetrator and the crime and expressed as criminal intent.

Criminal liability only occurs if the act is the result of a freely chosen will directed towards intentional commission. The moral element of a crime therefore takes two basic forms: intentional wrongdoing (criminal intent) and unintentional wrongdoing (negligence and lack of caution).

Electoral crimes are intentional; therefore, negligence is not presumed. By committing these crimes, the moral element is realised: the intention of the perpetrator to commit the criminal act, meaning it is done of their own volition. This is based on general criminal intent, consisting of knowledge and will, meaning that the perpetrator knows the act is punishable by law yet still commits it.

In electoral forgery, the moral element is evident in the perpetrator's awareness that their actions are contrary to the law and undermine the integrity of the electoral process as a whole. Nevertheless, their intention is to support a particular candidate at the expense of another through forgery.

Additionally, electoral forgery requires specific criminal

intent, meaning the perpetrator intends to disrupt the electoral process and its credibility and transparency through forgery to achieve a personal goal.

Therefore, electoral crime is intentional, and the legislator requires criminal intent and knowledge of legal violations.

## 2. Penal sanctions established for electoral crimes:

It should be noted that most of the primary penalties outlined in the aforementioned order for electoral crimes involve imprisonment alongside fines. These penalties are both custodial and financial, and in some cases, the legislator has made them optional for other crimes<sup>1</sup>.

In addition to the primary penalties, the Algerian legislator has imposed supplementary penalties for certain electoral crimes, which will be discussed below.

### 1. Primary penalties for electoral crimes:

The primary penalties for electoral crimes are addressed according to the phase in which the criminal behaviour occurs.

#### 1.1 Penalties for crimes related to registration on electoral lists:

The Algerian legislator specified these penalties in Article 278 of Order 21-01, which states: 'Anyone who registers on more than one electoral list using false names or titles, or who conceals a disqualifying condition during registration, shall be punished by imprisonment for a period of between three and three years, and a fine ranging from 4,000 to 40,000 DZD.'

The judge has discretion over the minimum and maximum limits for imprisonment and fines, based on the severity of the criminal act, but both must be applied simultaneously.

#### A. Penalties for Regulating Electoral Lists and Related Documents:

The Algerian legislator has enacted contemporary penalties for crimes related to the regulation of electoral lists, which include:

#### B. Penalty for Forging Registration Certificates or Removing Names from Electoral Lists:

The Algerian legislation has a specific provision for the crime of forging registration certificates or removing names from electoral lists. Those convicted of this will face imprisonment and fines according to Article 279 of Order 21-01, which states: "Any forgery in the issuance or presentation of a registration certificate or removal from electoral lists shall be punished by imprisonment for six (6) months to three (3) years and a fine of 6,000 DZD to 60,000 DZD".

Attempts to commit this crime are punishable by the same penalty.

#### C. Penalty for Forging or Concealing Voter Cards:

Article 280 of Order 21-01 states that those who forge or conceal electoral lists shall be punished with the penalties

specified in Article 279 (referring to the penalties in Article 279), which includes imprisonment for six (6) months to three (3) years and a fine of 6,000 DZD to 60,000 DZD.

Penalties are heightened if these violations are committed by officials responsible for electoral operations, with penalties potentially doubling to imprisonment from one (1) to six (6) years and fines from 12,000 DZD to 120,000 DZD.

#### D. Penalty for Using Fake Declarations or Forged Certificates:

According to Article 282 of Order 21-01, anyone using fake declarations or forged certificates shall be punished by imprisonment for between three and three years, and a fine ranging from 6,000 to 60,000 DZD.

#### 1.2 Penalties for Crimes Disrupting the Voting Process:

Article 285 of Order 21-01 states that anyone who votes based on registration obtained under the conditions specified in Article 278 of this organic law shall be punished by imprisonment for three to three years and a fine of 4,000 to 40,000 DZD if they:

- register themselves on more than one electoral list under false names or titles or conceal a disqualifying condition during registration;
- Impersonated the name or title of a registered voter.
- took advantage of multiple registrations to vote more than once.
- Registered themselves on more than one electoral list or in multiple electoral districts in a single election.

#### 1.3 Penalties for crimes committed during the counting process and announcing results:

The Algerian legislator has increased penalties for those responsible for offences committed during the counting process and announcement of results:

- Receiving ballots containing voters' votes;
- Counting or sorting them while reducing or increasing the count in the report or altering them.
- Reading names not registered on the ballots during the vote counting process in polling stations, as per Article 286 of Order 21-01. The penalty for this offence is imprisonment for between five and ten years, and a fine ranging from 100,000 to 500,000 DZD.

Article 299 of the same order stipulates penalties of imprisonment for five (5) to ten (10) years and a fine of 100,000 DZD to 500,000 DZD for any misconduct during voting by any member of the polling station or by an appointed official responsible for overseeing the ballots being counted.

#### 2. Supplementary Penalties for Electoral Crimes:

Additionally, a perpetrator of the offense of using fake declarations or forged certificates may be deprived of their civil rights for a period of at least two years and a maximum of five years (Article 282 of Order 21-01).

Referring to Article 9 bis 1 of the Algerian Penal Code, which defines the deprivation of civil rights as the loss of the right to vote or run for office.

#### Conclusion:

<sup>1</sup> - See: Articles 306 and 308 of Order No. 21-01 mentioned above.



This study addressed the topic of “Electoral Crime in Algerian Legislation - Between Substantive Provisions and Challenges in Achieving Community Security Requirements,” in light of Order No. 01/21, which includes specific provisions related to elections. Chapter Eight of this order discusses various behaviors that constitute electoral crimes, which must be addressed through the imposition of strict penalties on their perpetrators. This study reached several findings followed by a series of recommendations, summarized as follows:

**Firstly, the key findings of this study are as follows:**

1. Electoral crimes are evident in any act or omission that affects the proper conduct of the electoral process, regardless of who commits them or their purpose.
2. Despite the importance of providing criminal protection for the electoral process to ensure its integrity and transparency, and despite addressing various behaviours that violate the safety and integrity of the electoral process, this protection has proven insufficient to effectively deter corruption. This is because those tampering with elections can easily evade punishment due to the difficulties in proving these crimes and the trivialisation of the prescribed penalties.

**Second – Key Recommendations from This Study:**

1. Penalties for crimes affecting the integrity of various stages of the electoral process need to be tightened to prevent individuals from manipulating people’s votes or diverting them from their intended purpose. This can only be achieved by establishing a real deterrent against those manipulating the popular will. This requires reconsidering many of the penalties for electoral crimes, as they are currently too lenient and do not correspond to the severity of the offences committed or the objectives of the penalties as deterrents. Therefore, actions that undermine the integrity of the electoral process should be classified as felonies rather than misdemeanours or simple offences, as they involve the manipulation of the foundations and integrity of the state.

2. It is essential to expand the scope of criminalisation to include certain behaviours overlooked by the legislature, such as candidates hosting electoral banquets close to election dates. This has become one of the most effective ways to gather and engage with the electorate before election day.

3. Efforts should be made to instil constant awareness among all members of the electorate that ensuring electoral integrity is their sacred national duty, comparable to other national responsibilities and obligations. Any attack on the credibility of elections is considered a crime that threatens national stability and is akin to treason.

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