



The Relationship Between the Constitutional Court and the Electoral System in Algeria -An Analytical Study-

¹ **BALA ABDELAALI***

¹ The State Laboratory for Health and Food Community Security, Abbes Laghrour University of Khenchela, (Algeria)

ABSTRACT: The Algerian Constitutional Court is considered one of the most important independent oversight institutions, tasked with ensuring respect for the Constitution, and exercising certain competencies that are connected to other constitutional institutions and bodies, such as the National Independent Authority for Elections tasked with ensuring respect for the transparency of the electoral process across its various stages. The scope of the Constitutional Court's intervention in its relationship with the independent authority is determined through the provisions of the Organic Law on Elections 21-01, as an institution that exercises both prior and subsequent oversight over elections of a national character.

Keywords: Constitutional Court; Algeria; Elections; Relationship; Order 21-01; Analytical Study.

Received: 10-10-2025

Accepted: 15-01-2026

Published: 06-03-2026

1. Introduction

The Algerian legislator, through the provisions of Order No. 21/01, which includes the Organic Law on Elections, established many rules and principles aimed at readjusting the electoral process across its various stages, in pursuit of instilling ethics in political life as a new concept based on the principles of integrity and transparency, which most legislations seek, including Algerian legislation.

To ensure the integrity and credibility of the electoral process, the task of preparation, supervision, and oversight was entrusted to an independent authority that enjoys full powers and guarantees to achieve this purpose. The Algerian constitutional founder, through the 2020 constitutional amendment and the provisions of Order No. 21/01, also granted the Constitutional Court a set of powers in the field of presidential and legislative elections, and even referendum operations, which clarifies the relationship existing between the Court as an oversight institution on the one hand, and the provisions of the Organic Law on Elections as the legal framework that defines and regulates the electoral process in its various types and stages on the other hand.

Starting from the fact that the Constitutional Court in Algeria exercises prior and subsequent oversight over the electoral process, we sought to raise the following problem:

Is the scope of the Constitutional Court's intervention within the framework of the provisions of Order No. 21/01 broad, or is it restricted?

To answer this problem, we attempted to divide the study plan into four sections:

1. The Powers of the Constitutional Court in the Field of Declaring Candidacy for Presidential Elections

Declaring candidacy for the Presidency of the Republic is a registration request that is submitted by the candidate personally to the President of the Independent Authority, in exchange for a receipt of submission, and this declaration includes the concerned person's first name, last name, profession, and address¹.

¹- Article 249, paragraphs 01 and 02, of Order No. 21/01.

The declaration of candidacy is submitted to the Independent Authority for Elections within a maximum period of forty (40) days following the publication of the presidential decree calling the electorate, and the Independent Authority for Elections then rules on the validity of the candidacies submitted to it in the form of a request accompanied by a file, by means of a reasoned decision with legal reasoning, whether in the case of acceptance or rejection.

1.1 Ruling on the Validity of Candidacies by the Independent Authority

The validity of candidacies for the election of the President of the Republic is ruled upon by a competent authority, within specific legal deadlines, and the decision of acceptance or rejection is communicated to the concerned candidate, after which the Constitutional Court issues the decision approving the final list.

1.1.1 The Competent Authority to Rule

The Independent Authority for Elections rules on the validity of candidacies for the Presidency of the Republic submitted to it in the form of a request accompanied by a file, by means of a reasoned decision with legal reasoning, whether in the case of acceptance or rejection.

1.1.2 The Legal Deadlines for Ruling

The deadline granted to the Independent Authority to examine declarations of candidacy and decide on them is seven (07) days, calculated from the date of submitting the declaration of candidacy, as confirmed by Article 252 of Order No. 21/01.

1.1.3 Notification of the Decision to the Candidate

The declaration of candidacy is decided upon by means of a decision that includes either approval of the request after fulfilling the legal conditions, or rejection for failure to fulfill the legal conditions, and it is then communicated directly to the candidate.

1.2 Issuing the Decision Approving the Final List of Candidates by the Constitutional Court

The Independent Authority sends its decisions related to candidacies, accompanied by the candidacy files, to the Constitutional Court within a deadline not exceeding twenty-four (24) hours from the date of their issuance.

Based on the last paragraph of Article 252 of Order No. 21/01, the Constitutional Court has the final decision in determining and approving the list of candidates for the election of the President of the Republic. In this context, it rules on appeals submitted against the decisions of the Independent Authority that include the rejection of candidacies, and it approves the final list by means of a decision within a deadline not exceeding seven (07) days from the date of sending the last decision of the Independent Authority. This decision is published in the Official Gazette of the People's Democratic Republic of Algeria.

1.3 The Role of the Constitutional Court in Case of Withdrawal, the Occurrence of an Impediment, or the Death of the Candidate

After the Constitutional Court approves the candidacies in the form of a decision before publishing it in the Official Gazette, the candidate's withdrawal is not accepted or taken into account except in the case of a serious impediment that the Constitutional Court legally establishes, or in the case of the death of the concerned candidate. In that case, a further deadline is granted to submit a new candidacy, which may not exceed the month (01) preceding the date of the vote.

As for the case where the Court's decision has been published in the Official Gazette and the candidate dies or is struck by a serious impediment, the date of the vote is postponed for a maximum period of fifteen (15) days.

2. The Powers of the Constitutional Court in Receiving the Minutes of the Provisional Election Results

The voting process is subject to a set of legal conditions and procedures prescribed under the provisions of Order No. 21/01, followed immediately by the counting process, which is also subject to legal rules, the most important of which are the preparation of vote-counting minutes and the mandatory delivery and transmission of copies thereof to specific parties and bodies.

The Constitutional Court constitutes one of these parties to whom the original minutes relating to the provisional results of the election of the President of the Republic, the election of the National People's Assembly, and the Council of the Nation must be delivered, in accordance with legal procedures set out in the provisions of Articles 238, 270, 271, and 272 of Order No. 21/01.

2.1 As for the Election of the National People's Assembly

The provisions of Articles 270 and 271 of Order No. 21/01 set out the deadlines for completing the committee's work, and the methods for delivering copies of its minutes to the competent authorities.

2.1.1 Deadlines for Completing the Committee's Work

The work of the provincial electoral committee or the electoral district committee must be completed within a maximum of ninety-six (96) hours following the closing of the vote, with the possibility of extending this deadline for a maximum period of forty-eight (48) hours by the President of the Independent Authority.

2.1.2 Delivery of an Original Copy of the Minutes

An original copy of the minutes is delivered immediately to the President of the Independent Authority in exchange for a receipt of delivery, as set out in the provisions of Article 271, paragraph 03, of Order No. 21/01.

2.1.3 Delivery of a Certified True Copy

A non-original copy of the minutes of the provincial electoral committee is delivered to each of the following:

- The legally qualified representative of each candidate, in exchange for a receipt of delivery
- The coordinator of the provincial delegation of the Authority, or his representative.

2.1.4 Filing the Minutes of the Provincial Committee with the Registry of the Constitutional Court

The provincial committee files its minutes on the consolidation of results, the municipal vote-counting minutes, and their annexes in a sealed envelope with the registry of the Constitutional Court in exchange for a receipt of delivery².

2.2 As for the Election of the Council of the Nation

The provisional results of the election of the elected members of the Council of the Nation are announced by the President of the Independent Authority within forty-eight (48) hours of the Independent Authority's receipt of the vote-counting minutes and the consolidation of results³. The candidate who obtains the largest number of votes is declared elected, according to the number of seats to be filled, and in the event of a tie in votes, the older candidate is declared elected, contrary to the other elections (local and legislative) in which the youth criterion is taken into account.

The President of the Independent Authority sends to the Constitutional Court, without a specified deadline:

- The provisional results

²- Article 271, paragraph 02, of Order No. 21/01.

³- Article 238 of Order No. 21/01.

- The vote-counting minutes prepared at the level of the polling station or polling stations
- The minutes of the consolidation of results prepared by the committee formed by the heads of the polling stations and their deputies in the event that there is more than one polling station.

Accordingly, the Constitutional Court receives the minutes of the consolidation of the provincial election committees prepared by them, the municipal vote-counting minutes, and their annexes from the President of the Independent Authority in a sealed envelope, in exchange for a receipt of delivery, if it concerns the election of the National People's Assembly.

However, if it concerns the election of the members of the Council of the Nation, it receives the provisional results of these elections announced by the President of the Independent Authority, as well as the vote-counting minutes prepared at the level of the polling station or polling stations, and the minutes of the consolidation of results prepared by the committee formed by the heads of the polling stations and their deputies in the event that there is more than one polling station.

2.3 As for the Election of the President of the Republic

When it comes to the election of the President of the Republic, the committee is granted a somewhat longer time period compared to the elections of the Municipal People's Assembly and the Provincial People's Assembly, as well as the National People's Assembly.

2.3.1 Deadlines for Completing the Committee's Work

The work of the provincial electoral committee must be completed, in the case of presidential elections, within a maximum of seventy-two (72) hours following the closing of the vote, without the possibility of extending this deadline, unlike municipal and provincial elections and the National People's Assembly.

2.3.2 Delivery of an Original Copy of the Minutes

An original copy of the minutes of the consolidation of results is delivered immediately to the President of the Independent Authority in exchange for a receipt of delivery, as confirmed by Article 272, paragraph 03, of Order No. 21/01.

2.3.3 Delivery of a Certified True Copy

A certified true copy, at the headquarters of the provincial electoral committee, of the minutes of the consolidation of votes is delivered to each of the following:

- The legally qualified representative of each candidate for the presidential elections, in exchange for a receipt of delivery.
- The coordinator of the provincial delegation of the Authority, or his representative.

2.3.4 Filing the Minutes of the Provincial Committee with the Registry of the Constitutional Court

The provincial electoral committee files its minutes immediately, in a sealed envelope, with the registry of the Constitutional Court, in exchange for a receipt of delivery.

3. The Powers of the Constitutional Court in Adjudicating Appeals Against the Provisional Election Results

The scope of the Constitutional Court's intervention during the stage of announcing the provisional election results is defined in three cases, namely: examining appeals submitted against the provisional results of the presidential election and the referendum, and appeals against the provisional results of the election of members of the National People's Assembly, as well as the election of members of the Council of the Nation. It is thus the only body legally empowered to adjudicate appeals against the provisional results of these elections and to announce the final results.

3.1 As for the Provisional Results of the National People’s Assembly⁴

It should be noted that the provisions of Order No. 21/01, particularly Articles 209, 210, and 211, did not address the appeals or objections that may be submitted by the concerned parties against the counting results at the level of polling stations, as is the case for the elections of the Municipal People’s Assemblies and the Provincial People’s Assemblies, and even the elections of two-thirds (2/3) of the members of the Council of the Nation, and it confined itself to regulating the appeal process directly before the Constitutional Court.

3.1.1 Conditions for Appeal Before the Constitutional Court

It is permissible to appeal the provisional results of the legislative elections (the National People’s Assembly) announced by the President of the Independent Authority for Elections, in accordance with the conditions and procedures set out in Order No. 21/01.

The provisions of Order No. 21/01, as well as the statement issued by the Constitutional Council regarding the procedures for submitting appeals against the provisional results of the election of members of the National People’s Assembly for June 12, 2021, set out the formal and substantive conditions for accepting an appeal before the Constitutional Court.

A. Formal Conditions

For the appeal to be accepted, the following formal conditions must be met:

A.1 Persons Qualified to Submit an Appeal

The parties concerned with submitting an appeal before the Constitutional Court with respect to the election of members of the National People’s Assembly are specified by Article 209, paragraph 03, of Order No. 21/01 as: the candidate, the political party participating in the elections, in addition to the list of candidates for these elections.

In the event that the appellants appoint someone to submit the appeal on their behalf, it is required, under penalty of declaring the appeal formally inadmissible, that the person submitting the appeal carry an authorization enabling him to do so.

A.2 Submission of the Appeal in the Form of a Petition

The statement issued by the Constitutional Council confirmed the necessity of submitting the appeal in the form of a petition drafted in Arabic, to be deposited by the appellant or his legally qualified representative directly with the Registry of the Constitutional Council within forty-eight (48) hours following the announcement of the provisional results by the President of the Independent Authority for Elections⁵.

The Constitutional Court notifies the list whose victory is being challenged, or the candidate whose victory is being challenged, to submit a written memorandum to the Constitutional Court within seventy-two (72) hours from the date of submitting the appeal.

The petition of appeal must include the first name, last name, address, and signature of the appellant, and if the appellant is a political party or a list of candidates, the name of the party and the address of its headquarters must be mentioned, or the name of the list, and the capacity of the authorized person submitting the appeal.

B. Substantive Conditions

Among the most important substantive conditions for accepting the petition of appeal, according to the

⁴- Nassim Saoudi: Disputes of Parliamentary Elections Before the Constitutional Judge – A Comparative Study Between Algeria and Morocco, Journal of Law and Human Sciences, Volume 10, Issue 04, p. 529.

⁵- Article 209, paragraph 03, of Order No. 21/01.

statement of the Constitutional Council, are:

B.1 Presenting the Subject Matter and Grounding It in the Form of Arguments

The appellant must explain the subject of the appeal he has submitted as an objection to the provisional results of the legislative elections, by setting out the arguments and evidence that prove and confirm the validity of his allegations regarding the existence of violations or acts of fraud in the voting or counting results.

B.2 Supporting the Petition with the Means and Documents Corroborating It

After the appellant presents the subject of his appeal in the form of arguments, he must also prove the validity of his allegations by all available legal means that truly demonstrate the existence of a violation of the provisions of the Organic Law relating to the electoral system, particularly the vote-counting process.

It should be noted that the appellants in the results of the most recent legislative elections supported their appeal with compact discs documenting a violation of the provisions of the Organic Law.

3.1.2 Ruling on the Appeal and Announcing the Final Election Results

The Constitutional Court rules on the appeals within a period estimated at three (03) full days, by means of a reasoned decision that includes either:

- Annulment of the contested election if it deems (the Constitutional Court) that the appeal is well-founded; in this case, a new vote is organized within eight days, starting from the date of notification of the Constitutional Court's decision to the President of the Independent Authority for Elections⁶.
- Amendment of the drawn-up results record.

The Constitutional Court establishes the final results of the legislative elections and announces them within a maximum period of ten (10) days from the date of its receipt of the provisional results from the Independent Authority, and this deadline may be extended, when necessary, by forty-eight (48) hours by a decision of the President of the Constitutional Court⁷.

3.2 As for the Results of the Election of Members of the Council of the Nation

The results of the election of members of the Council of the Nation are also subject to challenge, both administratively (objections) and directly before the Constitutional Court, in accordance with specific legal procedures set out under the provisions of Order No. 21/01.

3.2.1 Administrative Challenge (Objections)

Based on the provisions of Article 237 of Order No. 21/01, in the event that objections are submitted regarding the counting results, they are recorded directly in the counting minutes.

- **Persons Qualified to Submit the Challenge:** The Algerian legislator did not specify the parties who are legally authorized to object to the counting results at the polling station level with respect to the election of members of the Council of the Nation.
- **The Competent Body to Examine and Decide on Objections:** The Algerian legislator indicated that objections are recorded in the vote-counting minutes drawn up at the polling station level, without specifying the competent body to decide on them, as is the case for municipal and provincial elections. Article 237 of Order No. 21/01 refers us to the provisions of Article 236 of the same Order, which raises the question of the competent body to decide on the objections submitted by voters and candidates and recorded in the counting minutes, in light of the legislator's silence in the provisions of Article 237.

The legislator also did not explain the procedures to be followed after recording the objection, nor the fate

⁶- Article 241, paragraph 04, of Order No. 21/01.

⁷- Article 211 of Order No. 21/01.

of these submitted objections, and which body will decide on them, especially since Article 238 provides that the President of the Authority announces the provisional results within forty-eight (48) hours of the Independent Authority's receipt of the counting minutes and the consolidation of results, without indicating the fate of the objections recorded in the counting minutes.

3.2.2 Appeal Before the Constitutional Court

Unlike the results of municipal and provincial elections, and the election of members of the National People's Assembly whose disputes fall within the jurisdiction of the administrative court, the Constitutional Court is the competent body to examine appeals submitted against the results of the election of members of the Council of the Nation, in accordance with specified rules.

– **Parties Qualified to Submit the Appeal:** Unlike municipal and provincial elections, and even legislative elections, the persons qualified to submit an objection before the Constitutional Court with respect to the election of two-thirds (2/3) of the members of the Council of the Nation are specified by the organic law as the candidate only, as Article 240 of Order No. 21/01 confirmed that every candidate has the right to object to the results of the vote.

– **Deadlines for Submitting the Appeal:** The appeal is submitted by the candidate for the election of members of the Council of the Nation within a legal deadline set at twenty-four (24) hours following the announcement of the provisional results by the President of the Independent Authority.

– **Form of the Appeal:** Unlike the appeal submitted before the Constitutional Court when it concerns the results of the legislative elections (the National People's Assembly), which requires submission in the form of a written petition, the provisions of Article 240 of Order No. 21/01 did not require the appeal to be submitted in the form of a petition.

– **Ruling on the Appeal:** The Constitutional Court adjudicates appeals within a period estimated at three (03) full days, by means of a reasoned decision that includes either:

– Annulment of the contested election if (the Constitutional Court) considers that the appeal is well-founded; in this case, a new vote is organized within a period of eight (08) days, starting from the date of notification of the Constitutional Court's decision to the President of the Independent Authority for Elections⁸.

– Amendment of the drafted results record.

– **Final Announcement of the Candidate Lawfully Elected:** The Constitutional Court announces the final results of the election of members of the Council of the Nation within ten (10) days from the date of its receipt of the provisional results, and in the event that the election is annulled by the Constitutional Court, a new vote is organized within a period of eight (08) days starting from the date of notification of the Constitutional Court's decision to the President of the Independent Authority for Elections⁹.

3.3 Adjudicating Appeals Against the Results of the Presidential Election and Referendums

The results of presidential elections and referendum operations are subject to the right of administrative challenge, as well as appeal before the Constitutional Court.

3.3.1 Administrative Challenge

Administrative challenge in this case means that every candidate, or his legally qualified representative in the case of presidential elections, and every voter in the case of a referendum, enjoys the right to challenge the validity of the voting operations by entering their objection in the counting minutes located at the polling station.

⁸- Article 241, paragraph 04, of Order No. 21/01.

⁹- The last paragraph of Article 241 of Order No. 21/01.

- **Persons Qualified to Submit the Challenge:** The provisions of Article 258 of Order No. 21/01 set out the persons legally qualified to submit a challenge against the results of both presidential elections and referendum operations, specifying them as follows:
 - The candidate or his legal representative, if it concerns challenging the results of the presidential election
 - The voter, if it concerns the results of referendum operations.
- **Procedures for Submitting the Challenge:** The results of the voting operations for presidential elections and the referendum are challenged by inserting the objection and recording it directly in the counting minutes located at the polling station.
- **Deciding on Appeals (Competent Authority, Decision Deadlines):** After the appeals are recorded in the counting minutes, the Independent Authority is immediately notified of these objections in order to decide on them, and its President announces the provisional results of the presidential elections within a maximum period of seventy-two (72) hours starting from the date on which the Independent Authority receives the minutes of the provincial electoral committees and the electoral committee for residents abroad¹⁰.

3.3.2 Appeal Before the Constitutional Court

This refers to the legally qualified persons' entitlement to submit an appeal to the registry of the Constitutional Court within legal deadlines and in accordance with specific procedures, against the results of the presidential elections or the referendum announced by the President of the Independent Authority for Elections.

A. Persons Qualified to Submit the Appeal:

Based on the text of Article 259, paragraph 04, of Order No. 21/01, appeals relating to the provisional results of the presidential elections and the referendum¹¹ are deposited by the candidate or his legally qualified representative and the voter¹² with the registry of the Constitutional Court.

B. Deadlines for Submitting the Appeal:

Appeals are submitted by the candidate or his legally qualified representative within forty-eight (48) hours following the announcement of the provisional results of the presidential elections.

After the appeal is deposited, the Constitutional Court notifies the candidate declared elected whose election has been challenged to submit a written memorandum within a period estimated at seventy-two (72) hours starting from the date of notification.

Although Article 263 of Order No. 21/01 refers us to Article 259 of the same Order with respect to voting operations and the disputes connected thereto, the matter, in our view, is not consistent, because there are some provisions related to presidential elections that cannot be applied to referendum operations, the most important of which are:

- Article 259 speaks about the candidate for the presidential elections, whereas the referendum does not concern candidacy or candidates.
- If the candidate or his legally qualified representative is the one who has the right to appeal the provisional results of the presidential elections, who has the right to appeal the referendum results before

¹⁰- Article 259, paragraph 03, of Order No. 21/01.

¹¹- As for referendum disputes, they are subject to the same appeal procedures against the provisional results of presidential elections, pursuant to the text of Article 263 of Order No. 21/01.

¹²- The text of Article 259, paragraph 04, did not specify the person who has the right to appeal the results of the presidential elections before the Constitutional Court.

the Constitutional Court?

– If the referendum results are subject to appeal before the Constitutional Court under the text of Article 263 of Order No. 21/01, why did the same Order not provide for the competent body to decide on them and the deadlines granted to it, as is the case for the provisional results of the presidential elections?

Accordingly, it is necessary to redraft the text of Article 259 by separating the provisions related to appealing the provisional results of the presidential elections from the provisions related to appealing the results of referendum operations, due to their difference in subject matter.

C. Adjudicating Appeals and Announcing the Final Results

Pursuant to the text of Article 260 of Order No. 21/01, the Constitutional Court adjudicates the appeals submitted to it within a period estimated at three (03) days, without specifying the starting point for calculating it, by means of a reasoned decision that includes either acceptance or rejection. If it becomes clear to the Constitutional Court that the appeals are well-founded, it redrafts the prepared results minutes, and it announces the final results of the presidential elections within ten (10) days starting from the date of its receipt of the minutes from the President of the Independent Authority¹³.

Whereas the Constitutional Court announces the referendum results within a maximum period of ten (10) days, starting from the date of its receipt of the minutes of the provincial electoral committees and the electoral committee for residents abroad¹⁴.

After it adjudicates the appeals it receives concerning voting operations, the Constitutional Court is competent to announce the final results of presidential and legislative elections and referendums, and this provides credibility for these elections and leads to their acceptance by all parties to the electoral process, which leads to strengthening the legitimacy of the elected bodies¹⁵.

4. The Powers of the Constitutional Court on the Occasion of Replacing a Member of Parliament

The provisions of Order No. 21/01 referred to the cases of replacing elected members within the popular assemblies, whether local or national, and the same provisions also defined the scope of the Constitutional Court's jurisdiction in this case, limiting it to the elections of the National People's Assembly and the elections of members of the Council of the Nation¹⁶, and excluding local elections from its jurisdiction.

4.1 With Respect to Replacing a Member of the National People's Assembly

A member of the National People's Assembly is replaced in accordance with procedures and conditions set out in the Organic Law on Elections, in terms of the cases requiring replacement as well as its procedures, which we will explain.

4.1.1 Cases of Replacing a Member of the National People's Assembly

Article 215 of Order No. 21/01 referred to the cases of replacing a member of the National People's Assembly and specified them as follows:

– Resignation

¹³- Article 260, paragraph 02, of Order No. 21/01.

¹⁴- Article 263, paragraph 02, of Order No. 21/01.

¹⁵- Ammar Abbas: The Powers of the Constitutional Court in the Electoral Field, Journal of the Constitutional Council, Issue 17, 2021, p. 128.

¹⁶- See: Moulay Brahim Abdelhakim, Al-Ra'i Al-'Id: The Constitutional Court in Light of the Algerian Constitutional Amendment of 2020, Ijtihad Journal for Legal and Economic Studies, Volume 10, Issue 03, 2021, p. 828.

- Death
- The occurrence of a lawful impediment
- Exclusion
- Deprivation of his electoral mandate
- Assuming a position in the state

4.1.2 Replacement Procedures

The process of replacing a member of the National People’s Assembly is subject to specific legal procedures under Order No. 21/01, including:

- Declaration by the Bureau of the Assembly that the seat of the deputy is vacant: As soon as one of the cases mentioned above is met, the Bureau of the National People’s Assembly declares the seat of the deputy in the National People’s Assembly vacant.
- Notifying the Constitutional Court of this declaration: After the Bureau of the National People’s Assembly declares the deputy’s seat vacant, the Constitutional Court is notified of this declaration immediately.
- Declaration by the Constitutional Court that the deputy’s seat is vacant: As soon as the Constitutional Court (currently the Constitutional Council) is notified of the declaration that the deputy’s seat is vacant, it declares the vacancy, and the process of replacing the member of Parliament begins.
- Replacing the member of Parliament from the same list: After the seat becomes vacant, the deputy is replaced by the candidate who obtained the largest number of votes from the same list for the remaining duration of the parliamentary mandate, as confirmed by Articles 215 and 216 of Order No. 21/01.

4.2 With Respect to Replacing a Member of the Council of the Nation

Article 242 and the following provisions of Order No. 21/01 set out the rules related to how to replace an elected member in the Council of the Nation, as follows:

4.2.1 Cases of Replacement

Replacement is resorted to in the event that the seat of an elected member of the Council of the Nation becomes vacant due to:

- Death
- Appointment to one of the positions provided for in the organic law defining cases of incompatibility with a parliamentary mandate
- Resignation or exclusion
- Deprivation of his electoral mandate
- Any other lawful impediment

4.2.2 Method of Replacement

In the event that the seat of an elected member of the Council of the Nation becomes vacant due to the occurrence of one of the cases mentioned above, the Bureau of the Council declares this vacancy and immediately notifies the Constitutional Court to declare the vacancy, after which a by-election is held to replace him, and the term of the new member in the Council of the Nation ends on the date the term of the replaced member ends.

2. Conclusions

Based on the foregoing, it becomes clear that the provisions of Order No. 21/01, which includes the Organic

Law on Elections, precisely set out the areas of intervention of the Constitutional Court and the exercise of its powers within this scope, and defined them in four cases:

- The field of declaring candidacy for presidential elections: In this field, the Constitutional Court is considered the final decision-maker in determining and approving the final list of candidates for the election of the President of the Republic.

It is also considered the only body legally empowered to establish the existence of an impediment and to decide on cases related to the candidate's withdrawal or death.

- The field of receiving the minutes of the provisional results of presidential and parliamentary elections and referendum operations: In this respect, the provincial electoral committee deposits its minutes immediately, in a sealed envelope, with the registry of the Constitutional Court, in exchange for a receipt of delivery, with respect to presidential elections and the election of the National People's Assembly. As for the election of members of the Council of the Nation, the President of the Independent Authority undertakes to send to the Constitutional Court, without a specified deadline, the provisional results, the counting minutes prepared at the level of the polling station or polling stations, and the minutes of the consolidation of results prepared by the committee formed by the heads of the polling stations and their deputies in the event that there is more than one polling station.

- The field of appeals against the provisional results of presidential and parliamentary elections and the referendum: The Constitutional Court has jurisdiction to examine the appeals submitted to its registry and to decide on them within specified legal deadlines. In this context, it undertakes the examination and scrutiny of the minutes containing the provisional results of the elections that are the subject of the appeal, in preparation for ruling on them. Thus, the Constitutional Court is the highest oversight body that adjudicates electoral appeals and announces the final election results.

- The field of replacing a member of Parliament: The jurisdiction of the Constitutional Court in this field is determined by declaring the state of vacancy declared by the bureaus of the Council of the Nation or the National People's Assembly, as the case may be, and the process of replacing the member of Parliament is initiated in accordance with the legally prescribed procedures.

Based on the foregoing, it can be said that the Constitutional Court is the decision-maker with respect to adjudicating the appeals submitted against the provisional election results referred to in the provisions of the Organic Law on Elections, and that it is the only authority empowered to announce the final

References

- [1] Order No. 21/01, dated 2021, containing the Organic Law on Elections.
- [2] Nassim Saoudi: Disputes of Parliamentary Elections Before the Constitutional Judge – A Comparative Study Between Algeria and Morocco, *Journal of Law and Human Sciences*, Volume 10, Issue 04, p. 529.
- [3] Ammar Abbas: The Powers of the Constitutional Court in the Electoral Field, *Journal of the Constitutional Council*, Issue 17, 2021, p. 128.
- [4] Moulay Brahim Abdelhakim, Al-Ra'i Al-'Id: The Constitutional Court in Light of the Algerian Constitutional Amendment of 2020, *Ijtihad Journal for Legal and Economic Studies*, Volume 10, Issue 03, 2021, p. 828.