

Constitutional Court Review of Presidential Elections in Algeria: Between the Requirements of Order No. 21-01 and the Aspirations of Constitutional Reform

Lamia Kacem

Lecturer (Class B)

Mohamed Lamine Debaghine University of Setif 2

Email: l.kacem@univ-setif2.dz

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Introduction

Elections are the only legal means through which peoples can choose those who govern them. They constitute the optimal mechanism adopted by any democratic system to confer legitimacy upon authority. Through elections, the principle of popular sovereignty is realized, but only through the establishment of an integrated electoral system that guarantees the conduct of all stages of the electoral process within a framework of transparency and integrity, by activating various oversight mechanisms and procedures.

In this context, the Algerian legislator has sought to establish oversight mechanisms and instruments to ensure that elections are conducted freely and fairly and to provide an environment characterized by transparency and impartiality. These efforts to improve and modernize such mechanisms continue in order to ensure that elections reflect genuine democracy.

Constitutional review of elections is of paramount importance in achieving the objectives established by national constitutions and laws. In the field of presidential elections, the constitutional framers of 2020 entrusted the Constitutional Court with oversight functions, while Order No. 21-01^[1] regulated certain aspects of these functions by granting the Court exclusive jurisdiction over most electoral disputes relating to this electoral process.

On the basis of the legal provisions,^[2] the Constitutional Court may examine appeals concerning decisions issued by the Independent National Electoral Authority regarding the validity of candidacies. This specific jurisdiction is governed by the provisions of Order No. 21-01. The Court is also empowered to announce the presidential election results in the first round and declare that the election will proceed to a second round within the legally prescribed time limits. It also exercises functions relating to the supervision of campaign financing.

This research paper seeks to achieve several objectives, the most important of which are as follows:

- To examine the provisions governing the role of the Constitutional Court at the various stages of the electoral process, from the perspective of constitutional texts and the provisions of Order No. 21-01.

- To highlight the most significant reforms in comparison with the functions previously exercised by the Constitutional Council in electoral matters and the provisions of earlier electoral laws.
- To identify the gaps revealed by the Court's practice and propose indicators for electoral reform consistent with the constitutional and political reforms taking place in the New Algeria.

To achieve these objectives, the following central research question has been formulated:

To what extent can the Constitutional Court ensure the oversight of the conduct and integrity of presidential elections in Algeria within the legal limits governing the exercise of its powers? What implications does this jurisdiction have for the effectiveness of constitutional reforms?

The following subsidiary questions arise:

- What powers does the Constitutional Court exercise during the stage preceding voting?
- What provisions govern the review of the stages following voting?

The research paper is divided into two sections:

Section One: Constitutional Review of the Stages Preceding Presidential Elections.

Section Two: Provisions Governing the Review of the Stages Following Presidential Elections.

Section One: Constitutional Review of the Stages Preceding Presidential Elections

This section examines constitutional review of presidential elections in relation to the stages preceding the electoral process, with particular emphasis on the innovations introduced by Order No. 21-01. It begins by examining the stage during which candidacy files submitted by citizens wishing to run for President of the Republic are reviewed (First Subsection). It then presents and analyzes the exceptional circumstances that may arise during the preliminary stages of the electoral process (Second Subsection).

First Subsection: Constitutional Disputes Concerning the Validity of Candidacies for the Office of President of the Republic

Candidacy is one of the preparatory acts that immediately precede the electoral process, pursuant to the Organic Law on Elections.^[^3] Given the national and international significance of presidential elections, electoral legislation has attached considerable importance to them by distinguishing them from other electoral processes, including legislative and local elections, and subjecting them to specific provisions. Among the special provisions applicable to presidential elections are those governing the review of candidacy files. In most comparative electoral systems, the task of reviewing candidacy files is entrusted to constitutional bodies, such as courts, constitutional councils, and independent authorities.^[^4]

Before analyzing the provisions governing disputes over candidacies for the office of President of the Republic, it is useful to clarify certain concepts and conditions relating to the candidacy process (First Division). The Second Division will then identify the body authorized to examine candidacy disputes and the powers it exercises in this area.

First Division: Concepts and Conditions Governing Candidacy for the Presidency

Candidacy is one of the preparatory acts that takes place shortly before the electoral process. Its timing is generally determined by electoral laws. It is a legal act through which a person formally and expressly declares, before the competent authority, their intention to stand in an election.^[^5]

The candidacy process is generally governed by two fundamental principles:

- The principle of universal eligibility to stand for election, which makes candidacy accessible to the largest possible number of citizens within the limits established by law.
- The principle of mandatory declaration of candidacy, which requires the submission of an application to the administration within a legally specified period preceding election day.^[6]

First: Conditions for Candidacy

Since the fundamental conditions for candidacy for the presidency are established by the constitutional framers, they can only be amended through a constitutional amendment. Accordingly, these conditions remain as stipulated in Article 87 of the 2020 Constitutional Amendment. They essentially include the following:

- The candidate and their spouse must possess Algerian nationality of origin only; the candidate must not have acquired any foreign nationality and must provide proof that both their father and mother possess Algerian nationality of origin.
- The candidate must profess Islam.
- The candidate must have attained the full age of forty on election day.
- The candidate must enjoy civil and political rights.
- The candidate must have resided permanently in Algeria, and nowhere else, for at least ten (10) years before submitting the candidacy.
- If born before July 1942, the candidate must have participated in the Revolution of 1 November 1954; if born after July 1942, the candidate's parents must not have been involved in acts hostile to the Revolution of 1 November 1954.
- The candidate must publicly declare their movable and immovable assets, both inside and outside the country.^[7]

Regarding the requirement that the President of the Republic possess Algerian nationality of origin exclusively, some political analysts have argued that this may be unfair to certain dual nationals who enjoy considerable influence in the political arena. Others, however, believe that the constitutional framers were justified in imposing this condition, on the grounds that it helps eliminate certain abuses and discourages reliance on a second nationality in the event of mistakes or decisions that threaten the country's stability. Such individuals might otherwise hasten to seek the protection of the state whose nationality they also possess under the rules governing international diplomatic protection.^[8]

Second: Powers of the Independent National Electoral Authority in Examining Presidential Candidacy Files

Applications declaring candidacy for the presidency are now initially submitted to the Independent National Electoral Authority within a maximum period of forty days following publication of the presidential decree summoning the electorate.^[9] The first point to note is that the deadline for submitting candidacy declarations has been shortened. Under Organic Law No. 16-10, as amended and supplemented, the deadline was forty-five (45) days.^[10]

The Algerian legislator granted the Independent National Electoral Authority seven (7) days from the date on which a candidacy declaration is submitted to determine the validity of presidential candidacies through a decision supported by legally sufficient reasoning.^[11] This

period is also shorter than the ten (10) days previously granted to the Constitutional Council under Organic Law No. 16-10, as amended and supplemented.^[12] Although this reduction may be necessary, the period allowed for holding presidential elections remains unchanged at three months from the date on which the electorate is summoned.

The examination of candidacy files is now conducted at two levels, which has necessitated shortening the periods previously provided under Organic Law No. 16-10, as amended and supplemented. Nevertheless, this reduction may hinder the Independent National Electoral Authority in examining candidacy files, particularly given that the ten-day period previously granted to the Constitutional Council under Organic Law No. 16-10 was itself criticized. This raises the question of how the situation can be assessed when the period is reduced to seven days.^[13]

Second Division: The Body Competent to Examine Disputes Concerning Applications for Presidential Candidacy

The Independent National Electoral Authority has the right to reject an application declaring candidacy for the presidency if the applicant does not satisfy the conditions stipulated in Articles 246 and 249 of Order No. 21-01, which contains the Organic Law on the Electoral System.^[14] These conditions particularly concern eligibility, the candidacy file and its supporting documents, the deadlines for submitting candidacy declarations, and the required deposit.^[15]

The legal framework governing elections has entrusted the constitutional body with the task of examining appeals against decisions rejecting candidacies for the office of President of the Republic. This arrangement reflects the nature and importance of presidential elections, for which appeals are subject to specific conditions, procedures, and deadlines. This differs from other electoral disputes, which fall within the jurisdiction of the ordinary and administrative courts. The distinction stems from the particular nature of electoral appeals, which are characterized by urgency.^[16]

It should be noted that the 2020 Constitutional Amendment did not expressly confer upon the Constitutional Court a specific power to determine the validity of presidential candidacies or to rule on decisions concerning campaign financing. However, an examination of the provisions of Order No. 21-01^[17] reveals that Article 252 empowers the Court to perform this function, as it expressly authorizes the Court to examine and decide appeals concerning the rejection of presidential candidacy applications by the national electoral oversight authority.^[18]

If a candidate's application is rejected, the candidate may appeal to the Constitutional Court. The national authority is required to transmit its decisions concerning candidacies within a maximum period of twenty-four hours. This follows from Article 55^[19] of the rules governing the operation of the Constitutional Court, which provides for the Court to decide appeals submitted against such decisions. Accordingly, examining these appeals requires identifying the procedures for filing an appeal and the manner in which it is adjudicated.

First, an appeal must be filed by a person who has the requisite legal standing or interest and must comply with the statutory deadlines established by the Electoral Law; otherwise, it may be rejected on formal grounds.^[20]

The expression "a person having standing or an interest" refers to an individual who qualifies as a candidate for the office of President of the Republic. It does not extend to another person, such as an agent, representative, or other third party. The deadline for appealing decisions issued by the Independent Authority rejecting applications to declare presidential candidacy is forty-eight (48) hours from notification of the decision.^[^21]

The Constitutional Court must decide the appeal within a maximum period of seven days from the date on which the last decision of the independent electoral oversight authority is transmitted. The Court's jurisdiction does not extend to decisions of the Independent Authority that have not been challenged. This raises the question of why the legislator restricted the scope of appeals that the Constitutional Court may examine. Algerian legislation does not grant every person with standing or an interest the right to challenge decisions accepting candidacies, particularly where a candidate does not satisfy the prescribed conditions. It would have been more appropriate to extend the scope of appeals to cover all decisions relating to candidacies, in order to uphold the principles of electoral competition and the peaceful transfer of power.^[^22]

Second Subsection: Constitutional Oversight of Exceptional Circumstances Arising Before Voting

After the constitutional body has approved candidacies for the office of President of the Republic, one of the candidates may die or become subject to another impediment. This raises the question of how presidential elections are to proceed under such circumstances.

In this context, Article 95, paragraph one, of the 2020 Constitutional Amendment stipulates: "Once a candidacy for the presidential election has been approved by the Constitutional Court, it may not be withdrawn except in the event of a serious impediment legally established by the Constitutional Court or in the event of the death of the candidate concerned."

This provision allows us to distinguish between two stages: the first, before the Constitutional Court approves the candidacy file, and the second, after such approval.^[^23]

First Division: Before the Constitutional Body Approves the Candidacy File

An examination of Article 95 of the 2020 Constitutional Amendment and Article 255 of Order No. 21-01 indicates that a candidacy may be withdrawn before the Constitutional Court expresses its approval.

Reference may be made to the deliberation dated 17 October 2019, which amended and supplemented the internal regulations dated 12 May 2019 governing the operation of the Constitutional Council. Under Article 48, the Constitutional Council—now the Constitutional Court—receives the decisions of the Independent National Electoral Authority concerning candidacies. These include decisions relating to both accepted and rejected candidacies.

Since the Independent Authority is required, under Article 252 of Order No. 21-01, to notify the applicant of its decision immediately upon issuance, a candidate whose file has been accepted by the Independent Authority may withdraw before the Constitutional Court approves the candidacy. As for rejected candidacies whose applicants appeal to the Constitutional Court, the Court is expected to rule on the appeals and notify the persons concerned of its decisions. If the Court rules in favor of accepting the file, the candidate may not, as a general rule,

withdraw except subject to the restrictions established by Article 95 of the Constitutional Amendment and Article 255 of Order No. 21-01.^[^24]

Second Division: After the Constitutional Court Approves the Candidacy File

Once the Constitutional Court has approved a candidacy file, Article 95 of the 2020 Constitutional Amendment distinguishes between withdrawal and death according to the timing of the event, differentiating between the first and second rounds of the presidential election. However, it emphasizes the exceptional nature of withdrawing a candidacy after the Constitutional Court has approved it.^[^25]

First: The First Round

Article 95 provides that, once the Constitutional Court has approved a candidacy, it may be withdrawn only in two circumstances: first, where a serious impediment occurs and is legally established by the Constitutional Court; and second, where the candidate concerned dies.

Article 255 of Order No. 21-01 reaffirms this rule. Nevertheless, several observations may be made.

Although the death of a candidate does not raise practical difficulties in itself, the second circumstance permitted under Article 95 of the 2020 Constitutional Amendment—the withdrawal of a candidacy due to a serious impediment—raises several problems.

1. The meaning of "a serious impediment legally established by the Constitutional Court."

The expression "serious impediment" appears vague, and its meaning is not easy to determine. The Constitutional Court should have clarified its scope and interpreted the term "serious impediment," since the Court is responsible for legally establishing the existence of such an impediment. It is worth noting that the exercise of constitutional interpretation on the Court's own initiative is considered one of the priorities in the exercise of its powers,^[^26] even though the Constitution does not expressly provide for it. Moreover, practical difficulties relating to this function have previously arisen.^[^27]

Although the 2020 Constitutional Amendment expressly recognized the interpretative role assigned to the Constitutional Court through referral under Article 192, paragraph 2, it provides that: "... these authorities may refer a provision or several provisions of the Constitution to the Constitutional Court for interpretation, and the Constitutional Court shall issue an opinion thereon."

The authorities referred to are those empowered by the Constitution to refer matters to the Constitutional Court, as stipulated in Article 193 of the 2020 Constitutional Amendment. It is conceivable that the referring authorities may request the Constitutional Court to interpret a constitutional provision in connection with the exercise of its powers. Since withdrawal from candidacy falls within the Court's jurisdiction, it is difficult to envisage that interpretation of the term "serious impediment" would be initiated by an external body.^[^28]

A serious impediment must be legally established by the Constitutional Court. In other words, the Court alone is empowered to determine whether the impediment is sufficiently serious to be recognized and to produce the legal consequences stipulated in Article 255 of Order No. 21-01. The problem, however, concerns when the Constitutional Court exercises this power.^[^29] Is the exercise of this power contingent upon a request to withdraw? Presumably, anyone wishing to withdraw must submit a request to the Constitutional Court. However, there appear

to be no legal provisions, either in Order No. 21-01 or in the former internal regulations of the Constitutional Council, specifying the procedures for submitting such a request.

2. The use of the terms "withdrawal of candidacy" or "withdrawal" in Article 95 of the 2020 Constitutional Amendment.

These terms imply a voluntary act on the part of the person concerned.^[^30] In our view, therefore, they are inappropriate in cases of death, in which the withdrawal of a candidacy or voluntary withdrawal cannot be envisaged. Similarly, in cases involving a serious legal impediment, the question arises as to whether the candidate must submit a withdrawal request. If the candidate does not withdraw despite the existence of a serious legal impediment, can the Constitutional Court intervene on its own initiative?^[^31]

In our view, the wording of Article 255 of Order No. 21-01 is not sufficiently precise. At first glance, the article appears to consist of two paragraphs that are separate in their legal effects. In reality, however, the provision concerns the consequences arising when the Constitutional Court accepts or recognizes the withdrawal of a candidate because of a serious impediment established by the Court, or because of the death of a candidate.

The first paragraph of Article 255 provides for the approval of candidacies by the Constitutional Court. This takes place through a decision issued by the Court containing the final list of candidates, which is published in the Official Gazette.

In this regard, we see no justification for repeating, in the second paragraph of Article 255 of Order No. 21-01, the wording concerning "the death of a candidate or the occurrence of a serious impediment after the Constitutional Court has approved the list of candidates and its publication in the Official Gazette of the People's Democratic Republic of Algeria."

In the interests of sound legislative drafting, it would have been sufficient for the article to state the following:

"No withdrawal by a candidate shall be accepted or recognized after the Constitutional Court has approved the candidacies, except in the event of a serious impediment legally established by the Constitutional Court or the death of the candidate concerned. In such circumstances, an additional period shall be granted for submitting a new candidacy. This period may not extend beyond the month preceding election day, and the election date shall, in such circumstances, be postponed for a maximum period of fifteen (15) days."^[^32]

The first paragraph of Article 255 of Order No. 21-01 establishes the first legal consequence of accepting or recognizing a withdrawal for the aforementioned reasons: an additional period is granted for submitting a new candidacy within the month preceding election day. The expression "new candidacy" itself raises a question: does it mean that candidacies are reopened to everyone, or does it concern only political parties whose endorsed candidates have withdrawn or died?

We believe that the legislator referred to a new candidacy to address situations in which a candidate belonging to a particular political party withdraws or dies. In such cases, the party is allowed to nominate another person belonging to that party within the legally prescribed period. The second paragraph of Article 255 of Order No. 21-01 establishes a second consequence: postponement of election day for a maximum of fifteen (15) days. This consequence necessarily follows from reopening candidacies for an additional period. The election date must naturally

be postponed because the election cannot be held on the originally scheduled date, given that new candidacies must undergo the review procedures prescribed by law. This makes it impossible to conduct the vote on the original date following the developments that necessitated reopening the candidacy process.^[^33]

Second: The Second Round

Article 95 of the 2020 Constitutional Amendment distinguishes between withdrawal and the two circumstances of death and the occurrence of a legal impediment during the second round of the presidential election, which is held when no candidate obtains an absolute majority of the valid votes cast.^[^34]

1. Withdrawal

If one of the candidates withdraws from the second round, the electoral process continues without taking that withdrawal into account.

Article 95 of the 2020 Constitutional Amendment appears to make withdrawal from the second round dependent on the candidate's own decision, without granting the Constitutional Court any authority to verify the reason for the withdrawal. We believe that this approach is somewhat lenient compared with the rules governing withdrawal during the first round. It permits a candidate to withdraw without providing justified reasons.

We see no objection to requiring that such withdrawal be supported, at a minimum, by justified reasons. The matter concerns the election of the President of the Republic, who is the guardian of the Constitution. A sudden announcement of withdrawal, particularly where the reasons are not serious, is therefore difficult to reconcile with the importance of the office.^[^35]

2. Death or the occurrence of a legal impediment

If one of the candidates in the second round dies or becomes subject to a legal impediment, the Constitutional Court declares that all electoral operations must be conducted anew. In such circumstances, the period for organizing a new election is extended to a maximum of sixty days. Here, the second-round candidate's will plays no role in the failure to complete the electoral process, since this results from death or a legal impediment. This also reinforces the importance of the Constitutional Court's role in interpreting the term "legal impediment," as explained above.^[^36]

Since Article 95 of the 2020 Constitutional Amendment provides that the Constitutional Court shall declare that all electoral operations must be conducted anew, this means that every stage of the electoral process must be repeated, beginning with the issuance of the presidential decree setting the election date and the opening of the candidacy period, and continuing until the Constitutional Court announces the final election results.

One further issue is that Article 255 of Order No. 21-01 does not refer to the provisions governing the second round of presidential elections. Instead, it addresses the situation applicable to the first round.

Upon examining Constitutional Council Decision No. 16, dated 10 March 2021, concerning the constitutional review of the order containing the Organic Law on the Electoral System, we observed that, when reviewing the provisions of the draft order, the Constitutional Council declared paragraphs 2 and 3 of Article 257 unconstitutional. Those paragraphs concerned the second round and provided as follows:

"...6. With regard to paragraphs 2 and 3 of Article 257 of the order containing the organic law referred to the Council, they provide that:

'If one of the two candidates in the second round withdraws, the electoral process shall continue until its conclusion without recognizing the candidate's withdrawal.

In the event of the death of either of the two candidates in the second round, or the occurrence of a legitimate impediment affecting either of them, the Constitutional Court shall declare the period for organizing a new election, which may not exceed sixty days.'

Considering that paragraphs 2 and 3 of Article 257 of the organic-law order referred to the Council contain constitutional provisions by reproducing verbatim the text of paragraphs 2 and 3 of Article 95 of the Constitution;

Considering that, under the constitutional principle of the distribution of powers, the legislator must, when exercising its legislative authority, respect the scope assigned by the Constitution to the text under consideration and must not include provisions that constitutionally belong to other legal instruments;

Considering that reproducing certain constitutional provisions in the organic-law order does not constitute legislation, but merely the reproduction of provisions whose regulation falls within the competence of another instrument, subject to different procedures for preparation, adoption, and amendment as established by the Constitution;

Considering that, by reproducing the text of paragraphs 2 and 3 of Article 95 of the Constitution and incorporating them into paragraphs 2 and 3 of Article 257, the organic law violated the constitutional principle governing the distribution of powers. Consequently, paragraphs 2 and 3 of Article 257 of the organic-law order referred to the Council are unconstitutional...."[³⁷]

The foregoing indicates that the Constitutional Council considered the verbatim reproduction of constitutional provisions to constitute a violation of the constitutional principle governing the distribution of powers between the Constitution and legislation, including the Organic Law on Elections.

In our view, the Constitutional Council's position is surprising. Our evidence for this is that the first paragraph of Article 255 of Order No. 21-01 itself reproduces verbatim the following wording from the Constitution: "... except in the event of a serious impediment legally established by the Constitutional Court or in the event of the death of the candidate concerned."[³⁸]

In our view, a violation of the constitutional principle governing the distribution of powers occurs when the legislative authority encroaches upon the subject-matter jurisdiction reserved for the Constitution. This might occur, for example, if legislation granted the Constitutional Court additional powers not provided for by the Constitution.

However, where a law specifies the procedures for implementing constitutional provisions by reproducing certain constitutional clauses or paragraphs in a provision that requires no further elaboration, we do not consider this to constitute an infringement of the principle governing the distribution of powers. That principle cannot be understood to prohibit the legislator from using the same terminology as that appearing in constitutional provisions. Where a constitutional provision already regulates the second round of elections in a manner that leaves no room for further legislative elaboration, there is no objection to the law reproducing the same provisions,

particularly given the obligation to respect the supremacy of the Constitution. Indeed, one of the criteria of sound legislative drafting is consistency among the terminology used in legal instruments, particularly between lower-ranking and higher-ranking rules.

In our view, the problem lies in paragraphs 2 and 3 of Article 95 of the 2020 Constitutional Amendment. These paragraphs address details that should not appropriately be included in a constitutional provision. On the one hand, Article 95 refers to the Organic Law on Elections to establish the procedures for implementing its provisions; on the other hand, it itself specifies the consequences arising from withdrawal, death, or a legal impediment during the second round.

Based on the foregoing, we believe that, through this decision, the Constitutional Council rendered Article 255 of Order No. 21-01 incomplete because it contains provisions concerning the first round but not the second. It does not even include a reference to Article 95 of the 2020 Constitutional Amendment to indicate that the latter applies directly to the second round.^[39]

Section Two: Powers of the Constitutional Body Concerning the Stages Following Voting

Order No. 21-01, containing the Organic Law on the Electoral System, guarantees every person with legal standing or an interest the right to appeal presidential elections before the constitutional body. It also establishes the procedures for deciding such appeals.

To examine this issue, this section is divided into two subsections. The First Subsection examines the principal powers held by the constitutional body regarding appeals against presidential election results. The Second Subsection addresses the announcement of the final presidential election results and appeals concerning campaign financing.

First Subsection: Electoral Appeals Concerning the Provisional Results of Presidential Elections

Under Order No. 21-01, jurisdiction over appeals concerning the provisional results of presidential elections belongs to the Constitutional Court, formerly the Constitutional Council. The applicable provisions establish a series of substantive and formal legal requirements governing candidates' exercise of their right to appeal. Such appeals must be submitted within specified deadlines and in accordance with prescribed procedures.

To examine this matter comprehensively, this subsection is divided into two divisions. The First Division addresses the procedures and deadlines applicable to appellants and appeals, while the Second Division examines the powers of the Constitutional Court in this area.

First Division: Appeal Procedures and the Persons Entitled to Appeal

Recognizing the importance of the electoral process and the role played by citizens' votes and the candidates themselves in building a state governed by the rule of law and ensuring that the right person occupies the appropriate position, the constitutional framers granted every person with the requisite legal standing the right to challenge the validity of the provisional election results. This is intended to ensure integrity and transparency at all stages of the process, particularly during the counting of votes and the emergence of preliminary results.^[40]

Under Article 191 of the 2020 Constitutional Amendment, the Constitutional Court is empowered to examine appeals relating to presidential elections. The Organic Law on Elections grants every candidate the right to appeal, subject to compliance with a set of legal requirements.

Before submitting an appeal concerning the provisional results to the registry of the Constitutional Court, every candidate or their legally authorized representative must enter an objection in the vote-counting record held at the polling station. The appeal must then be submitted within forty-eight hours following the announcement of the results.^[41]

Voters, observers, media organizations, and polling-station officials are not entitled to submit such appeals, because the legislator has not granted them this right. Some argue that excluding voters from the right to appeal is intended to prevent unfounded challenges, although, from a constitutional perspective, this exclusion conflicts with the substance of citizens' political rights.^[42]

Under Article 259 of Order No. 21-01, the President of the Independent National Electoral Authority announces the results within a maximum of seventy-two (72) hours from the date on which the Authority receives the electoral records from the provincial electoral committees and the electoral committee responsible for Algerian voters residing abroad.

Appeals concerning the provisional results, accompanied by an objection to the validity of the voting process, must be submitted to the registry of the Constitutional Court within forty-eight (48) hours following the announcement of the provisional results. The Constitutional Court then notifies the candidate declared elected whose election has been challenged, allowing that candidate to submit a written memorandum within seventy-two (72) hours from the date of notification.^[43]

The Algerian legislator has also granted candidates, or their legally authorized representatives, a period of forty-eight (48) hours following the announcement of the provisional results to challenge the validity of the election of a successful presidential candidate. The day on which the results are announced is excluded from the calculation of this period.^[44]

The Constitutional Court decides the appeals submitted to it within three legal days from the date on which it receives them.^[45] This is consistent with the nature of the electoral process, which requires electoral disputes to be resolved swiftly, within short deadlines and through simple, accessible procedures, in order to guarantee the integrity and transparency of presidential elections.^[46]

Second Division: Powers of the Review Mechanism in Dealing with Appeals

When examining appeals concerning the provisional results of presidential elections, the constitutional review mechanism may reject an appeal if it finds that the appeal suffers from a formal defect. One particularly important example is the failure to enter an objection in the vote-counting record held at the polling station, as required by Order No. 21-01.

To enable the rapporteurs of the Constitutional Court to perform their duties, the legislator has authorized them to use various investigative measures, including hearing any person or requesting the production of any document relating to the electoral process.^[47]

The Court may also order the correction or redrafting of result records if they contain errors in the counting process or if fraud has occurred that affected the election results.^[48]

It should be noted, however, that Order No. 21-01 merely grants the Court the power to rule on the legality of election results and to correct the records prepared, without empowering it to annul an election or declare it invalid. Nor does it specify how an application seeking the annulment of an election may be brought directly before the Constitutional Court.

Some scholars therefore argue that the Order does not regulate the presidential electoral process with sufficient precision, since it does not establish deadlines for deciding objections and effectively leaves almost no time to register them by requiring that they be recorded at the polling station on the very day of voting.^[49]

Second Subsection: The Oversight Role of the Constitutional Body in Announcing Final Presidential Election Results and Reviewing Campaign Financing

This subsection examines the constitutional body's powers concerning the announcement of presidential election results (First Division), followed by an examination of the provisions applicable under Algerian law to the supervision of campaign financing (Second Division).

First Division: Announcement of the Final Presidential Election Results

Under Article 260, paragraph two, of Order No. 21-01, the Constitutional Court is responsible for announcing the final presidential election results within ten (10) days from the date on which it receives the electoral records^[50] transmitted by the President of the Independent National Electoral Authority.

Some scholars have criticized the wording of this paragraph because it does not expressly address the effect of successful appeals against the provisional presidential election results. In their view, it would have been more appropriate to add the phrase "including the determination of appeals," by analogy with Article 252, which addresses the Constitutional Court's power to issue the decision containing the final list of candidates for the presidential election.^[51]

Where appropriate, the Constitutional Court may identify the two candidates who will proceed to the second round of voting. The second round is scheduled for the fifteenth (15th) day following the Court's announcement of the first-round results, provided that the maximum period between the first and second rounds does not exceed thirty (30) days.^[52]

As regards the role that the Court may play in disputes over results that lead to a second round, an examination of Articles 259 and 260 of Order No. 21-01 reveals no explicit reference to provisional election results that trigger a second round when no candidate obtains an absolute majority of the votes cast, as required by Article 248 of Order No. 21-01.

Some scholars argue that Article 259 is not worded in a way that accommodates the possibility of proceeding to a second round. Consequently, it does not establish the rules and procedures for deciding disputes arising from the announcement of provisional results, particularly during the second round. They regard this as a legal gap that appears to have escaped the attention of the bodies responsible for providing advisory opinions on the draft Electoral Law.^[53]

Another concern may arise where one of the candidates eligible to participate in the second round dies or becomes subject to an impediment. This situation is addressed in paragraph three of Article 95 of the 2020 Constitution, which empowers the Constitutional Court to declare that all electoral operations must be conducted anew. In such circumstances, the deadline for organizing a new election may be extended to a maximum of sixty (60) days.^[54]

In this regard, when reviewing Order No. 21-01, the Constitutional Council considered that the Constitutional Court's jurisdiction over appeals under Article 260 encompasses the announcement of presidential election results in all circumstances, whether appeals have been received or no appeals have been submitted.^[55]

Second Division: Appeals Concerning Campaign Financing

To obtain a majority of the votes, candidates generally resort to all available means of publicizing their electoral programs. This requires substantial financial resources. Candidates must ensure that they do not receive donations or contributions from any foreign state. They must also reject interference by hidden or undisclosed actors seeking to manipulate the elections and tamper with their results.^[^56]

To obtain reimbursement of campaign expenses, the candidate must submit the campaign finance account within two months from the date on which the final results are announced. Under Article 116 of Order No. 21-01, the account is submitted to the Campaign Finance Oversight Committee established within the Independent National Electoral Authority.

The Committee is responsible for reviewing the accuracy and credibility of the transactions recorded in the campaign finance account. It must issue its decision within six months. Its decision may approve the account, amend it, or reject it.^[^57] If the six-month period expires without an express decision from the Committee, the account is deemed approved. The candidate is nevertheless required to submit the campaign finance account to the Committee within two months from the announcement of the final results.^[^58]

Under Article 121 of Order No. 21-01, the Constitutional Court has jurisdiction to examine appeals against decisions issued by this Committee. Such appeals must be submitted within one month from the date on which the persons concerned are notified of the decisions.

The President of the Constitutional Court appoints one or more rapporteurs from among the Court's members to examine the appeal against the decision of the Campaign Finance Oversight Committee. The Constitutional Court then rules on the appeal by issuing a decision.^[^59]

Through this mechanism, candidates may obtain reimbursement of campaign expenses amounting to up to 30%, provided that they obtain a specified number of valid votes.^[^60]

Conclusion

This research paper has examined the role of the constitutional mechanism in presidential elections throughout all stages of the electoral process. It has sought to identify the problems and gaps associated with the subject and has reached a number of findings and recommendations, presented below.

First: Findings

1. An examination of the type of review exercised by the Constitutional Court during the stages preceding the electoral process reveals that the Court may consider appeals against the rejection of presidential candidacies, but not appeals against decisions accepting them. This affects the right to fair competition among candidates and has generated doctrinal debate between supporters and opponents of this position.
2. The Constitutional Court has been equipped with a mechanism for reviewing exceptional circumstances arising before and after the constitutional body's approval of candidacy files. Nevertheless, the Court's authority to intervene when a serious impediment affects a presidential candidate has not been clearly established.
3. An examination of the Constitutional Court's powers concerning the stages following the electoral process, including appeals relating to presidential election results, the procedures for deciding such appeals, the announcement of final election results, and appeals concerning campaign financing, reveals that the Court:

- May reject an appeal on formal grounds if it suffers from a procedural defect.
 - May correct or redraft election-result records in cases involving errors or fraud, but cannot annul an election or declare it invalid.
 - Operates under a legal framework that does not adequately regulate the electoral process, since the legislator has not specified the deadlines for deciding objections and has established an extremely restrictive period for registering them.
4. With regard to announcing the final presidential election results and deciding appeals concerning campaign financing, the Constitutional Court exercises powers in these areas that do not differ substantially from those previously exercised by the Constitutional Council.
5. The mechanisms for appealing election results remain complicated, particularly with respect to procedural requirements and short deadlines.

Second: Recommendations and Proposals

1. The independence of the constitutional oversight mechanism should be strengthened by reviewing the procedures for selecting its members and President, in order to bring them into greater alignment with the standards of impartiality and transparency.
2. The deadlines for submitting and deciding appeals should be extended, and citizens should be permitted to challenge certain decisions rather than restricting the right of appeal to candidates and political parties alone.
3. Technological advances should be used to facilitate electoral oversight, voter registration and verification, and the counting of votes.
4. Judges specializing in electoral disputes should be trained within the Constitutional Court.
5. The provisions governing presidential elections and the functioning of the Constitutional Court should be reconsidered to eliminate ambiguity and improve precision, thereby ensuring the integrity of the electoral process.

ⁱFootnotes and References

[¹]: Order No. 21-01 containing the Organic Law on the Electoral System, dated 10 March 2021, Official Gazette, Issue No. 17, published on 10 March 2021, as amended and supplemented by Organic Law No. 26-05, dated 4 April 2026, Official Gazette, Issue No. 24, published on 4 April 2026.

[²]: It should be noted that this study was conducted on the basis of Order No. 21-01 and the 2020 Constitutional Amendment. Nevertheless, it has been revised to reflect the latest amendments to Algerian legal texts, particularly the 2026 Constitutional Amendment (Law No. 26-04) and Organic Law No. 26-05, which amends and supplements Order No. 21-01. It should also be noted that no significant changes have been made to presidential elections or their oversight. In its decision reviewing the constitutionality of the Organic Law on Elections, and with regard to the powers of the Independent National Electoral Authority, the Constitutional Court identified only certain formal amendments concerning the reference to Article 202 of the latest constitutional amendment and the replacement of the term "ensures" with "undertakes." For further details, see Decision No. 02/CC/CR/26, dated 15 Shawwal 1447 AH, corresponding to 3 April 2026, concerning the review of the conformity of the Organic Law amending and

supplementing Order No. 21-01, containing the Organic Law on the Electoral System, with the Constitution.

[^3]: Benini, Ahmed. Procedures Preparatory to the Electoral Process in Algeria. Doctoral dissertation, University of Batna, 2005–2006, p. 160.

[^4]: Abbas, Ammar. "Presidential Elections in Light of the Jurisprudence of the Algerian Constitutional Council." *Constitutional Council Journal*, No. 15, 2020.

[^5]: Ben Denni, Malika. The Constitutional Council and Legislative Elections. Master's thesis, University of Algiers, Faculty of Law, 2011–2012, p. 17.

[^6]: Boumaaza, Tahar, and Boumaaza, Abdelaziz. Judicial Supervision in Algeria. Master's dissertation, University of Béjaïa, Faculty of Law, 2016, pp. 36–37.

[^7]: See Article 87 of the 2020 Constitution.

[^8]: Ataoui, Tahar, and Ouisat, Fatiha. "Disputes Concerning Presidential Elections before the Constitutional Court." *Journal of Legal and Political Thought*, Vol. 9, No. 1, 2025, p. 487.

[^9]: Ibid., Article 251.

[^10]: Article 140 of Organic Law No. 16-10.

[^11]: See Article 251 of Order No. 21-01.

[^12]: See Article 141 of Organic Law No. 16-10.

[^13]: Ghabouli, Mouna, and Toubal, Abdel Salam. "The Legal Framework Governing the Independent Electoral Authority in Algeria." *Journal of Legal and Political Research*, No. 1, 2019, Faculty of Law and Political Science, University of Setif 2.

[^14]: Order No. 21-01, dated 10 March 2021.

[^15]: Amari, Sarah. The Constitutional Court in Algeria: Organization and Jurisdiction. Master's thesis in Law, specialization in Administrative Law, Department of Law, Faculty of Law and Political Science, Echahid Hamma Lakhdar University, El Oued, 2020–2021, p. 49.

[^16]: Jelloul, Haidour. "Electoral Disputes as a Mechanism for Ensuring the Transparency and Integrity of Elections." *Journal of Legal and Political Research*, Faculty of Law and Political Science, University of Jijel, Vol. 7, No. 1, 2022, p. 740.

[^17]: See Order No. 21-01, dated 26 Rajab 1442 AH, corresponding to 10 March 2021, concerning the Electoral Law.

[^18]: It should be noted in this regard that Order No. 21-01 was declared compliant by the Constitutional Council in its capacity as an organic law. Accordingly, the provisions contained therein possess constitutional legitimacy, including those concerning the Constitutional Court's authority to review presidential elections in this area. For further details, see Constitutional Council Decision No. 16/CC/21, dated 26 Rajab 1442 AH, corresponding to 10 March 2021, concerning the constitutional review of the order containing the Organic Law on Elections.

[^19]: Article 55 of the Rules Governing the Operation of the Constitutional Court provides: "The Constitutional Court shall receive the decisions of the Independent National Electoral Authority concerning candidacies, accompanied by the candidacy files, within twenty-four hours of their issuance. These documents shall be deposited with the General Secretariat of the Constitutional Court against an acknowledgment of receipt."

[^20]: Rehab, Shadia. "The Jurisdiction of the Constitutional Court in Electoral Matters." *Constitutional Council Journal*, No. 17, 2021, pp. 71–99, specifically p. 75.

[^21]: Ibid., p. 76.

[^22]: Kersas, Marwa. "Oversight of Presidential Elections by the Constitutional Court under the Provisions of Amended and Supplemented Order No. 21-01." *Constitutional Court Journal*, No. 4, June 2024, pp. 395–435, specifically p. 412; see also Amina Raïs, op. cit., p. 222.

[^23]: Amina Raïs, op. cit., p. 224.

[^24]: Amina Raïs, op. cit., p. 225.

[^25]: Ibid.

[^26]: Djellab, Kamel. "The Role of the Constitutional Council in Interpreting the Constitution." *Journal of Law and Human Sciences*, Vol. 11, No. 3, University of Ziane Achour, Djelfa, 2018, p. 42.

[^27]: Ibid., p. 42.

[^28]: Amina Raïs, op. cit., p. 223.

[^29]: Ghallab, Abdelhak. "New Conditions for Candidacy in Presidential and Legislative Elections under the Constitution and the Electoral Law: A Critical Analytical Study." *Law Journal*, Vol. 8, No. 2, University of Relizane, p. 195.

[^30]: Ghallab, Abdelhak, op. cit., p. 196.

[^31]: Amina Raïs, op. cit., p. 220.

[^32]: Ibid., pp. 227–228.

[^33]: Ibid., p. 228.

[^34]: Ibid.

[^35]: Ibid., p. 229.

[^36]: Ibid., pp. 227–228.

[^37]: Ibid., p. 230.

[^38]: See Article 255 of Order No. 21-01.

[^39]: Amina Raïs, op. cit., p. 231.

[^40]: Marwa Kersas, op. cit., p. 418.

[^41]: Chektami, Siham. "The Role of the Constitutional Court after Presidential Elections: An Analytical Study under Algerian Legislation." *Journal of Legal and Social Sciences*, Vol. 10, No. 2, June 2025, pp. 650–662, specifically p. 653.

See also Shadia Rehab, op. cit., p. 80.

[^42]: Siham Chektami, op. cit., p. 653.

[^43]: See Article 259, paragraph 5, of Order No. 21-01.

[^44]: Shadia Rehab, op. cit., p. 82.

[^45]: See Article 260, paragraph 1, of Order No. 21-01.

[^46]: Marwa Kersas, op. cit., p. 420.

[^47]: Siham Chektami, op. cit., p. 655.

[^48]: See Article 260, paragraph 1, of Order No. 21-01.

[^49]: Ben Saifi, Maryam, and Daman Dhib, Imad. "The Role of the Constitutional Court in the Electoral Process." *Journal of Law and Political Science*, University of Khenchela, Vol. 10, No. 1, 2023, p. 1115. See also Marwa Kersas, op. cit., p. 421.

[^50]: Following the counting of votes, the officials responsible for the process hand the signed vote-counting sheets to the president of the polling station. At the same time, they submit the

ballot papers whose validity has been disputed. Two sets of records are prepared at the polling station: the first records the valid votes cast, disputed votes, and invalidated votes; the second is prepared by the president of the polling station, and a copy is provided to the representative of the Independent Authority. For further details, see Tahar Ataoui and Fatiha Ouisat, *op. cit.*, p. 56.

[^51]: Amina Raïs, *op. cit.*, p. 233.

[^52]: Shadia Rehab, *op. cit.*, p. 83.

[^53]: It may be noted in this regard that the roles of both the People's National Assembly and the Council of the Nation are absent.

[^54]: Shadia Rehab, *op. cit.*, p. 83.

[^55]: See Decision No. 16/CC/21, cited above.

[^56]: See Articles 155 and 122 of Order No. 21-01.

[^57]: Amina Raïs, *op. cit.*, p. 234.

[^58]: Marwa Kersas, *op. cit.*, p. 423.

[^59]: See Articles 64 and 65 of the Rules Governing the Operation of the Constitutional Court.

[^60]: Amina Raïs, *op. cit.*, p. 235

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