

The audio _visual media usage controls in the electoral process according to Algerien legislation

ضوابط استعمال وسائل الإعلام السمعية البصرية في العملية الانتخابية وفقا للتشريع الجزائري

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Abstract:

Within the framework of the state orientation toward strengthening the role of the citizen in the electoral process and his stimulating to participate in election ; It proceeded to provide several mechanisms in order to ensure transparent and fair elections, and that was through revitalizing the role of media in the light of evolving its use and its impact, while devoting a series of legal controls by which it guarantees expanding the space of practicing Democracy in a complete impartiality, by emphasizing on fair and equitable distribution among all the candidates to be used in the electoral process, and here's what we study in this article with a focus on the legal developments which was preparing the presidential elections 2019, through which the pivotal role of the National Independent Authority of electoral observation appears, in its framework the audio _visual media's activity in the electoral process as well as the audio _visual authority .

Keywords:

The media – the elections - the electoral process –the candidates –the political parties -

المخلص:

في إطار توجه الدولة نحو تعزيز دور المواطن في العملية الانتخابية وتحفيزه للمشاركة في الانتخابات، فإنها قد عمدت على توفير العديد من الآليات قصد ضمان انتخابات شفافة ونزيهة، فكان ذلك بتفعيل دور وسائل الإعلام في ظل تطور مجال استعمالها وقوة تأثيرها، مع تكريس مجموعة من الضوابط القانونية تضمن من خلالها توسيع مجال ممارسة الديمقراطية بكل حيادية، بالتأكيد على التوزيع العادل والمنصف بين كافة المترشحين لاستعمالها في العملية الانتخابية، وهو ما سنقوم بدراسته في هذا المقال مع التركيز على المستجدات القانونية التي كانت بصدده التحضير للانتخابات الرئاسية 2019، والتي يبرز لنا من خلالها الدور المحوري للسلطة الوطنية المستقلة لمراقبة الانتخابات في تأطيرها لنشاط وسائل الإعلام السمعية البصرية في العملية الانتخابية إلى جانب سلطة ضبط السمع البصري.

الكلمات المفتاحية:

الإعلام، الانتخابات، العملية الانتخابية، المترشحين، الأحزاب السياسية.

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Introduction:

There were many pictures, by which the state's direction emerges toward devoting the principle of transparency and allow the citizens to participate in the process of functioning and encourage it to use the information and communication technologies to ensure that the information reaches the largest possible number of society groups and its trying to exploit the advantages which the audio _ visual mass media achieves, specially the visual one in the electoral process, and within the framework of devoting the citizen's right in full and objective media, regarding to the developments and the principles that the constitution of 2016 came up with, specially the article 53 of it, which allows the right to the political parties to use the public media equally. And that's what confirms us the importance of the role that the mass media of its various audio _visual types plays or even the role of electronic media in guiding the National public opinion and the consequences of its use, whether its positive version in transmitting the real and objective image of the national citizen system or in its use as a propaganda tool and incitement, which may lead to create a conflict and oppositions in points of view.

The Problem of the study:

Throughout what has already been raised, it becomes clear to us that the mass media is a means of awareness and mobilization at the same time.

This matter needs a legal framing for all aspects related to its use in the electoral process. And that what we are supposed to study after proposing the following problems:

How was the use framework of mass media in the electoral process within the legal developments?

A group of sub- questions may emerge throughout this problem:

- How effective do the framing legal controls to use the audio-visual media in the electoral process?
- What are the responsible bodies for tuning the way of exploiting the audio-visual media in the electoral process?
- What is the effect of the equal and fair distribution principle's among the candidates for the use of media on the integrity of the election campaign?

The Methodology used:

The electoral system has witnessed in Algeria several shifts and reforms in order to adapt with the political and social development and overflow the crisis of electoral abstinence and that was under a group of legal amendments, which we have studied an analytical study with the focus on the legal controls which

govern the use of audio –visual media from all the actors in the electoral campaign, and that by employing the rules of the analytical approach

General Division of the study:

We will study the controls of using the audio_ visual media in the electoral process within two sections:

We took up in **the first section** the legal framing of these regulations, but **the second section** we have studied the role of media in a stage of the electoral operation ‘s stages, which is the electoral campaign.

Section I: the use of audio –visual media in the electoral process within the legal texts

There are several legal texts through which the regulations of exploiting the audio-visual media in the electoral process is determined, and that indicates only the importance of media in directing the public opinion, and its role in devoting the democratic orientation on which the modern state is based, and that we are supposed to study in the points as the following within the framework of respecting the gradation of the legal rule.

A) The legal basis to use the media in the electoral process:

The prominent and the consistent matter in our studies of the Algerian situation and the transformation in framing the electoral process, is a set of legal and political reforms that was its result issuing a group of legal and regulative texts which mainly related to organizing the political competition and reforming the electoral process.

Within the framework to link between the two vital areas (the media and the elections) and their degree of impact in practicing the national political activity and their direct relationship with the general system of the whole state. We find the necessity of studying all the legal acts that have relationship with the two previously mentioned fields, and one the demands that are imposed by the study with the focus on the new developments according to the current situation.

Starting by the constitutional amendment of 2016 which came up with the organic law related to the election 01/16 and touched upon the last amendment under the organic law number 08/19¹, in addition to a group of legal acts represented in:

- **The organic law number 19/07 related to the independent authority to monitor the elections².**
- **The organic law number 12/04 related to the political parties³.**
- **The law number 14/04 related to audio-visual activity⁴.**

The right of free expression was devoted throughout many legal texts, whether national or international, starting off 1989 constitution⁵ which acknowledged that “the freedom of expression and the foundation of associations and meetings are guaranteed to the citizens”, and it ‘s the same text that the article 48 from the 2016 constitution included. One of the new developments that the last constitution came up with ; that states clearly on media pluralism in the written, audio-visual press and that’s in the article 50 “the freedom of written, audio-visual media, and on media network is guaranteed”.

and the article 02 of organic law number 12/05 concerning media which states that “the activity of media is practiced freely within the provision of organic law and the applicable legislation and organization ”⁶

Also, the article 177 of the organic law number 19/08 concerning the electoral system on “each candidates of the local legislative or presidential elections, in order to present his program to electors, has a fair area in the of audio visual media which are authorized to practice according to applicable legislation and organization.

These granted shares are equal between a candidate and another for the presidential elections differ from the local and legislative elections depending on the importance of candidates ‘ number which are nominated by a political party or a group of political parties”.⁷

Concerning the organic law number 19/07 related to The National Independent Authority Of Elections, states the right in exploiting the audio-visual media through the article 08 “The national independent authority takes all the procedures and the measures that guarantee to prepare and conduct elections in all fairness and transparency and neutrality without any distinction among the candidates, and takes charge on this; in particular:

- The fair and equitable distribution of allocated time to the candidates in the audiovisual media in coordination with control authority which supervise the audiovisual.

- To facilitate the work of media institutions and journalists to follow up the different stages of the electoral process in coordination with the competent authorities”.

And in the article 47 text of the organic law number 12/04 concerning the political parties, we find that the political parties can issue the media bulletins or magazines as a means of informing the citizen about the party’s activities, as it came in “ it ‘s able for the political party within the framework of respecting this applicable law and legislation to issue media publication or magazines”⁸.

Also, the matter does not stop on what 's reported in the organic law concerning the political parties, but it extends to the article 24 text of the law number 12/06 concerning the associations, which states that:

“the association, under the provision of applicable legislative, can do the following:

- Issuing and publishing magazines bulletins, informative documents, and leaflets that have a relationship with its goal under the respect of institution, the values and the national constants and the applicable laws”.⁹

And this is the same subject that the article 48 of the law number 14/04 came up with, concerning the audio visual activity as a consolidation of freedom of opinion and respect the multiparty, where it stated that “the book of general conditions includes the commitments that allow:

- Respecting the multiparty and the multiplicity of intellectual stream and the opinions in television and radio programs.

- The refrain from selling the spaces which are designed for the advertisement because of electoral advertising.

- Compliance with the laws and commitments of producing and broadcasting the electoral campaign quotas.

- In the application of legislation and regulation in effect.”

B) The institutional framework use of media in the electoral process:

There are many parts which have the right of exploiting the audio visual media and this right can be granted to the independent supreme body to control elections or the political parties, also the candidates in the presidential, the local or the legislative elections, or even the associations and that within the framework to enhance expanding the practice of Democracy.

However, we will touch upon the legal text which is related to two categories, they are:

1- The independent supreme body to control election:

The supreme independent body to control elections benefits from the probability of exploiting the audio visual media in order to inform the citizen about the taken procedures to frame the electoral process in all its stages, and all the harnessing physical and human means to ensure the successful process, and that through applying the text of article 05 of the organic article 19/05 which states that “the independent authority under the provision of exercising its powers, benefits from the use of the national audio-visual media, according. to the established legislation and regulation”

The media notifies to this purpose from the president of the authority.

2- the political parties:

The article 53 of the constitution states that “the political accredited parties without any discrimination under the respect of the article 52 above, benefit from the following rights, in particular;

- A timing in the public means of media fit with its representation at the national level”¹⁰.

In the article 174 p 5 of the organic law number 19/08 states that “the political parties which prepares the election campaign in the framework of referendum consultations from a fair field in the audiovisual media that are licensed to practice according to the applicable legislation and regulation.

The ways and the procedures are determined in by using the audiovisual media licensed to practice according to the applicable regulation and legislation.

The way of other advertising is determined by a decision from the head of national independent authority of elections”.

C)the dual control on shaping the principles of equality in exploiting audiovisual media:

Starting from the text of article 178 of organic law number 08/19 which came up with “ all the means of audio visual media are licensed to practice according to the established legislative and regulation have to participate in covering the election campaign with the guarantee of fair distribution of time of the use of media from the candidates.

The national independent authority to control elections in a coordination with the authority of auditory and visual tuning ensures respecting this article provisions ”.¹¹

It becomes clear to us that the Algerian legislator was keen in devoting the principle of equality among all the candidates, the political parties to exploit the audio visual media, with the distribution of time shares, and its time of broadcasting, and order the parties ‘ interventions and the approved standards in that is to fit the electoral lists with a number of untapped time shares.¹²

He entrusted devoting this principle at the first class to the supreme independent authority to control elections. So, its practice of control authority is an inherent jurisdiction which is granted to each authority to adjust validity of taking all the measures at upon the preview of irregularities and offences after the use of the private or public media, since, they have a direct relationship to the parties of electoral process.

We deduce that in the article 17 text of the law number 19/07 which came up with “the independent authority, upon the preview of any registered

irregularity in the audio visual, takes all the necessary measure about it according to the applicable legislation and regularity”.

Also, beside the supreme independent authority to control elections, we find The Authority of Audiovisual Regulations as an innovated, independent and administrative authority in order to adjust the audio-visual practice.

Hereby the article 64 text of the organic law number 12/05 related to the media, which states that “the authority of audio-visual regulation is established, it is an independent authority, that has a moral personality and the material independence”.

Also, the legal framework of the audio visual activity is determined under the law number 04/14 in which the legislator grants the power of applying the rules to the authority of audio visual regulation, which must be by individual decisions, specially, represented in applying the way of broadcasting programs assigned for the political formations and accredited, national, syndic, and professional organizations.

Its role in supervision appears through:

- Watch over to respect the pluralistic expression of intellectual streams and opinion in all the suitable means in service program of audio-visual broad casting, principally through the political media ‘s shares.
- To investigate in the complaints issued from the political parties, the electoral organizations and associations¹³.

Section II: the role of media in stimulating the media-advertising through the electoral campaign

What characterizes the stage of advertising or the electoral campaign that is not a procedural stage, which has a relationship with the data or information with digital processing. It’s an interactive stage in which the use of information and communication technology appears through involving the civil society and enhancing its control role, beside the means of media in determining the political orientation. So, it’s the closest perception can be shaped in the conception of the Digital Democracy which was already mentioned before¹⁴.

The electoral campaign is considered as a procedure and a legal right for each candidate, based on a group of principles and legal grounds, as the equality among the candidates and give a way for them to express their ideas and hiring all kinds of media as : journalists, TV, Internet, and social media ect¹⁵

At the same time, the candidates keep a set of restrictions and controls, in particular, controlling the use of media and imposing sanctions and penalties in the case of breaching the rules of organizing the electoral campaign.¹⁶

A) the means of electoral campaign:

The matter which can be confirmed after our studies to all the previous legal texts, which link the media and elections and within the framework of our determine to the legal means that can be exploited in the electoral process is that all the legal texts have been used the term “**audiovisual media**”.

However, under the multiple means which have their result is the developments in the use of technology, we find that they led to the relief of various means that may be used in the electoral process, the most important ones are: the electronic media and the social media

In view of the multiplicity of means, and in the frame of adherence the legal term,so this matter requires us to determine what is meant by “**audio visual**” and “**audiovisual activity**”

Audio visual: is every means of media which is contrary to the paper media (the book or newspaper) ie: it ‘ s a means of media that uses a device to communicate, and these means can be limited from its simplicity as the sign or the poster to the most complicated and developed ones as computers, cinema and television.

Also,the audio visual field is shaped for the breeding workers, in all the means of media and communication, which use the audio visual image i.e: corresponds to the printed media of communication¹⁷.

The audio visual activity: It ‘ s defined under the article 58 of the organic law number 12/05 that is “every thing is placed under the disposal of the audience and a class of it by wireless connection,broadcasting signals, cracks, painted shapes, images, sounds,or different messages that have not postage stamp” and in that expansion and enumerate activities, which are considered as the audio visual activities¹⁸.

In view of the importance of this stage in directing the public opinion, since it expresses a set of activities and events which the candidates practice in order to achieve their political goals, and it’s brainstorming and political programs allegedly implemented during the electoral custody, the matter that makes its means multiple and gradate according its importance and their effectiveness, and they are as following;

- The wall stickers¹⁹.
- The meeting and gatherings.

- The means of media and communication, whether they are traditional or modern.

1- The wall stickers :

The wall stickers are considered as one of the oldest communicative means and they are rapidly spreading and easy to understand, so the political entity resort to use the stickers in order to move their targets to the citizen and influence him by the implications that it transmits whether in the image, the letter, the word or the symbol²⁰.

The political work is based on an advertising activity which simplify the goals and programs, in order to groom the public opinion, thus the wall stickers is a means of communication bears the program content of the candidates 's work and plays an important role in awareness and education, advice and guidance of the segments of society²¹.

The article 182 of the organic law number 19/08 states that “ the constituencies allocate public places to stick the nominations, its area is distributed equally.

The use of any other form of advertising is prohibited outside the specified place for this purpose.

The National Independent Authority of elections ensures applying the provisions, which are mentioned above”

It becomes clear that through this article text above that the national independent authority to control elections takes charges of identification the places assigned to each candidates to stick the nominations and the advertising documents and distribute them equally, and that's before 15 days from the date of opening the electoral campaign, but at the local level the places are determined taking into account the percentage of the population density for every municipality, and that will be before 8 days²².

2- The meetings and the electoral assembly:

The procedures of holding the meeting and the public demonstrations have been organized, in general whether what ' related to the electoral process or other, according to the amended law number 91/19.

And the intuitive matter that the organizing any meeting or manifestation will be after permission from the local authority (the president of the municipal people 's council), after applying for a request that specifies the date, the place and the time of meeting where is held and its object.

One of the matters that require to respect, regardless to not compromise the country codes, that 's organized in a place which it's easy to the citizen to

reach and do not touch the general system and that according to the article 02 text of the law number 91/19 which came up with “the public meeting is a temporary gathering of agreeing people, is arranged outside the public road and in closed place and easy for general public to join in order to exchange ideas or to defend the common interests”²³.

3- The traditional, modern media and communication:

Reforming the media sector by the insurance of the media law of the year 2012, is considered among the main themes, which are included in the approved political reforms, in which, after that the media scene witnessed a set of changes, the most important is to open the audio _visual sector for the private investment, and to establish the two control authorities (the audio -visual control authority and the written press control authority).

The legal supervision shows the way to exploit the audio -visual media under the law number 14/04. especially the articles 51 and 48. the text of article 48 stated that “the general conditions book includes the commitments which allow:

- The respect of multiparty and the multiplicity of intellectual streams and the opinions in radio and TV programs.
- To refrain from selling specified spaces of advertising for the electoral advertising.
- Compliance with the rules and obligations of delivering and broadcasting quotas related to the electoral campaign in application of valid legislation and the regulations”²⁴.

Regarding to the big role which the traditional, visible, audio, readable media and the modern ones like internet and its uses (social media _blogs _forums, the electronic media) in the orientation and education process with imposing a set of controls in order to guarantee neutrality and to avoid occurring a popular counter mobilization²⁵.

The real role of media, during the electoral process, focuses on two essential primary axis:

First: Covering all the activities of electoral process from the first moment till the day and the procedures of counting and sorting and announcing the results.

Second: covering the electoral campaign of the parties and the competing candidates among themselves to win the seats²⁶.

B) The importance of media in the electoral process:

– The ability to influence and to expand the information range, the media is characterized as a means that has a palatial dimension covers all the regions of the country.

– The inclusivity in addressing the concerned, since the electoral campaign continues throughout the election period, and will be oriented to all cultural levels of citizens who are covered in the elections²⁷.

– The means of media are considered as a means that has a direct and indirect communicative activity, which helps to measure the political participation and involving the civil society in the electoral process.

– The mass media is an organized and planned activity, subjected for monitoring and controlling, which ensures neutrality in subtracting and credibility in the information²⁸.

– The audio-visual media is considered as one of the expressions that distinguished by simplicity and repetition and which influence the behaviors of voters by convincing them, of what the informational message contains.

– The possibility of direct access to all the details of the electoral process (the registration centers, the candidates – election centers – appointments – documents – legal regulatory texts for the electoral process)²⁹.

The role of traditional media as banners and stickers and gathering and field visit can not be neglected because of its characterization by ease of use in comparison with the difficulties which the candidate intercepts to access to audio and visual advertising devices³⁰.

The matter that cannot be ignored is in the role of media, including information and communication technologies with all its kinds in directing the public opinion which appeared recently in electoral process practices of the presidential elections 2019 which managed to unify the opinion in whole the country without being any advanced planning there, or to be invisible powers that guide or organize it, whatever it's a comprehensive national move, the social media helped to unify, organize and fleshing out it to express the opinion of united people.

C) The controls of media use in the electoral campaign:

The Algerian legislator set a group of controls which the candidates must be adhered to, during their use of advertising means within the sector campaign framework, as the following:

- Respecting the legally prescribed dates of the official electoral campaign and the candidate respects the program that he presents with the candidates file.

- Do not use foreign languages and do not use any way of commercial advertising to show electoral advertising.

- Do not publish and sounding opinions and scouting the intentions of the electorates to vote and measuring the popularity of candidates before 72 hours and 5 days for the community residing abroad, before the polling dates.

- The disuse of leadership and institutions and public management and education and training institutions, whatever their types or their belonging for the purpose of electoral advertising, also, the properties or the tools affiliated with the private and the public legal person.

- The refrain of every candidate from any illegal situation or behavior or wrongful, insulting or outrageous, unethical acts and watch over the smooth running of the campaign.

- ban the bad use of the country codes in the electoral advertising or prejudice the revolution or the general system and public morals³¹.

Conclusion:

The electoral abstinence and no political participation are considered as one of the most important manifestations which prevailed the Algerian community and which expresses a position or a direction that the citizen takes stems from a personal conviction to not want to participate definitely in the business and cases of the political community whatever, it was not to register in the electoral lists or not acclamation.

The reasons are various in that : the lack of trust in the electoral system, and the citizen does not feel that voting is a political duty from the duties of citizenship or even the conviction that election in all their stages and levels are mainly an operation aims to keep the existing system and that what makes the media appears as a mechanism that can change the current situation and increasing the popular in the electoral operation under the commitment of credibility since it provides a fast and easy flow of information and comprehensiveness to all members of society.

No doubt, that equality and neutrality in organizing the electoral campaign and media advertising are the most important mechanisms which through them a space of freedom, the multiplicity of opinions and sovereignty of democratic situation, and the emerge of political bloc which are able to offer many

alternatives to the citizen, enable him to differentiate among them to choose the most effective suggestion or an electoral program based on the data and ideas which may be disclosed directly in all audiovisual media that the practical reality has proven its effectiveness in providing a daily and continuous interactions with the citizen.

However, to reach the advantages that the audiovisual media provides and its uses in the electoral process in all its stages, the matter requires to activate the legal controls in the presence of an effective regulatory institutions on the political parties' activities.

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