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## **Analytical study between Decree 21/01 and the amended and supplemented Decree 21/13 of Law 11/10 - The community as a model -**

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### **Abstract:**

The Municipality is the basic pillar that forms the administrative organisation and the main nucleus of local development. It has two main bodies represented in the Municipal People's Assembly and its President, each of which has a set of powers granted to it by the Local Administration Law No. 11/10. The municipal bodies are also subject to some form of supervision by the Inspectorate, which is perhaps the legislator's concern to ensure that the municipality does not abuse its powers and privileges. The main objective of this study is to highlight the main structures of the municipality and to focus on the main powers granted to it by law, as well as to shed light on the control mechanisms imposed on it. One of the most important findings is that the control over the municipality took the form of strict control, as it included the Municipal People's Assembly as an entity and its members, as well as control over its actions. Therefore, we cannot say that the independence of the municipality is absolute, but rather relative, as it is subject to the central authority.

**Keywords:** Municipal People's Assembly, President of the Municipal People's Assembly, law, legislator, municipality, powers.

### **Introduction:**

The commune in Algeria is the first and fundamental unit of local communities because of the important role it plays as a point of contact between the administration and the citizen. It is the embodiment of administrative decentralisation, as all citizens participate in its management. The municipality has undergone several developments since the occupation until today, and the Algerian legislator has paid attention to the legislation of the municipality through some laws that are known in the legal system. Through this research paper, we will try to highlight the main structures of the municipality and focus on the main competences legally entrusted to it, as well as shed light on the control mechanisms imposed on it. From this, we pose the following problem: "To what extent are the provisions of Law 11/10 on the municipality effective in comparison with the repealed Law 90/08? And what are the procedural developments introduced by Decree 21/01 on elections and Decree 21/13 amending the Municipal Law?"

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The descriptive and analytical approach was chosen because it is the most appropriate for legal studies and research.

In order to get to know the Algerian municipality, we will look at both its concept and the mechanisms of control over it.

## **2. The concept of the municipality:**

The Algerian organisation in the management of administrative affairs relied on the local administration represented by the wilayah (province) and the municipality, and gave great attention to the municipality because of its proximity to the citizen as the basic organising device politically, administratively and socially in the state.

### **Definition of the municipality:**

The municipality is the fundamental pillar that constitutes the administrative organisation and the primary nucleus for local development. Therefore, we will deal with the definition of the municipality in the Algerian constitutions and its definition in the laws related to it, from the first law issued in 1967 to the current law 11/10.

#### **1.1.2 Definition of the local authority in the Algerian constitutions:**

The Algerian legislator referred to the territorial communities and mentioned the municipality among them, and his reference to them differed according to the constitution in force at the time, starting with the 1963 constitution, through the 1989 constitution, to the constitutional amendment of 1996. Article 09 of the 1963 Constitution, dated 10 December 1963, recognised the commune as follows: “The Algerian State is a unitary State organised in the form of territorial, administrative, economic and social communities, and the commune is the basic territorial, administrative, economic and social community”. As for the Constitution of 1976, dated 22/11/1976, it mentions them in article 36: “The territorial communities are the wilaya and the municipality”<sup>2</sup>. As for the 1989 Constitution, it referred to them as: “The territorial communities of the State are the wilaya and the municipality, and the municipality is the territorial community”, which was maintained in the 1996<sup>1</sup> amendment of 07/12/1996. As for the constitutional amendment of 2020, in article 17, paragraph 01, it referred to the local communities of the state and mentioned the municipality among them, stating: “The local communities of the state are the municipality and the wilaya....” It also emphasised in paragraph 02 of Article 17 that “the municipality is the basic community”<sup>3</sup>.

#### **2.1.2 Definition of the Municipality in the Laws Relating to the Municipality**

The definitions related to the municipality have been different according to each law and the period in which each law was issued:

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<sup>2</sup>- Presidential Decree 96/438 of 07/12/1996 containing the Algerian Constitution, Official Journal No. 76.

<sup>3</sup>- Presidential Decree 20/442 of 30 December 2020 amending the Constitution of 2020, Official Journal No. 82 of 2020.

Municipal Law No. 67/24 of 18/01/1967<sup>4</sup> defined it as: “The municipality is the basic political, administrative, economic, social and cultural territorial community”. This shows the multiplicity of the functions of the municipality in the socialist system of the time.

Article 1 of Law 90/08 of 11/04/1990 defines it as follows: “The municipality is the basic territorial community, with legal personality and financial autonomy, established by law”. This means that the municipality is a decentralised basic unit, a public service with rights and duties, which on the one hand makes it different from the individuals who manage it, and on the other hand it has a separate financial liability, i.e. it is financially independent from the individuals who manage it, and financial autonomy is one of the characteristics of legal personality.

The Municipal Law No. 11/10 of 22/07/2011 defines it as follows: “The municipality is the basic territorial community of the State and has legal personality and independent financial liability and is established by law”. This is the same definition as in Law 90/08<sup>5</sup>.

However, it added in article 2 that: “The municipality is the decentralised territorial base and the place for the exercise of citizenship and constitutes the framework for the participation of citizens in the management of public affairs”, considering the municipality as the institutional framework for the practice of local democracy. This definition is in line with the constitutional amendment of 2020, which considers the municipality as a fundamental community.

## **2.2 Municipal bodies**

According to article 15 of the Local Authorities Code, the organisational structure of local government in Algeria is made up of two bodies: a consultative body, the local people’s assembly, and an executive body, headed by the president of the local people’s assembly. There is also an administration that ensures the smooth running of its services, headed by the Secretary General of the Municipality under the authority of the President of the Municipal People’s Assembly.

### **1.2.2 The Municipal People’s Assembly:**

In this section we will look at both the definition of the Municipal People’s Assembly and how it is constituted.

#### **1. Definition of the Municipal People’s Assembly**

The Municipal People’s Assembly is the elected body that represents the main administration in the municipality. According to article 169 of the Electoral Code (Decree 21/01)<sup>6</sup>, the Assembly is elected for a five-year term by proportional list voting. Therefore, the study of the Municipal People’s Assembly requires us to examine its composition, operating rules and deliberation system as follows:

#### **2. Composition of the Municipal People’s Assembly**

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<sup>4</sup>- Law 67/24 of 18/01/1967 on the municipality, Official Journal No. 06.

<sup>5</sup>- Article 01 of Law 11/10 of 22 June 2011, Official Gazette No. 37 of 07.03.2011.

<sup>6</sup>- Decree 21/01, of 10 March 2021, establishing the Organic Law on Elections, BOE No. 17, of 10 March 2021.

The Municipal People's Assembly consists of several members, the number of which varies from one municipality to another according to the population census of each municipality. Some systems aim to have a large local council in order to involve as many citizens as possible in the decision-making process, while others seek to reduce the number of members in order to allow for in-depth study and discussion of issues. In Algeria, the electoral system<sup>7</sup> determines the number of seats in elected councils based on the size of the population, as determined by the most recent general population and housing census, in accordance with Article 187 of Ordinance 21/01 (as amended). For example:

- 13 members in municipalities with less than 10,000 inhabitants.
- 15 members in communes with between 10,000 and 20,000 inhabitants.

### **3. Conditions for election to the municipal councils**

Article 200 of Organic Law 21/01 on Elections stipulates that candidates for the Municipal People's Assembly must fulfil the conditions set out in Article 50 of the same law, in addition to being registered in the electoral district in which they are standing, as set out in Article 51 of the same law. On reading the text, it is clear that the legislator requires certain conditions to be met by both voters and candidates<sup>8</sup>.

### **4. The electoral process**

The electoral process refers to the set of procedures, measures and actions related to elections, including the preparation of the electoral roll, voting and subsequent counting, culminating in the announcement of the results. The legislator has provided the necessary safeguards to ensure the credibility of the electoral process, including:

- Verification of electoral lists: Under the supervision of an independent authority, the electoral lists are checked by a municipal committee. This is provided for in Article 63 of Decree 21/01.

A new provision, introduced by article 62 of decree 21/01, stipulates that the revision of the electoral lists takes place during the last quarter of each year. In addition, an extraordinary revision may be carried out by presidential decree. The composition of the municipal committee that oversees the revision process includes

- A judge appointed by the president of the competent judicial council as chairman.
- Three citizens of the municipality, selected by the provincial delegation of the Independent Authority from among the registered voters on the electoral list concerned. The committee is supported by a permanent secretariat, headed by an experienced and competent municipal employee.

The electoral process consists of several stages, including voting, counting and the distribution of seats.

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<sup>7</sup>- Hassan Awadh: Local Administration and its Applications in Arab Countries, a Comparative Study, University Institution for Publishing and Distribution, without year of publication.

<sup>8</sup>- See the provisions of Article 200 of Decree 21/01, as amended and supplemented, op. cit.

#### **1-4 The electoral process:**

Voting refers to the expression of citizens' opinions and their choice of representatives to manage the affairs of the state and its institutions. Voting takes place over the course of one day, beginning at 8 a.m. in the morning and ending at 7 p.m. in the evening of the same day. However, in exceptional cases, the Wali (Governor) may decide, after consulting the Minister of the Interior and informing the Wilaya (Provincial) Election Supervisory Committee, to advance the closing time of the voting process in order to facilitate the exercise of the electorate's right to vote.

It is important to note that the decision to advance the voting process may be taken up to 3 days (72 hours) before the scheduled voting day<sup>9</sup>, particularly in municipalities where the voting process cannot be held on the same day due to exceptional circumstances. This may be requested by the Independent High Electoral Authority, for example, in the case of nomadic and semi-nomadic populations living in remote areas, as well as for security personnel to ensure the smooth conduct of the electoral process during local elections.

Article 133 of Law 21/01 on elections stipulates that voting is personal and secret. However, Article 157 of the same law allows voting by proxy, subject to a number of conditions, such as the proxy being a registered voter belonging to one of the categories listed in Article 157.

Patients in hospitals or being treated at home, severely disabled or invalids, workers employed outside their state of residence, university students studying outside their state of origin and citizens temporarily resident abroad, as well as members of the National People's Army, National Security and Civil Protection, and employees of the National Customs and Prison Services and the Municipal Guard.

It should be noted that the legislator included university students in order to enshrine the principle of national participation in the electoral process. The legislator's interest in the proxy voting process can only be seen as an agreement with the principles of true democracy, as it avoids the loss of votes from voters who were unable to participate in the voting process in person, which gives more credibility to the integrity and transparency of the electoral process.

#### **2.4 Counting and tabulation of votes:**

The process of counting and tabulating the votes involves counting and calculating the votes received by each candidate. It also includes the steps of opening the ballot boxes, opening the ballot papers and eliminating any invalid votes. The counting process takes place immediately after the polling stations close, as provided for in Article 152 of Decree 21/01.

In order to prevent any possibility of fraud or manipulation of the votes and the ballot papers, the legislator has stipulated that the counting of the votes shall be carried out under the supervision of the members of the polling station, as provided for in article 153 of decree 21/01: "The counting shall be carried out by counters under the supervision of the members of the polling station...".

#### **3.4 Allocation of seats:**

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<sup>9</sup>- Article 132 of Decree No. 21/01, as amended and supplemented, op. cit.

This stage is considered one of the most difficult and complex steps in the electoral process. It requires precise mathematical calculations, and in many cases this process has been the subject of deep disputes between candidates, especially given the lack of clarity in the law on this matter.

Ordinance 21/01 dealt with the method of allocating seats once the votes had been counted in Article 171, which stipulated that the seats to be filled would be distributed among the lists in proportion to the application of the rule of the largest remainder, i.e. the list that obtained the highest percentage of votes. The second paragraph of the same article added that lists that did not obtain at least 5% of the votes expressed would not be taken into account, as opposed to the 7% threshold in the previous Law 16/10.

Article 172 of Decree 21/01 establishes the electoral coefficient: “The electoral coefficient is the result of dividing the number of votes expressed in each constituency by the number of seats to be filled in the same constituency...”. Then the distribution begins on the basis of the calculated electoral coefficient, with each list receiving the number of seats corresponding to the electoral coefficient.

If there is a vacant seat, it is allocated to the list whose candidate is the youngest, as provided for in paragraph 2 of article 174 of decree 21/01. In the event of a tie between a male and a female candidate, the remaining seat is awarded to the female candidate.

#### **4.4 The legal status of the Municipal People’s Council:**

Membership in the Municipal People’s Council is voluntary, while the President of the Municipal People’s Council is dedicated to his duties and receives compensation for performing his functions. In order for a member to attend the meetings and deliberations of the Council, the summons sent to him or her is considered a legal justification for his or her absence from work<sup>10</sup>. In the event of the death, resignation or exclusion of a member, he will be replaced by the next candidate on the same list and the Wali (Governor) will issue the replacement decision within one month, as stipulated in Article 41 of Law 11/10 on the Municipality.

#### **5. Powers of the Municipal People’s Council:**

The Municipal People’s Council has several powers that cover all activities of public or general interest within the municipal area<sup>11</sup>. Through its deliberations, the Council can express its recommendations on most matters of municipal interest. In particular, it contributes, alongside the State, to the management and development of the territory, as well as to economic, cultural and security matters. The Municipal People’s Council effectively exercises most of these powers through its standing and special committees. The Council has a number of powers in different areas:

- Powers of the Municipal People’s Council in the field of planning, urban development and equipment, as covered by Articles 107-121 of Law 11/10.

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<sup>10</sup>- Farida Meziani: Principles of Algerian Administrative Law, Ammar Qarfi Printing Press, Batna, 2011, p. 219.

<sup>11</sup>- Muhyi al-Din al-Ashi: Principles of General Administrative Law, Halabi Publications, Beirut, 2003, p. 54.

- Powers of the Municipal People’s Council in the social and cultural field, as set out in Article 122 of Law 11/10.

- The powers of the Municipal People’s Council in the field of health and cleanliness, as organised in Article 123 of Law 11/10, including the role of the Municipality in the fight against pollution, the maintenance of roads and the preservation of public health.

## **6. Functioning of the Municipal People’s Assembly:**

The Municipal People’s Assembly exercises its powers through deliberation, and the Assembly adopts a modern democratic method of administration, as its decisions are made only after research, investigation, data collection and consultation on the matter. There is no room for individual work.

In order to study the functioning of the Municipal People’s Assembly, we will look at both the sessions of the Municipal People’s Assembly and its deliberations.

### **6.1 Meetings of the Municipal People’s Assembly:**

The Municipal People’s Assembly holds a regular session every two months, and the duration of each session does not exceed five days, i.e. six regular sessions per year. It is noteworthy that the legislator changed the number of sessions of the Assembly after it had been held every three months, i.e. four times a year, as provided for in Article 14 of the repealed Law 90/08. The legislator reduced the duration of the sessions to two months and renewed the duration of the sessions to 5 days, as stated in Article 16 of Law 11/10<sup>12</sup>.

With regard to extraordinary sessions, Article 17 of Law 11/10 stipulates that “the Assembly shall meet in extraordinary session whenever the affairs of the Municipality require it, at the request of its President or two-thirds of its members, or at the request of the Wali (Governor)”.

Article 19 of Law 11/10 states that “the Municipal People’s Assembly shall hold its meetings at the seat of the municipality, except in cases of force majeure, in which case the legislator may authorise the meeting to be held outside the seat of the municipality or outside its territory, but only after being determined by the Wali.

The date and agenda of the sessions of the Assembly shall be determined by the President in consultation with the Executive Body.

The Assembly shall commence its deliberations when the majority of its members are present, provided that written invitations, accompanied by the agenda, have been sent to their places of residence at least ten full days before the opening of the session<sup>13</sup>.

### **2.6 Deliberations of the Municipal People’s Council:**

Article 23 of the Municipal Law stipulates that the meetings of the Municipal People’s Council are valid only if the absolute majority is present, which means that the deliberations are considered valid after the second convocation with a difference of 05 full days, regardless of the number of members present. The Council’s meetings are public and open to the citizens

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<sup>12</sup>- See the provisions of Article 16 of the aforementioned Law 11/10.

<sup>13</sup>- Articles 19-21 of the same law.

of the municipality and to any citizen interested in the subject matter of the deliberations. In practice, however, 90% of the elected councils refuse to allow any form of participation by the citizens, and they always find the same excuse to prevent the citizens from following the affairs of their municipality, namely that the deliberations concern confidential matters and relate to the examination of the situation of the elected members or to matters relating to security, which is contrary to the principle of organising local consultation and strengthening local democracy, as well as the principle of bringing the administration closer to the citizens.

With regard to the system of meetings, Article 27 of Law 11/10 entrusts it to the President, who may, after warning, expel any non-elected member of the Council who disturbs the orderly running of the meeting. It should be noted that the legislator has explicitly emphasised the recognised authority to direct the session and impose order in it. Article 28 of Law 11/10 provided for the prohibition of any councillor from attending the sessions of the Council in which it deliberates on a subject that concerns him or in which he has an interest.

In this context, article 29 also stipulates that “the Secretary General of the Municipality shall ensure the confidentiality of the meeting under the supervision of the Municipal People’s Council”.As for Article 30, it provides for the publication of the deliberations in the designated places for observation and information of the public within the following eight days of their entry into force, except for the cases provided for in Article 26 of Law 11/10.The legislator has made the publication of these deliberations compulsory in order to allow citizens to examine them.

### **2.2.2 The President of the Municipal People’s Assembly:**

The President of the Municipal People’s Assembly is the responsible official and represents the executive body. He or she is elected from among the members, and the body includes two or more vice-presidents, the number of which varies according to the population. We will deal with the method<sup>14</sup> of electing the President of the Municipal People’s Assembly, then we will discuss the cases of termination of their duties, according to the Law 11/10 and the Decree 21/13, which modified and completed its provisions.

#### **1- Appointment of the President of the Municipal People’s Assembly**

We will deal with the method of their appointment through the legal texts, be it the Municipal Law or the Electoral Law.

A- Appointment of the President of the Municipal People’s Assembly in the light of Law 11/10 and Decree 21/01

Article 65 states:”The President of the Municipal Council shall be declared from the list that has obtained the majority of the votes of the electors.In the event of a tie, the youngest candidate shall be declared president”.

What is noteworthy about this article is that the legislator did not address the ambiguity regarding the appointment of the President of the Municipal People’s Assembly, except for the

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<sup>14</sup>- Georges Vedel: Administrative Law, Part Two, University Publishing and Distribution Institution, Beirut, 2011, p. 378.



second paragraph, which addressed the problem of equal votes by entrusting it to the youngest.

The method of appointing the President of the Municipal People's Assembly was the subject of much debate among the deputies, who dropped the text of the original article included in the draft Municipal Act prepared by the executive authority. However, the legislator rectified the matter and further clarified this article in the repealed Electoral Law 12/01, in Article 80, which stipulates that in the event that no list obtains an absolute majority, the lists that have obtained at least 35% of the seats may present a candidate.

The legislator also proposed another solution in the event that no list obtained at least 35% of the seats, according to which all lists could present a candidate, in which case the election would be secret and the candidate with the most votes would be declared President of the Council.

In the event of a tie, two rounds are held over the following two days, and if there is still a tie, the youngest candidate is declared President of the Municipal People's Assembly<sup>15</sup>, a matter not mentioned in Decree 21/01.

B- Method of appointing the President of the Municipal People's Assembly in the light of Decree 21/13 amending and supplementing Municipal Law 11/10 and Decree 21/10 amending and supplementing Decree 21/10

The Wali (Governor) summons the elected members for the installation of the Municipal People's Assembly within 8 days of the announcement of the results [Article 02 of Decree 21/13 amending the provisions of Article 64 of Law 11/10].

- The council meets under the chairmanship of the oldest elected member to elect its president within 5 days of the inauguration of the council, and a temporary office is set up to supervise the election, composed of the oldest elected member assisted by the two youngest elected members, provided they are not candidates. The Bureau shall draw up the list of candidates [Article 64 bis].

- The candidate for the presidency of the Municipal People's Council shall come from the list that has obtained the absolute majority of seats.

- The two lists that obtained at least 35% of the seats may each present one candidate. If no list has obtained at least 35% of the seats, all the lists may present a candidate [Article 04 of Decree 21/13 amending the provisions of Article 65 of Law 11/10].

The President of the Municipal People's Council announces the candidate who has obtained the absolute majority of votes.

If no candidate obtains the absolute majority of votes, a second round is held between the candidates who obtained the first and second places, and the candidate who obtains the majority of votes is declared the winner. In the event of a tie, the oldest candidate shall be

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<sup>15</sup>- Article 80 of the repealed Organic Law 12/01 of 18 January 2012.

declared the winner, as provided for in Article 04 of Decree 21/13 amending the provisions of Article 65 of Law 11/10<sup>16</sup>.

Article 63 of the Municipal Law 11/10 stipulates that the Mayor must be a permanent and effective resident of the Municipality, which is a better guarantee of communication between the citizens and the Mayor, and of close attention to the interests of the citizens and the improvement of their daily lives. Article 68 of Law 11/10 stipulates that a report must be drawn up between the outgoing mayor and the new mayor within 8 days of the latter's inauguration, and a copy of this report must be sent to the Wali (governor). If the term of office of the council president is renewed, he or she must present a report on the situation in the municipality, with the aim of increasing transparency in local administration and ensuring continuity in public services.

The president elects one or more deputies, the number of which varies from 2 to 6, depending on the population of the municipality and the number of seats on the council, as specified in article 69 of the Municipal Law: "The President of the Municipal People's Council shall be assisted by two or more deputies, whose number shall be as follows

- Two (2) deputies for municipalities with a popular council of seven to nine members.
- Three (3) deputies for municipalities with an eleven-member municipal council.
- Four (4) deputies for municipalities with a Municipal People's Council composed of fifteen seats.
- Five (5) Deputies for Municipalities with a Municipal People's Council composed of twenty-three seats.
- Six (6) deputies for municipalities with a popular council composed of thirty-three seats".

## **2- Termination of the duties of the president of the local people's council**

The duties of the president of the local people's council come to an end in three cases specified and limited by the Algerian legislator, namely resignation, death and dismissal. These will be dealt with in the following points:<sup>17</sup>

### **1.2 Resignation**

This consists of the mayor's explicit written declaration of his wish to resign from the presidency of the local council. This is done by convening a meeting of the Council to present the resignation, which is then recorded in a deliberation that is sent to the Wali (Governor). The resignation of the President then takes effect from the date of its receipt by the Wali, which serves only to inform the supervisory authority.

### **2.2 Death**

Death is a natural event, as defined in article 40 of law 11/10, and terminates the mandate of any member of the local council. The next municipal representative on the list is then

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<sup>16</sup>- Article 65 of Law 11/10, source cited above.

<sup>17</sup>- Articles 40-41-42 of Law 11/10.

immediately elected, and the Wali must make a replacement decision within a maximum of one month, as stated in Article 41 of Law 11/10.

### **3.2 Dismissal**

This is the stage that follows the suspension decision. Article 43 of Law 11/10 stipulates that the Wali must issue a suspension decision against an elected member who is being prosecuted for a crime involving public funds or for reasons of disgrace, or who is the subject of judicial measures that prevent him from performing his duties (such as pre-trial detention). Article 44 then requires the issuance of a final dismissal decision immediately upon the issuance of a final judgment or decision convicting them of one of the aforementioned offences.

### **4.2 Resignation**

This is an implicit form of resignation in which the President of the Municipal People's Council (Mayor) does not explicitly express his will, but rather adopts an attitude that expresses his abandonment of his position. Article 74 of Law 11/10 deals with resignation and states: "The resigning president of the Municipal People's Council who has not convened the Council in accordance with Article 73 to submit his or her resignation in accordance with the law shall be considered to have abandoned his or her position".

Article 75 also states: "The unjustified absence of the President of the Municipal People's Council for more than one month, declared by the Municipal People's Council, shall be considered a case of abandonment of office.

From the above provisions, it is clear that the situation of abandonment of the office of the President of the Municipal People's Council can take two forms:

The first form is resignation outside the above-mentioned procedures, i.e. the president of the local people's council submits his resignation without informing the council to officially record it through a deliberation. In this case, the state of resignation is declared after the president has been absent for 40 days, during a regular meeting of the council attended by the wali (governor) or his representative, and a replacement is appointed according to the aforementioned rules.

The second form is due to the unjustified absence of the president of the local council for more than one month, even if he did not intend to resign. In this case, the Municipal Council is responsible for declaring the resignation as soon as the period of unjustified absence has been established, as a prescribed measure for the Council alone.

If the Council fails to establish the case of abandonment, the Wali shall, after 40 days of absence, convene the Municipal People's Council and declare the state of abandonment, in accordance with Article 75 of Law 11/10: "The unjustified absence of the President of the Municipal People's Council for more than one month shall be considered a case of abandonment of office and shall be declared by the Municipal People's Council".

If 40 days have elapsed since the absence of the President of the Local People's Council, and the Council has not been convened in exceptional cases, the Wali shall convene it in order to determine this absence.

The President of the Municipal People's Council shall be replaced in his duties in accordance with the provisions of Article 72 of Law 11/10.

The replacement of the President of the Municipal People's Council shall be carried out under the conditions and in the manner prescribed in Article 65 of this Law.

## **2- Powers of the President of the Municipal People's Assembly**

The legislator has granted the President of the Municipal People's Assembly numerous and varied powers, which differ according to the position he occupies. Some of these powers are exercised by the President in his capacity as a representative of the community, and he is subject to light supervisory control in the form of administrative oversight. Others are exercised by him in his capacity as an authority of administrative decentralisation, i.e. as a representative of the State, and he is subject to the hierarchical authority over him, from the Wali (governor) to the ministers concerned.

The President of the Municipal People's Assembly exercises his powers as the head of the executive body of the Council, and at other times as a representative of the Municipality and also as a representative of the State.

### **1.2 Powers of the President of the Municipal People's Assembly as Head of the Executive Body**

The President of the Local People's Assembly shall preside over the Local People's Assembly, convene it and submit to it matters within its competence. He is also responsible for preparing the draft agenda of the meetings and chairing them, as provided for in article 79 of Law 11/10. The law also gives the President of the Municipal People's Assembly the power to expel any non-elected member of the Council who has disrupted the orderly running of the meeting.

The President of the Municipal People's Assembly attends the meetings and organises them, determining the date and agenda of the meetings after consulting the executive body.

He also takes on the task of suspending deliberations and implementing them, as provided for in Article 30 of Law 11/10: "Deliberations shall not be suspended, with the exception of those relating to public order and disciplinary cases, under the supervision of the President of the Municipal People's Assembly, in the places designated for posting and informing the public, and shall be published by any other means of communication within the following eight (8) days of their entry into force, in accordance with the provisions of this law".

### **2.2 Powers of the President of the Municipal People's Assembly as the representative of the municipality**

Given that the municipality is a legal entity, the existence of a person who represents it is one of the consequences of its existence as such. The Mayor of the Municipality has been entrusted with the task of representing and expressing the will of the Municipality, which is manifested through the powers vested in him, including:

- Representation, whereby the mayor represents the municipality in all civil and administrative acts of life, as well as in all legislative decrees and official events. The Mayor

also represents the Municipality before the competent judicial authorities, as stated in Article 78 of Law 11/10.

- Preparation of the budget, where the Mayor prepares the municipal budget and proposes it to the Council for discussion and vote, and then follows up on its implementation. The Mayor is also the authorising officer for expenditure and monitors the development of municipal finances, as stipulated in article 81 of law 11/10.

- Maintenance of the real and movable property belonging to the municipality, for which the President is responsible, under the supervision of the Municipal Council:

- Concluding contracts for the acquisition of property, transactions, tenders, leases, gifts and bequests.

- The execution of municipal works contracts and the supervision of their proper execution.

- To take all the decisions signed for the statute of limitations, expiration, etc., as described in article 82 of law 11/10.

- Peaceful supervision of the municipal employees, since the municipal employees are subject to the hierarchical authority of the President of the Municipal People's Assembly, according to Article 125 of Law 11/10.

### **3.2 Powers of the President of the Municipal People's Council as a Representative of the State**

Considering the municipality as the representative of the state at the grassroots level, the prestige of the state can only be restored by restoring the prestige of the municipality and giving it authority over all areas in which the municipality has the right to intervene and for which it is responsible. Since the President is considered to be the representative of the State at the municipal level, the legislator has granted him, as a decentralised authority, extensive and clearer powers than previous laws. These powers are mentioned in many texts.

#### **1.3.2 Competence of the President of the Municipal People's Council as civil registrar**

Article 86 of Law 11/10 stipulates that the President of the Municipal People's Council, in his capacity as civil registrar, has the right to perform all contracts relating to civil status, under the supervision of the territorially competent public prosecutor. The concern for civil status is both historical and legal, as individuals and families have a relationship with this service that is more than merely administrative. As registrar, the mayor is obliged to carry out a series of actions that guarantee the rights of citizens, reinforce the authority of the municipality and strengthen its credibility. He is also required to maintain the confidentiality of information relating to births, marriages, divorces and deaths, as laid down in articles 1 and 2 of the Personal Status Act<sup>18</sup>. However, due to the growing number of daily problems and the impossibility for the President of the Municipal People's Council to personally perform the duties of civil registrar, the law has authorised him to delegate these duties to one or more permanent municipal employees, under his supervision and responsibility. The delegate is

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<sup>18</sup>- Abdelaziz Saad: The civil status system in Algeria, Houma Publishing and Distribution House, Algeria, 1995, p. 54.

responsible<sup>19</sup> for keeping civil status records, including death, marriage and birth records, as well as for managing various civil status documents and determining the responsibilities of the civil status service staff.

### **2.3.2 Powers of the Chairman of the Municipal People's Council as an Administrative Officer**

Article 93 of Law 11/10 stipulates that the powers of the President of the Municipal People's Council include administrative powers and powers in the field of administrative police. In this capacity, he works to protect public order, which includes various aspects such as health, safety and public order. Its powers in this area have been somewhat extended in order to ensure the effective presence of the State at local level.

The protection of persons and property is guaranteed by an appropriate organisation, as it is one of the responsibilities of the State, which is exercised by the municipality through decisions or measures to protect human dignity, inviolability, property and security.

It also requires the protection of citizens' civil rights against any violation of the cleanliness of the environment in which they live, against any unauthorised construction or against the unauthorised use of public property for private purposes. The Mayor also supervises the organisation of assemblies, whether public demonstrations, sporting events, protest marches or political party meetings, by determining the extent of the movement, the location and the places to be used, in order to regulate traffic, protect people, ensure tranquillity and protect property.

In order to maintain public order, the Chairman of the Municipal People's Council undertakes a number of tasks to protect rights and freedoms, including

- Ensuring the maintenance of public order and the safety of persons and property.
- Maintaining public order in all public places where people congregate.
- Preventing disturbance of the public peace.
- Organising roads and traffic in the city.

The legislator has given the mayor the power to requisition municipal police forces in the exercise of his various powers, because placing the police at his disposal is necessary to strengthen his position, ensure the implementation of his decisions and impose respect for his initiatives, since he enjoys public authority at his disposal and not at his service. This requires a qualitative approach in the selection of personnel, ensuring their specialised training and providing them with the legal and financial means to carry out this mission.

### **3.3.2 Powers of the President of the Municipal People's Assembly as a judicial police officer**

The Code of Criminal Procedure has defined the roles and responsibilities of those who are granted the status of judicial police officers, assistants or officials. Article 14 of the Code defines the categories of judicial police as follows

- Judicial police officers
- Judicial police assistants
- Officials and assistants entrusted with specific judicial police tasks.

Article 15 of the Code of Criminal Procedure identifies those who are granted the status of judicial police officers, including the presidents of the Municipal People's Assemblies. This explicit designation empowers the President of the Municipal People's Assembly as a judicial police officer with the aim of controlling and reducing crime. The Presidents of the Assemblies have all the powers of judicial police officers for all types of crimes, without any limitation or specification.

The President's responsibilities in this area include collecting evidence and investigating the perpetrators of crimes. The Code of Criminal Procedure gives the judicial police broad powers to fulfil their role in ensuring the safety of society and protecting the rights of the accused. In addition, the President of the Municipal People's Assembly must inform the Public Prosecutor of the scene of the crime and is obliged to go to the scene of the crime immediately and promptly in order to preserve the evidence, as stated in Article 42 of the Code.

### **3. Supervision of the municipality**

The independence of the municipality and its enjoyment of legal personality does not mean that it is free from supervision or control by the central authority. Independence is a consequence of having legal personality. Although the President and the members of the Assembly are elected and reflect the popular will of the citizens of the municipality, this does not exempt them from being subject to supervision by the supervisory authority, the "Governor".

The pertinent question here is what kind of supervision can be exercised over the municipality represented by its president and assembly? We will try to answer this question in accordance with Law 11/10. We will examine the forms of oversight under this law and clarify whether it has introduced new aspects regarding the principle of municipal independence and to what extent it has either relaxed or tightened oversight compared to the now repealed Law 90/08.

#### **1.3 Supervision of the Municipal People's Council:**

Supervision of the Municipal People's Council is exercised within the limits and in various forms, including supervision of the Municipal People's Council as an entity in itself, which takes two forms: suspension and dissolution, which we will discuss below:

##### **1.1.3 Dissolution**

Dissolution is a measure of collective dismissal of the members of the Municipal People's Council, and is a supervisory mechanism by which the functions of the Municipal People's Council are terminated by legally removing it and depriving its members of the capacity they hold<sup>20</sup>.

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<sup>20</sup>- Adel Boumrane: The Municipality in Algeria, Dar Al-Huda, Ain Mlila, 2004, p. 103.

## 1. Grounds for dissolution

The Algerian legislator has expressly provided for the power of the supervisory authority to dissolve the Municipal People's Council, which is one of the most serious measures that the supervisory authority possesses, as the Algerian legislator has included it in all previous municipal laws. The Municipal Law 11/10 sought to define and limit the cases and reasons for which the Municipal People's Councils must be dissolved, in an effort to maintain the stability of the Municipal People's Councils, as stipulated in Article 46 of Law 11/10<sup>21</sup>. From the text of Article 46, it can be seen that the legislator has widened the scope of control by broadening the grounds for the dissolution of the Municipal People's Council and adding four new cases compared to Law 90/08.

## 2- The authority responsible for dissolution

The People's Municipal Council is dissolved by a presidential decree, as stipulated in Article 47 of Law 11/10 on Municipalities, which states: "The People's Municipal Council shall be dissolved and renewed by presidential decree on the basis of a report by the Minister of the Interior".

The text makes it clear that the legislator has corrected the error in the wording of Article 35 of Law 90/08, which stated: "The People's Municipal Council can only be dissolved by a decree adopted by the Council of Ministers on the basis of a report by the Minister of the Interior". The new law has removed the ambiguity regarding the type of decree that would be used for the dissolution, clearly stating that it would be a presidential decree and not an executive decree, as was the case under the previous law.

Upon dissolution of the People's Municipal Council, the Wali (Governor) will appoint an administrator and assistants to temporarily manage the affairs of the municipality during the ten days following the dissolution, and their duties will end by operation of law upon the installation of the new council. This is to avoid any interruption of public services<sup>22</sup>. During this period, elections will be held to renew the Council within a maximum of six months from the date of dissolution, provided that this is not the last year of the electoral term, as provided for in Article 49 of Law 11/10. The term of office of the new Council ends with the expiration of the remaining period for the general renewal of the Municipal Councils, in accordance with Article 50 of Law 11/10. The dissolution of the People's Municipal Council shall entail the revocation of the membership status of all its members, without prejudice to the legal personality of the Council

Law 11/10 on Municipalities also introduced a new procedure, according to Article 51, which states that in the event of exceptional circumstances preventing the holding of elections in the municipality, the Wali shall appoint an administrator to manage the affairs of the municipality, based on a report by the Minister of the Interior, which shall be submitted to the Council of Ministers. The administrator's duties end with the installation of the new council and the holding of municipal elections, once the necessary conditions have been met<sup>23</sup>.

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<sup>21</sup>- Mohamed El-Saghir Belali: Lessons in Administrative Institutions, Dar Al-Ulum Publishing and Distribution, Annaba, Algeria, p. 134.

<sup>23</sup>- See the provisions of Article 51 of Law 11/10, source cited above.



### **2.1.3: Suspension**

Suspension is the nullification of the functioning of the Municipal People's Assembly for a certain period of time, where this suspension is carried out by the Minister of the Interior, and this decision must be substantiated. This section deals with the conditions for suspension and its effects.

#### **1- Conditions for suspension**

Suspension is subject to certain conditions laid down by law, while ensuring that the supervisory authority does not abuse its power. For the suspension decision to be valid, two important conditions must be met:

- The existence of an urgent situation, although the legislator did not define the urgent cases in which the Municipal People's Assembly can be suspended. However, it did stipulate that the decision to suspend must be justified by the Minister of the Interior.
- The Algerian legislator has set the duration of the suspension at one month, after which the Municipal People's Assembly must either be dissolved or allowed to resume its assigned duties.

#### **2- Effects of the suspension on the Municipal People's Assembly**

The Algerian legislator did not specify the assessment of the duration of the suspension and, in order to guarantee the independence of the municipality as a territorial unit, the legislator omitted to control the suspension in Laws 90/08 and 11/10. However, in order to reassert its control and dominance over local authorities, it issued the decree declaring the state of emergency 92/44 of 9 February 1992 and the executive decree 92/149 of 11 April 1992 on the suspension of members of the municipal and provincial people's assemblies, granting the suspension powers to the then head of government.

### **2.3 Control over members of the Municipal People's Council:**

To discuss this type of control, a distinction must be made between municipal employees and members of the Municipal People's Council, since municipal employees are subject to the authority of the President of the Municipal People's Council under the supervision of the Secretary General of the Municipality. Article 125 of Law 11/10 states that "the municipality shall have an administration under the authority of the President of the Municipal People's Council and activated by the Secretary General of the Municipality".

Therefore, the municipal employees are subject to an independent administration under the supervision of the Secretary General, who is appointed and whose rights and duties are determined by regulations, and who exercises a series of competencies defined by the Municipal Law. Under the repealed Municipal Law 90/08, the municipal employees were subject to the hierarchical authority of the President of the Municipal People's Council<sup>24</sup>, since article 65 states that "the President of the Municipal People's Council exercises

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<sup>24</sup>- Article 127 of Law 11/10, source cited above.

administrative authority over the municipal employees in the forms and conditions established by the laws and regulations in force”<sup>25</sup>.

As for the elected members of the Municipal People’s Council, they are subject to the administrative control exercised over them by the supervisory authority, mainly represented by the Wali (Governor), which includes both suspension and dismissal, which will be analysed below.

### **1.2.3: Suspension**

Suspension refers to the temporary freezing of membership in the Municipal People’s Assembly in the event of judicial proceedings against the elected member, as article 43 of the Municipal Law stipulates that “any elected member who is the subject of judicial proceedings for a crime or offence involving public funds or for reasons that are detrimental to his honour, or who is the subject of judicial measures that do not allow him to continue to exercise his electoral mandate properly, shall be suspended by decision of the Wali (Governor) until a final judgement is issued by the competent judicial authority.

Accordingly, in order for the suspension decision to be valid, several pillars must be met, namely: the reason, the competence, the subject, and the observance of certain forms and procedures, which we will discuss below:

#### **1- Reason and competence**

The local councillor is suspended for legal reasons in the following cases

1- When he is the subject of legal proceedings, and this prosecution may be for one of the following reasons

- A felony or misdemeanour involving public funds, such as an accusation of bribery or misappropriation of public funds.
- Crimes of honour, which are various crimes that are generally contrary to public morality.

2- If the member is subject to judicial measures that prevent him from continuing to exercise his electoral mandate.

It should be noted that the Algerian legislator has widened the scope of suspension by recognising the possibility of suspension in the event that the member is subject to judicial measures, which is the opposite of what was applied under Law 90/08.

The Algerian legislator has limited suspension to a single case, that of criminal prosecution, as provided for in the first paragraph of Article 32. With regard to the authority responsible for suspension, the law gives the power of suspension to the supervisory authority, represented by the Wali (governor).

#### **2- As regards the place**

The decision to suspend membership is effective from the date of the decision until the final judgement of the competent judicial authority. If the innocence of the member is proven,

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<sup>25</sup>- Article 129 of the same law.

his/her status will be restored by force of law, without the need to prove it by consultation or any other means.

### **3- Form and procedure**

Article 43 of Law 11/10 did not specify the form of the suspension decision or the procedure to be followed by the Wali (Governor) in issuing the suspension decision. It simply stated that the suspension would be by decision, without addressing any other formalities. In doing so, it abolished the formalities and procedures stipulated in the Wilaya (Province) Law 90/09, where Article 32, Paragraph 2 states: “The reasoned suspension decision shall be issued by the Wali after consultation with the Municipal People’s Council”.

Accordingly, in terms of form, the suspension decision must be justified, i.e. the reason for the suspension must be stated, in order to preserve the rights of the elected member. In terms of procedure, it must be taken after consulting the Municipal People’s Council, although its opinion is not binding on the Wali, as it is only an advisory opinion, but it is an essential procedure, the non-observance of which would lead to the nullity of the decision.

The legislator’s abolition in Law 11/10 of the procedure for consulting the Municipal People’s Council before issuing the suspension decision does not in practice affect the independence of the municipality, since the Council’s opinion was only advisory and did not oblige the Wali to adopt it. However, the legislator erred in overlooking the form of the suspension decision, the “reasoning”, since the justification of the decision is an essential formality that must be included in any administrative decision in order, on the one hand, to preserve the rights of the elected member of the Municipal People’s Council and, on the other hand, to prevent the possibility of abuse of power by the supervisory authority, the “Wali”, in the exercise of its powers.

#### **2.2.3: Dismissal**

The control of dismissal is considered one of the most important controls imposed on the members of the Municipal People’s Council individually. It refers to the termination of the duties of the members of the Municipal People’s Council individually and the deprivation of their membership in the Municipal People’s Council. The Algerian legislator has expressly provided for dismissal in the laws relating to the municipality.

We will consider dismissal in the light of Law 11/10.

#### **Dismissal in Law 11/10**

The Algerian legislator did not explicitly address dismissal in Law 11/10, as it did in the previous repealed Law 90/08. However, the review of this law shows that the legislator did not address the control of dismissal, as the term “dismissal” is not mentioned in this law. It did, however, refer to it by using the term “automatic resignation”, which is laid down in Article 45, which states: “Any elected member who is absent from more than three (3) ordinary meetings within the same year without a valid excuse shall be deemed to have automatically resigned from the Municipal People’s Council. In the event of the elected member’s absence from the hearing session despite the validity of the notification, the decision of the Council shall be deemed to have been taken in the presence of the member”.

Therefore, despite the fact that the term “dismissal” is not used and that the same reasons for dismissal are not included as in Law 90/08, automatic resignation is similar to dismissal, especially in terms of its legal effects, since both result in the removal of the elected member from the Municipal People’s Council. Law 11/10 overlooked the two cases provided for in Article 31 of Law 90/08.

### **3.2.3: Exclusion**

Exclusion is the removal of the representative from his representative duties, i.e. the complete loss of membership, and it results from a criminal conviction, as stipulated in Article 44 of Law 11/10: “Any member of the Municipal People’s Assembly who has been convicted of a criminal offence for the reasons mentioned in Article 43 shall be excluded from the Assembly by force of law. The Wali (governor) shall establish this exclusion by means of a decision”.

This article corresponds to Article 33 of Law 90/08. Exclusion is considered after the decision of suspension, and this does not mean that the decision of exclusion must be preceded by a decision of suspension, and that the decision of suspension must be followed by a decision of exclusion. Rather, the matter remains subject to the final judgement or judicial decision against the member concerned, which binds the Wali to take the decision of expulsion in case of conviction, without having any other choice. Therefore, in order for the expulsion decision to be valid, the following elements must be present:

#### **1. In terms of reason and jurisdiction:**

The ground for expulsion and loss of membership is the conviction of the member by a criminal judgment, as mentioned in article 43. It should be noted that this conviction is determined by a final decision, which means that the first convictions do not lead to expulsion, but the decisions taken must be final. The legislator was right in this respect, since what he confirmed is in fact in line with one of the legitimate procedural principles, namely the presumption of innocence. As for the competence, it belongs to the Wali as a supervisory authority.

#### **2. As to the subject:**

The object of exclusion is the permanent and definitive loss of the status of member, as in the case of death or resignation (Article 40 of Law 11/10).

Exclusion results in the replacement of the excluded member by the candidate immediately following the last elected from the same list, by decision of the Wali within a period not exceeding one month.

#### **3- Form and procedure**

The essential and main procedure in Law 90/08 is the declaration of exclusion by the Communal People’s Assembly, whereas Law 11/10 did not provide for such a procedure, since the limited supervisory role was not continued in Law 11/10, where the supervisory authority regained its traditional powers to exercise control over the municipal bodies by taking suspension and exclusion measures, without taking into account the opinion of the Communal People’s Assembly.

### **3.3: Supervision of the acts of the Communal People’s Assembly**

The acts of the Communal People’s Assembly are subject to the supervision of the supervisory authorities, which approve the deliberations if they are in accordance with the laws, or cancel them if they are contrary to the laws, or replace the municipalities if they fail to take the actions required by the demands of the public interest, and we will discuss in this point the forms of this type of supervision, which are approval, cancellation and replacement.

#### **1.3.3: Authorisation**

The supervisory authorities exercise control over the Communal People’s Assembly through the approval of some of its acts, since the deliberations of the Communal People’s Assembly are not enforceable without the approval of the Wali (governor), as stipulated in Article 57 of Law 11/10, and the approval of the deliberations of the Communal People’s Assembly takes two forms, which are implicit approval and explicit approval.

##### **1- Implicit approval**

The general rule is that the deliberations of the Communal People’s Assembly are implemented after the expiration of 21 days from the date of their deposit at the office of the Wali, where the Wali expresses his opinion or decision on the legality and validity of the decisions taken in the deliberation, as stipulated in Article 56 of the Communal Law, and these deliberations include all deliberations whose subject matter is not the matters mentioned in Article 57, which shall be considered as implicit approval after the expiry of the time limit, and the nullity in this case is relative and not by force of law, the Wali has the right to raise it whenever he discovers it within 21 days, and it is protected after this period.

##### **2- Explicit Approval**

Explicit approval is the decision of the Wali (the governor) to explicitly approve the deliberations of the Municipal People’s Assembly in the cases stipulated in Article 57 of the Municipal Law, which states that “deliberations concerning budgets and accounts, the acceptance of foreign donations and legacies, and the disposal of real estate may not be carried out without the Wali’s approval”. However, the legislator has tried to mitigate the severity of this explicit approval and the resulting delay and disruption of administrative activity by resorting to implicit approval with an extension of the deadline to 30 days, as was the case under Law 90/08, according to its article 43.

It should be noted that the number of subjects requiring the Wali’s approval in Law 11/10 has been expanded compared to what was stipulated in Article 42 of Law 90/08, where explicit approval was limited to “budgets and accounts, the establishment of public and municipal services and institutions”.

Nullity is manifested in the right of the Superintendency to challenge and nullify municipal deliberations through its powers to remove any legal effect from deliberations or decisions of the municipal council that are flawed and in violation of legality. While nullity under Law 90/08 took two forms: absolute nullity in Article 44 and relative nullity in Article 45, Law 11/10 has abandoned the form of relative nullity and included the case of relative nullity within the scope of nullity, where Article 59 establishes nullity by law as follows

The deliberations of the Municipal People’s Assembly shall be null and void by operation of law, see Article 59 of Law 11/10.

### **2.3.3: Cancellation and nullity**

While Article 60 states: “The President of the Municipal People’s Assembly or any member of the Council in a situation of conflict of interest with the interests of the Municipality, in his personal name or that of his spouse, ascendants or descendants up to the fourth degree, or his representatives, may not take part in the deliberation that deals with this matter, and this deliberation shall not be considered null and void by a reasoned decision of the Wali (Governor)”.

Therefore, the legislator’s inclusion of the word “null and void”, without limiting the decision of nullity to a specific period of “one month” as stated in the repealed Article 45, indicates that nullity is absolute and not relative. The legislator has also broadened the scope of the interests of the member participating in the deliberation to include the interests of his spouse, ascendants or descendants up to the fourth degree, whereas in the old law it was limited to personal interests or as a representative.

The decision declaring the deliberation null and void may be appealed through an administrative appeal, which may be addressed to the Wali as the issuing authority or, hierarchically, to the Minister of the Interior, or through a judicial appeal before the administrative courts by filing an action for annulment, in accordance with the provisions of Article 61 of the Code of Civil and Administrative Procedure.

### **3.3.3: The solutions**

The inspectorate can replace the municipal councils in a specific case defined by the law, or in the event that these councils refuse to carry out their duties. The fact that the legislator has made the power of the Supervisory Authority to replace the local councils subject to strict and precise conditions is essentially explained by the seriousness of this measure for the independence of the local councils, so that it is applied by law in exclusively defined situations and areas, as these areas are not divided by their heavy weight. The power of substitution is manifested in administrative substitution and financial substitution.

#### **1- Administrative solutions**

The administrative solutions are manifested in the exercise of administrative control powers, where the discretionary power of the Wali (governor) appears to intervene in place of the mayor to take whatever he deems appropriate to protect public order whenever he sees negligence on the part of the mayor concerned.

All laws related to the municipality have addressed the power of substitution, starting with the Municipal Law 67/24 in its article 233, and Law 90/08, as well as the latest Law 11/10 in article 100, which stipulates that: “The Wali may take, in respect of all or some of the municipalities of the wilaya (province), all measures relating to the maintenance of security, cleanliness and public tranquillity, and the continuity of public services, when the municipal authorities do not do so, in particular the management of electoral operations, national service and civil status.”

It should be noted that the Algerian legislator has extended the powers of the Wali in the field of administrative control and has focused and paid attention to the proper functioning of certain areas such as electoral operations and national service, given the importance of these areas in the social life of the citizen, which was not provided for in Law 90/08.

The Wali's power of substitution also manifests itself when the Mayor is negligent or refuses to take the necessary decisions to implement the laws and regulations that he is legally obliged to take. This substitution takes place after the expiry of the period of notice given by the supervisory authority to the mayor concerned, as provided for in Article 101 of Law 11/10.

### **Financial Solutions:**

By law, the Wali (governor) has the right to replace the Municipal Popular Council (MPC) if the latter fails to approve the municipal budget. This is stated in Article 249 of Law 67/24, which stipulates that "the authority that establishes the municipal budget may not reject or modify the expenditures and revenues recorded for it".

Municipal Law 90/08 gave the Wali the power of substitution in relation to the budget, as it gave him the right to include in the municipal budget a compulsory expenditure that had previously been rejected by the Council.

Article 102 of Law 11/10 states that "in the event of a disruption in the Municipal Popular Council that prevents the vote on the budget, the Wali shall ensure its approval and implementation under the conditions set out in Article 186 of this Law".

If the Municipal People's Council votes on an unbalanced budget, the Wali shall return it to the President with his comments within fifteen (15) days of receiving it, who shall then submit it to a second deliberation by the Municipal People's Council within ten (10) days. The Municipal People's Council shall be warned if it votes again on a budget that is not balanced or that does not provide for compulsory expenditure. If the budget is not voted on within eight (8) days of the aforementioned warning in accordance with the conditions set forth in this article, it shall automatically be set by the Wali.

Furthermore, the Wali shall cover his deficit upon its implementation if the Council fails to do so, in accordance with Article 184 of Law 11/10<sup>26</sup>.

### **4. Conclusion:**

The Algerian legislator, in the Organic Law on Elections issued by Decree 21/01, as amended and supplemented, has added university students to the other categories that are unable to vote, in order to enshrine the principle of national participation in the electoral process. The legislator's interest in the proxy voting process can only be seen as an endorsement of the principle of true democracy, as it avoids the loss of votes from voters who were unable to vote in person, thus giving greater credibility to the integrity and transparency of the electoral process.

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<sup>26</sup>- Article 143 of Law 11/10, source cited above.

Regarding the cases of termination of the duties of the President of the People's Municipal Assembly, the legislator added a new case in Law 11/10, namely the case of resignation. As for the case of withdrawal of confidence, the legislator removed this procedure in order to protect the President from local political fluctuations. This procedure makes it possible to protect the local authority from instability, which delays its development plans, on the one hand, and to maintain the continuity and quality of the public service, on the other, as it also aims to stabilise the local authorities and prevent the takeover of the local authorities by interest groups for personal purposes.

The Algerian legislator introduced new changes to the method of electing the President of the People's Municipal Assembly through Decree 21/10, as amended and supplemented, by strengthening the role of youth and activating the role of women in political participation, and then amended Decree 21/01 with Decree 21/10, which strengthened the principle of parity between men and women, and also Law 11/10 was amended by Law 21/13 to modify again the election of the President of the People's Municipal Assembly.

The control over the municipality took the form of a strict control, since it included the People's Municipal Assembly as a body and its members, as well as the control over its actions, and therefore we cannot say that the independence of the municipality is absolute, but rather relative, since it is subject to the central authority.

Therefore, a recommendation can be made to the legislator to reduce the strictness of the control of the tutelary authority over the municipality and to grant it a certain degree of independence so that it can exercise its powers, since its dependence on the centre may obscure the characteristic of independence.

## **5. List of references**

### **First: Legal texts:**

#### 1- Ordinary laws:

- 1- Law 67/24 of 18/01/1967 relating to the municipality, Official Gazette, No. 06.
- 2- Law 11/10 of 22 June 2011 relating to the Municipality, Official Gazette, No. 37, of 03/07/2011.

#### 2- Organic Laws:

- Organic Law 12/01, of 12/01/2012, on elections, Official Gazette No. 01.
- Order No. 21/01 of 10 March 2021 containing the Organic Law on the Electoral System, Official Gazette No. 17 of 10 March 2021.

### **3- Regulatory texts:**

- Presidential Decree 96/438 of 07/12/1996 adopting the Algerian Constitution, Official Journal No. 76.
- Presidential Decree 20/442 of 30 December 2020, Official Journal No. 82 of 30 December 2020.



#### **4- Works:**

- Georges Vedel, Administrative Law, Part Two, University Publishing and Distribution Institution, Beirut, 2011.
- Hassan Awadha, Local Administration and its Applications in Arab Countries, a Comparative Study, University Publishing and Distribution Institution, undated.
- Abdelaziz Saad, The civil status system in Algeria, Houma Publishing and Distribution House, Algeria, 1995.
- Adel Bouamrane, The Municipality in Algeria, Dar Al-Huda, Ain Milia, 2004.
- Farida Mezianie, Principles of Algerian Administrative Law, Amar Karfi Press, Batna, 2011.
- Mohieddine El-Ashi, Principles of General Administrative Law, Al-Halabi Publications, Beirut, 2003.
- Masoud Chiheb, The powers of the executive bodies of local authorities, Journal of Parliamentary Thought, second edition, Algeria, March 2003.
- Mohamed El-Saghir Bali, Lessons in Administrative Institutions, Dar Al-Uloom for Publishing and Distribution, Annaba, Algeria.