Journal of Rights and Freedoms

Folder 13, Number 2
Year 2025, p 971 - p 983

The Development of the Two-Level Litigation Principle in Algerian Administrative Law

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Received	Accepted	Published
29/04/2025	26/07/2025	31/10/2025

Abstract:

The administrative judicial system in Algeria has followed a distinct path compared to private law, particularly in its gradual adoption of two-tier litigation. This process remained slow for years until it was formally embedded in the 2020 constitutional amendment, which led to the establishment of administrative courts of appeal. This development marked a turning point in the administrative justice system, prompting the introduction of various legal provisions to reflect and support the structural changes

key words:

administrative, law, appeal process, judicial system, public service.

introduction:

Citizens primarily turn to the judicial system as a means of safeguarding their rights and liberties. Therefore, the state ensures that the judiciary operates based on the principles of legality, equality, and accessibility for all. Citizens resort to the judiciary to achieve justice, which necessitates guaranteeing their right to a fair trial. This right cannot be fully realized if the judicial process is limited to a single tier. Since humans are fallible, a ruling issued in the first instance may be unjust. Justice requires that the dispute be reconsidered by a higher judicial authority, with more experienced judges reviewing the case both factually and legally to ensure the correctness of the initial ruling. Put differently, having a second level of judicial review allows for the rectification of mistakes that might have been made in the initial court ruling

The concept of two-level litigation represents a core element of the rule of law, as it guarantees both the equal application of legal norms and the proper enforcement of judicial procedures.

In Algeria, this principle has undergone significant developments, particularly in administrative law, due to the unique nature of administrative disputes, which involve public service activities and the legal personality of public entities.

The purpose of this study is to examine different dimensions of how the two-tier litigation principle is applied within administrative law. The central research question can be stated as follows:

To what extent has the Algerian legislator addressed the principle of two-tier litigation? Has it been effectively implemented, or is it merely a formal procedure?

To answer this question, the study will first examine the period of instability in applying the principle of two-tier litigation.

Subsequently, the study will assess the extent to which the Algerian legislator has moved toward putting this principle into practical effect.

Section I: The Transitional Phase of Uncertainty in Applying the Two-Tier Litigation Principle in Administrative Law

This section examines how the two-tier litigation principle has been applied within both the unified judicial framework (A) and the dual judicial framework (B).

A) The Principle of Two-Tier Litigation under the Unified Judicial System

After independence, Law No. 62/218 was enacted, stipulating the continuation of French legislation except where it conflicted with national sovereignty.

At that time, the administrative judiciary in Algeria consisted of three administrative courts in Algiers, Constantine, and Oran, which had jurisdiction as courts of first instance. In effect, the administrative judicial system initially exhibited structural duality, though this was limited to the lower courts.

During the colonial era, the French Council of State handled appeals from these courts, which brings into question whether the two-tier litigation principle was genuinely applied at that time. To remedy this legal shortcoming, the Algerian legislator enacted Law No. 63-218 on June 18, 1963, which led to the creation of the Supreme Council. This council included an administrative chamber alongside other chambers for civil matters. Consequently, the two-tier litigation principle was achieved in administrative judiciary, albeit with a lack of structural coherence between ordinary and administrative justice.

The lower courts exhibited structural duality, while the apex body was unified for both administrative and civil matters.

However, this judicial system did not remain unchanged. Ordinance No. 65/278 of November 17, 1965, restructured the judicial system[1], transferring the jurisdiction of administrative courts to judicial councils under Article 5.

As a result, administrative chambers within judicial councils assumed general jurisdiction over administrative disputes, with their rulings subject to appeal before the Supreme Council, thereby forming a unified judicial system.

Functionally, Ordinance No. 66-154 of June 8, 1966 — which introduced the Code of Civil Procedure [2], marked a major step forward in reinforcing the two-tier litigation principle in administrative law, regardless of the institutional framework in place.

Although the system remained unified, the presence of two levels of litigation was maintained. Article 7 of the code assigned jurisdiction

[1] Ordinance No. 65-278 of November 17, 1965, on Judicial Organization, No. 96, dated November 23, 1965

[2] Order No. 66-154 of June 8, 1966, containing the Civil Procedure Code

to administrative chambers to hear cases involving the state, provinces, municipalities, and public institutions of an administrative nature, with their rulings subject to appeal before the Supreme Council.

At first glance, the two-tier litigation principle appeared to be respected.

However, an exception in the subsequent paragraph created a limitation by granting the Supreme Council exclusive jurisdiction over annulment requests.

As a result, only certain administrative disputes were subject to two-tier litigation, while others, such as challenges to administrative decisions, were reviewed exclusively by the Supreme Council as a court of first and last instance. Article 231 of the Civil Procedure Code reinforced this by granting the Supreme Council jurisdiction over appeals for annulment of administrative decisions exceeding its authority.

This situation raises concerns about why certain administrative disputes were excluded from two-tier litigation. While such cases require high expertise, denying litigants a second level of review contradicts the principles of justice. This restriction may be attributed to the nascent state of Algeria's administrative judiciary and the shortage of qualified personnel at the time. However, these reasons do not sufficiently justify the limitation.

Thus, the legislator exhibited hesitation in fully implementing the two-tier litigation principle in administrative law.

Following the adoption of the 1989 Constitution, Article 143 led to the replacement of the Supreme Council with the Supreme Court. Subsequently, Law No. 89-22 of December 12, 1989, reorganized the Court's structure and functions, introducing several specialized chambers, among them the administrative chamber

Subsequently, the Civil Procedure Code was amended by Law No. 90-23 of August 18, 1990[1], This law introduced a form of development in the principle of litigation at two levels in terms of functionality.

[1] Law No. 90-23 of August 18, 1990, amending and supplementing Order No. 66-154 of June 8, 1966, containing the Civil Procedure Code, Official Journal No. 36.

Previously, the Supreme Court had exclusive jurisdiction over disputes related to administrative decisions. However, jurisdiction was transferred to judicial councils to examine administrative decisions related to local authorities as a first instance.

This jurisdiction was categorized into two forms: the first relates to administrative decisions issued at the provincial level, which are handled by the courts located in Algiers, Oran, Constantine, Béchar, and Ouargla.

The second type pertains to decisions issued by the presidents of municipal popular councils, which are reviewed by other judicial councils according to the regional jurisdiction defined by regulations.

As a result, decisions made by central administrative authorities do not fall within the jurisdiction of judicial councils but are instead reviewed by the Supreme Court, in accordance with Article 231 of the Civil Procedure Code.

Although this distribution of jurisdiction appears to reflect the legislator's gradual move towards adopting a two-tier litigation system, it has also been criticized for the inefficiency of dividing disputes over local authority decisions between regional and local chambers. On the contrary, this division is expected to burden citizens and contradict the principle of bringing justice closer to them, as they would be forced to travel to regional chambers.

At this stage, the implementation of the two-tier litigation principle has notably advanced at the local level, while remaining limited at the central level. The administrative chamber of the Supreme Court maintains sole authority to adjudicate central administrative decisions, handling such cases as both a court of first and final instance, in line with Article 274 of the Civil Procedure Code

B) The Application of the Two-Tier Litigation Principle within the Framework of Judicial Duality

The 1996 Constitution heralded the establishment of an independent administrative judiciary structurally separate from the ordinary judiciary, which had previously handled administrative disputes through administrative chambers.

The unique characteristics of administrative disputes required the creation of a separate judicial body, distinct from those handling regular litigation

Furthermore, the country's ongoing developments and the increasing number of cases have placed a significant burden on judges.

This situation highlighted the need for reforms aligned with the importance of administrative disputes, which require specialized expertise and a strong command of administrative law.

In this context, Article 152 of the 1996 Constitution introduced judicial duality by establishing the Council of State as the highest authority within Algeria's administrative judiciary. This sets the stage for analyzing the application of the two-tier litigation principle. within this dual judicial system requires analyzing Article 152 of the 1996 Constitution, which leads to the following observations:

-The article explicitly lists all bodies of the ordinary judiciary, namely the Supreme Court as the highest authority, followed by judicial councils and courts. In contrast, within the administrative judiciary, The Council of State is the only body mentioned as responsible for reviewing the decisions of administrative judicial authorities, without specifically identifying these bodies

-The reference to "administrative judicial bodies" in the plural suggests that the Council of State oversees multiple entities, rather than a single judicial bodyThis mirrors the structure of the ordinary judiciary, where the court of first instance serves as the initial level of litigation, with the judicial council acting as the second level.

-The third paragraph of Article 152 underscores that the main function of both the Supreme Court and the Council of State is to ensure the consistency of judicial precedent. In other words, these institutions act as the ultimate recourse for litigants.

A careful analysis of Article 152 indicates a clear move towards applying the two-tier litigation principle in administrative cases, as demonstrated by the structural division of the administrative judiciary and the establishment of new judicial bodies.

However, a closer look at Article 153 reveals that the details of this separation were left to be determined by organic laws. To implement this provision, two important organic laws were passed: Organic Law No. 98-01, which outlines the structure and jurisdiction of the Council

of State.[1] Organic Law No. 98-02, which relates to the organization of administrative courts [2].

At first glance, the existence of two administrative judicial bodies appears to fulfill the constitutional provision, which refers to administrative judicial authorities in the plural.

This prompts inquiries into how this structure influences the implementation of the two-tier litigation principle in administrative cases.

From a substantive viewpoint, an analysis of the legal texts regulating the operation of administrative judicial bodies shows that administrative courts act as the primary jurisdiction for administrative disputes. Their decisions may be appealed to the Council of State, as outlined in Article 10 of Organic Law No. 98-01, which designates the Council of State as the appellate body. This implies the existence of a second level of litigation. However, this setup contradicts the Council of State's original role, which is explicitly defined as a court of cassation.

Additionally, the two-tier litigation principle, as outlined in Organic Law No. 98-01, appears to be incomplete. Article 9 of the same law excludes certain disputes from the jurisdiction of administrative courts, reserving them solely for the Council of State as both the first and final instance. These cases involve annulment actions related to decisions made by central authorities, national professional organizations, and national public bodies. Therefore, the two-tier litigation principle does not apply to this category of administrative decisions, raising questions about the reasoning behind this exception

Although the purpose of appeals is to correct judicial errors and safeguard citizens' rights, it appears that the Algerian legislator exercised caution in this matter. This caution may stem from a reluctance to assign the review of central administrative decisions to administrative courts due to their relatively recent establishment.

Such decisions require judges with greater expertise and experience, given their sensitivity compared to local administrative decisions. As a result, administrative courts have effectively assumed the same role

[1] Organic Law No. 98-01 of May 30, 1998, concerning the jurisdiction, organization, and functioning of the Council of State, Official Journal No. 37, dated June 1, 1998.

[2] Organic Law No. 98-02 of May 30, 1998, relating to administrative courts, Official Journal No. 37, dated June 1, 1998.

that administrative chambers previously played within judicial councils.

Limiting the administrative judiciary to just two levels is not justified, especially since the Constitution clearly calls for more than two administrative judicial bodies to uphold the principle of two-tier litigation. This situation highlights the urgent need for corrective measures, including the creation of an independent appellate body.

It seems illogical for the Council of State to act simultaneously as a court of first instance, an appellate body, and a cassation court. This arrangement would place excessive pressure on its judges and, in the end, compromise its primary role, which is to address cassation appeals.

Section II: The Move Toward the Effective Implementation of the Two-Tier Litigation Principle After the 2020 Constitutional Amendment

The 2020 Constitution introduced Administrative Appellate Courts, assigning them the primary jurisdiction of reviewing appeals against decisions issued by administrative courts (A). However, this does not mean that they hold exclusive appellate jurisdiction over all administrative judicial matters.

The Algerian legislator has also granted these courts exceptional competencies, which will be detailed in Second Topic.

A) The Primary Jurisdiction of Administrative Appellate Courts

the 2020 constitutional amendment represented a pivotal step in aligning with the framers' intention to effectively implement the two-tier litigation principle. For the first time, this principle was explicitly included in Article 165, as outlined in its second paragraph. To enforce Article 165, a structural reform of the administrative judiciary was required. Under the 1996 Constitution, the administrative judiciary comprised the Council of State and administrative courts. However, to introduce a second level of litigation, Administrative Appellate Courts were established as per Article 179, paragraph 2 of the 2020 Constitution.

A thorough analysis of Article 179 in its various paragraphs from the 2020 constitutional amendment reveals the following key observations:

-Reaffirming the Council of State's primary role, which is to unify judicial precedent and handle cassation appeals, a function it shares with the Supreme Court.

- the explicit implementation of the two-tier litigation principle is achieved through the clear establishment of Administrative Appellate Courts. Previously, the Constitution used a broader term, referring to the Council of State as the body overseeing the work of administrative judicial authorities without specifying those bodies. The 1996 framework left it to legislation to determine these authorities, leading to the creation of only one body—the administrative courts. however, Article 179 of the 2020 Constitution offers greater clarity and binding authority by explicitly mandating the establishment of Administrative Appellate Courts, thereby ensuring the implementation of the two-tier litigation principle.

-for the first time, a new role was assigned to the Council of State in a constitutional text. Under Article 171 of the 2016 Constitution, the Council of State was exclusively responsible for reviewing the actions of administrative judicial bodies.. However, Article 179 of the 2020 Constitution expands its role to include overseeing other bodies adjudicating administrative cases. This raises several questions:What are these other adjudicative bodies in administrative matters?Will the law explicitly define them, or will it take years before another constitutional amendment clarifies their nature, similar to how administrative courts and appellate administrative courts were eventually established?Will these bodies have the right to appeal their decisions, and if so, before which authority?

-Two years after the constitutional amendment, Organic Law No. 22-10 of June 9,2022, concerning the judicial organization[1] was enacted. this law clearly defined the structure of the Algerian administrative judiciary in Article 4, which now comprises the Council of State, Administrative Appellate Courts, and Administrative Courts. It formally assigned the responsibility of handling appeals against decisions made by Administrative Courts to the Administrative Appellate Courts In doing so, the law aligned with the 2020 constitutional amendment by structurally and functionally adopting the two-tier litigation principle in administrative matters.However, a

[1] Organic Law No. 22-10 of June 9, 2022, relating to judicial organization, Official Journal No. 41, issued on June 16, 2022

closer examination of Article 29, particularly its second paragraph, raises an important question.

This provision allows Administrative Appellate Courts to handle additional cases assigned by special legal texts. This leads to the following inquiry:Is the legislator still hesitant to fully establish Administrative Appellate Courts as the sole appellate authority in administrative litigation?

Given this context, it is essential to examine the specific texts referred to by this law to assess how thoroughly the two-tier litigation principle is applied in Algeria. Is it just a formal principle, or has it been effectively implemented in all its facets? This question will be explored in the second section

B) The Special Jurisdiction of the Administrative Appellate Courts

After the adoption of the Organic Law on Judicial Organization, Organic Law No. 98-01, which governs the organization of the Council of State, was amended by Organic Law No. 22-11 on June 9, 2022.[1]. This amendment modified Articles 9, 10, and 11, which outline the jurisdiction of the Council of State

In this context, Article 9 reinforces the Council of State's primary jurisdiction over cassation appeals, suggesting that appellate jurisdiction is delegated to the Administrative Courts of Appeal. However, a contradiction arises when examining Article 10 of the same law, as it grants the Council of State the authority to hear appeals against decisions made by the Administrative Courts of Appeal.

This results in an inconsistency—on one hand, the Constitution establishes a new administrative appellate body, yet on the other hand, the Council of State retains appellate jurisdiction. Therefore, it is necessary to investigate the reasons or conditions governing appeals before the Council of State—in other words, to determine the legal nature of cases subject to appeal.

[1] Organic Law No. 22-11 of June 9, 2022, amending and supplementing Organic Law No. 98-01 on the organization, functioning, and jurisdiction of the Council of State, Official Journal No. 41, issued on June 16, 2022

A close examination of Article 10 reveals that the legislator is keen on giving particular attention to the review of central administrative decisions. previously, these decisions were within the exclusive jurisdiction of the Council of State, which served as both the initial and final authority. However, under the new legal framework, the responsibility for these decisions as a first-instance body has been assigned solely to the Administrative Court of Appeal of Algiers, rather than to other administrative appellate courts. This approach seems to consider the regional context in which these decisions are issued. Nevertheless, this justification is not entirely convincing. From a substantive perspective, why should this jurisdiction not be assigned to the Administrative Court of Algiers as the first-instance authority? On the contrary, assigning appellate jurisdiction to the Council of State deprives these decisions of the right to cassation, which is an essential complement to the principle of two-tier litigation.

Jurisprudence from the Council of State has established that an appellate body cannot review the same case again under cassation proceedings[1].

It can be said that the Algerian legislator is adopting a gradual approach to handling central administrative decisions.

Originally, these decisions were within the exclusive jurisdiction of the Council of State, which served as both the first and final instance. The system has since evolved, transferring jurisdiction to the Administrative Court of Appeal of Algiers, with the option to appeal its decisions to the Council of State. This approach was confirmed by Law No. 22-13.[2], This law amended and supplemented Law No. 08-09 on the Code of Civil and Administrative Procedure through the addition of Article 900 bis. The long-term expectation is that jurisdiction over such decisions may eventually be transferred to administrative courts, should the legislator deem the circumstances appropriate due to their particular nature.

Conclusion

The principle of two-tier litigation in administrative matters has undergone several developments, albeit at a slow pace that does not

[1] Decision No. 007304 dated 23/09/2002, (S.M.) v. Directorate of Education of Batna Province.

[2] Law No. 22-13 of July 12, 2022, amending and supplementing Law No. 08-09 on civil and administrative procedures, Official Journal No. 48, issued on July 17, 2022.

reflect its full and effective implementation. The gradual adoption of this principle has been hesitant and limited.

It appears that the legislator has been influenced by the colonial legacy. While France has made significant strides in consolidating the principle of two-tier litigation, the Algerian legislator has struggled with structural and functional inconsistencies. Initially, administrative justice operated within a unified framework that did not truly reflect the application of this principle.

The transition to a dual judicial system was expected to be fully realized under the 1996 Constitution. However, this transition remained incomplete due to the absence of an intermediate judicial body between administrative courts and the Council of State it was only after 24 years, with the 2020 constitutional amendment, that the principle of two-tier litigation was clearly established through the creation of Administrative Courts of Appeal.These courts had become a pressing necessity, as legal professionals had long called for relieving the Council of State of responsibilities that did not align with its primary function of examining cassation appeals

While the 2020 constitutional amendment officially established the principle of two-tier litigation, its implementation remains incomplete in practice. The legislator has adopted a gradual approach, assigning the Administrative Court of Appeal of Algiers exclusive first-instance jurisdiction over decisions issued by central administrative authorities, with appeals against its rulings still brought before the Council of State.

This allocation of first-instance jurisdiction to the Administrative Courts of Appeal for annulment actions against central administrative decisions distorts their intended appellate function. Additionally it removes the option of filing cassation appeals before the Council of State, as Algerian administrative jurisprudence has established that the Council of State does not review cases it has previously adjudicated on appeal.

Therefore, it is essential to limit the role of Administrative Courts of Appeal strictly to appellate jurisdiction, as designated by the Constitution. There is no justification for granting them powers that exceed their true function.

Instead, administrative courts should be given general jurisdiction over all administrative disputes, regardless of their nature.

Since independence, Algeria has made significant progress, and the argument that first-instance judges lack the competence or experience to review central administrative decisions is no longer valid.

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3/Organic Law No. 22-10 of June 9, 2022, relating to judicial organization, Official Journal No. 41, issued on June 16, 2022.

4/Organic Law No. 22-11 of June 9, 2022, amending and supplementing Organic Law No. 98-01 on the organization, functioning, and jurisdiction of the Council of State, Official Journal No. 41, issued on June 16, 2022

5/Law No. 63-218 of June 18, 1963, establishing the Supreme Council, No. 43, dated June 28, 1963.

6/ Order No. 65-278 of November 17, 1965, on Judicial Organization, No. 96, dated November 23, 1965.

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