

Updates on appeals in administrative matters under Law 22-13

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It is important to note that the Council were established because they were not required to review appeals against decisions made by administrative courts in the first instance, while retaining its other powers granted to it by law—thus ensuring the principle of two-tier litigation.

Accordingly, the evaluation and correction of errors falls within the jurisdiction of the higher level, whether after an appeal has been filed by the litigant. The appeal is a regular means of challenging judgments issued by the courts, submitted to a court of a higher degree than second-instance opportunity to obtain a more just ruling.

This was regulated by Algerian law under Law 08/09, which dealt with civil and administrative procedures. Law 22/13 later amended it.

- What are the most important developments in the appeal process introduced by the Algerian legislator under Law 22/13?
- And did the Algerian legislator succeed in establishing it as one of the legal guarantees that ensure the litigant's right to a review of judgments issued by the administrative judiciary?

To answer this issue, we relied on the descriptive-analytical method, focusing on the key provisions introduced by the amendment of Law 22/13, and we divided the outline into two sections:

- The notion of appeal in administrative law.
- Appeal procedures and their legal effects.

1- The Concept of Appeal in Administrative Matters:

In administrative matters, we must first address the definition of appeal in administrative law and its types, then address its conditions, and finally address the competent authority to rule on the appeal.

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1.1- The Definition of Appeal in Administrative Law and Its Types:

Appeal is considered one of the ordinary means of appeal for reviewing the judgments issued by first instance courts. Therefore, we must search for its definition in, then address its types in.

1.1.1- Definition of Appeal in Administrative Law:

In administrative law, an appeal is a way to ask that a decision rendered by the administrative court be overturned for breaking the law and applying a rule to a fact that it does not apply to¹.

It is also defined as one of the ordinary means of appeal used against judicial rulings issued by judicial bodies as a first judicial instance, allowing the second instance, before which the appeal is brought, to review these judicial rulings with the aim of annulling, amending, or upholding them².

What can be deduced from these definitions is that they revolve around a single concept, which is that appeal in administrative matters is considered one of the ordinary means of appeal against judicial rulings issued by administrative courts. It is a right of every party in the lawsuit, whether plaintiff or defendant, as it is used by anyone harmed by the ruling issued by the judges of the first instance. Its purpose is to reconsider the dispute once again with the aim of annulling or amending it, in order to reduce the injustice suffered by the party harmed by the ruling of the first-instance judges.

1.1.2- Types of Appeal in Administrative Matters:

Article 951 of the Code of Civil and Administrative Procedures outlines the two forms of appeal—main (original) appeal and incidental (cross) appeal—and specifies the conditions required for each."

A. Original Appeal:

The initial appellant, or the party who filed the appeal, is typically the one who has been found partially or completely wrong. All disputing parties as well as any intervening parties are entitled to this privilege, so long as there is an element of interest³.

The original appeal is referred to as an appeal filed by one of the litigant's expressing dissatisfaction with the decision, either in whole or in part. It can also be described⁴.

B. The Incidental Appeal:

An incidental appeal is filed by the respondent in reaction to the principal appeal, serving as a countermeasure to the original claim. The respondent may initiate this type of appeal in response to the issues raised by the appellant." cross-appeal in any state the litigation is in, even if he was formally notified of the judgment without reservation, and even in the event of forfeiting his right to file .

While the admissibility of the incidental appeal is contingent upon the admissibility of the principal appeal, it nonetheless possesses the following distinct characteristics:"

- It is independent from the principal appeal in that appeal if it was lodged prior to the withdrawal. The appellant remains bound by the outcome of the cross-appeal.
- Unlike the principal appeal, it may be lodged even after the lapse of the prescribed appeal period."
- cross-appeal is not subject to the payment of fees, as the Finance Law does not impose any obligation on the cross-appellant to pay any fees. Accordingly, the cross-appellant may not be required to pay any fees⁵.

It is also has expired. He may submit a cross-appeal after being notified of the principal appeal.

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However, the legislator has settled the matter by stating that .

According to Article 951 of the Code of Civil and Administrative Procedure, certain conditions must be fulfilled for an incidental appeal to be admissible:

- "If the principal appeal is withdrawn, the incidental appeal will be dismissed if it is filed thereafter.

It is worth mentioning, and according to the legislator, that the respondent is allowed to lodge a cross-appeal even if he no longer has the right to the principal appeal. Accordingly, the principal and incidental appeals complement each other, and an incidental appeal cannot be accepted without a principal appeal.

1.2 Conditions for Appeal in Administrative Matters:

Among the rights guaranteed by all constitutions is the right to access justice, and this right can only be exercised by following a set of procedures and fulfilling a number of both formal and substantive conditions. The Algerian legislator, like other legal systems, has established a set of conditions for .

1.2.1 Conditions Related to the Petition:

outlined several requirements pertaining to the petition, which can be summarized as follows: that it must be written, and that representation by a lawyer is mandatory.

A. The Petition Must Be Written:

The petition initiating the lawsuit is considered The initial process through which a party submits written claims to the court⁶. This is in accordance with same law specifies the information that the legal petition must contain to ensure its validity and correctness⁷.

As part of modernizing the justice system within the framework of advanced and modern procedures and

enabling parties to litigate electronically a method adopted in administrative justice, especially in France⁸.

Article 815 of the CAPC provides for the possibility of filing a lawsuit either through a paper petition or electronically. This aims to simplify litigation procedures and reflects the legislator's desire to modernize the judicial service⁹.

B. Compulsory Representation by a Lawyer:

In some legal situations, a lawyer is required since they represent the judicial institution by providing services in favor of the litigant therefore representing this institution and litigating on its behalf¹⁰.

According to the new provision added by the Civil and Administrative Procedure Law in Article 900 bis, private individuals must have a lawyer before administrative courts at the appeal stage. According to Article 827, legal entities listed in Article 800 are exempt from legal representation.

Regarding the lawyer, representation is not required before the administrative court as a first instance; this corresponds to what is done before ordinary courts.

Prior to the change, representation by a lawyer was mandatory before the Council of State, where the legislator stipulated that the lawyer be registered with the Council of State in appeals of judgments rendered by administrative courts. Litigants may now be represented by a lawyer in two cases under the appellate judicial body; it is no longer necessary for the lawyer to be registered with the Council of State or the Supreme Court¹¹.

Article 900 bis 01's terms "parties" in the plural, which refers to both the plaintiff and the defendant, makes it somewhat ambiguous. This indicates that the person mentioned in the article is a private individual;

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legal organizations mentioned in Article 800 have been exempted by the legislator under Article 827¹².

1.2.2 Conditions Related to the Parties of the Case:

For a lawsuit to be valid, it must meet formal conditions, which are: interest (first), capacity (second), and legal competence (third).

A. Interest:

Interest is defined as the benefit, advantage, or gain a person obtains as a result of a judgment in their favor regarding what they are fundamental principles of procedures, as where there is no interest, there is no lawsuit. This has been affirmed by the Council of State in many cases where it ruled the lawsuit inadmissible due to the absence of interest¹³.

For any lawsuit to be admissible before the judicial authorities, the plaintiff must have a personal interest; otherwise, the judge will rule it inadmissible. Interest is also considered a general condition in all lawsuits, whether the case is brought before ordinary courts or administrative courts¹⁴.

B. Capacity:

Capacity is the qualification or power given to the plaintiff or relevant individual to turn to the court to safeguard their rights and interests. Legal persons or people may also be given this capacity¹⁵. As it is the foundation of the lawsuit, the general rule is no lawsuit without interest; the interest must be legal, that is, based on a valid right.¹⁶

The plaintiff has to be legally competent to sue and must demonstrate the interest to justify the action. The particular capacity or ability to act, whether for a natural person or a legal entity, gives them the power to act before the court to protect their rights¹⁷.

C. Legal Competence:

Legal competence means the ability to initiate a lawsuit¹⁸, i.e., the person's ability to act before the judiciary to defend their rights and interests. Competence is a condition for the validity of the procedures taken by or directed toward the opposing party, meaning the person's ability to act before the judiciary to defend their rights and interests. The absence of such competence results in the invalidity of the litigation procedures¹⁹.

No legal person can have the competence to litigate unless they have reached the age of majority as stipulated in the Civil Code, which the law defines for an individual as having reached the full age of 19 years, and being of sound mind. This applies to natural persons²⁰.

1.2.3 Conditions Related to Time Limits for Appeal:

conditions that must be respected by the appellant, because once the time limit expires, the judge's ruling becomes not subject to appeal, considering that the deadline is a public order issue²¹.

The Algerian lawmaker established the deadlines for appealing court decisions by citing the Civil and Administrative Procedure Law's provisions²².

A. Time Limits for Appeal:

By reexamining the rulings and decisions made by the administrative court, appeals are regarded as one of the most significant common methods of contestation. According to Article 950 of the same law, the administrative court's judgments and the administrative court of appeals' decisions must be made within a month and two months, respectively, in order to exercise this right.

Furthermore, Article 937 of the Civil and Administrative Procedure Code requires the Administrative Court of Appeal to issue a ruling within ten days from the date of official notification in cases of urgency.

B. Method of Calculating Time Limits:

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Initiating a lawsuit requires that it be confined within specific dates and time limits. The right-holder does not have the freedom to choose the dates to bring their case before the administrative or ordinary judiciary; rather, they must file it within the time limit specified by law. The lawsuit will be inadmissible if it is filed before or after this period, even if all other conditions are met. The time limits also vary depending on the type of appeal, whether ordinary or extraordinary²³.

The Algerian legislator adopted the principle of counting the time limits in full, meaning that no procedure may be taken before the expiry of the deadline, in compliance with Civil and Administrative Procedure Code Article 405. Both the notification day and the time limit expiration day are excluded. The is not a full or partial working day. Holidays as defined by this law are official public holidays and weekly rest days in compliance with the relevant legal provisions, and they are taken into consideration when calculating the time limit²⁴.

C. Extension of Time Limits:

The legislator gave great importance to ensuring that all litigants obtain their full rights regardless of their place of residence. To embody this, Article 404 of the aforementioned law stipulated the extension of legal time limits by two months for persons residing abroad, in order to give them sufficient opportunity to defend their rights. The deadlines that are extended include those for objection, appeal, cassation, and petition for review²⁵.

D. Interruption and Suspension of Time Limits:

Interruption of time limits refers to the occurrence of an event that leads to the nullification of the period that elapsed before that event and the elimination of all its effects, and the time limit starts anew after the end of that event²⁶.

As for the suspension of the time limit, it refers to the occurrence by law²⁷.

What is novel about Article 832 of the Civil and Administrative Procedure Law is that the author made a distinction between situations where time limits were interrupted and situations where they were suspended.

The cases of interruption of time limits are:

- The claimant's passing or a shift in their legal capacity.
- Appeal before an incompetent judicial authority.

As for the cases of suspension of time limits, they are:

- A sudden incident or force majeure
- Request for legal aid

According to the previous version of Law No. 08-09's Article 832, time limits are broken in the following situations: appeal before an incompetent judicial authority, request for legal aid, death of the claimant or change in their legal capacity, force majeure or sudden incident. Meaning that the legislator previously included all cases within the scope of interruption of time limits²⁸.

1.3 The Competent Authority to Rule on Appeals in Administrative Matters:

The Algerian legislator, in accordance with the specific legal competencies of each body, entrusted both the Administrative Courts of Appeal and the Council of State with the authority to hear appeals brought before them. Generally, the Council of State functions as an appellate body for decisions issued by the Administrative Courts of Appeal, while the latter serve as second-instance courts for rulings issued by first-instance administrative courts..

Referring to French law, we discover that it established broad administrative decisions, appeals relating to municipal and departmental elections, and appeals for abuse of power against administrative

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decisions. The wisdom behind this is the prompt resolution of cases²⁹.

As for the Algerian legislator, it appears that they have, in principle, adopted the criterion that the judgment or decision must be of first instance in order to be appealed before the higher degree.

1.3.1 Jurisdiction of the Administrative Courts of Appeal as Appellate Courts:

Pursuant to Article 900 bis of the Code of Civil and Administrative Procedure, appeals against judgments and orders issued by administrative courts must be brought before the Administrative Court of Appeal. Additionally, under certain provisions, this court is empowered to rule on cases delegated to it, as well as on jurisdictional disputes arising between two administrative courts falling within its territorial jurisdiction. Consequently, the Algerian legislator has excluded specific matters from the scope of appellate review.:

- Administrative courts' final rulings, which are based on particular legal texts.
- Administrative court rulings that involve the appointment of one or more experts cannot be appealed separately; instead, the appeal must be filed with the ruling that decides the dispute on its merits. Article 952 of the Code of Civil and Administrative Procedure makes this very clear.

It also rules on urgent matters in accordance with the deadlines mentioned above, based on Article 937 of the aforementioned law.

According to Article 900 bis, the Administrative Court of Appeal in Algiers has the authority to hear cases involving the annulment. It is important to note that the legislator has given this court the authority to consider cases that were previously under the Council of State's purview for first and final instance adjudication, in

addition to its function as a second-degree instance in administrative litigation³⁰.

1.3.2 Jurisdiction of the Council of State as Appellate Court:

Law No. 11/13, which was added to and modified by Law No. 98/01, reflects the Council of State's legal framework³¹, which defines the powers, organization, and operational mechanisms of the Council of State.

an authority that assesses the conduct of administrative bodies. It strives to enforce the law and guarantees the country's administrative judicial rulings are consistent. Its judicial powers are organized in Articles 09, 10, and 11 of the mentioned organic law, in addition to those outlined in Law No. 08/09 previously mentioned, which specifies these powers in Articles 901, 902, and 903. These powers vary according to the jurisdiction of the Council in considering cases.

In matters involving the annulment, interpretation, or assessment of the legality of administrative decisions issued by central administrative authorities, national public institutions, and national professional bodies, the Council of State is responsible for adjudicating appeals against rulings issued by the Administrative Court of Appeal in Algiers, in accordance with Article 902 of Law No. 22/13..

where it is reexamined from a legal and factual standpoint. When considering the case, the Council has the same authority as the first-instance judge and considers both the requests made before the first-instance judge and those that have been appealed in accordance with the two-tier litigation principle. In the event that the administrative court's judgment is overturned, the Council of State may refer the matter to the appropriate administrative court or address the matter and render a

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decision in accordance with Article 346 of the Code of Civil and Administrative Procedure.

2. Procedures for Appeal in Administrative Matters and Their Effects:

Anyone wishing to file an appeal must Code, just like they would with an opposition appeal. This is part of his commitment to ensuring the proper functioning of justice in accordance with the applicable legal provisions and rules. By following these procedures, the appellant ensures that their appeal is accepted and that they receive a ruling that satisfies them and preserves their interests. Similarly, the appeal has certain effects. To highlight these procedures and the resulting effects, we have divided this chapter into (Section One), which is dedicated to the procedures followed in filing an appeal, and (Section Two), which discusses the effects of this appeal.

2.1 Procedures Followed in Filing an Appeal:

It is evident from examining a few sections of the Civil and Administrative Procedure Code that the Algerian lawmaker has nearly perfectly balanced the processes that are followed before the Council of State and administrative appeal courts. He relied on citing the clauses that govern the procedures in this regard, whether in the petition to initiate the case, the manner of filing the case, or the procedures for filing and registering the appeal.

2.1.1 Procedures Followed Before the Administrative Appeal Courts:

The following are the steps involved in submitting an appeal to the administrative courts:

A. Petition to Initiate the Case:

"The provisions of articles 815 to 828 of this law apply before the administrative appeal courts," reads Article 900, paragraph 1³².

Filing an administrative case before the competent judicial body requires submitting a petition, either in paper or electronic form. This petition must include the details specified in Article 15, along with an attached copy of the contested decision. The remaining procedures remain as stated until Article 828.

Regarding the administrative courts and the Council of State, representation by a lawyer is mandatory, except for the cases specified in Article 827, which exempt the state and the organizations listed in Article 800 from this duty. According to the second paragraph of Article 900 bis, the parties must be represented by an attorney when bringing a case before the administrative appeal courts³³.

B. Filing the Case:

"The provisions of articles 539 to 542 of this law apply to the procedures for filing and registering the appeal," reads Article 900, paragraph 6³⁴.

"The appeal is filed through a petition deposited with the registry of the judicial council that issued the appealed judgment within its jurisdiction," according to Article 539. The appeal may also be entered into a special register maintained by the court's registry.

The appeal petition is promptly entered in a special register, numbered and approved by the president of the judicial council in accordance with the order of its arrival, along with the names and titles of the parties, the case number, and the date of the first session, in compliance with the provisions of Article 17 of this law. Copies of the appeal petition are marked with the case number and the date of the first session by the court clerk, and the appellant is required to formally notify the appellee. Between the date of the summons' delivery and the first scheduled session, a minimum of twenty (20) days must pass³⁵.

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Data Required for Filing the Appeal Petition According to Article 539:

- The judicial body that issued the appealed judgment.
- The name, title, and address of the appellant.
- The name, title, and address of the appellee or their last known address.
- A concise synopsis of the requests, facts, and justifications supporting the appeal.
- The seal and signature of the lawyer³⁶.

C. Deadline for Filing the Appeal:

As mentioned earlier, the appellant must adhere to the deadline condition for the acceptance of the appeal, as this procedure is of utmost importance. The deadline is set at one month, starting from the date of official notification of the judgment, in the case of appealing before the administrative courts against judgments issued by them. It is important to note that the period allocated for filing an appeal in urgent orders is fifteen (15) days.

2.1.2 Procedures Followed Before the Council of State:

The following is stated in Article 40 of Law No. 98/01, which deals with the Council of State's powers: "Judicial procedures before the Council of State are subject to the provisions of the Civil Procedure Law." This article makes it abundantly evident that the legislator is referring to the requirement that the Civil Procedure Law's provisions be applied in the processes that are conducted before the Council of State³⁷.

Notably, the lawmaker did not outline any unique protocols for the Council of State when submitting an appeal to it. As previously mentioned, the appeal is submitted in the form of a petition filed with the registry of the Council of State by an accredited lawyer, with the

exception of the persons specified in Article 800 of this procedure. After paying the court fees, the petition is registered and numbered in a special register, and then the presidency of the council distributes the files to the relevant chambers, where the chamber president appoints the repo³⁸.

2.2 The Effects of Appeal in Administrative Matters:

In this section, we will review the effects of the appeal on the execution of the appealed judgment in (the first section), and then we will discuss the effects of the appeal on the authority of the appellate authority in (the second section).rting member.

2.2.1. The Effects of Appeal in Administrative Matters on the Appealed Judgment:

Articles 900 bis 2 and 9, which deal with the appeal process, were introduced to define the position on the enforcement of judicial decisions issued by the Administrative Courts or the Administrative Courts of Appeal (first) following the amendment of the Civil and Administrative Procedure Law and the creation of the Administrative Courts of Appeal. Additionally, this rule has exceptions (second).

A. The Suspension Effect of Appeal in Administrative Matters:

According to Article 900 bis 2 of Law 22-13's first chapter, "Procedures Followed Before Administrative Courts of Appeal, "An appeal has a suspensive effect and affects the enforcement of the judgment.³⁹ "

Article 908 of the same law also refers to this, as it states, "An appeal before the Council of State has a suspensive effect and affects the enforcement of the judgment.⁴⁰ "

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The text of these two articles makes it abundantly evident that the Algerian legislator has adopted a suspensive effect for appeals, which means that, in contrast to the circumstances prior to the amendment, decisions rendered by the first-instance court are no longer enforceable and the appeal has a suspensive effect comparable to that applied in regular courts⁴¹.

The suspensive effect of an appeal before the Council of State is confirmed by Article 8 of Law 22-13, which amended Article 908. This relates to cases in which the Algerian Administrative Court of Appeal hears appeals against rulings made by national public bodies, national professional associations, and central administrations.

According to Article 910 of the recent amendment to the Civil and Administrative Procedure Law, the Council of State may suspend the enforcement of administrative decisions or lift this suspension when serving as an appellate court in urgent cases⁴².

It is important to note that this new amendment contains contradictions and inconsistencies between its provisions. On one hand, it proposes making administrative appeal judgments affect their enforcement, while on the other hand, it states that judgments and decisions of administrative courts and the Council of State are considered enforceable as soon as they are issued, without requiring the exhaustion of ordinary appeal procedures, as is the case in ordinary judicial rulings⁴³.

Article 600, after its amendment, states: "Only an enforceable title may be used as justification for forced execution. The Council of State, administrative court rulings, and administrative court of appeals are among the titles that are enforceable."⁴⁴

It is clear from this that there is an apparent contradiction between Articles 900 bis 2 and 600 after amendment. While the first article suspends the enforceability of the administrative judgment, the second grants it enforceability as soon as it is issued. This calls for an amendment of the wording of Article 600 of Law 08-09 by adding the condition of exhausting ordinary means of appeal⁴⁵.

It's crucial to remember that Articles 910 and 911, as amended, specify an extra circumstance in which the implementation of administrative judgments that have been appealed may be halted. The Council of State has the power to suspend or lift the enforcement of administrative decisions while it considers the case as an appellate court in administrative cases, according to Article 910⁴⁶. Previously, suspension of enforcement was referred to Articles 833 to 837, which concern the procedures for suspension of enforcement followed before administrative courts.

"The Council of State may, upon receiving a petition to lift the suspension of enforcement ordered by the Administrative Court of Appeal in Algiers, decide to lift it immediately if it may harm the public interest or the rights of the appellant, until the appeal is ruled upon," reads amended Article 911⁴⁷.

From the content of Article 911, it is evident that the Council of State has the right to issue an order to suspend the appealed urgent ruling (which in this case is the decision to lift the suspension of an administrative decision) following the submission of a petition by the Administrative Court of Appeal in Algiers for the suspension of enforcement. The Council of State may choose to immediately lift the suspension in this situation, provided that it finds the appealed judgment

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may harm the public interest or the appellant's rights, until a decision is made on the substance of the appeal.

B. The Exception to the Rule of Suspensive Effect of Appeal in Administrative Matters:

It is not always true that an appeal before administrative judicial authorities prevents the judgment from being enforced. Interim orders are an exception. These orders are distinguished by their instantaneous effects, which begin on the day the convicted party is formally notified. According to Article 935 of the Code of Civil and Administrative Procedures, which is unaffected by the most recent amendment, the summary judge also has the authority to determine whether the order should be enforced immediately upon issuance. It says: "The date of official notification or notification to the convicted party is when the interim order takes effect. Nonetheless, the summary judge has the authority to determine whether it should be enforced immediately after it is issued."

Therefore, an appeal against interim orders does not suspend their enforcement, as also confirmed by Article 303 of The Civil and Administrative Code Procedures.

2.2.2 The Effect of Appeal in Administrative Matters on the Authority of the Appellate Body:

In administrative cases, the appellate judge has broad authority because the appeal moves the dispute from the court of first instance to the court of appeal, which uses its broad authority to reexamine the matter from a legal and factual standpoint. (Initially) Additionally, it has the authority to decide on the dispute's topic directly. (The second).

A. The Transferred Effect of the Dispute in Administrative Matters:

The transferred effect of an appeal in administrative matters refers to the transmission of the case in all its

aspects—including factual issues, arguments and supporting documentation submitted to the appellate body during the court of first instance's initial proceedings⁴⁸. Stated differently, the transferred effect entails reintroducing the case before the appellate judge in terms of both facts and law, giving the judge broad authority to either uphold or annul the appealed judgment in whole or in part.

In order to file an appeal, the matter must be sent to the second-degree court for review. The court of first instance and this court share the same authority. It reviews the case's facts and follows the proper procedures to determine the truth, reevaluating the facts in light of the filed documents and the written defenses put forth by the parties. In the end, it applies the legal principle that it believes is suitable for the case's circumstances⁴⁹.

The transfer of the dispute decided by the first-instance court to the second-instance court, which reexamines the case from both a factual and legal standpoint, is known as the transferred effect. This means that all of the judicial claims, pleas, defenses, evidence, and legal arguments that were previously made are brought up again in the appellate court, which is the second-degree court. For a new review, the appellate judge receives the entire case file. As a result, the appeal process is regarded as an extension of the original proceedings, and the appellate judge has all the authority of the administrative court judge, including the ability to carry out the required investigations without sending the parties back to the court of first instance. With the exception of those that have been forfeited, the party also maintains the same procedural rights as in the initial court.

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The administrative appellate court has the authority to revisit cases that have already been filed and decided by the administrative court of first instance, reevaluating them from a legal and factual standpoint. To preserve the idea of two-tier litigation, this is carried out in accordance with the arguments, proof, and defenses made before the initial court as well as within the parameters of the appeal that was filed⁵⁰.

a. Imitations on the Transferred Effect of the Dispute in Administrative Matters

The following succinctly describes the restrictions placed on the transferred effect of the dispute in administrative matters:

- Except in certain situations that are precisely outlined in the Code of Civil and Administrative Procedure—specifically, as stated in Article 341 of Law 08-09—new claims are typically not admissible on appeal. According to this article, "new claims are not admissible on appeal, except for set-off defenses, new fact." This restriction is based on the principle that the purpose of two-tier litigation is to correct potential errors made by the trial court. Thus, it would be illogical to correct a supposed error regarding a matter that was not brought before the lower court, or a matter it failed to address for some reason. The aim of this restriction is to safeguard the principle of two-tiered litigation, as allowing new claims could deprive the opposing party of the opportunity to litigate them fully at both levels.

- filed it, not the other parties who did not take part in this phase. Therefore, if the initial judgment concerns an indivisible matter, the appeal cannot be accepted against one party alone

without summoning the remaining parties to appear at the hearing. This condition further supports the integrity of two-level adjudication.

- The particular grounds stated in the appeal bind the appellate court. Only matters specifically stated in the appeal may be taken into consideration by the appellate body. The appellant's silence on particular matters is regarded as implicit acceptance of them, which grants such matters the authority of *res judicata* (the matter already judged)⁵¹.

b. Exceptions to the Limitations of the Transferred Effect of the Dispute in Administrative Matters:

exceptions to the limitations on the transferred effect of the dispute, represented as follows:

- New Claim as a Means of Defense to Reject the Original Claim:

A new claim raised for the first time before the appellate body is considered admissible, as it serves as a principal means of defense against the original claim. Although this approach involves presenting a new claim rather than merely rejecting the lawsuit, it is deemed acceptable because it fulfills a defensive function in the original case.

However, if the new claim exceeds the scope of defense—for example, if the opposing party, for the first time before the appellate body, asserts ownership of the disputed property, while in the first instance they only argued for dismissal of the claim—then this claim is considered inadmissible, as it constitutes a new claim that goes beyond the limits of defense⁵².

The opposing party also has the right to raise any form of defense, whether substantive, procedural, or a plea of inadmissibility. They may also, for the first time before the appellate authority, present new evidence,

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such as requesting witness testimony or the appointment of an expert. Additionally, they may rely on new defenses, arguments, and evidence recognized in both legal doctrine and jurisprudence.

As for the attachments of the original claim, they refer to everything that may be added to the original claim without altering its substance. Such attachments that may be submitted for the first time before the appellate authority are those that become due after the issuance of the administrative court's judgment, and are presented for the first time through a new claim related to the subject. As a result, the extra claim is accepted as an exception to the general rule and is regarded as a new claim filed before the court of second instance for the first time⁵³.

- Issues Arising from Third-Party Intervention:

As an exception to the general rule that forbids bringing new claims before the appellate body, case. Thus, a new claim related to persons can only be accepted the party with whom they align. As for aggressive intervention, it is not admissible for the first time before the appellate body, as it involves submitting an entirely new claim with all its elements.

Some jurists argue that invoking new legal grounds for the first time before the appellate court does not infringe upon the principle of two-tier litigation, as the legislator intended for the appeal to serve as a second opportunity to make up for what the parties missed in the first instance. Forgetting a defense or piece of evidence should not deprive them of benefiting from this path, which is considered an extension.

to submit counterclaims in addition to new legal means, documents, and evidence before the appellate body. This is because the article states that

"Counterclaims may be submitted during the appeal proceedings.⁵⁴ "

It can be noted that this restriction is considered a matter of public order, yet the rule of inadmissibility of new claims in appeal should not hinder the acceptance of claims related to public order. Moreover, this rule aligns with the transferred effect, whereby the appellate judge does not merely review the contested judgment but addresses all aspects of the dispute. This allows all matters raised before the administrative court as the first instance to be reintroduced, in addition to new means⁵⁵.

This rule is considered relative, not absolute, as there are some exceptions stipulated in Article 462 of the repealed Code of Civil and Administrative Procedure, which states:

"It is not permissible to plead nullity or procedural invalidity by someone who has submitted a memorandum on the merits⁵⁶. "Its counterpart is Article 61 of the Code of Civil and Administrative Procedure (Law 08-09), which stipulates:

"Procedural invalidity may be raised during the conduct of the procedure, but it is not admissible if submitted by someone who, by arguing the merits, has waived the right to raise the procedural irregularity.⁵⁷ "

This article allows the interested party to raise procedural defenses based on invalidity at any time during their presentation, but prior to any defense related to the merits. This means that raising such defenses after submitting any argument on the merits may lead to them being inadmissible. In other words, taking such an action implies that the party raising the defense has, in principle, accepted the⁵⁸.

B. The Appellate Judge's Authority to Address the Subject Matter of the Dispute:

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When a judge of the second degree receives an appeal against a decision rendered by the court of first instance, the judge has the authority to consider the case fully and render a single ruling that addresses the appeal and the subject matter jointly. This is known as the right of intervention⁵⁹.

Intervention is considered a discretionary authority held by the appellate judge when a non-final judgment in the dispute is annulled, whereby he may rule on the subject matter of the dispute if he is qualified to do so⁶⁰.

It can be said that the authority of intervention affects the principle of two-tier litigation, as first-instance judge did not address. It also contributes to accelerating procedures and avoiding delays resulting from remanding the case to the judges of the first instance for reconsideration⁶¹.

The appellate judge exercises this authority when it becomes evident that the judgment issued by the trial court is unlawful and must be annulled. This may occur in cases such as the failure of the judgment to rule on the dispute, or if the ruling was rendered but did not comply with the required legal procedures. The appellate judge is also entitled to decide directly on the subject matter of the dispute without the need to refer the case back to the trial court that issued the ruling⁶².

In order for the appellate judge to exercise the authority to address the subject matter of the dispute before him, several conditions must be met, as follows:

a. Annulment of the First-Instance Judgment:

Only in the event that the judgment that did not address the dispute's subject matter is annulled may the right of intervention be used. This requirement makes sense because intervention gives the appellate judge the authority to make a decision on a matter that was initially

the administrative court judges' domain as a court of first instance. The appellate judge cannot get involved unless the administrative court's first-instance ruling is overturned. Article 346 of Law No. 09-08, which was previously mentioned, implicitly implies this requirement.

In order court of first instance's judgment must be revoked. The following was the reasoning behind the decision: "However, since the wali's decision was issued by the real estate conservation office, the Council of State's jurisprudence has decided to treat the request for registration cancellation as a request to revoke the wali's decision. On the other hand, the first-instance judges were right to assert their jurisdiction, which made their decision vulnerable to revocation. However, if the appealed judgment is revoked, the appellate authority may step in if the case is prepared for.⁶³ "

b. The Case Must Be Ready for Adjudication:

It is not sufficient for the appellate judge to annul the administrative court's judgment in order to be able to consider the lawsuit; rather, the lawsuit must be ready for adjudication. A lawsuit is considered ready for adjudication if the parties have submitted their final claims and defenses before the court of first instance or the appellate authority, and if the investigation has been sufficient, thus providing the appellate judge with all the necessary elements to make a decision without the need for further investigation. However, if the parties have not addressed the subject matter of the lawsuit and have not presented their defense, the appellate judge does not have the right to consider the lawsuit in this case⁶⁴.

Administrative jurisprudence has not yet settled on defining the concept of a case that is ready for adjudication. Nevertheless, submit their documents in full, allowing the judge to ascertain the truth of the

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dispute. When there is agreement on the dispute's subject, judicial administrative interpretation is also regarded as⁶⁵.

c. The Optional Nature of Addressing the Merits:

remains a matter of discretion for the appellate judge. Even if all the necessary conditions are met, the judge is not obliged to exercise this authority. The judge may intervene in the case to ensure litigation. Thus, the appellate judge enjoys wide discretionary power, based on their conviction that this or that solution is the most appropriate to achieve justice⁶⁶.

Conclusion:

Finally, following the enshrined the principle of litigation at two levels under the 2020 Constitution and Law 22-13. These courts make decisions in a second instance.

In appeals period from two months to one month and mandated legal representation before these courts.

One of the most significant innovations of Law 22-13 is the appeal that was filed before the Administrative Court of Appeal in order to carry the dispute and halt the execution. This will resolve issues that were previously caused by the administrative courts' judgments being enforceable even after they were appealed.

Additionally, by allowing the litigant to electronically file system and implementing electronic transactions, though certain flaws are still noticeable.

Accordingly, we present the following recommendations:

- Considering the volume of administrative disputes, expand the number of administrative courts.
- Judges should be trained in administrative law in accordance with the independence and specificity of administrative law and justice.

- Because administrative litigation procedures have unique judicial procedures that is distinct from the Civil Procedure Code is required.
- Redraft Law 22-13's Article 900 bis, which requires both private and public entities to have legal representation, should only require private entities to have legal representation; public entities are exempt from this requirement.
- The necessity of amending the text of Article 600 so that it does not contradict

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⁶⁶⁻ Yves GAUDEMET, Administrative Law, 18th edition, Edi, L.G.D.J. Paris, 2005, Nos. 287-300.