



***Appeal in cassation at the Algerian Council of State in the light of Law
22/13 amending the Code of Civil and Administrative Procedure.***

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Abstract:

The Algerian Council of State is an administrative judicial authority, entrusted with jurisdiction and evaluation under the Constitutional Amendment 20-442 and the organisational texts issued accordingly. However, the original jurisdiction of the Council of State, despite the recent amendment to the Code of Civil and Administrative Procedures, the "casation appeal" remains relatively amputated, due to judicial duplication (appeal - cassation), which is contrary to the principle of litigation on two degrees stipulated constitutionally.

Keywords:

Council of State - Jurisdiction - Appeal - Cassation.

I. INTRODUCTION

The judicial organization in Algeria is based on the principle of judicial duality "ordinary judiciary - administrative judiciary". Accordingly, in the administrative judiciary, the judicial pyramid consists of administrative courts as a general principle, administrative courts of appeal that were recently established under the Judicial Organization Law 22-10, and the Council of State, which is considered a constituent body for the work of the administrative judicial authorities on the one hand, and a judicial body that ensures the unification of judicial jurisprudence in the administrative article

In application of Article 165 of the Constitutional Amendment 20-442, which stipulates that the principle of litigation must be applied at two levels, this principle has been embodied in the administrative judiciary, where the jurisdiction of the Algerian Council of State has been radically modified by assigning it to consider cases in hand since it is an appellate body, and a cassation body, which is the original competence of the Algerian Council of State

Accordingly, through this article, we will try to address exclusively the competence of the Algerian Council of State as a cassation body, and to know whether it can exercise the jurisdiction of cassation as an exclusive jurisdiction under the new amendment or not, after the jurisdiction of cassation was truncated under Law 08-09 on the Code of Civil and Administrative Procedures.

The importance of our discussion of this topic (appeal in cassation before the Algerian Council of State), since the appeal in cassation in the administrative article has always been a place of legal problems in the judicial arena, which raised doubt about the embodiment of the principle of litigation on two degrees in the administrative article, as this principle is constitutional, and must be applied in order to preserve the rights and freedoms stipulated in the constitution and organization.

Problem of the study

In order to address this issue, we pose the following problem:

Can the Council of State exercise jurisdiction related to appeal of cassation in the administrative article in light of the new amendment to the Civil and Administrative Procedures Law?

To answer the problem mentioned above, we rely in this study on a systematic approach based on: 1- Analytical method: It is the prominent approach in this study, due to our reliance on the analysis of legal texts exclusively, related to the study.- 2- Descriptive approach: in order to define some of the terms of the study, in addition to some variables that are the comparative aspects in the subject.

As for the reasons for choosing the topic:

The reason was purely objective as the study addresses one of the variables within the framework of the scientific research of the thesis

To answer the problem raised previously, the study is divided into two parts as follows:

1- The first part: the concept of cassation appeal in the administrative judiciary.

First: Definition of cassation appeal in the administrative judiciary

Second: Cassation appeal procedures in the administrative court.

2- The second part: judgments subject to appeal in cassation before the State Council.

First: Cassation appeal against general judicial decisions.

Second: Cassation appeal against special judicial decisions.

Theme: The concept of cassation appeal in the administrative judiciary.

The cassation appeal before the administrative court (Algerian Council of State) is one of the legal procedures stipulated by the Algerian legislator in order to preserve rights and freedoms in general before the administrative court.

Accordingly, first, we address in this part of the study the definition of cassation appeal before the administrative court, and then we explain the legal procedures followed by the appellant in order to exercise this right before the State Council.

- First: Definition of cassation appeal in the administrative judiciary

Referring to the Algerian legislation in a broad sense, the definition of appeal in cassation in the administrative judiciary (before the Council of State), has been addressed through several directions, of which were:

A- Legal Definition of Cassation Appeal before the Council of State:

With reference to Law 22-13 on Civil and Administrative Procedures, specifically Article 901, or Organic Law 98-01, as amended and supplemented by Law 22-11, specifically Article 09 thereof, we find that the Algerian legislator did not explicitly define cassation appeal, but rather defined cassation appeal on the basis of determining jurisdiction. This is not a problem at all as the definitions are the specialty of jurisprudence in the first place, and the judiciary in the second. This is when considering the cases at hand.

B- Judicial definition of cassation appeal before the Council of State:

With reference to the various judicial rulings issued by the Algerian Council of State, or through a brief reading of some of the provisions and decisions of the French Council of State, we find that the definition of an appeal in administrative cassation was not explicitly defined by the administrative judicial authorities, and the reason for this is due to the fact that the Algerian Council of State in particular paid attention to the procedural aspect of this appeal, and this if it indicates anything, it indicates that the cassation appeal is a procedural appeal that can be defined through its procedures and methods of adjudication.

It was mentioned in the implicit definition of the cassation appeal before the State Council within Resolution 072652 issued on 19-07-2012, that"..... Cassation appeal is usually opened against judgments issued by the courts of first instance, and decisions issued by the appellate authorities."

C- Jurisprudential definition:

Since the definitions and legal explanations are explicitly the competence of jurisprudence, only the administrative cassation appeal has been defined by several jurists and jurists, and among these definitions are:

1- Definition of Mr. Muhammad Ali Al-Kaik:

"He defined the appeal in cassation as a procedural means developed by the legislator in order to allow the interested party from litigation to submit the dispute again to a new judicial authority in order to impart the appealed judgment from illegal impurities."

2- definition of Muhammad Subhi Najm:

"He defined appeal in cassation as an unusual way that is permissible only in final judgments. This means that the cassation authority considers the violation of the law to decide whether to cancel the judgment issued by lower judicial authorities as not every violation allows the appeal. Rather, the law stipulates specific conditions for accepting the appeal in cassation, which are limited exclusively by the text of the law."

3- Definition of Professor Al-Marsafawi:

"Appeal in cassation is a way through which a kind of supervision of the application and interpretation of the law is sought to be achieved, leading to the unification of legal principles applied by the courts in general."

The observation that we conclude through the sum of the previous definitions, which is unanimous among the various jurists even if they differ in the definition, that the appeal in cassation before the administrative judiciary (the State Council) is an unusual method in the final judgments issued at the last degree.

3- From our part, and in addition to the previous definitions, we can propose the

following definition,

"The cassation appeal before the Algerian Council of State is an extraordinary legal procedure that enables the litigant to appeal the final judgments issued at the last instance before the Council of State, provided that the formal and substantive conditions are met in the appellant, provided that the Council of State decides on the subject of the appeal within the legal deadlines allocated for this, by a final judgment either by accepting the appeal in form and substance, or by rejecting the appeal for one of the reasons decided by it."

Second: Cassation appeal procedures in the administrative court.

The conduct of the case at any judicial authority was governed by general rules and principles stipulated by law. This applies to the initiation of the cassation appeal procedure at the Algerian Council of State, as the initiation of this procedure is governed by legal conditions represented in:

A- Conditions related to the parties of the litigation:

The formalities of initiating the cassation appeal procedure at the Algerian Council of State are:

1- Capacity:

Article 13 of Law 08-09, as amended and supplemented, stipulates that no person may litigate at the judicial authorities unless he has an existing or potential interest determined by law.

In this regard, the judge can raise the lack of capacity requirement directly when considering the dispute and before deciding upon it, leading to the non-adjudication of the administrative dispute

In connexion to this, the capacity in litigation means that the plaintiff (litigant) is in a suitable position to initiate the lawsuit. This appropriate position is the status of sound law, which entitles him to go to the judiciary.

1-Interest: since the resort to an appeal in cassation at the Algerian Council of State has always aimed at realising benefit, whether public if it concerns to a public legal person or private if it concerns a natural individual or a private legal person, this benefit must be determined. This benefit is defined by most jurisprudence as:

-The utility or the practical benefit that accrues to the defendant from the judgment of his requests.

-The interest is the interest and the spoil that accrues to the plaintiff.

-The benefit gained by the appellant from resorting to the Court of Cassation"

In addition, among the conditions behind the cassation appeal at the State Council is that it must be:

- Legitimate interest: The legitimacy of the interest here means that the interest behind the appeal in cassation is in line with public order, and that the law is the one which protects it. This is due to the fact that it cannot be imagined that the Algerian Council of State will decide upon a lawsuit filed at it, while it is originally not legitimized in terms of interest.

• Existing or potential: the existing interest is that which exists from the day of the appeal in cassation at the Council of State, while the potential interest is that which is likely to occur in the future in the case of adjudication of the case subject to the casation.

A-Conditions related to the decision of the subject of the appeal:

- One of the conditions necessary for initiating the cassation appeal procedure before the Algerian Council of State is that the subject of the appeal is related to:

• -The existence of an administrative decision: The condition of the administrative

decision is one of the obligatory conditions without which the cassation appeal will be rejected, since the final judgment issued by the various degrees of administrative litigation is about an administrative decision

-The decision subject to the appeal must be issued by the last administrative judicial authority: this means that the administrative decision that is subject to a cassation appeal before the Algerian Council of State, must be issued by an administrative judicial authority, whether general or specialized..

Part two: judgments subject to appeal in cassation before the State Council.

With reference to the amended and supplemented Algerian Code of Civil and Administrative Procedure, we find that the Algerian legislator has limited the types of administrative judicial rulings that can be subject to appeal in cassation at the Council of State, including decisions issued by public judicial authorities (first). Accordingly, we will address all these judicial decisions in detail in this axis, highlighting the judicial problem they raise.

First: Cassation appeal against general judicial decisions.

General judicial decisions mean those decisions issued by the administrative judicial authorities, and which bear the nature of an appeal, or are specified under the legal text. These decisions include:

1- Administrative judicial decisions issued by the courts of appeal:

1-The administrative courts of appeal provided for in Law 22-13 issue final judicial decisions, on the occasion of their adjudication of one of the disputes submitted to them, provided that the law enables litigants to appeal this judicial decision at higher judicial bodies represented by the Council of State.

This very obvious specialty of the Algerian Council of State (cassation appeal) is also confirmed by the provisions of Organic Law 22-11 through Article 09 thereof.

1- Administrative judicial decisions issued by the State Council as a body of appeal: When we examine the judicial jurisdiction of the Algerian State Council in light of the new amendment to the Code of Civil and Administrative Procedures, we find that the Algerian legislator assigned the State Council two dual judicial jurisdictions, which are:

A - Appeal: This is when it comes to judicial decisions issued by the Court of Appeal of Algiers, on the occasion of its consideration, as a first instance, of the decisions of central bodies, central administrative authorities, and national public bodies.

The problem that arises here is: Can the Algerian State Council exercise two types of judicial jurisdiction in the same judicial decision, once as a body of appeal, and once as a body of veto?

Referring to the jurisprudence of the Algerian State Council, we find there is a decision that settled the matter through Resolution No. 072652 issued on 07/19/2012 and concerns the case against the municipality of Mourad Rais. Its content stated, "...and therefore the decisions issued by it are absolutely final and may not be appealed except by requesting reconsideration or correcting material errors..."

It can be said here that judicial jurisprudence has settled the matter, as the rulings issued by the Algerian State Council, as a body of appeal, cannot be appealed by cassation before the State Council.

Thus, the Algerian legislator has been incorrect in this matter, which makes the cassation jurisdiction explicitly suspended before the Council of State, and this is especially so after the installation of the administrative courts of appeal.

This leaves two options for the litigant: either choosing to appeal by negligence in the cassation appeal, or waiting for the expiry of the deadlines for appealing the cassation and

proceeding with the cassation appeal directly at the Council of State.

Thus, the two levels litigation in the Algerian administrative judiciary is not explicitly applied until now.

Second: Appealing the cassation against special judicial decisions.

As for private administrative judicial decisions, which are issued by specialized judicial bodies to which the law has given this character, and which can be appealed in cassation before the Algerian State Council, the Algerian legislator did not specify them exclusively through the Code of Civil and Administrative Procedures. Rather, it lefts the matter open to the legal systems of the special administrative judicial authorities. The latter were represented in:

1- Judicial decisions issued by the Accounting Council:

What is noted in the new amendment to Law 98-01 amended and supplemented, and Law 22-13 related to civil and administrative procedures, is that the Algerian legislator did not include, as usual, the name of the Accounting Council in the veto jurisdiction of the State Council. However, this does not mean that the Algerian State Council does not consider the decisions of the Accounting Council as a veto body. On the contrary, it considers the decisions of the Accounting Council as a veto. This is due to the nature of the decisions issued by the latter.

1- Decisions issued by the Supreme Judicial Council:

Decisions issued by the Supreme Judicial Council are subject to the oversight of the administrative judiciary through cassation appeal, since the latter issues special judicial decisions to which legislation has given this legal character.

2- Decisions issued by the National Appeal Committee for the profession of notarial:

Article 67 of Law 06-02 stipulates that disciplinary decisions issued by the Appeals Committee should be subject to appeal directly at the Algerian State Council.

3- Decisions issued by national committees for the profession of judicial reporters: The National Appeal Committee issues decisions of a judicial nature on the occasion of its convening as a disciplinary committee, provided that the decisions of the National Committee are appealed directly before the Council of State without the right to appeal.

Conclusion:

At the end of our study of the issue of cassation appeal at the Algerian Council of State in light of the new amendment to the Code of Civil and Administrative Procedure, it can be said that:

Appealing in cassation before the Algerian State Council is an unusual method of litigation aimed at correcting the judicial decision issued by the administrative judicial bodies in the world, whether ordinary or specialized, and this is by following the stipulated legal procedures.

It is also noted through the new amendment to the Civil and Administrative Procedures Code that the Algerian legislator has made some changes with regard to the jurisdiction of cassation at the Algerian State Council, the latter represented in:

The possibility of the Algerian State Council exercising veto jurisdiction when it comes to appeals issued by the Administrative Courts of Appeal.

But the problem that remains is that the judicial duality of the State Council. This is due to the fact that the latter convenes as an appeals court on the occasion of its consideration of decisions issued by the Administrative Court of Appeal of Algiers, and as a body of cassation when it considers judicial decisions issued by ordinary courts of appeal.

Therefore, through this study, we concluded:

-The veto jurisdiction of the Algerian State Council in light of the new amendment to the Code of Civil and Administrative Procedure is still marred by some procedural ambiguity.

-The judicial duality of the Algerian State Council disrupts the jurisdiction of the veto when it comes to appealing rulings issued by it as an appellate body.

After we have reached the results presented above, we can present some proposals that will strengthen the veto function of the Algerian State Council:

-The State Council must be exempted from appellate jurisdiction.

-Reconsidering the distribution of judicial jurisdiction in administrative matters.

-The necessity of establishing an appellate court specialized in hearing appellate cases related to the central authorities.

-The nature of some judicial decisions issued by private administrative judicial authorities must be reconsidered, as the latter violate the constitutionally stipulated principle of two-tier litigation.

References

1- Organic Law No. 22-10 on Judicial Organisation, issued on June 09, 2022, Official Gazette, No. 41.

2-See Article 165 of Constitutional Amendment 20-442, issued on December 30, 2020, Official Gazette No. 82, p.36.

3- See Article 901 of Law 22-13 on the Amendment of Law 08-09 on the Code of Civil and Administrative Procedure, dated July 17, 2022 Official Gazette No. 02, p.08.

4- See Article 09 of Law 22-11 on the Organisation of the Algerian Council of State of June 16, 2022, Official Gazette, No. 14.

5- Hafeez former, a doctoral thesis entitled: Adversarity in the administrative material before the State Council, Mohammed Khaider University Biskra, Law Department, specialisation in Public Administration Law, 2018/2019, p.128.

6- Muhammad Ali Al-Kaik, Principles of the Casing of Criminal Judgements, Radiation Library for Publishing Alexandria, 1989, p. 210. By acting

7- Mohamed Sobhi Najm, explained the Algerian Code of Criminal Procedure, Diwan of University Publications, Algeria, 1984, p. 145 by act.

8 - Hussein Sadiq Al-Marzafawi, Principles of Criminal Procedure, Knowledge Facility, Alexandria, 1996, p. 812 Acting.

9-See Article 13 of Law 08-09 as amended and supplied by 22/13 mentioned above.

10 - Dahmani Kamal, an article entitled: Procedural Privacy for the Acceptance of Administrative Claims before Administrative Judicial Authorities within the Framework of Law 08-09, Journal of the Department of Research, Legal and Political Studies, Volume 06, Issue 02, Year 2022, p.207. By acting

11 -Dahmani Kamal, same article, p211.

12 - Ammar Boudiaf, reference in administrative disputes, section I, theoretical framework for administrative disputes, Dar Al-Basos for Publishing and Distribution, 01 2013, p. 269.

13- Hoam Sheikha, Master's memorandum entitled: Appealing the veto before the Algerian Council of State, University of 8 May 45 Guelma, Faculty of Law, Arts and Social Sciences, Division, Public Law, specialisation of constitutional and administrative institutions, year 2005/2006, p.37.

14- Makfoulji Abdelaziz, Article entitled Conditions for Acceptance of the Case, Journal of Legal and Political Research and Studies, Issue 06, without an edition, p.118.

15 - See Article 901 of the aforementioned Law 22-13.

16- See Article 900 bis, of Law 22-13 mentioned above.

17 - See Article 901, of the aforementioned Law 22-13.

18 - See Article 09 of Organic Law 22-11, on the organisation and management of the State Council, Official Gazette, No. 41., p.14.

19 - See Article 902, Law 22-13 above.

20- See Resolution 072653, issued by the Algerian Council of State on July 19, 2012.

21- Order No. 95-20, dated July 17, 1995, relates to the Accounting Board, J.R., No. 39, issued on July 23, 1995, as amended and completed.

22-See Article 67, of Organic Law 12-22, on the methods of electing members of the Supreme Council of the Judiciary and the rules of its organisation and functioning, issued on June 27, 2022, Official Gazette, No. 44.

23- See Article 67 of Law 06-02 regulating the profession of the notary, issued on February 20, 2006, Official Gazette No., without number.

24- See Article 63 of Law No. 06-03 regulating the profession of judicial record, issued on February 20, 2006, Official Gazette, without number.

List of sources:

First: constitutions:

1. Constitutional Amendment 20-442, issued on December 30, 2020, Official Gazette No. 82, p.36.

Second:

The rules:

2. Organic Law No. 22-10 on Judicial Organisation, issued on June 09, 2022, Official Gazette, No. 41.

3- Organic Law 22-11, related to the organisation and management of the State Council, Official Gazette, No. 41., p.14.

3- Law 22-13 on amending Law 08-09 on the Code of Civil and Administrative Procedure, dated July 17, 2022 Official Gazette No. 02

4- Law 22-11 on the organisation of the Algerian State Council of June 16, 2022, Official Gazette, No. 14.

5- Order No. 95-20, dated July 17, 1995, concerns the Accounting Board, J.R. No. 39, issued on July 23, 1995, as amended and completed.

6- Organic Law 12-22, on the methods of electing members of the Supreme Council of the Judiciary and the rules of its organisation and work, issued on June 27, 2022, Official Gazette, No. 44.

7- Law 06-02 regulating the profession of the notary, issued on February 20, 2006, the Official Gazette issue, without number.

8- Law No. 06-03, which includes the organisation of the profession of judicial minutes, issued on February 20, 2006, the Official Gazette, without number.

Third: References.

First: the articles.

1- Dahmani Kamal, Article entitled: Procedural Specificity for the Acceptance of Administrative Claims before Administrative Judicial Authorities within the Framework of Law 08-09, Journal of the Department of Research, Legal and Political Studies, Volume 06, Issue 02,

Year 2022, p.207. By acting

2- Makfoulji Abdelaziz, Article entitled Conditions for Acceptance of the Case, Journal of Legal and Political Research and Studies, Issue 06, without a print.

Second: Theses.

1- Hafeez, a doctoral thesis entitled: Adversarity in the administrative subject before the State Council, Mohammed Khaider University Biskra, Department of Law, specialisation of Public Administration Law, 2018/2019.

2- Hoam Sheikha, Master's memorandum entitled: Appealing the veto before the Algerian State Council, University of 8 May 45 Guelma, Faculty of Law, Arts and Social Sciences, Division, Public Law, specialisation constitutional and administrative institutions, year 2005/2006.

Third: Books.

1- Muhammad Ali Al-Kaik, Principles of the Casing of Criminal Judgements, Radiation Library for Publishing Alexandria, 1989

2- Mohamed Sobhi Najm, explained the Algerian Code of Criminal Procedure, Office of University Press, Algeria, 1984.

3- Hussein Sadiq Al-Marsfawi, Principles of Criminal Proceedings, Knowledge Facility, Alexandria, 1996. 4- Ammar Boudiaf, Reference in Administrative Disputes, Section I, Theoretical Framework for Administrative Disputes, Dar Al-Boujos for Publishing and Distribution, edition 01 2013.