



The Role of Administrative Courts of Appeal in Ensuring the Protection of Individual Rights and Freedoms



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Houda NOUIOUA*

University of Constantine 1, Algeria: houda.nouioua79@gmail.com

Abstract

There is no doubt that the establishment of administrative courts of appeal in Algeria will strengthen the principle of litigation at two levels in the administrative article in a way that is easy for litigants and the entire state institutions, as one of the most important basic principles of the judiciary, which is a basic guarantee of a fair trial and guarantee the right of defense, protection of the rights of individuals from arbitrary or illegal administrative decisions on the one hand, as well as correcting imbalances and ensuring the integrity of judgments at the first instance level. As the custodian of freedoms and rights, the administrative judiciary remains an effective tool to ensure the protection of the latter and the consolidation of administrative justice and the rule of law.

Keywords

Administrative courts of appeal ;
Two-levels litigation ;
Protection of individual rights ;
Basic guarantees.

الكلمات المفتاحية

محاكم إدارية للاستئناف،
التقاضي على درجتين،
حماية حقوق الأفراد،
ضمانات أساسية.

دور المحاكم الادارية للاستئناف في ضمان حماية حقوق وحرية الأفراد ملخص

لا شك أن إنشاء المحاكم الإدارية للاستئناف في الجزائر سيعزز مبدأ التقاضي على درجتين في المادة الإدارية بشكل ميسر على المتقاضين ومجموع مؤسسات الدولة، باعتباره أحد أهم المبادئ الأساسية للقضاء، وهو ضمان أساسية لمحاكمة عادلة وضمان لحق الدفاع، حماية لحقوق الأفراد من القرارات الإدارية التعسفية أو غير المشروعة من جهة، وكذا تداركا للاختلالات والتأكد من سلامة الأحكام على مستوى الدرجة الأولى. فالقضاء الإداري باعتباره قضاءً حام للحريات والحقوق، فهو يظل أداة فعالة لضمان حماية هذه الأخيرة وترسيخ العدالة الإدارية وسيادة القانون.

* Corresponding author. E-mail: houda.nouioua79@gmail.com

Doi:

I- Introduction :

Administrative courts of appeal are one of the pillars of the judicial system in many countries, as they represent a judicial platform specialized in reviewing decisions issued by administrative bodies in the executive branch. Administrative courts are of particular importance in the context of strengthening the rule of law and protecting individual rights and freedoms in the face of an authority that may go beyond its limits or make arbitrary decisions that negatively affect citizens. While the executive branch is the body that implements government policies and decisions, situations may often arise that require judicial intervention to ensure that these decisions are not arbitrary or violate the fundamental rights of individuals.

The latter is one of the main pillars of building the rule of law, it is the cornerstone of the stability and development of societies. When the rights of individuals are effectively guaranteed and protected, it contributes to strengthening the rule of law, achieving social justice, providing a sustainable legal environment that respects human dignity, not to mention enhancing confidence in legal institutions and even enhancing the status of the state in the international community as a whole.

In this context, the Administrative Courts of Appeal in Algeria play a vital role, as they represent a second supervisory mechanism that ensures a balance between the administration and the rights of individuals, through the appeals filed by these against administrative decisions that they consider illegal or unjust. It is not just a judicial instrument for considering legal disputes, but a guardian of constitutional rights, which establishes legal control over the practices of the executive branch to ensure that its decisions comply with the law and the norms of Justice.

On this basis, we pose the following question : **to what extent are the Administrative Courts of Appeal able to ensure the protection of the rights of individuals in the face of administrative decisions that may be unfair or illegal ?**

In response to the problem posed, the study requires the adoption of a descriptive approach to explain the work and organization of this structure, as well as an analytical approach to analyze the texts of laws related to these courts as a second degree of litigation, while praising their role in protecting the rights of individuals, provided that our study plan is as follows :

First chapter : legal and functional framework of Administrative Courts of Appeal.

Second chapter : the role of Administrative Courts of Appeal in protecting the rights and freedoms of individuals.

1- The legal and functional framework of Administrative Courts of Appeal

These courts were established as administrative appellate bodies under Law No 22-07, bearing provisions for judicial organization (Law No 22-07,2022) These courts are appellate bodies alongside the Council of State, positioned as second level courts within the administrative judicial hierarchy of Algeria. Their decisions are subject to cassation (and, in certain instances, appeal) before the Council of State, with the objective of reducing the burden on the latter and reinforcing the principle of two-level litigation. Pursuant to Article 08 of this law, six administrative appellate courts have been established, with their headquarters located in Algiers, Oran, Constantine, Ouargla, Tamanrasset, and Béchar. The first section will examine the legal framework governing these courts, while the second section will address their functional and jurisdictional scope.

1-1- The Legal Framework for Administrative Courts of Appeal

The legal framework for administrative courts of appeal is established based on a set of constitutional, legal, and regulatory texts, as follows:

1-1-1- Administrative Courts of Appeal in accordance to the Constitution

The constitutional amendment of 2020 (presidential decree No. 20-442, 2020) explicitly references the administrative courts of appeal, as stated in Article 179, paragraph 02: "... The Council of State represents the body that set right the work of the administrative courts of appeal, the administrative courts, and other entities adjudicating administrative matters...". This stands in contrast to the provisions of article 152 of the 1996 constitution, which merely implied the

existence of "lower administrative judicial bodies" that fall under the supervision and oversight of the Council of State. It is noteworthy that Article 179's endorsement of administrative courts of appeal is consistent with the principle of two-level litigation, which has been established as a constitutional principle by the recent constitutional amendment in Article 165. This article articulates that "the judiciary is founded upon the principles of legality and equality. Justice is accessible to all. The law guarantees the right to litigation in two instances and determines the conditions and procedures for its implementation."

1-1-2- Administrative Courts of Appeal in accordance to the law

The provisions concerning the administrative courts of appeal can be derived from four legal texts, as follows:

- Law No 22-07 on judicial division, which established six administrative courts of appeal pursuant to Article 08. This article assigns the determination of their competence to the judicial organization, stating: "Six administrative courts of appeal shall be established, located in Algiers, Oran, Constantine, Ouargla, Tamanrasset, and Béchar."
- Organic law No 22-10 (organic law No 22-10, 2022) on judicial organization, which refers in Article 4 (organic law No 22-10, 2022) to the administrative courts of appeal as one of the components of the administrative judicial system. It delineates their competence, composition, and organization within Articles 29 to 38.
- Law No 08-09, bearing the Code of Civil and Administrative Procedures, amended and supplemented by law No 22-13 (law No 22-13, 2022) which regulates the procedural rules before the administrative courts of appeal in Articles 900 bis to 900 bis 9.
- Law No 04-11, bearing the status of the Algerian judiciary, (law No 04-1, 2004) which, according to Article 2, applies to all judges, including those of the administrative courts of appeal.

1-1-3- Administrative Courts of Appeal in accordance to the judicial organization

The Law on Judicial Division has referred the determination of the territorial competence of the administrative courts of appeal to the judicial organization in Article 10. Additionally, the organic law bearing judicial organization has referred the matter of determining the administrative and financial management of the administrative courts of appeal to the judicial organization under Article 38. In implementation of these provisions, two executive decrees were issued, namely:

- Executive decree No. 22-435, dated on December 11, 2022, which defines the territorial competence of the administrative courts of appeal and the administrative courts executive decree No. 22-435, 2022).
- Executive Decree No. 23-120, dated on March 18, 2023, which defines the administrative and financial management procedures for the administrative courts and the administrative courts of appeal (Executive Decree No. 23-120, 2023).

The Administrative Court of Appeal adjudicates the cases filled to it in a collegial composition, unless otherwise stipulated by law. This is outlined in Article 33 of the same law (law No 22-07, 2022) and further detailed in Article 900 bis 5 of the Code of Civil and Administrative Procedure, which specifies that the panel of judges shall consist of at least three judges (law No 22-07, 2022).

1-2- The functional framework (competence) of the Administrative Courts of Appeal

In addition to their competence in adjudicating conflicts of competence between two administrative courts, (Article 808 of law No 22-13, 2022) as well as to rule on related issues within the scope of administrative disputes (Law No 22-13, 2022), the Administrative Courts of Appeal exercise a specific and regional judicial competence, which we will address as follows:

2.1. The subject-matter competence of administrative appellate courts

As a general rule, the Administrative Courts of Appeal exercise appellate jurisdiction as a second-instance court. However, they also exercise, as an exception, original jurisdiction as a first-instance court in certain disputes.

2.1.1. Administrative Courts of Appeal as an appellate judge

It is evident from Article 29 of law) Law No. 22-10,2022) that the administrative courts of appeal have jurisdiction, as courts of second instance, to hear appeals against judgments and orders issued by the administrative courts. In this regard, they issue final decisions that are subject to cassation before the Council of State. It is worth noting that, prior to the establishment of the administrative courts of appeal, the exclusive jurisdiction to adjudicate appeals was vested in the Council of State, which rendered final judgments that were not subject to further appeal.

2.1.2. Administrative courts of appeal as Courts of first instance

Although the primary jurisdiction of the six (6) administrative appellate courts is to act as courts of appeal, serving as the second level in the administrative judicial hierarchy, the legislator has conferred an exclusive additional jurisdiction upon the Administrative Court of Appeal in Algiers. This is stipulated in Article 900 (law No 22-13,2022) of the code of civil and administrative procedure, which grants it the authority to issue judgments as a court of first instance (initial jurisdiction), subject to appeal before the Council of State. This jurisdiction pertains to disputes that were previously under the exclusive jurisdiction of the Council of State before the amendments introduced by Law No. 22-13. Such disputes include annulment claims, as well as claims for the interpretation and examination of the legality of administrative decisions issued by central administrative authorities, national public bodies, and national professional organizations.

The concept of legality review concerning administrative decisions entails assessing the extent to which the central administration complies with the law in all its actions and decisions.

2.2. Territorial jurisdiction of administrative courts of appeal

Article 08 of the law on judicial division mandates the creation of six (6) administrative courts of appeal, distributed across the national territory. The law entrusts the determination of their territorial jurisdiction to subordinate regulatory provisions. In this regard, executive decree No. 22-435 was issued, which specifies, in Annex I, the territorial jurisdiction of each administrative court of appeal, encompassing a cluster of administrative courts, with the number varying by region. As a result, judgments and orders issued by an administrative court may only be appealed before the appellate court to which it is territorially assigned.

It is important to highlight that this territorial distribution applies to the six courts in their role as appellate bodies. However, when the administrative court of appeal in Algiers exercises its supplementary jurisdiction as a court of first instance, its territorial jurisdiction extends to encompass the entire national territory, as it is the sole body exercising this jurisdiction at the national level.

2. The role of administrative courts of appeal in protecting individual rights and freedoms

In practice, significant progress has been made within the judicial system following the 2020 constitutional amendment, which enshrines the principles of the separation of powers and the equilibrium among them. New laws and amendments have been enacted in alignment with constitutional provisions, particularly concerning administrative justice, which plays an essential role in safeguarding fundamental rights and freedoms. Administrative courts are recognized as the competent authority for upholding the principle of legality, especially due to the broad powers granted to them by the legislator, ensuring the enforcement of their rulings. This includes the authority to issue directives to the administration and impose penalties, thereby enhancing the credibility and effectiveness of the judiciary.

This section aims to explore the legal safeguards that empower administrative judges in executing their esteemed duty of administering justice and applying the law accurately:

2.1. Legal Safeguards for Administrative Judges in Protecting Rights and Freedoms

Administrative courts of appeal serve as pivotal instruments in preventing administrative abuse of power in decision-making. These courts offer independent judicial review over administrative acts, granting individuals the opportunity to contest decisions that infringe upon their legal rights. On occasion, the executive branch may overstep its authority or issue decisions that adversely affect individuals without appropriate legal justification. Administrative courts play an indispensable role in maintaining the equilibrium between state power and the protection of citizens' rights against unlawful actions. The legal safeguards enabling these courts to perform this function include:

2.1.1. Safeguarding the Principle of Independence of the Administrative Judiciary

The constitutional framework underscores the principle of judicial independence as a fundamental pillar for safeguarding individual rights and freedoms within the realm of administrative justice, as enshrined in Article 163 of the 2020 constitutional amendment. To strengthen this principle, the constitutional legislator has established a range of legal safeguards aimed at ensuring its effective implementation. This approach aligns with the objectives of constitutions and legal systems worldwide, which seek to empower administrative judges to serve as competent guarantors of the rule of law and protectors of individuals' rights and public freedoms within the context of administrative justice.

The constitutional basis for the establishment of a dual judicial system was first enshrined in the 1996 Constitution, specifically in Article 152, alongside Law No. 98-01 (- law No 98-01,1998) concerning the jurisdiction of the Council of State and Law No. 98-02(-law No 98-02,1998) on administrative courts. With the recent constitutional amendment, the legislator sought to formalize the creation of administrative courts of appeal under law No. 22-07 on judicial division, thereby establishing an additional pillar within the administrative judiciary. This reform enhances the supervision of rulings issued by primary administrative courts, rectifies judicial errors, and mitigates bureaucratic barriers commonly imposed by the administration.

Moreover, the enactment of Law No. 22-07, which seeks a comprehensive overhaul of the administrative judicial system through institutional and organizational reforms, has bolstered the independence and operational efficiency of administrative courts, establishing greater specialization and a clearer organizational structure. In parallel, Law No. 22-13, which amends and supplements the Civil and Administrative Procedure Code (Law No. 08-09), mandates that administrative disputes be subject to distinct litigation procedures, setting them apart from those applied in ordinary courts.

2.1.2. Safeguarding the principle of legality

Administrative courts of appeal are entrusted with reviewing the legality of administrative acts issued by executive authorities, exercising their jurisdiction as a court of first instance in specific cases, pursuant to article 900 bis of law No. 22-13 on civil and administrative procedure. This review encompasses verifying the conformity of administrative decisions with applicable legal provisions and ensuring that the procedures followed in their issuance are in full compliance with established legal norms. This oversight function serves to prevent arbitrary actions by the executive, upholds the principle of equality before administrative bodies, and ensures strict adherence to the rule of law.

2.2. Judicial oversight mechanisms on administrative actions to protect individual rights and freedoms

One of the primary mechanisms employed by administrative courts to review actions of the executive authority is to provide individuals with the opportunity to challenge administrative decisions that violate their rights. These challenges may be initiated through administrative lawsuits before primary administrative courts or, in certain instances, before administrative courts of appeal. The purpose of these challenges is to assess whether the administrative decisions in question adhere to legal standards.

- Judicial oversight represents the most prominent and effective form of control over administrative actions, given its direct connection to the protection of individuals' rights and interests, as well as the impartiality, independence, and legal safeguards inherent in the judiciary (-Abdullah Bassiouni Abdel-Ghani, 1988, p. 68).The administrative judge, as the protector of individual rights and freedoms and the guarantor of the principle of legality in administrative relations, does not intervene ex officio to safeguard such rights, even in cases of clear violation, in strict adherence to the principle of separation of powers. Therefore, it is incumbent upon the aggrieved party to initiate legal proceedings.
- In accordance with Article 801 (as amended) of Law No. 22-13, administrative lawsuits are divided into various categories, (-Barbara Abdelrahman, 2022, p. 554).

Including annulment actions, actions for the interpretation and review of the legality of decisions made by administrative authorities, full jurisdiction actions, and other types of actions governed by specific provisions. Among these, annulment and compensation lawsuits are the most frequently used by individuals to trigger judicial oversight over administrative actions that infringe upon their rights and freedoms.

2.2.1. Annulment lawsuits

Annulment lawsuits allow administrative judges to scrutinize the legality of a contested administrative decision, with the authority to annul and revoke its legal effects if it is deemed unlawful. However, administrative courts are restricted from altering or replacing the defective decision or issuing directives to the administration, in adherence to the principle of separation of powers. (-Ammar Ouabadi, Algeria, p. 583.)

These lawsuits specifically target the administrative decision itself, not the administrative body. The judicial role in annulment cases is confined to declaring the invalidity of the unlawful decision, with judgments possessing absolute authority (-Mohamed Rifaat Abdel-Wahab and Hussein Othman Mohamed Othman, Alexandria, 2000, p.11.) binding on all parties. This contrasts with judgments in full jurisdiction lawsuits, which carry relative authority, binding only on the litigating parties (the claimant and the administration).

In accordance with Article 900 bis, administrative courts of appeal have jurisdiction to hear appeals against rulings and orders issued by primary administrative courts in annulment cases, except those involving central authorities. Appeals generally allow for a reexamination of the case in all aspects, and appellate courts hold the same powers as first-instance courts, including confirming, partially confirming, overturning, or issuing a new decision on the case (-Abdelrahman Barbara, op. cit, p. 570.)

An exception to this rule is provided in Paragraph 2 of Article 900 bis, which stipulates that annulment lawsuits challenging administrative decisions issued by central administrative authorities, national public institutions, and professional organizations fall under the exclusive jurisdiction of the Administrative Court of Appeal in Algiers as the court of first instance. Appeals against its decisions are directed to the council of state.

Additionally, it is important to note that legal representation by an attorney is compulsory for all cases before the appellate administrative courts as per Article 800 bis 1.

As for the initiation of the lawsuit, the legislator adopted the referral mechanism and did not establish any new provisions specifically applicable to the administrative courts of appeal.

2.2.2. Full jurisdiction lawsuits (compensation)

Full jurisdiction lawsuits are aimed at examining the legality of administrative actions and, where deemed unlawful, annulling those actions while also granting compensation for any harm caused by such unlawful acts. Unlike annulment lawsuits, which focus on the challenged actions themselves, full jurisdiction lawsuits target the administrative authorities responsible for the harmful acts.

In these cases, administrative judges possess broader powers than those of ordinary court judges. They are empowered to investigate the nature of the administrative action's impact, determine whether the harm was caused by the action, and assess the appropriate amount of compensation required to fully and fairly remedy the damage.

Conclusion:

In fact, the Administrative Courts of Appeal, as a link between the administrative courts and the State Council, are an additional effective platform in achieving justice in disputes between individuals and the administration. They enable citizens to challenge the decisions taken by administrative officials, through their review of the judgments and decisions of the courts of first instance, providing them with an opportunity to obtain compensation or correction of situations that may harm them. The review of decisions by the Administrative Courts of Appeal contributes to enhancing transparency within the administrative bodies, as the latter must provide clear legal justifications when making any decision that may affect the rights of individuals, taking into account its compliance with the standards of justice and equality. This oversight role stimulates the improvement of administrative performance and reduces corruption and abuses, enabling individuals to access justice quickly and effectively, which enhances their confidence in the judicial system and in the performance of the government.

The purpose of the legislator behind this creation is not limited only to achieving the principle of judicial duplication or bringing justice closer to litigants through the establishment of these courts at the regional or local level, as much as it is to reduce the burden on the Council of state and make its role limited to unifying jurisprudence and adjudicating Appeals in Cassation, in addition to ensuring the quality of administrative judgments through reviewing the primary judgments issued by administrative courts, which enhances the accuracy and fairness of judicial decisions and is considered an additional guarantee for achieving the principle of fair trial, moreover, these courts enhance the expertise of judges in the field of administrative law in general to ensure the achievement of speed and effectiveness in Disputes' disposition.

In conclusion, despite the importance and role of the Administrative Courts of Appeal in promoting and protecting the rights of individuals in the Algerian judicial system, they face a set of challenges that can be addressed through :

- Increase the number of competent judges while providing continuous training.
- Accelerate the process of digitization of courts and judicial procedures.
- Strengthening coordination between administrative courts and executive bodies.
- Standardization of jurisprudence through clear guidelines of the State Council.
- Simplify procedures and provide effective mechanisms for the execution of sentences.

These are challenges facing the Administrative Courts of Appeal in Algeria, but they also highlight opportunities to improve the performance of the Administrative Judiciary and strengthen its role in protecting the rights and freedoms of individuals.

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- [8]. Executive Decree No. 23-120, dated on March 18, 2023, which defines the administrative and financial management procedures for the administrative courts and the administrative courts of appeal, published in the Official Gazette No. 18 dated on March 21, 2023.
- [9]. Article 33 states: "The Administrative Courts of Appeal and the Administrative Courts shall adjudicate in a collegial disposition, unless otherwise stipulated by law."
- [10]. Article 900 bis 5 states: "The Administrative Courts of Appeal shall adjudicate in a collegial disposition, unless otherwise stipulated by law, the panel of judges shall consist of at least three (3) judges, including a president and two (2) assistant judges of the rank of chancellor."
- [11]. Article 808 of Law No 22-13 states: "The resolution of disputes related to judicial competence between two administrative courts under the territorial competence of the same Administrative Court of Appeal shall be assigned to the president of the latter..."
- [12]. Texts of Articles 810 and 811 of Law No 22-13 on Civil and Administrative Procedure, as amended and supplemented.
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- [14]. Article 900 bis provides: "the Administrative Court of Appeal is competent to adjudicate appeals against judgments and orders rendered by Administrative Courts". It is also vested with jurisdiction to decide on cases assigned to it under specific legal provisions. Furthermore, the Administrative Court of Appeal of Algiers has original jurisdiction to hear cases concerning the annulment, interpretation, and assessment of the legality of administrative decisions issued by central administrative authorities, national public bodies, and national professional organizations."
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