

**Novelty in the Principle of Two - Tiered Litigation
in the Administrative Affairs-law22-13-
جديد مبدأ التقاضي على درجتين في المادة الإدارية-القانون 22-13-**

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Abstract :

principles upon which the judiciary rests whether ordinary or administrative. These principles The principle of two tiered- litigation is regarded one of the fundamental are viewed as the rights that the litigants possess to review the judicial verdicts and reach solutions that satisfy the conflicting parties. The Algerian constitutional founder and legislature embodied this principle at the constitutional, legislative, and structural levels through the establishment of administrative courts of appeal and set forth numerous legal frameworks that regulate them, whether against judicial verdicts issued by administrative courts with general jurisdiction in the administrative judiciary or for appeals and cassations in judicial decisions issued by the administrative court of appeals for Algiers, or appeal by cassation as the last stage of litigation or consideration of the first and last level of decisions issued by independent administrative authorities.

Keywords : Principle Judiciary;Appeal; Cassation;Court.

ملخص:

يعتبر مبدأ التقاضي على درجتين من المبادئ الأساسية التي يقوم عليها القضاء سواء العادي أو الإداري، وهي من الحقوق التي يملكها المتقاضين من أجل مراجعة الأحكام القضائية، والوصول للحلول التي ترضي الأطراف المتنازعة، وجسد المؤسس الدستوري والمشرع الجزائري هذا المبدأ دستوريا تشريعيا وهيكلية، وذلك من خلال استحداث المحاكم الإدارية للاستئناف وقرر لها العديد من الأطر القانونية التي تنظمها سواء ضد الأحكام القضائية الصادرة عن المحاكم الإدارية صاحبة الولاية العامة في القضاء الإداري، أو بالنسبة للطعن بالاستئناف والنقض في القرارات القضائية الصادرة عن المحكمة الإدارية للاستئناف للجزائر العاصمة أو الطعن بالنقض كآخر درجة للتقاضي أو النظر لأول وآخر درجة في القرارات الصادرة عن السلطات الإدارية المستقلة.

الكلمات المفتاحية: مبدأ، القضاء، الاستئناف، النقض، المحكمة

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Introduction

The law aims to establish and organize basic rights and freedoms as well as highlight the legal frameworks and systems to protect them, be it administrative or judicial before the ordinary or administrative judiciary. However, relations are regarded unequal and conflicting interests¹ in administrative article. Upon this premise, the constitutional founder and the Algerian legislator granted several judicial mechanisms to handle the administrative affairs seeking to ensure the protection of basic rights and freedoms legally prescribed. The most important basic principles that guarantee this legal and judicial protection is the principle of two-tiered litigation, that witnessed many legal developments, whether procedural or substantive in the Algerian administrative legislation. This was applied from a procedural and practical side in some lawsuits and administrative work². This principle is viewed one of the basic guarantees of the right functioning of justice because it plays a significant role in rectifying judicial mistakes and compels judges to carefully consider the opponents' claims and their defense, and their judicial arguments, considering that the judicial verdict will be subject to review and reconsideration of the case from a higher judicial authority than the judicial authority issuing the decision. It is a legal means for the litigant to rectify any shortcomings in their claims missed arguments and evidence before the court of the first instance³, as this principle is deemed fundamental, important and constitutionally and legislatively mandated. It has a strong link with the domain of protecting fundamental rights and freedoms⁴, particularly with the public administration, which aims to achieve public interest, while managing interactions with those seeking private interest, therefore two conflicting interests, the judiciary works to reconcile them according to the principle of legality.

The method utilized in this research is analytical and comparative where various legal, legislative and regulatory texts of this principle were studied. This led us to explore the legal developments in the application of this principle in the Algerian legislation and put emphasis on the structural enshrinement of this principle through the establishment of administrative courts of appeal and the possibility of applying it against central administrative decisions. Hence, the following research questions are posed:

1. What is the Algerian founder and legislator's position towards the principle of two-tiered litigation in the administrative article?
2. What are the administrative judicial structures that are devoted to this principle in the Algerian administrative judiciary?

To answer this question, the survey is divided into two parts; the first part deals with the legal consecration of the principle of two-stage litigation in Algerian legislation, where two ideas are discussed; the first relates to the legal frameworks specific to the practical application of the principle of two-stage litigation in Algerian law at its various levels, whether constitutional or legal, and the structural consecration of the principle of two-stage litigation in administrative matters, as it is regarded one of the areas that have known the practical application of the principle of two-stage litigation, yet it has been supported by the administrative courts of appeal. The second section, however, discusses the exceptions to the application of the principle of two-stage litigation in the administrative judicial system in Algeria, especially with regard to administrative decisions issued by the central administrative

authorities, which are considered an obstacle to the application of the principle of two-stage litigation in administrative matters.

1. Legal consolidation of the principle of two-level litigation in administrative article

The two-tier litigation principle is viewed one of the most significant principles applied in the procedures in both ordinary and administrative judiciary. On this basis, the link between the principle and the legally established methods of appeal as a basic right for litigants in order to review judicial rulings and decisions on the one hand, and to protect basic rights and freedoms on the other. The principle has a direct relationship with opposition and appeal in the first degree and appeal in cassation in the second one of litigation in administrative matters.

1-1 Constitutional Framework for the Principle of Two –tiered Litigation in Administrative Article

The principle of two- tiered litigation is one of the fundamental principles that safeguards the rights and conflicting freedoms before administrative judicial structures in general and administrative litigation procedures in particular. However, hinging upon this principle in the administrative article witnessed a specificity and distinction because the administrative judiciary in Algeria was criticized fiercely, therefore hassled to the incomplete structural organization of the principle of the two –tiered litigation compared to the structural organization of the ordinary judiciary⁵, This principle is affirmed in article 165 of Presidential Decree No. 20-442⁶ which contains the constitutional amendments it affirmed the establishment of the judiciary on the basis of the principles of legality and equality, and emphasized the idea that the judiciary is available to everyone and the law also guarantees litigation on two levels, where it determines procedures and conditions for its application.⁷ What consolidates the two-tiered litigation principle is the principles of legality and equality on which the constitutional founder hinged as mentioned above, since the term « legitimacy » means all acts of administration are subject to law, be it legislative or organizational. Thus, equality's one of the legal fundamentals on which the administrative and judicial work rests, which is portrayed in the pursuit to achieve an effective functioning of justice, on the basis of equality of litigants. Therefore, there is no difference between the litigant before the ordinary and administrative courts.⁸ This show cases that the constitution was consolidated clearly and fully in the ordinary judiciary , and also relied upon the principle in the administrative justice with distinct legal, procedures and provisions that differ according to the type of conflict, the nature of the administrative work and the issuing part, in various litigation procedures, whether before regular judicial authorities or administrative ones.

The two-tier litigation principle is reinforced by the principles of legality and equality,

Upon which the constitutional founder relied in Article 165 of the constitutional amendment.

This establishes the practical application of the two-tier litigation principle in both regular and administrative judicial bodies. The principle of legality means that all administrative actions must comply with the law , whether they are encouraging or regulatory according to Article 168 of the constitutional amendment. The judiciary reviews appeals against administrative authority decisions. Reflecting the constitutional founder 's commitment to subject all administrative actions to judicial oversight, ensuring the two degree litigation principle protects the private interests of individuals dealing with the administration,

considering that these interests may conflict and the legal standings are not equal. Equality is viewed legal principle underlying administrative and judicial legal work, manifested in the oversight of justice based on equality among litigants. Thus, there is no distinction between litigants in ordinary courts and those in administrative courts. Comparative legislation, especially European law, has provided numerous legal guarantees in administrative litigation to protect the fundamental rights and freedoms of individuals interacting with the administration. One of the key guarantees is the assurance of respecting and applying the principle of two-tier litigation in administrative disputes. The constitution has clearly established the practical application of this principle for ordinary courts, while it relies on the same principle in administrative courts through distinctive legal procedures that vary based on the nature of the dispute and the type of administrative action. The constitutional framework differentiates between decisions made by local or functional administrative bodies and those by central administrative authorities, impacting the fundamental rights and freedoms of individuals interacting with the administration, particularly as judicial disputes are confined to Algeria.

is symbolized in ensuring the proper administration of justice, on the basis of equality between litigants, and therefore there is no difference between a litigant before the ordinary judiciary and the administrative judiciary. Comparative legislation, especially European legislation, which has surrounded litigation procedures in administrative matters with many legal guarantees that protect the basic rights and freedoms of those dealing with the administration, and the most important of these guarantees is ensuring respect and application of the principle of litigation at two levels in administrative disputes. It is clear from the above that the constitution has enshrined the practical application of this principle in a clear and complete manner with regard to the ordinary judiciary, and it has also relied on the principle in administrative judiciary with distinct legal procedures and provisions that differ according to the type of dispute, the nature of the administrative work and the entity that issued it, as the constitutional founder distinguished between decisions issued by local or service administrative bodies, and administrative decisions issued by central administrative bodies⁹, which negatively affects the basic rights and freedoms of those dealing with the administration, considering that the judicial dispute does not go beyond the capital, Algiers.

1-2 Principle of Two-tiered Litigation in Administrative Affair switching the Framework of Legislative Texts

The Algerian legislator 'standpoint has undergone a gradual change with regard to the application of the principle of two- tiered litigation in the administrative judiciary ranging between restriction and expansion according to the legislative texts and regulatory structures organized for administrative conflicts, where appeals were examined by the council of the state acknowledged as the appropriate judicial entity for appeal and cassation. However, due to the numerous specialties of this latter, the Algerian legislator has acted through Law 13 /22modifiedand completed the code of civil and administrative Procedure, worked on establishing administrative courts for appeals, which was entrusted with the task of examining appeal against judgments' initially issued by the administrative court at first instance, and granted it a set of rights, such as the consideration of jurisdictional conflicts between administrative courts as well as to prepare the annual report on the work of its administrative tribunals, supplementing the tribunal's competence.

The Algerian legislator has incorporated this principle in many legal texts. In what follows these legal texts are discussed:

- Law 22-07 embracing the judicial division, according to which the six administrative courts of appeal were established.
- Law 22-13 modified and completing the civil and administrative procedures law, which established administrative courts of appeal, and supported them with several legal and judicial provisions that would embody the principle of two-tiered litigation, therefore protect the basic rights and freedoms of those dealing with the administration.
Law 22-10, which includes the judicial organization, where its fourth chapter was under the heading Administrative Courts of Appeal, and article 29 of it states that the administrative courts of appeal are considered an appellate body for urgent judgments and orders issued by the administrative courts, in addition to the possibility of adjudicating all cases authorized to them according to the specific provisions .
- Organic Law 22-11, modified and completing Organic Law 98-01 containing the Law of the council of state, where article 10 of which includes the jurisdiction of the council of state to decide on appeals of decisions issued by the administrative court of appeal of Algiers in claims for cancellation, interpretation and assessment of the legality of administrative decisions issued by the central administrative authorities and national professional organizations.

1-3 Principle of two- tiered litigation in administrative article in the framework of regulatory texts

The organizational framework of the administrative court of appeal, that is, the organizational and structural embodiment of the principle of two-tiered litigation is represented in the following regulatory texts:

Executive decret 22- 435, dated December 11, 2022¹⁰ specifies the territorial jurisdiction areas for the administrative courts of appeals and administrative courts.

-Executive Decree No. 23-120 dated on March 18, 2023, which determines the administrative and financial supervisions for administrative courts and administrative courts of appeal¹¹. This decree included the establishment in each administrative court of appeal a general secretariat headed by a secretary-general, placed under the authority of the governor of the state. The secretary-general is regarded as the secondary officer in charge of disbursing the budget of the administrative court of appeal, as he is charged with adhering to the expenses of running the court and its liquidation, and he is in charge of disbursing them within the limits of the financial appropriations granted. He is also responsible for the administrative management of the administrative court of appeal.

2-Structural consolidation of the principle of two-tiered litigation in administrative article

The principle of two-tiered litigation is regarded one of the most fundamental principles upon which the ordinary and administrative judiciary is based. The effective application of this principle in administrative article has witnessed a gradual development, especially with regard to the application of this principle, whether from an organizational or structural side.

2-1- Establishment of administrative courts of appeal

The Algerian legislator endeavored to consolidate this principle by establishing administrative courts of appeal, whose role is to adjudicate conflicts, thus the legislator distinguished between centralization and decentralization that are discussed below:

2-1-1 Organic organization of the Administrative Court of Appeal

The Administrative Court of Appeal is structured as outlined in Article 30 of Organic Law 22-10 concerning judicial organization, which includes the following members:

- Judges
- A President, who holds a rank of at least Councilor
- A Vice-President or, when required, two Vice-Presidents
- Presidents of Chambers
- Section Heads, if necessary
- Counselors
- Judges appointed by the State Governor
- The State Governor, who must hold a rank of at least Councilor
- The State Governor, along with one or two Assistants, when needed.

2-1-2- Constitution of administrative court of appeal

The purpose of establishing administrative courts of appeal was to examine appeals against judicial verdicts and urgent orders issued by administrative courts with general jurisdiction in administrative conflicts. The latter also decide in a collective formation, unless the law dictates otherwise. This formation consists of at least three judges. Among them is a president and two assistants with the rank of advisor¹², in accordance with Article 900 bis5 of Law 22-13 modified and completed the Law of civil and administrative procedures, who are the judges of the court. It also consists of state governors and their assistants, where Article 30 of Organic Law No. 22-10 stipulated that this position must be held at least with the rank of advisor to the state council. As for his assistants, the law does not stipulate special conditions, therefore they can be appointed from the civil or administrative judiciary judges who are representatives of the public prosecution and exert the same prerogatives as state governors at the state council.¹³

It is evident from this text that the legislator has maintained the same composition as that of the administrative court, while requiring the rank of assistant advisor for the administrative court of appeal, in contrast to the assistants of the administrative court as stated in Article 814 bis. It can be inferred that the judges of the administrative court of appeal are selected based on their competence and professional experience.

In the case of an obstruction affecting the President of the Administrative Court of Appeal, the deputy shall assume his responsibilities. Should this not be feasible, the most senior president of the chamber will take over his duties. Conversely, if a judge encounters an impediment, another judge will be appointed to succeed him by the order of the President of the Administrative Court of Appeal, in accordance with Article 35 of Organic Law No. 22-10. The Governor of the State will fulfill the responsibilities assigned to him under the amendment to the Civil and Administrative Procedures Law 22-13, as well as the relevant special texts, in line with Article 36 of the Organic Law. The procedures followed in the administrative courts and the administrative courts of appeal are governed by the provisions of the Civil and Administrative Procedures Law and the applicable special legal texts, as outlined in Article 37 of Organic Law 22-10.

2-1-3- Structural organization of the Administrative Court of Appeal

The Administrative Court of Appeal consists of several chambers, the number of which is determined according to the nature and size of the judicial activity by order of the

President of the Administrative Court of Appeal after consulting the Governor of the State. It may, if necessary, be divided into sections, the number of which is determined according to the forms and methods mentioned in the law, in accordance with the text of Article 34 of Organic Law No. 22-10 issued on June 9, 2022 relating to the judicial organization.

2-1-4- Management of the Administrative Courts of Appeal

The Administrative Court of Appeal functions through a General Secretariat, as stipulated in Article 06 of Executive Decree No. 23-120. This General Secretariat is overseen by a Secretary General, who is supported by three department heads, in accordance with the first paragraph of Article 10. The departments that comprise the General Secretariat include the Department of Personnel and Training, the Department of Finance and Public Resources, and the Department of Computer Information, as outlined in Article 13 of the aforementioned Executive Decree.

According to Article 07 of Executive Decree No. 23-120, the Secretary General undertakes his responsibilities under the authority of the State Governor and is recognized as the secondary authority for the disbursement of the court's budget. His role is categorized in alignment with that of a Deputy Director within the central administration, as stipulated in the final paragraph of Article 06 of the aforementioned Executive Decree. He is tasked with managing the expenses associated with the operation of the Administrative Court of Appeal, overseeing its liquidation, and authorizing disbursements within the confines of the appropriations allocated to him. These appropriations are delegated to him by the Minister of Justice through delegation orders, within the scope of his authority. Furthermore, any amendments to these appropriations must be communicated to the financial controller and the relevant public accountant, in accordance with Article 14 of the aforementioned Executive Decree.

The responsibilities and authorities conferred upon the Secretary General are delineated in Article 08 of Executive Decree 23-120, particularly concerning the formulation of the equipment budget for the Administrative Court of Appeal. These responsibilities include the following:

- Drafting and preparing the budget associated with equipment operations and submitting it to the relevant authority.
- Overseeing the allocated financial resources and executing all activities related to equipment, including transactions and contract finalizations.
- Maintaining financial records in accordance with the formats established by the applicable regulations governing public accounting.
- Monitoring and evaluating all projects prepared by the central authority.

The Secretary General of the Administrative Court of Appeal shall also prepare, after the approval of the President or the Governor of the State of the Administrative Court of Appeal, as the case may be, in particular vacations, work certificates, licenses to practice the teaching profession, and absence licenses in accordance with the text of Article 9 of the aforementioned Executive Decree.

In accordance with the provisions outlined in Article 10 of the previously mentioned executive decree, and within the scope of its designated authority in human resources management, the following responsibilities are also assumed:

- Conducting recruitment activities funded by current financial allocations concerning contracted personnel,
- Overseeing the effective progression of the professional careers of both employees and contracted personnel associated with the administrative courts and the courts of appeal,
- Formulating recommendations intended to uphold overall discipline within the administrative court of appeal and its affiliated administrative courts.

The head of the department is also considered one of the important positions that undertake the tasks and powers assigned to it under the legal texts specified for it, and they differ according to the department, as this position is considered a high position according to the second paragraph of Article 11 of the aforementioned executive decree, as he is appointed by a decision of the Minister of Justice, Keeper of the Seals, and his duties are terminated according to the same forms according to the last paragraph of Article 11 of the same decree, and he is appointed in this capacity from among the secretaries of the main control departments and the main administrators or at least an equivalent rank, who prove three years of actual service as an employee. Or from among the secretaries of the control departments and the analyst administrators and administrators or an equivalent rank, who prove five years of actual service in this capacity, or from among the main engineers in computer science at least, the administrators who prove three years of actual service as an employee or the state engineers in computer science, who prove five years of actual service in this capacity. Employees holding senior positions must also belong to ranks whose duties are consistent with the powers of the relevant structures.

Each head of department is also charged with heading and managing a specific department according to the concept of Article 13 of Executive Decree 23-120 as follows:

- **Department of Personnel and Training:** This department is charged with managing the career path of employees affiliated with the judicial clerks, joint departments and contracted employees. It also draws up a map of needs, especially in the field of training for employees and works to improve their level, in coordination with the President of the Administrative Court of Appeal, and everything related to the promotion of judges or employees.

-**The Finance and Public Means Department:** This department is responsible for the preparation and execution of the annual budget estimates for the Administrative Court of Appeal, including the equipment budget and that of the associated administrative courts. It maintains financial records in compliance with the applicable public accounting regulations. Additionally, it identifies all essential requirements for the functioning of the Administrative Court of Appeal and its affiliated courts. The department oversees the management of movable and real estate assets, as well as the vehicle fleet, ensuring their preservation. Furthermore, it is tasked with the administration of judicial archives and all documentation necessary for the operations of the Administrative Court of Appeal.

- **Information Technology Department:** This department works on managing local networks dedicated to information technology and securing systems, networks, databases and information, as well as repairing information technology devices and related applications and programs.

2-2 Rights of administrative court of appeal

The administrative courts of appeal were established under article 900 bis of act No. 22-13, where the Algerian legislator granted them many jurisdictions. The most important is to decide on appeals against judgments and orders issued by administrative courts. It is also responsible for resolving cases mandated by specific legal enactment¹⁴ and it also examines conflicts of jurisdiction between two administrative courts within their jurisdiction, which falls within the specific jurisdiction of the administrative court of appeal.

Six administrative courts have been established in accordance with Article 8 of Law 22-07 that includes judicial division; they are located in Algiers, Oran, Constantine, Ourgla, Temenrassat and Bechar.

Each administrative court of appeal contains administrative courts¹⁵, where the organization determines the jurisdiction of each of them¹⁶. This falls within the regional jurisdiction of the new administrative courts of appeal that were established in order to consolidate the principle of two-tiered litigation structurally.

2-2-1 Administrative court of appeal of Algiers

The Algerian legislator, in accordance with the recent amendment to the code of civil procedures, has assigned the administrative court of appeal for Algiers to investigate cases of annulment and interpretation of legality and interpret legality filed against administrative decision issued by central administrative authorities. This embodies the principle of two-tiered litigation in administrative article.

2-2-2 Exceptional rights of administrative court of Algiers

The last paragraph of article 900 bis of the last modification of the code of civil and administrative procedure has granted jurisdiction to the administrative court of appeal of Algiers to decide, as a first instance, claims to annul and interpret legality of administrative decisions issued by central administrative authorities, national public entities and the national professional organizations that is regarded as the application of the two-tiered litigation principle. These decisions have become subject to appeal by cancel action before the administrative court of appeal of Algiers which has a positive impact on the principle of two-tiered litigation, mainly for central administrative decisions which were immune from the possibility of judicial review issued by the council of state of first and final instances.

3- Embodying the principle of two-tiered litigation before the council of state

Appeal is viewed as the only way to embody the principle of two-tiered litigation because it enables revisiting the conflict again from a procedural and substantive perspective. It is the normal way of appeal; this is through representing the conflict before a higher court and more experienced judges. In order to revisit the appealed judgment for any defect, assessment of the treatment of the facts of conflicts made by the judge of the first rank as well as the application of the law¹⁷ were the elements consolidated in the recent amendment to the law of civil and administrative procedure in accordance with article 902: "The council of state is empowered with the authority to rule on appeals against decisions issued by the administrative court of appeal of Algiers in cases of annulment, interpretation and assessment of the legality of central administrative decisions, national public entities and national professional organizations."

Appealing by cassation is one of the ordinary appeals considered by the state of the council as the governing entity of the administrative law through the ability to review appeals against decisions issued by the same authority.

According to Article 901 of the law mentioned above, the Council of State holds the prerogative to adjudicate appeals by way of cassation in judgments and decisions issued by the relevant administrative judicial authorities.

3-1- Exceptions outlined in the principle of two –tiered litigation in the administrative article

Despite the amendments made by the Algerian legislator in the structural organization of the principle of two –tiered litigation in the Algerian administrative judiciary, through the creation of administrative courts of appeal, the legislator has preserved the original jurisdiction of the council of state as the first and final instance for conflicts referred to it under special texts, as well as appeal in cassation against administrative judicial decisions issued by administrative courts of appeal, and appeal against judgments issued in relation to central disputes.

3-2- Judicial jurisdiction in the administrative article for the first and final instances

The independent administrative authorities Endeavour's to apply laws and regulations in their areas; called sectoral control authorities in relation to the sector to which they belong, provided that this role is not limited only to the application of laws in material dimension, but also extends to the field of ethics, as some of them combine the functions of control and organization, which are viewed in the latter area as administrative decisions in the traditional sense. They express the authorities' use of the privileges of public authority like the council of monetary and credit, and committee for regulating stock exchange operations. Therefore, it is administratively approved in this case on the one hand. On the other hand, some administrative authorities may impose administrative sanctions on economic operators. These sanctions differ from those imposed by the judiciary, as they are issued by an administrative authority, therefore may be regarded as administrative decisions subject to judicial appeal before the competent administrative judicial authority, and thus determine the judicial authority competent to consider appeal against administrative decisions issued by it, as the legislator recognizes the administrative judge's control over the organizational and individual actions issued by the council of monetary and credit to state but a few.

This is in accordance with article 65 of law No. 03-11, as modified and completed, which stipulates that: "The regulations issued and published as set forth in article 64 above is subject to annulment, and the Minister in charge of Finance presents the annulment before the council of state..... A single appeal of annulment of decisions taken under Article 62 above is permitted....", as the legislator recognized the control of the administrative judge in Article 87 of the same law and includes the following: "Appeals are not admissible before the council of state under articles 82, 84 and 85 only following two decisions of rejection.....

It is the same for the banking commission, the stock exchange regulation and control committee, the postal and telecommunications regulatory authority, the insurance supervisor committee, as well as the electricity and gas authority.

In terms of the issue regarding the remaining authorities as the independent administrative that the legislator did not mention the competent judicial authority to examine the appeals filed against them, it will be dealt with after addressing all the aforementioned criteria; they are subject to the control of the administrative judge, however the legal problem may arise regarding the distribution of jurisdiction between the administrative court as it has the general jurisdiction and the council of state.

In order to determine the competent judicial authority, it is necessary to ascertain the status of independent administrative authorities within the subjects of public law, ergo it should be excluded from national professional organizations. Thus, part of jurisprudence sees that they do not fall within the central authorities, and another part includes them within the central executive authorities, yet they are not subject to the legal system implemented by the executive administrative authorities, which makes them characterized by a distinct legal system, and regarded them as special central authorities; both the administrative court and the state council, examine their own conflicts are either under a claim for compensation or a lawsuit for exceeding authority.

3-3- Appeal for cassation before the council of the State

The article 11 of the organiclaw98- 01related to the law of the council of state stipulates that the council of state adjudicates appeals presented by the litigants by cassation against final decisions of the administrative judicial entities and appeals for cassation in the decisions of the council of the audit council which is also authorized for appeal under article 901 of the civil and administrative procedure law modified and completed and has the authority to decide on appeals in cassation in judgments and final decisions issued by the administrative judicial entities, yet the most overriding thing to mention in the jurisdiction of the council of the state is that it will consider conflict as an appellate and cassation in the annulment cases and interpretation of legitimacy raised against decisions issued by the central administrative bodies and public administrative entities and professional organizations which have an impact upon the principle of two- tiered litigation , there for upon rights and fundamental freedoms relevant to them and which have interest in judicial administrative decisions.¹⁸

Conclusion

To wrap it up, the principle of two-tiered litigation is regarded one of the significant judicial principles that can assure the appropriate functioning of justice through the correction of its mistakes. Nevertheless, its implementation with regard to the administrative judiciary remains in complete because it is applied to judgments and orders issued by administrative courts and decisions issued by administrative courts of appeal. However, the council of state retains the right of review in the first and final instances of litigation regarding conflicts referred to it through special texts, such as independent administrative authorities. This affects the principle of two-tiered litigation; the inability to review decisions issued by the council of state, therefore generates repercussions with regard to the protection of basic rights and freedoms, undermining the legal guarantees that ensure their protection. After establishing administrative courts of appeal, the legislator found it a must to unify administrative judicial procedures for all administrative conflicts presented before administrative judicial systems in order to achieve legal effectiveness for the protection of basic rights and freedoms as well as to simplify and facilitate the procedures, as is the case with ordinary conflicts. However, it is noticeable that there is an overlap in the litigation procedures before the regular judicial and administrative structures, where the distinction and adherence to them generate intricacy and confusion.

Recommendations

on this basis the following recommendations may be included:

- The importances of enacting a law for administrative judicial procedures, to define, unify and simplify judicial procedures.

- Reassessing the issue of the training of judges in the administrative field, owing to the specificity of administrative conflicts, the nature of the conflicting parties and the interests for which the opposing parties are litigating.
- The importance of revising the foundational Judiciary legislation, in order to incorporate specific positions for administrative courts of appeal.
- It is imperative to modify Article 900 reiterated in Law 22-13, as it broadly addresses generally mandatory representation by a lawyer, and does not distinguish between public legal entities and those dealing with them.

¹- Ahmed Hindi, *The Principle of Two-Level Litigation, A Comparative Study*, New University House, Egypt 2009, p. 49..

²--Bakhoush Zein El Abidine, *Governor of the State, an administrative judiciary structure with the mission of the Public Prosecution*, Algerian Journal of Legal and Political Sciences, Volume 57, Issue 05, 2020, p. 109.

³- Presidential Decree 20-442 dated 15 Jumada al-Ula 1442 corresponding to November 30, 2020, regarding the issuance of the constitutional amendment, approved in a referendum on November 1, 2020, Official Gazette No. 82 issued on November 30, 2020.

⁴ Mahmoud Al-Sayed Al-Tahawi, *Challenging Judicial Rulings*, Dar Al-Fikr Al-Jami'i, Alexandria, Egypt, 2003, p. 2.

⁵- C. Al-Arabi Abdel Aziz, *The Status of the Two-Level Litigation Principle in Administrative Matters*, Legal Analyst Journal, Volume 05, Issue 01, June 2023, p. 106.

⁷- See Article 165 of Decree 20-442 containing the 2020 Constitutional Amendment

⁸- Khaloufi Rachid .*Administrative Disputes, Part Two*, Office of University Publications, Algeria, 2011, pp. 198-199.

⁹ Catalin-Silviu Sararu, *Administrative litigation systems in Europe*,
<https://www.researchgate.net/profile/Catalin-Silviu-Sararu.25-09-2024.08.25>.

-Catalin-Silviu Sararu, Cristina Elena Popa Tache, *AN OVERVIEW OF CERTAIN TENDENCIES IN EXTENDING THE CONCEPT OF ADMINISTRATIVE LITIGATION IN THE EUROPEAN UNION AND INTERNATIONAL LAW*
<https://www.researchgate.net/profile/Cristina-Popa-Tache,25-09-2024.08.32>.

¹⁰.- Issued in the Official Gazette No. 84 dated December 14, 2022.

¹¹ -See Article 900 bis 5 of Law 22-13 of July 12, 2022 amending and supplementing Law No. 08-09 containing the Code of Civil and Administrative Procedures.

¹²- See Article 900 bis 5 of Law 22-13 dated July 12, 2022 amending and supplementing Law No. 08-09 containing the Code of Civil and Administrative Procedures.

¹³- Ghalabi Bouzid, Hamsha Makki, *The Legal System of the Administrative Court of Appeal*, Al-Mufikr Magazine, University of Biskra, Volume 18/Issue 1, 2023, p. 307.

- Law 22-13 dated July 12, 2022 amending and supplementing Law No. 08-09 containing the Civil and Administrative Procedures Law, issued in the Official Gazette No. 48 issued on July 17, 2022.

¹⁴- Law 22-13 of July 12, 2022 amending and supplementing Law No. 08-09 containing the Civil and Administrative Procedures Law, issued in the Official Gazette No. 48 of July 17, 2022.

¹⁵- See Article 9 of Law 22-07 containing the judicial division issued on May 5, 2022, published in the Official Gazette on May 14, 2022, No. 32.

¹⁶- See Article 10 of Law 22-07 containing the judicial division issued on May 5, 2022, published in the Official Gazette on May 14, 2022, No. 32.

¹⁷- Senousawi Somaya, The specificity of the principle of two-level litigation before the administrative judiciary, Algerian Journal of Legal, Economic and Political Sciences, 2010, p. 688.

¹⁸Muhammad Al-Saghir Baali, The Mediator in Administrative Disputes, Dar Al-Ulum for Publishing and Distribution, Algeria, 2009, p. 120.

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