

Updates on the Algerian judicial reform in administrative matters

مستجدات الإصلاح القضائي الجزائي في المواد الإدارية

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Abstract:

The Algerian judicial system entered a new phase following the 2020 constitutional amendment under Article 179, which restructured administrative jurisdiction to align it with ordinary jurisdiction. The most notable change was the establishment of appellate administrative courts, which represented a second hearing of litigation in administrative law, with administrative courts being subordinate to them, while the State Council acts as the top of the administrative judicial hierarchy and oversees the work of appellate administrative courts, administrative courts, and other bodies that deal with administrative law. To ensure compatibility between the legal system and the Constitution, substantial amendments were introduced in 2022 which affected the Organic Law concerning the Council of State, the Organic Law concerning Judicial System, the Law on Judicial Division, as well as the Law on Civil and Administrative Procedures which underwent significant amendments aimed at simplifying administrative litigation procedures and redistributing jurisdiction among the existing and newly established bodies.

Keywords: judicial- reform- Algeria. administrative - matters.

ملخص:

شهد النظام القضائي الجزائري مرحلة جديدة بعد التعديل الدستوري لسنة 2020 بموجب المادة 179 منه، بتغييره هيكلية القضاء الإداري وجعله منسجما مع القضاء العادي، وذلك بتأسيسه لأول مرة محاكم إدارية استئنافية تمثل درجة ثانية للتقاضي في المادة الإدارية، تعلو المحاكم الإدارية في حين أن مجلس الدولة يمثل قمة الهرم القضائي الإداري مقوم لأعمال المحاكم الإدارية للاستئناف والمحاكم الإدارية والجهات الأخرى الفاصلة في المواد الإدارية، ولتتكيف المنظومة القانونية مع ما هو وارد في الدستور عرفت سنة 2022 تعديلات جوهرية مست القانون العضوي المتعلق بمجلس الدولة، والقانون العضوي المتعلق بالتنظيم القضائي، وقانون التقسيم القضائي، ناهيك عن قانون الإجراءات المدنية والإدارية الذي جاء بتعديلات جوهرية من شأنها تبسيط إجراءات التقاضي في المادة الإدارية، وإعادة توزيع الاختصاص بين الهيئات الموجودة والمستحدثة.

الكلمات المفتاحية: الإصلاح- القضائي- الجزائر- المواد- الإدارية.

Introduction :

In the history of Algeria's post-independence, the judicial system has undergone several distinct phases, beginning with a unified judicial system and culminating in a dualistic system as established by the 1996 Constitution under Article 152. This development resulted in the separation of the ordinary judiciary from the administrative judiciary, with the Council of State positioned at the apex of the administrative judiciary hierarchy, and the administrative courts endowed with general jurisdiction over administrative disputes. The Council of State functions as the regulatory authority overseeing the activities of the administrative judicial bodies. To further entrench the dualistic judiciary, the Civil and Administrative Procedure Act No. 08-09 was enacted on February 25, 2008, dedicating Chapter Four to the procedures applicable before the administrative judicial bodies.

Notwithstanding, the non-conformity of the ordinary judiciary structures with administrative judiciary, coupled with the dearth of an explicit provision in the Constitution supporting the principle of litigation on two degrees before the judiciary, limiting it only to criminal matters pursuant to Article 160 of the 2016 Constitutional Amendment, has raised many concerns.

In the midst of criticism leveled at the administrative judicial system and its non-conformity with dual judicial systems, particularly the French system, the 2020 constitutional amendment emerged, which set the stage for a new phase in the administrative judicial system.

Therefore, the importance of the topic is to demonstrate how well the legislative system conforms to what is mentioned in the constitution, particularly with the amendments enacted in 2022, which affected the organic law governing the Council of State, the organic law pertaining to the judicial system, the law on judicial division, and the law governing civil and administrative procedures. This allows for an explanation into how these amendments might have contributed to enforcing the judicial duality system in Algeria.

In light of the above, we pose the following issue:

Was the Algerian founder and legislature able to establish a fully integrated administrative judiciary with simple litigation procedures through the 2020 constitutional amendment and subsequent legal amendments?

To address this issue, we employed a descriptive methodology to define some of the concepts in the study, an analytical methodology to analyze various legal texts related to the study, and occasionally a comparative method to compare repealed or amended legal texts with new ones, following this classification:

Firstly: The most notable updates in in judicial reform relevant to administrative law

Secondly: Rules for distributing jurisdiction among both existing and newly established bodies

Firstly: The most important administrative judicial reforms since the 2020 constitutional amendment

The Algerian administrative judiciary has seen important reforms, beginning with the constitutional amendment of 2020 and subsequent legal amendments. These include noteworthy amendments such as:

A- Strengthening of the principle of litigation on two degrees:

The rule established in the Algerian judicial system is the concept of litigation on two degrees. To this end, the Algerian constitution explicitly guarantees this principle in its latest amendment, Article 165, which states: ""The law guarantees litigation on two degrees and stipulates the conditions and procedures for its application. ¹" Previously, the principle had only been explicitly stated with regard to criminal matters under the 2016 constitutional amendment, Article 160.²

The term "litigation on two degrees" refers to the possibility for the parties involved in a dispute or one of them to bring the dispute before a second higher judicial body after being adjudicated under a trial judgment on first instance.

The fundamental principle of litigation on two degrees provides an opportunity to review the initial judgment, in light of the idea of justice itself. The judge may misinterpret the situation presented before him or misunderstand the law's judgment and its application to the situation. In either case, justice necessitates rectification³.

In this regard, the situation can only be rectified through an appeal by the capacity's holder and the interested person before a second instance to reconsider the judgment of first instance. This involves a re-examination of the judgment's validity in terms of both reality and the law⁴.

Regarding the administrative judicial system, it came into existence following the adoption of the dual judicial system through Article 152 of the 1996 Constitutional Amendment⁵. This system varies in structure and procedures from the ordinary judiciary, creating two distinct judicial pyramids: the ordinary pyramid with the Supreme Court at its top and the Judiciary Councils and Courts in between, and the administrative hierarchy with the Council of State at the top and administrative courts as its base.

The comparison between ordinary and administrative judiciary's pyramids indicates that the former is divided into three (3) instances (Supreme Court, Judiciary Councils, Courts), whereby courts of first instance and judiciary councils serve as the two litigation degrees while the Supreme Court is the cassation court. On the other hand, the administrative judiciary only has two instances (Administrative Courts, Council of State)

Hence lacks of a second or parallel degree to the judiciary councils. As per Organic Law 98-01⁶ and Civil and Administrative Procedure Law 08-09, ⁷ the Council of State serves as both an appellate and cassation court. This indicates that the principle of litigation on two degrees has not been fully implemented in the administrative judiciary, unlike the ordinary judiciary.

Due to the criticisms that have been raised regarding this situation by law professors and the need to establish independent administrative courts or councils for appeal for this purpose, the 2020 constitutional amendment was introduced in response to the aspirations of judicial reform in administrative law. This amendment established administrative courts for appeal, in accordance with Article 179, which states that the Supreme Court is the body responsible for the actions of judiciary councils and courts.

The State Council is the body responsible for the actions of administrative courts for appeal, administrative courts, and other bodies that adjudicate administrative laws..."

Thus, administrative courts for appeal are considered as the second degree of litigation in administrative law, aimed at strengthening the principle of litigation on two degrees, particularly for decisions made by central administrative authorities, national public bodies, and professional

organizations that were under the sole jurisdiction of the Council of State as the first and final degree for litigation relating to annulment, interpretation, and assessing their validity. Additionally, the establishment of these courts relieves the burden on the Council of State and allows it to concentrate on evaluating the actions of administrative judiciary bodies and unifying jurisprudence.

The number of courts is specified in Law No. 22-07, which was issued on May 5, 2022, which includes judicial division⁸, and consists of six (6) courts located in Algiers, Oran, Constantine, Ouargla, Bechar and Tamanrasset.

B- Simplification of Litigation Procedures:

Following the 2020 constitutional amendment, the Algerian legislature has focused on adopting new legislative texts and adapting the applicable legal texts with constitutional amendment's provisions. One is the amendment of the Civil and Administrative Procedure Law under Law No. 22-13.⁹ This amendment introduced new provisions that meet the requirements of reforming the judicial system, particularly the administrative one.

-1- Representation by Optional Lawyer before Administrative Courts:

In cases of a representation by obligatory lawyer before the Administrative Courts for appeals and the Council of State, then representation by a lawyer before administrative courts of first instance has become optional, as with the ordinary courts of first instance, following the new version introduced by Article 815 of the Civil and Administrative Procedures Law. Accordingly, the legislator has successfully upheld the constitutional principle of equality before the judiciary, as well as the principle of equal opportunities granted to litigants, as advocated by the jurisprudence before the amendment of the Civil and Administrative Procedures Law. The differentiation between litigants in ordinary and administrative judiciaries is now eliminated, thereby ensuring the principle of equality between both judiciary branches concerning the representation by a lawyer.

Nevertheless, we believe that dispensing with representation by a lawyer before administrative courts may lead to the rejection of numerous cases due to the litigants' lack of familiarity with the procedures of administrative proceedings and specificities.

Therefore, we see that representation by a lawyer before administrative courts is imperative, notably in view of the move towards electronic litigation. Additionally, the privacy of administrative disputes requires the plaintiff to possess adequate qualifications and legal competence to enable them to correctly and accurately file a case.¹⁰ Furthermore, given that administrative justice is a founding justice that relies heavily on the role of a lawyer as an active role in devising administrative law principles and theories, along with enlightening the judgement body.¹¹

2- Recognition of E-Litigation in Administrative Law:

The exercise of the right to litigation necessitates providing certain safeguards. One of the most important of these is the simplification of litigation procedures. This, in turn, can only be accomplished through the modernization of the justice sector - by incorporating and making use of modern technology, with more flexible and simplified judicial procedures that guarantee credibility in adjudicating disputes within reasonable deadlines.

Consequently, the Civil and Administrative Procedures Law now recognizes e-litigation in its latest amendment.

As a result, the case can now be filed electronically for administrative or appellate courts, as well as the State Council. Similarly, litigants can be notified electronically of procedures and investigatory measures (Articles 815, 900 bis 1, and 900 bis 3).

It is worth mentioning that Algeria had previously recognized electronic litigation before the amendment of the Civil and Administrative Procedures Law in other laws, particularly in the Law on Modernizing Justice¹² and the Criminal Procedures Law.¹³ However, recognizing it in the Civil and Administrative Procedures Law is considered a commendable step by legislature, as it is the essential cornerstone of the litigation system.

Therefore, electronic litigation will undoubtedly contribute to reducing time, effort, and expenses, as well as reducing the congestion in judicial bodies, including administrative ones. This will positively impact cases that have been pending for years.

Additionally, electronic litigation alleviates the pressure on judicial institutions by reducing the number of paper files, leading to a reduction in storage space.

3- Permissibility to Present Oral Submissions during Hearings:

Prior to its amendment, Article 886 of the Civil and Administrative Procedures Law did not require the administrative court to respond to arguments made orally unless they were confirmed by written requests. However, now parties are entitled to present oral submissions during hearings due to the drafting of the article which states: "The parties may present their oral submissions in addition to their written submissions during the hearing."

4- Making Jurisprudence & Judicial Decisions Suspending of Implementation and Conveyance of Dispute:

According to Article 900 bis 02 of the Civil and Administrative Procedures Law, "an appeal shall serve as a conveyance of the dispute and be suspending of execution of the judgment." In a similar vein, Article 908 of the same legislation states, "an appeal to the State Council results in transferring the dispute and suspending the implementation of the judgment."

By reading these two articles, we can deduce that an appeal to administrative judicial bodies has a transferring impact on the dispute and suspending implementation, which was not the case prior to amending the Civil and Administrative Procedure Law. Previous to its amendment, judgments rendered by administrative courts had an executive nature, even in the case of their appeal, leading to several practical issues¹⁴.

However, it is noteworthy to mention that Article 600 of the Law of Civil and Administrative Procedures stipulates that the judgments of administrative courts, administrative courts for appeal, and the State Council are regarded as executive bonds immediately upon their issuance, with no further conditions, such as the exhaustion of ordinary appeals.

Therefore, Articles 600, 900 bis 2, and 908 are contradictory, as the first grants executive power to the judgment or decision immediately upon issuance, unlike the latter two articles that suspend their implementation.

5- Simplifying the Procedures of Correcting judgments and Judicial Decisions:

The Civil and Administrative Procedure Law has made amendments to the correction procedures concerning material errors that often plague judicial judgments. The former legislation dictated that even if a simple error, such as a misspelled name of one of the parties, was present, a

new case would need to be filled, adding further financial and supplementary costs to the litigant, according to Article 891 of the Civil and Administrative Procedure Law¹⁵.

A material error implies an improper representation of a material fact or disregarding its existence. The correction aims to correct the omission or material error that occurred in the judgment without altering the rights and obligations of the parties already decided in the judgment.

Consequently, the correction of judgments and judicial decisions is carried out by means of a request directed to the president of the body that issued the judgment. This request shall be decided by means of an order on a petition within a period of fifteen (15) days from the date of submission of the request, after hearing the parties or their assignment to attend¹⁶, whereas the deadline for deciding on a correction request was undefined under Article 891 before amendment, and was made by a judgment and not by an order.

Furthermore, Article 892 of the amended Civil and Administrative Procedures Law permits for objection to the order deciding on the correction request before the Head of the judicial body that issued it within fifteen (15) days from the date of official notification of the order.

The Government Commissioner is also permitted to submit a correction request spontaneously or on the request of one of the parties, particularly if it becomes apparent that the material error is attributable to the judiciary¹⁷.

6- The possibility of appealing judicial orders in urgent matter:

Chapter Two (Immediate Urgency) of Section Three (Emergency) of the Fourth Book (Procedures Followed before Administrative Judicial Bodies) of the Civil and Administrative Procedures Law asserts that three (3) articles render orders issued under it immune from appeal. These articles include 919, 921, and 922, as outlined in Article 936 of the same law:

- Urgent orders issued to suspend the implementation of administrative decisions as outlined in Article 919.
- Orders issued due to extreme urgency under Article 921.
- Orders issued that contain necessary measures as outlined in Article 922 as well.

Alongside the previous three cases, there are urgent orders issued in the article of execution's problems. These are issued when writ of execution encounters an obstacle or problem that prevents their implementation, or when there is a request to suspend the implementation of the execution's writ. These procedures are regulated under Articles 631 to 635 of the Civil and Administrative Procedures Law. The jurisdiction in these procedures belongs to the administrative judicial entity that issued the judgment to decide on any problem or request to suspend the execution.

The decision in the case will be rendered by an irrevocable order that is not subject to any appeal, pursuant to Article 633 of the Civil and Administrative Procedures Law. This article was appealed through unconstitutionality, alleging that it affects the principle of litigation on two degrees, and was referred from the Supreme Court to the Constitutional Court, which decided to reject the claim and consider the article that was the subject of constitutionality, not violating the principle of litigation on two degrees¹⁸.

It is worth mentioning that under Law 22-13, amending the Law on Civil and Administrative Proceedings, Article 936 has been reformulated as follows: "Orders issued in urgent matter are subject to appeal."

As a result, all orders issued in an immediate emergency under the Law on Civil and Administrative Proceedings are now appealable without exception. This aligns with the principle of

litigation on degrees which stipulated by Article 165 of the 2020 Constitutional Amendment and strengthens the rights of defense and fair trial.

Secondly: Rules for distributing jurisdiction among both existing and newly established bodies:

After the 2020 constitutional amendment, the Administrative Judiciary comprised of three bodies is the Administrative Courts, the Administrative Courts of Appeal, and the Council of State. The distribution of jurisdiction is as follows:

A- Administrative Courts:

Under Law No. 98-02 dated May 30, 1998, the Administrative Courts were established to replace the administrative chambers of the judicial councils, as per Article 1 of the same law, which states¹⁹: "Administrative courts are established as judicial bodies for public law in administrative law." The Organic Law 22-10 on Judicial System considers them as the first degree for litigation in administrative law, as per Article 38.

The Executive Decree 98-356, promulgated on November 14, 1998, fixing the modalities of implementation of law's provisions 98-02. The first article of this decree stipulates the establishment of 31 administrative courts throughout the national territory. However, Executive Decree No. 11-195, issued on May 22, 2011, increased the number of administrative courts to 48, with each province now having its court. Moreover, the Executive Decree No. 22-435 further increased the number of administrative courts to 58, in line with the country's new territorial division.

1- Composition of Administrative Courts:

Pursuant to Article 814 (bis) of the Law on Civil and Administrative Procedures, administrative courts render decisions through a collective arrangement comprising no less than three judges - a presiding judge and two associates. The article does not require that associates hold the position of assessor, which was previously the case when the court was composed of three judges, one of whom was a president and the other two associate assessors²¹.

Article 32 of Organic Law 22-10 on Judicial Organization outlines the composition of administrative courts as follows:

Presiding Judges:

- Presiding Judge,
- Deputy Presiding Judge, or two (2) Deputy Presiding Judges as necessary,
- Section Chiefs,
- Branch Chiefs
- Judges,
- Judges assigned to handle petitions,
- Judges responsible for recording judgments,

Judges of State Commissariat

- Government Commissioner,
- Assistant Government Commissioner or two (2) Assistant Government Commissioners as necessary.

2- Subject-Matter Jurisdiction of Administrative Courts:

Administrative courts have a general competence to decide on all administrative disputes unless otherwise stipulated by law. As the court of general jurisdiction, pursuant to Article 800 of the Civil and Administrative Procedures Law, the administrative court holds first-degree jurisdiction with a possibly appealable decision in all cases where the State, a province, municipality, public institutions of an administrative nature, national public bodies, or national professional organizations are a party.

Upon reviewing the above article, it is evident that the Algerian legislature has kept the organic standard for determining the competence of administrative courts, expanding its jurisdiction to cover national public bodies and professional organizations.

Regarding the types of actions that fall under the jurisdiction of administrative courts, these have been defined by Article 801 of the Civil and Administrative Procedures Law as follows:

- **Action for Annulment:** it is the only substantive action and in rem that can be used to annul the illegal administrative decisions.
- **Action for Interpretation:** it is intended to clarify the true meaning of a decision, without annulling it or assessing legality.
- **Action for Assessing Legality:** it is an action brought for the purpose of demanding the assessment of the legality of a particular administrative decision.
- **Action for Full Jurisdiction:** this term refers to the sum total of judicial claims brought forth by parties with interests, presented before the competent judicial bodies, under a set of specific legal conditions and procedures designed to first recognize the existence of legally acquired personal rights, secondly to determine whether these rights have sustained any material or moral damage, thirdly to assess the extent of that damage and establish full compensation for it, and fourthly, to pass judgment on the administrative authorities accused of full compensation, such as compensation claim, administrative contract claims, and employee financial disputes²².
- **Cases conferred under particular provisions:** Some of the cases that are conferred to administrative courts through particular provisions are listed below:
- **Electoral disputes:**

The Administrative Court has competence over electoral disputes and may issue appealable judgments before the Administrative Court of Appeal, such as the appeal of the voting list in accordance with Article 129 of Order 21-01 dated March 10, 2021, which includes the Organic Law on Elections²³: "... The decision may be appealed to the territorially competent Administrative Court within a period of three (3) full days from the date of notification of the decision..."

- **Public procurement disputes:**

These are disputes related to public procurement governed by Presidential Decree No. 15-247, issued on September 16, 2015, which regulates public procurement and delegations of public facilities²⁴.

3- Territorial Jurisdiction:

The general principle of territorial jurisdiction is that it is given to the judicial body under its jurisdiction the defendant's domicile is located. If the defendant has no known domicile, it shall be attributed to the judicial body in whose jurisdiction the defendant's last known domicile was located. If a domicile is chosen, the territorial jurisdiction shall belong to the judicial body where the chosen domicile is located, unless the law states otherwise²⁵.

In the case of multiple defendants, territorial shall be attributed to the judicial body under its jurisdiction where one of them is domiciled²⁶.

However, Article 804 sets forth exceptions to the general rule mentioned in Articles 37 and 38 of the Code of Civil and Administrative Procedure, which are as follows:

- 1- In matters pertaining to taxes or charges, before the court under its competence where place of imposing taxation or charge.
- 2- In matters pertaining to public works, before the court under its competence where place of implementation of works.
- 3- In matters pertaining to administrative contracts, irrespective of their nature, before the court under its competence where place of conclusion and implementation of the contract.
- 4- In matters pertaining to staff disputes or state officials or other persons working in administrative public institutions, before the court under its competence where place of appointment.
- 5- In matters pertaining to medical services, before the court under its competence where place of service's provision.
- 6- In matters pertaining to supply, works, or rental of technical or industrial services, before the court under its competence where place of conclusion or execution of the agreement, if one of the parties is resident there.
- 7- In matters pertaining to compensation for damage resulting from a felony, misdemeanor, or fault, before the court under its competence where place where the harmful act was committed.
- 8- In matters pertaining to problems arising from the implementation of judgments issued by administrative judicial bodies, before the court that issued the judgment in question.

In order to facilitate access to judiciary for litigants, the legislature has amended Clauses 4 and 8 of Article 804, and its wording is now as follows:

- In matters pertaining to staff disputes or state officials or other persons working in administrative public institutions, before the court under its competence where place of their employment.
- In matters pertaining to problems arising from the implementation of judgments issued by administrative judicial bodies, before the head of the administrative judicial body that issued the judgment in question. The latter shall adjudicate in it according to the procedures specified in articles 631 to 635 of this law.

B- Appellate Administrative Courts:

A provision for appellate administrative courts was introduced for the first time in Algeria under Article 179 of the 2020 Constitutional amendment.

1- Appellate Administrative Court's Internal Regulation:

In accordance with Article 900 bis 05 of the Civil and Administrative Procedures Law, appellate courts shall have a collective composition, unless the law provides otherwise, which composed of a minimum of three (3) judges, including a President, and two associate assessors.

The composition of the Administrative court for appeal is further defined in Article 30 of Organic Law 22-10 relating to Judicial Organization, as follows:

Presiding Judges:

- A President with a minimum rank of State Councilor,
- A Vice President with two (2) additional Deputies as necessary,
- Heads of the Chambers,
- Chiefs of Departments, as necessary, Assessors.

Judges of the State Commissariat:

- A Government Commissioner with a minimum rank of Assessor in the State Council.
- Associate Government Commissioner: or two (02), when necessary.

In terms of the organization of administrative courts for appeals, they are structured in the form of chambers. Chambers can be divided into sections, and the number of chambers and sections can be determined based on the nature and the extent of the judicial activity, as per the opinion after an opinion has been sought from the Government Commissioner²⁷.

2- Subject-matter jurisdiction of administrative appeal courts:

According to Article 900 (bis) of the Civil and Administrative Procedures Law, administrative appeal courts exercise two types of jurisdiction. The first is as a secondary degree (appeals), and the second is as a first degree court.

2-1 Administrative Court of Appeal's Jurisdiction as Second Degree:

Article 29 of Organic Law 22-10 on Judicial Organization states, "The Administrative Court of Appeal is the jurisdiction for appeals against judgments and orders issued by administrative courts²⁸." The same is also stated in Article 900 (bis) of the Code of Civil and Administrative Procedures.

As a result, the six administrative courts of appeal are competent to hear and to decide appeals from judgments and orders issued by administrative courts, understanding that this competence was previously assigned to the Council of State prior to the amendment of the constitution and subsequent laws.

We appreciate the valuable contribution of the Algerian founder and legislature to ease the burden on the Council of State and enable it to fulfill its essential role as a regulatory body for administrative judicial activities, as well as unify jurisprudence. By doing so, the amendment is expected to simplify the litigation procedures in administrative law within reasonable deadlines, in contrast to the previous situation where the judgments of 48 administrative courts were appealed to a single body -- the Council of State -- not to mention bringing justice closer to the litigants.

2-2 Primary Jurisdiction of the Administrative Court for Appeal:

As set forth in Article 900 bis of the Civil and Administrative Procedure Law, the Administrative Court of Appeal in Algeria is competent to hear and decide, as a first instance, cases pertaining to the annulment, interpretation, and assessment of the legality of administrative decisions issued by central administrative authorities, national public bodies, and national professional organizations.

Accordingly, the Administrative Court of Appeals in Algiers is competent to the following cases as a first instance:

- Appeals for the annulment, interpretation, and assessment of the legality of decisions issued by central administrative powers, including the decisions of Presidency of the Republic, Prime Ministry, Head of Government, and Ministries.
- Appeals for the annulment, interpretation, and assessment of the legality of decisions issued by national public bodies, such as the legislature and judiciary when exercising jurisdictions of an administrative nature, the Constitutional Court, the Council of accounting, the Economic and Social Council, and independent administrative powers...
- Appeals for the annulment, interpretation, and assessment of the legality of decisions issued by national professional organizations, such as the National Chamber of Judicial Officers, the National Chamber of Notaries...

It is worth recalling that this jurisdiction assigned to the Administrative Court of Appeal in Algiers as a first instance court was previously granted to the State Council as a first and final instance court, according to Article 09 of Organic Law 98-01 concerning the State Council, and Article 901 of the Civil and Administrative Procedure Law.

Consequently, assigning this jurisdiction to the Administrative Court of Appeal in Algiers would establish the principle of litigation on two degrees, as the decisions of the Council of State regarding the aforementioned decisions have previously been considered first and final instance, and therefore are not appealable through ordinary means, as there is no higher body than the Council of State. Moreover, it would be unjust for one single judicial body to hear the same case twice.

3- Territorial Jurisdiction of Appellate Administrative Courts:

The Executive Decree 22-435, dated December 11, 2022⁹, has defined the territorial jurisdiction of the six (6) appellate administrative courts located in the following provinces: Algiers, Oran, Constantine, Ouargla, Tamanrasset, and Bechar, as follows:

Algiers : Algiers, Blida, Bouira, Tizi Ouzou, Djelfa, Medea, M'Sila, Boumerdes, Tipaza, Ain Defla.

Oran : Oran, Tlemcen, Tiaret, Saida, Sidi Bel Abbès, Mostaganem, Mascara, El Bayadh, Tissemsilt, Ain Temouchent, Relizane, and Chlef.

Constantine : Constantine, Oum El Bouaghi, Batna, Bejaia, Jijel, Setif, Skikda, Annaba, Guelma, Bordj Bou Arreridj, El Tarf, Souk Ahras, Mila, Tébessa, and Khenchela.

Ouargla : Ouargla, Ghardaia, El Oued, Biskra, Ouled Djellal, Illizi, Touggourt, Djanet, El M'Ghair, and El Menia.

Tamanrasset: Tamanrasset, In Salah, and In Guezzam.

Bechar: Bechar, Adrar, Tindouf, Naama, Timimoun, Bordj Badji Mokhtar, and Béni Abbès.

Establishing six (6) appellate administrative courts is an important step by the legislature in application the principle of litigation on two degrees in administrative law. However, we believe that this number is not sufficient given the increasing number of administrative disputes. Therefore, it would be preferable to increase their number in the future, in order to bring justice closer to litigants and ease the burden on the six courts, because a country the size of Algeria with only six appellate administrative courts is not sufficient to resolve disputes within reasonable deadlines.

C- Council of State:

According to the amended and supplemented Organic Law 98-01, the Council of State exercises two types of jurisdictions: advisory jurisdiction and judicial jurisdiction.

1- Advisory jurisdiction:

The Council of State expresses its opinion on legal texts and orders notified to it, in accordance with the conditions specified by Organic Law 98-01, and propose the amendments it deems necessary.

The opinion presented by the Council is not binding on the government, and the government is not responsible for not taking its opinion into account, but it is obliged to present the draft law or order to the Council of State³⁰.

2- Judicial jurisdiction of the Council of State:

The judicial jurisdiction of the Council of State, according to the aforementioned Organic Law 98-01 and the civil and administrative procedure law, consists of the following:

2-1- Jurisdiction of the State Council as a Court of Cassation:

Article 09 of Organic Law 98-01 and Article 901 of the Civil and Administrative Procedures Law included jurisdiction of the State Council over appeals for cassation against final judgments rendered by administrative judicial bodies, whether they are administrative courts or courts of appeal.

As for appeals for cassation against final judgments rendered by administrative courts, these are very rare cases³¹, because the provisions of Article 800 are clear when stating that administrative courts decide in first-instance by a judgment that is appealable in all cases where the state, province, municipality, public institutions with administrative, public national bodies and professional organizations are parties to the case.

The State Council also is competent to appeals for cassation against final judgments rendered by the six administrative courts of appeal.

The appeals for cassation assigned to the State Council under special provisions include, for example, the decisions of the Court of Accounts as a competent judicial body, issued within the framework of the composition of convened chambers. These decisions are appealable for cassation before the State Council under Article 110 of Order 95-25 dated 17 July 1995, relating to the Court of Accounts³².

Likewise, Article 67 of Organic Law No. 22-12 dated 27 June 2022, which establishes the ways of electing the members of the Supreme Judicial Council, the rules of its organization and its function³³, states: "The decisions of the disciplinary composition of the Council shall be appealable for cassation before the State Council."

2-2 Jurisdiction of the State Council as an appellate body:

According to Article 10 of Organic Law 98-01, the State Council has jurisdiction to decide on appeals against decisions issued by the Administrative Court of Appeal in Algiers concerning annulment, interpretation, and assessment of the legality of administrative decisions issued by central administrative authorities, public national bodies, national professional organizations, and the same wording as that included in Article 902 of the Civil and Administrative Procedure Law. In principle, the jurisdiction to appeal jurisprudence pertained to the administrative courts of appeal, as we have seen previously, which led to a lack of uniformity between the degrees of litigation between the ordinary and administrative judiciary and will overburden the State Council and distance it from its corrective role³⁴.

Therefore, it would be preferable if the legislature assigned this jurisdiction to the Administrative Court of Appeal in Algiers, while the jurisdiction as first instance for reviewing decisions of central administrative authorities, public national bodies, and national professional organizations is assigned to the Administrative Court of First Instance in Algiers.

2-3 Jurisdiction of the State Council under special provisions:

According to Article 903 of the Civil and Administrative Procedure Law and Article 11 of the amended and supplemented Organic Law 98-01, the State Council is competent to adjudicate cases assigned to it under special provisions.

Through these two articles, the legislature did not specify the nature and manner of the Council of State's decision in cases entrusted to it under special provisions; whether it acts as a body of cassation or decides on them in the first and final instance. The most probable is that the Council of State has the jurisdiction in the first and final instance because the cases decided under special provisions as a court of cassation are specified in Article 901 of the Civil and Administrative Procedures Law and Article 09 of Organic Law 98-01 concerning the Council of State³⁵.

Therefore, it can be argued that the legislature still grants the Council of State jurisdiction as the first and final instance under special provisions, which violates the principle of litigation on two degrees established by the constitutional founder in Article 165 of the 2020 constitutional amendment.

However, the question posed in this regard is about the nature of the special provision referred to in Articles 903 of the Civil and Administrative Procedures Law and Article 11 of Organic Law 98-01. Is it an ordinary law or an organic law? The most probable is that the special provision is an organic law because the Council of State's competences are specified in the constitution and Organic Law 98-01, and an ordinary law cannot specify the Council of State's competences.

Conclusion:

The administrative justice system had brought a fundamental change following the 2020 constitutional amendment, with the principle of litigation on two degrees being enshrined in administrative law through the establishment of appellate administrative courts as the second degree of the administrative judiciary under Article 179. The Judicial Division Law 22-07 stipulates the establishment of six (6) courts, including one at the national level.

With regards to the distribution of jurisdiction between existing and newly established bodies, amendments have been made to the Organic Law 98-01 pertaining to the Council of State, the Organic Law of judicial organization, and the Civil and Administrative Procedure Law, which clarify the jurisdiction of various administrative judicial bodies. These updates also serve to strengthen litigation procedures in administrative law, such as recognizing e-litigation in all stages, making judicial judgments and decisions disputable and on hold for execution, simplifying the action for correcting judicial judgments and decisions, and allowing for all orders issued in cases of urgent matters to be appealable without exception.

Nevertheless, despite the significant reforms that the administrative judiciary system has seen since the constitutional amendment in 2020, they are still inadequate to build a complete administrative judiciary system that is in line with the judicial duality system. Therefore, we suggest the following points:

- Developing a special law for administrative judicial procedures that suits the nature and specificity of administrative disputes, which are primarily investigatory in nature.
- Training for administrative judges in a judicial-administrative training, and developing a special basic law for them.
- Increasing the number of appellate administrative courts, as six administrative appellate courts are insufficient for a state the size of Algeria, due to the rising number of administrative disputes on one hand, and in order to bring the judiciary closer to litigants on the other.
- The primary jurisdiction of the Administrative Court for appeals in Algiers is revoked with regards to hearing actions of annulment, interpreting and assessing the legality of administrative decisions issued by central administrative authorities, national public bodies, national professional organizations, and it is assigned to the primary Administrative Court in Algiers until the State Council is fully able to perform its primary duty of the cassation in the administrative law and unification of jurisprudence.

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