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THE LEGAL STATUS OF THE AUDIOVISUAL REGULATORY AUTHORITY IN ALGERIA

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Abstract

The audiovisual media sector has undergone major changes in Algeria, especially after the economic reforms, which explains the content of the laws devoted to its organization, whose the organic Law No. 12-05, which included several provisions, in particular the creation of bodies specializing in the regulation of audiovisual activity. This requires a search for the legal status of this regulatory authority, especially since the audiovisual activity is a sensitive area on the one hand, and on the other hand it is a sector linked to exercise of one of basic freedoms guaranteed constitutionally, it is about the freedom of communication.

***Key Words**:* Media sector; Regulatory authority; Legal nature; Independence; Administrative authority

ملخص: المركز القانوني لسلطة ضبط السمعي البصري في الجزائر

عرف قطاع الإعلام السمعي البصريتحولات كبيرة في الجزائر خاصة بعد الإصلاحات الاقتصادية، هذا ما فسر مضمون القوانين المكرسة لتنظيمه منه القانون العضوي رقم 12-05 والذي تضمن عدة أحكام أبرزها إنشاء هيئات متخصصة لضبط نشاط السمعي البصري. وهو الأمر الذي يستدعي البحث عن المركز القانوني لهذه الهيئات الضبطية . خاصة أننشاط السمعي البصري مجال حساس من جهة، وبسبب ارتباطه بممارسة إحدى الحريات الأساسية المضمونة دستوريا وهي حرية الاتصال من جهة أخرى.

الكلمات المفتاحية: قطاع الإعلام، سلطة الضبط، الطبيعة القانونية، الاستقلالية، سلطة إدارية.

Résumé : ***Le statut juridique de l'autorité de regulation audiovisuel en Algérie***

Le secteur des médias audiovisuels a connu de profondes mutations en Algérie, notamment après les réformes économiques, ce qui explique le contenu des lois consacrées à son organisation, dont la loi organique n° 12-05, qui comportait plusieurs dispositions, notamment la création d'organismes spécialisés dans la régulation de l'activité audiovisuelle. En effet, cela nécessite une recherche du statut juridique de cette autorité de régulation,

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d'autant plus que l'activité audiovisuelle est un domaine sensible d'une part, et d'autre part un secteur lié à l'exercice d'une des libertés fondamentales garanties par la constitution, il s'agit de la liberté de communication.

Mots Clés *:*Secteur des médias ; Autorité de régulation ; Nature juridique ; Indépendance ; Autorité administrative.

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Introduction:

The audiovisual media sector has undergone profound changes in Algeria, particularly after the various reforms undertaken by the public authorities at the economic level, which explains the content of the laws devoted to its regulation, including Organic Law No. 12-05 of January 12, 2012 relating to the information[1], which included several provisions, in particular the establishment of specialized bodies for the regulation of audiovisual activity.

Something that materialized two years later, with the promulgation of Law No. 14-04 of 24 February 2014 on audiovisual activity[2], which, in addition to setting the general framework of the exercise of the audiovisual activity by both the public and private sectors, determines the outline of the mission of the Audiovisual Regulatory Authority, responsible to ensure the transition of a sector hitherto monopolized by the State towards free competition.

On this basis,Law 04-14, in addition to setting the general framework for the exercise of audiovisual activity by the public and private sectors, also defined the mission of the audiovisual regulatory authority, as body responsible for ensuring the transition of a sector that the State had until now monopolized to free competition, while maintaining the required balance, between interests that are by nature opposed, which may be exposed to the process of transition from a monopolistic regime to a liberalization.

In this context, there is reason to question the legal qualification of the audiovisual regulatory authority with regard to its real legal status and the role assigned to it in preserving the rights and freedoms of journalists and the interests of the State ?

In order to answer this problem through this research paper, we wish to specify to what extent the legal status of the audiovisual regalotry authority activity has been reinforced by exposure to the provisions linked to its legal nature (the first topic), and highlight the powers and attributions enjoyed by this authority as an activity Audiovisual is a sensitive area on the one hand, and because of its attachment to the exercise of one of the fundamental freedoms guaranteed constitutionally, which is freedom of communication on the other hand (the second topic).

[1]Organic law n° 12-05 of January 12, 2012, relating to information, JORA n° 02, of January 15,2012.
.[2] Law n° 14-04 of 24 February 2014, relating to audiovisual activity, JORA n° 16 of March 23,2014.

The first topic:

The legal nature of the audiovisual regulatory authority

The audiovisual regulatory authority is responsible for ensuring the safeguarding of public freedoms, which involves analyzing the legal status of this authority in order to highlight the possibility of qualifying the audiovisual regulatory authority as an authority administrative authority, to see how the audiovisual regulatory authority constitutes an administrative authority (first requirement), before proceeding to the analysis of the consistency of the character of the independence (second requirement).

first requirement:Audiovisual regulatory authority: Administrative authority

Being able to qualify any body as having an authoritarian character should be based on a set of criteria that show us that this body is considered an authority with decision-making power. Given that independent administrative authorities are authorities in the sense that distinguishes them from advisory bodies, not only because they have real decision-making power, but also because these decisions fell within the competence of the executive authority (first section), and most of them enjoy an administrative character, either explicitly by legislator, or This can be inferred from the manifestations that indicate it (second section).

First section: The authoritarian character of the audiovisual regulatory authority.

Qualifying any body as having an authoritarian character should be based on a set of criteria that show us that this body is considered an authority with decision-making power. But the qualification of these bodies as an authority does not justify their belonging to the category of classical administrative bodies.Inthis area, several doctrinal opinions that have dealt with the issue of authority in order to understand the legal nature of these new bodies.

The notion of authority can be understood in twoways : organic and material. In the foreground it designates a legal person governed by public law (or even private law) or one of its bodies[1].With regard to the material meaning, authority is analyzed through the effects attached to legal acts emanating from competent state institutions.

[1] FORTAT Nicolas, Autorité et responsabilité administrative, Thèse pour le Doctorat en Droit public, Université François Rabelais de Tours, 2011, p2.

Indeed, theselastexercisetheir “authority” over others because of the “legitimate” powers they have in order to perform their functions.

The quality of authority is attributable to any organ meeting the criteria intrinsic to the identification of the notion of authority both in the material and organic sense, this even in spite of an explicit qualification of the legislator.Thisis the case for the independent regulatory authorities in Algeria, which are considered as authorities both by the doctrinethat the case law[1]. The qualification of “authority” selected by the organic law relating to information, to designate the regulatory body for audiovisual activity, such a solemn qualification must be measured against an index relating to the powers attributed to these bodies as well as to its purpose of making decisions and enforcing them.

However, the use of the term authority by the Algerian legislator means that these entities are not simple advisory bodies whose mission is to focus on the presentation of opinions, but that they have the power to issue decisions. , whose original competence originally belongs to the executive power[2]. Indeed, under the terms of Law No. 14-04 relating to audiovisual activity, the Audiovisual Regulation Authority has a set of decision-making powers both individual and regulatory. The article 55[3]confers on thisauthority, for example, the mission for the creation of radio and television channels, moreover the same article assignsit the task of setting the rulesrelatingtothe insertion of messages of public interest in the programs of the various radio and television services, as well as other prerogatives in terms of regulation and control ofcontents, and the law relating to audiovisualactivityattributestothe regulatory authority of the said sector, a repressive power[4]. Thus the audiovisual regulatory authority replaces, in fact, not only the executive power but also the judicial judge.

It is concluded that the audiovisual regulatory authority has the character of an "authority" in its own right, since it has real decision-making power, even if its primary role is to protect the freedom of expression and the audiovisual media, while guaranteeing free competition in the sector concerned.

[1]See, ZOUAÏMIA Rachid, Les autorités de régulation indépendantes face aux exigences de la gouvernance, Belkeise Edition, Alger, 2013, p 35.
[2]ZOUAÏMIA Rachid, Les instruments juridiques de la régulation économique en Algérie, Belkeise Edition, Alger, 2012, p 23.
[3] Article 55 of Law No. 14-04 of February 24, 2014, relating to audiovisual activity, op.cit
[4]See, articles from 98 to 106 of law No. 14-04 of February 24, 2014, relating to audiovisual activity, op.cit.

Second section : The administrative character of the audiovisual regulatory authority :

The independent administrative authorities were created to Regulate in order to free the audiovisual sector from the empire of the State. It should be noted that the privatization of the sector could not be done without a minimum of State control.

Thus, the legislator did not declare to the audiovisual regulatory authority an administrative character, as in certain other authorities, such as the supervisory authority for posts and telecommunications.

At the opposite of the Superior Information Council[1] whichdescribeitasexpressly of independent administrative authority[2], the organic law relating to information provides in its article 64: « An audiovisual regulatory authorityisherebyestablished,independentauthority, enjoyinglegal personality and autonomy financial » . And the silence of the legislator obliges us to seek the criteria to deduce the administrative nature of the authority :

A. Element relating to the activity of the body : The purpose of the latter is to ensure the application of the law in the field of competence that the latter entrusts to him, but he is also recognized as a competence for the enactmentnormativeacts: suchacts, both individual and regulatory, aremanifestly administrative acts.

B. The regime applicable to the staff of the authority : when the staff falls under the status of the public service, the employing body is qualified as an administrative authority.
C. The regime applicable to the accountingof the body : the credits necessary for the accomplishment of the missions of the Audiovisual Regulatory Authority are entered in the general budget of the State. The same article specifies that « The accounting of
D. the Audiovisual Regulatory Authority is held, in accordance with the rules of public accounting, by an accountant appointed by the minister responsible for finance. Expenditure control is exercised in accordance with accounting procedures public »[3].
E. Although its administrative character derives from a combination of various criteria of importance, this description remainsunconfirmed and

[1]See, Zebda Noureddine, the Media Legislation in Algeria, revue d'enseignant chercheur pour les études juridique et politique,No. 2,2022, p2105.
[2] Article 59 of Law No. 90-07 of April 3, 1990 relating to information, JORA No. 14 of April 4, 1990 (repealed).
[3]See, article 73 of law No. 14-04, op.cit

unauthorized.Althoughits administrative character derives from a combination of various criteria of importance, this description remains unconfirmed and unauthorized.

Second requirement :The extent of independence of the audiovisual regulatory authority

The Organic Law on Information expressly qualifies the Regulatory Authority as an independent authority. But the question of independence still raises legal debate.

Consequently, the question of independence arises from two angles : the first is in terms of independence from political power, because it is traditionally linked to its field of intervention (first section), the second in terms of independence from audiovisual sector operator (second section)

First section :The independence of the audiovisual regulatory authority with regard to political power :

The concept of political public authorities refers to the constitutional authorities of the State, that is to say executive and legislative without the judiciary, the latter as an independent constitutional authority does not constitute a danger for the guarantee of the principle impartiality to which the regulation authorities are subject. It imposes and contributes to ensuring its independence.

The question of independence towards public power is based on several justifications, including the question of the separation of function since : " The question of combining the intervention task on the market as a public economic operator, and intervention as a regulator would undermine the principle of impartiality, equal treatment and equal opportunities between dealers, and they must therefore be separated.

Thus, the main problem posed by the regulation of the audiovisual sector is how to preserve it, Overall, ensure the proper functioning of a complex system and adjust this sector which is sensitive since it aims to frame and define a public freedom , which is the freedom of communication, as pointed out by several authors.

The study of the relationship between the regulatory authorities and the legislative power defines a doctrinal debate divided into : Two different currents, of which - one insists on the call to intensify this relationship under the pretext that such a rapprochement with the legislative power, far from being an obstacle, on the contrary, will increase its independence.

Another current maintains that the public power seek through the relationship to impose more control on these authorities and to put its hold on them, then to claim their complete independence.

The Algerian political system is also characterized by the concentration of power in the hands of the executive[1].

There are even those who question even the real existence of legislative power and consider it a mere myth.

However, the emancipation of the audiovisual regulator vis-à-vis parliament may be entirely justified insofar as it will indirectly guarantee freeing the audiovisual regulatory authority from the control of the executive power. Which also require the constitutionalization of this authority so that it is endowed with a specific status regulatory authority whose independence is guaranteed in the same way as the other public powers by the constitution.

we can say that the mission of the audiovisual regulatory authority is to combine it: the protection of public freedom and the promotion of free competition in this sensitive sector,requires for the regulator in charge of the sector a form of independence more uncompromising, both in relation to political power and regulated operators.

Second section :The independence of the audiovisual regulatory authority with regard to regulated operators :

The fear of seeing the regulatory authorities lose their independence not for the benefit of the traditional administration, but worse still to fall under the influence of companies operating on the regulated market, is completely justified in this meaning that such dependence will certainly harm the principle of impartiality of the regulator.

In this regard, the most accepted approach highlights an essential factor that can lead to this form of dependence, it revolves around the notion of « capturing » who can be defined as the risk that the regulated company manages to exert on the regulatory authority a significant influence leading the latter to act in abnormally protecting the interests of the company in question[2], To this end, two elements can contribute to the materialization of this risk On the one hand, by the nature of the regulatory mission requires the indipandante regulatory authorities unlike traditional central administrations a better understanding of the challenges of the sector subject

[1]ZOUAÏMIA Rachid, Les instruments juridiques de la régulation économiques en Algérie, op.cit, p 32
[2]SeeDEZOBRY, Guillaume, « L'indépendance des autorités de régulation économique à l'égard des opérateurs régulés », RFAP, n° 3, 2012, p. 649.

to regulation[1]. The law relating to the audiovisual activity provides for a system of functional incompatibilities. In effect, it specifies in its article 61 that the mandate of member of the college is incompatible with the exercise of any professional activity likely to affect its impartiality and its independence. During the exercise of his mandate, the member of the body "not may, directly or indirectly, collect fees or any other form of remuneration, except for services rendered before taking office[2].

The second element further favoring the risk of capture consists of "the permeability" thatexistsbetween the personnel of the regulatory authorities and those of the operatorsregulated. Indeed, the desire to integrate professionals from a givensectorintothecomposition of the regulator of said sector, most often justified by the questfortheindependence of the authority in question and its neutrality[3],may have in some cases figures the opposite effect. To the extent that the presence of former employees of the companies subject to regulation in the colleges of regulatory institutions or vice versa will bear undermining the neutrality of the action in recent year, Nevertheless the measure generally provided for by legislators in order to thwart these abuses: such as the principle of incompatibilities[4].the recognized independent character explicitly by the legislator to the audiovisual regulatory authority must be apprehended in a broad sense encompassing both an emancipation of the audiovisual regulatory authority vis-à-vis the political power as well as its freedom from the possible influence regulated operators, both public and private. However, such independencecan be consecrated only by the implementation of a panoply of heterogeneous guarantees capable of to ensure its effectiveness.

THE SECOND TOPIC:

The powers of the audiovisual regulatory authority:

The establishment of an independent authority responsible for regulating the audiovisual communication sector,reflects, first of all, the ambition to subtractthishypersensitivesectorbothpolitically and economicallyfrom any interference from the political power, for audiovisual communication "The existence of the independent administrative authority constitutes a guarantee of the

[1] Ibid.
[2] Art. 63 of Law No. 14-04, op. Cit.
[3]See ZOUAÏMIA Rachid, « L'autorité de Régulation de L'audiovisuel », Revue Académique de la Recherche Juridique, n°1, 2018, pp 756s
[4] ZOUAÏMIA Rachid, Les autorités de régulation indépendantes face aux exigences de la gouvernance, op. Cit, p 158 et s

exerciseofthisfreedom"[1] , the creation of the audiovisual regulatory authority in Algeria by organic law relating to information,falls within this order of idea, due to the fact that it is responsible for a general mission of ensuring the free exercise of audiovisual activity[2].

The legislature has granted a homogeneous set of powers, as they sometimes take on the appearance of executive authority through the regulatory authority entrusted to it, the prior control of the market (first requirement), and to others moments they take measures that have been monopolized by the authority of the judiciary through the arbitration procedure and the exercise of repressive power (second requirement).

First requirement: substitution of the audiovisual regulatory authority for the executive power.

Indeed, "this authority is endowed with all the prerogatives that allow it, to implement its regulatory power, both as guardian and policeman of this freedom "[3]

In this context, the audiovisual regulatory authority is empowered, first of all, to control, a priori, the exercise of the audiovisual activity through the prior authorization regime (first section). Furthermore, the authority guarantees the general conditions required for the implementation of freedom of communication, by applying a regulation strategy (second section).

First section: The prior authorization regime.

In Algerian law, the legislator did not derogate from the more or less universal rule, which recommends a priori regulation of the audiovisual sector, insofar as the law governing the latter subjects the creation of television and radio channels to obtaining prior authorization[4].

The Algerian legislator adopted the licensing system, and the Culture and Communication Committee in charge of the study pointed out a draft law related to audiovisual in the supplementary report states that a license cannot be waived given that the license is a basic mechanism for regulating audiovisual activity.

"The audiovisual activity is freely exercised"[5], but this type of media has never benefited from an absolute freedom such as that granted, in reality, no State, however

[1]MAISL Herbert, « Les autorités administratives indépendantes : Protection des libertés ou régulation sociale », in COLLIARD Claude-Albert & TIMSIT Gérard (S/ dir.), Les autorités administratives indépendantes, PUF, Paris, 1988. pp 78-79.
[2]See, article 54 of law n° 14-04, of February 24, 2014, relating to audiovisual activity, op.cit
[3]See, Ministry of Communication, law project relating to audiovisual activity, op.cit
[4]See, article 17 of law n° 14-04, of February 24, 2014, relating to audiovisual activity, op.cit.
[5] Article 2 of Law No. 14-04, of February 24, 2014, relating to audiovisual activity, op.cit

liberal it may be in audiovisual matters, allows the right to broadcast to be exercised without prior authorization[1]. The submission of the communication by audiovisual means to aexorbitant regime with regard to the organization of freedom of expression, in this case the prior authorization regime, was justified, in large part, by the technical characteristics specific to this type of communication[2].

In Algerian law, it is the drafters of the bill relating to audiovisual activity who emphasize the need to put in place mechanisms which allow (to) control, rigorously, the exercise"ofcommunicationradio or television. Consequently, the State is the only one authorized to judge "the advisability of the creation of these services[3]through a procedure for selecting applications leading to the issuance of an authorization for the benefit of the applicant whose service offer is more appropriate.

In reality, under the effect of the prodigious development of communication and information technologies, the scarcity of traditional broadcasting channels is being filled by other transmission media, such as satellites, which offer an unlimited possibility of creating satellite radio and television services[4]. However, however, the passage from the analog image to the digital image has contributed to widening the hertzian space[5] ,The legislator has defined hartzian waves in article 7 of law 14-04,it is assigned to each broadcast channel by the authority that has licensing power.

In view of these developments, the abundance of audiovisual distribution channels is proving to be a reality today. Therefore, the ex ante regulation to which this type of media is subject, justified by the scarcity of these media, is suddenly devoid of its reason to be.

On the other hand, the Algerian legislator did not consider it appropriate to introduce such a derogation from the a priori regulation applied to audiovisual activity via the regimeoftheprior authorizationestablished by the law of 2014. Indeed, although this text explicitly provides for the possibility of creating satellite broadcasting services[6] ;

[1]JOST François, « Culture et dépendances : Les avatars d'une mission du service public », Le temps des médias, n°1, 2010, p 103.
[2]See DERIEUX Emmanuel & GRANCHET Agnès, Droit des médias : droit français, européen et international, 6e édition, LGDJ, Paris, 2010.p 45
[3]See the explanatory memorandum in : Ministry of Communication, Bill relating to audiovisual activity, op.cit.
[4] FLICHY Patrice, Une histoire de la communication moderne : espace public et vie privée, Casbah Edition, Alger, 2000, pp 205-207.
[5] JOURDAA Laurent, Le contentieux de l'image : étude de jurisprudence comparée, Thèse pour le Doctorat en Droit public, Université de Toulon, 2014, p.272.
[6]see article 5 of law n° 14-04, op.cit

In this regard, there is reason to question the merits of generalizing the authorization regime to all types of broadcasting in Algerian law, since some of these do not sufferfromanyrarity.Theobviousanswer, in this context, is that this regime, far from constituting a simple means of reconciling the technical constraints and the requirements of liberalization of the audiovisual sector, ensures, at the same time implicitly, the maintenance of the influence of the power in place on the actors of this activity, which is so sensitive to politics.

In Algerian law, the field of application of the prior authorization regime relating to the creation of radio or television services is clearly broader and, this on double level.

The First, with regard to the types of broadcasters subject to this condition, article 21 of the law relating to audiovisual activity, specifies that the authorization regime applies to broadcasting by cable, to the use of radio frequencies over the air and by satellite, in the clear or by an encryption process[1]

Second, the authorized audiovisual services are not only channels created by legal persons deprived of Algerian law. Indeed, Article 5 of the 2014 law expands the content of these services to also include thematic channels created by companies, institutions and bodies in the public sector[2]Thus, it can be seen that the authorization regime applies to audiovisual communication services instituted by certain state structures such as parliament or other institutions,apart from the channels constituting the audiovisual public sectorwhosecreation and the status is fixed by decree[3].

In addition, the divergence characterizing the methods of granting prior authorizations relating to the creation of audiovisual channels, manifests itself with regard to the body invited to issue the said authorization. In this regard, the majorityofcomparativelegislationgrantsthis prerogative to independent regulators. However, under Algerian law, the audiovisuel regulatory authority has only a limited power in this area, because it has the power to examine authorization requests without being able to issue them itself.

Second section :Establishing a competitive market in the audiovisual field.

In order to achieve the objective of genuine openness, the legislator must put in place a number of legal mechanisms in order to ensure free access to the audiovisual market for new operators, and from there, the authority should first ensure the establishment of free competition and the creation of a free competitive market, through guarantees dedicate before moving on to its preservation and the balance of the market, all this in cooperation with the Competition Council.

[1] Article 21 of Law No. 14-04, op.cit
[2] Article 5 of Law No. 14-04, op.cit.
[3] Article 13 of law n° 14-04, op.cit

According to the classic typology, the independent regulatory authorities are divided into two main categories, namely: those responsible for protecting fundamental rights and freedoms and those* vested with a function of economic regulation[1],However, such a "distinction quicklyfindsitslimitsinsofar as on the one hand all the actions of the independent regulatory authoritiesareinterested to a certain extent in civil liberties,andthat on the other hand the economic purpose is not different from the action of the independent regulatory authorities responsible for regulating freedoms.

The institution of the audiovisual regulatory authority in Algerian law is perfectly in line with this dual purpose logic in the sense that it ensures, in addition to the emancipation of the audiovisual activity, the regulation of the audiovisual market in a economic perspective, aiming in the first place to accompany the transition of the latter from monopoly to free competition , as well as to maintain the balance required in the audiovisual sector.

After more than two decades of the promulgation of the first text consecrating the liberalization of the radio and television sector in Algeria, the latter remains until the beginning of the 21st century under the monopoly of the State.

However, the concomitance of the factors forced the power in place to rethink this mode of management of radio and television. Thus, on the domestic level, the socio-cultural and economic evolutions of Algerian society have made it almost impossible to maintain the audiovisual monopoly by the State[2],in the sense that the public channels have lost a large part of the audience, which now prefers foreign satellite services[3]. Moreover, the spectacular technological progress in themediafieldled to a globalized diffusion of information so that attempts to lock the national audiovisualfieldprovedcompletelyOutmoded.The first law devoted in Algerian positive law to audiovisual activitywaspromulgated in 2014[4], thislays down in clearer terms the principle according to which the audiovisual activityisfreelyexercised,byspecifyingmoreoverthat this freedom must be framed by the general principles listed in article 2 of the organic law referred to above, which essentially revolve around respect for the laws of therepublic, the religion of the state and other religious beliefs, the identity and values of society, public order …etc.

[1] CHEVALLIER Jacques, « Le statut des autorités administratives indépendantes : harmonisation ou diversification ? », RFDA, n° 5, 2010, p 898.
[2]See, CHERIF Dris, « La nouvelle loi organique sur l'information de 2012 en Algérie : vers un ordre médiatique néo-autoritaire ? », L'année du Maghreb, n°8, 2012, p 311 .
[3]See, MOSTEFAOUI Belkacem, Médias et liberté d'expression en Algérie : repères d'évolution et éléments d'analyse critique, El dar El Othmania Edition, Alger, 2013, p 135
[4] Article 2 de la loi n° 14-04 du 24 février 2014, relative à l'activité audiovisuelle, op.cit

In addition, this text reorganizes the audiovisual market by allowing private investors under Algerian law to operate radio and television services.

However, this liberalization of the audiovisual field cannot be understood in an absolute senselikethatprevailingHowever, thisliberalization of the audiovisual field cannot be understood in an absolute sense like that prevailing in certain pure economicactivities.However, thisliberalization of the audiovisual field cannot be understood in an absolute sense like that prevailing in certain pure economicactivities.Insofar as, despite the fact that the broadcasting sector tends more and more to establish itself as an industry in its own right[1],it remains all the same that the audiovisual sector involves non-economic interests, which therefore requires that the regulation of the audiovisual market ensured in the first place by the audiovisual regulatory authority, be in addition to its asymmetrical nature, a regulation of risks, in the sense that it must protect the broadcasting sector from possible attacks on thefreedom of expression or the right to information, resulting from the implementation of a pure mercantilist logic in this sector.

As such, the audiovisual regulatory authority is first called upon to make use of the various powers with which it is invested in order to allow free access for private operators to the market in question ,Indeed, this function of the audiovisual regulatory authority constitutes the second part of its hybrid regulatory mission combining protection of freedom of expression and promotion of free competition in audiovisualactivity,andthis, through the implementation of a strategyregulationwhosepurposeis to guarantee the same competitive conditions for companies in both the public and private sectors, despite the limits intrinsically linked to the prior authorization regime to which only radio and television services are subjectprivate.

On another level, the audiovisual regulatory authority is called upon to ensure another form of regulation aimed not at weakening the public sector in order to make the radio and television market more attractive to the benefit of private operators, but on the contrarymaintainthismarket open to competition between the private operators themselves, so as not to harm media pluralism resulting from the pluralism of broadcasters[2].

Insum, wecanseethat the audiovisual regulatory authority plays an undeniable role in the establishment of effective competition on the radio and television market through

[1]See, CHERIF Dris, « La nouvelle loi organique sur l'information de 2012 en Algérie, op.cit,p
[2] TOUSSAINT-DESMOULINS Nadine, « Les entreprises de communication audiovisuelle : concurrence et équité concurrentielle » in MBONGO Pascal & PICCIO Carine & RASLE Michel (S/ dir.), La liberté de la communication audiovisuelle au début du 21e siècle, L'Harmattan, Paris, 2013, p 43

the powers of control, opinion and even decision at its disposal. Nevertheless, its action remains, frompartially, hampered by the presence of a dominant public audiovisual sector and not entirely subject to the principle of free competition. However, the importance of theaudiovisual regulatory authority action in this area in no way prejudges the fact that it is calledupon to coexistwithanotherregulator, in the market, in this case the Competition Council.

Second requirement: substitutionof the audiovisual regulatory authority for the judicial judge.

it is admitted that the independent regulatory authorities are neither administrations in the classic sense of the term, nor even jurisdictions in their own right, it is nonetheless true that these new institutions borrow from each other some of their characteristics and their functions .

As such, the independent regulatory authorities also have the prerogatives inherited from traditional administrative bodies such as decision-makingpower,otherpowerswhich in principle come under the office of the judicialauthoritiesrepressive attributions as well as those relating to the settlement of disputes[1]

This is the case with the audiovisual regulatory authority insofar as the 2014 law grants it power to settle disputes (first section)alongside a more or less limited repressive power (second section).

First section: the Arbitration Jurisdiction of the audiovisual regulatory authority

It is recognized that disputes resolution is only a mechanismofregulation-whichiswhythis power has been given to regulators. Nevertheless, this arbitration functionperformedbyregulatorsimmediately come up against the classic definition of arbitration, whichtargetstheconstitution of an arbitral tribunal and the establishment of a procedurewhoseelementsessential are contractuallydecided by the parties to the dispute but which result in an act of a jurisdictional nature rendered by the private arbitrators who settle the dispute in as judge[2].

[1] CHAMPEAUD Claude, « L'idée d'une magistrature économique », Revue justice, n° 1, 1995, n° 1, 1995, p 61 et s.

[2]See, FRISON-ROCHE Marie-Anne, « Arbitrage et droit de la régulation », in FRISON-ROCHE Marie-Anne (S/ dir.), Les risques de la régulation, Vol 3, coll. « Droit et économie de la régulation », Presses de Sciences Po. et Dalloz, Paris ,2005 . p 22.

It should be noted that the independent regulatory authorities constitute a derogation from arbitration as defined by the general rules of the code of civil and administrative procedure, the arbitration provided by the independent regulatory authority takes place outside the independent regulatory authorities constitute a derogation from arbitration as defined by the general rules of the civil and administrative procedure code, the arbitration provided by the independent regulatory authority takes place outside the contractual sphere, the fact that the parties to the dispute do not proceed to the conclusion of a compromise or an arbitration clause[1].

in addition, the regulatory authority called upon to settle a dispute in the context of an arbitration procedure does not waive the application of the law in favor of the rules chosen by the parties. Indeed, this arbitration function of the regulators is similar to that provided in the past by the courts of the State, which makes it a special alternative dispute resolution[2].

As regards the nature of the legal act by which an independent regulatory authority puts an end to the dispute submitted to it, it is clear that this act cannot take on a jurisdictional nature despite all attempts to attach it to this category, for the simple reason that at the opposite of the judicial act which benefits from the authority of res judicata, such authority is lacking in the case of an act taken by an administrative authority which only benefits from the authority of res judicata[3].

Moreover, these acts are of an administrative nature. Consequently, the arbitral function of the Autorites de regulation indepandente although it is similar to the office of the judge, it remains non-jurisdictional.

The power to settle disputes recognized for the benefit of the audiovisual regulatory authority is part of the perspective of a contentious function. Indeed, article 55 of the law relating to audiovisual activity provides that in matters of dispute settlement the authorityarbitrates disputes betweenlegal persons operating a service ofaudiovisual communication, eitheramongthemselves or withusers[4].

According to the article 55, the audiovisual regulatory authority is empowered to conduct a two-level arbitration mission. On the one hand, it arbitrates disputes between operators in the regulated sector. To this end, the authority decides on questions relating to the piracy of programs by competing broadcasters or even to resolve questions relating to unfair commercial practices… etc. In any case, the

[1] ZOUAÏMIA Rachid, « Les fonctions arbitrales des autorités administratives indépendantes », in L'exigence et le droit, Etudes en l'honneur de Mohand ISSAD, AJED Edition, Alger, 2011, p 552.
[2] Ibid
[3] - ZOUAÏMIA Rachid, Les instruments juridiques de la régulation économique en Algérie, op.cit, p 130.
[4] - Article 55 de la loi n° 14-04, op.cit

audiovisual regulatory authority exercises a competence which aims to carry out its mission of regulation a priori constituting to guarantee the opening of the audiovisual market to free competition.Thus, itcanbeconsidered as aeconomicjurisdictiongivenits role in the matter[1].

In addition, the audiovisual regulatory authority is called upon to settle disputes also opposingregulators to users of radio and television services, insofar as any violation of the law committed by a regulated company can be brought before the authority. In this respect, it is clear that the arbitration function of audiovisual regulator interferes with the office of the criminal judge.

Regarding the procedure for implementing the contentious function of the audiovisual regulatory authority, the text of the law does not provide for a detailed procedure in this area. Indeed, apart from the reference made in article 55 to persons empowered to seize the authority with complaints alleging a violation of the law by a regulated operator,the 2014 law remains silent on the other procedural rules governing this arbitration function.

In short, it turns out that the dispute resolution power available to the audiovisual regulatory authority, although it is an important lever for its regulatory mission,itdoes not fail to arouse certain reservations, particularly as to the nature of the acts by which the authority puts an end to the disputes submitted to it, insofar as the admission of the administrative nature of these leads us once again to the question of the legitimacy of entrusting the supervision of public freedom to an administrative authority[2].

Second section: Exercising repressive jurisdiction:

The transfer of the sanctioning power of the Office of the Jurisdictionsrepressivemeasures for the benefit of independent regulators, mostoftenassimilated to State administrations, in the sense that it constitutes an attack on the principle of the separation of powers.

The power of sanction now recognized for almost all independent regulatory authorities in Algerian law, the doctrine most often refers to the limits of traditional powers, in particular the judicial power[3], in the context of the regulation of new fields of activity characterized by a particular technicality, As such, an independent

[1]CHAMPEAUD Claude, op.cit, p 6
[2] ZOUAÏMIA Rachid, Les autorités de régulation indépendantes face aux exigences de la gouvernance, op.cit, p 206
[3] TAIBI Achour, « La justification du pouvoir de sanction des AAI de régulation est-elle toujours pertinente ? », RIDP, n° 3, 2013, p 463.

regulatory authority is more suited to sanctioning an operator who fails to meet these obligations than the criminal judge.

Therefore, the power to sanction is extremely important for a regulatory institution to carry out its mission.

In the same way as the regulatory authorities set up in the economic and financial sectors, the 2014 legislator attributed to the audiovisual regulatory authority a real repressive power in the sense that it aims to sanction any breach of the laws and regulations committed by regulated operators. However, it should be noted that this power is not exercised in the same way against public and private broadcasters.

The power of sanctions held by the audiovisual regulatory authority only really targets operators in the private sector, insofar as this text provides against public channels failing to fulfill their obligations only for a provisional msureea. Indeed, article 98 of the law of 2014 provides that "when a legal person operating an audiovisual communication service, in the public or private sector, does not comply with the conditions provided for by the legislativetextsandregulations, itisgiven formal notice by the audiovisual regulatory authority to comply with them within a period set by the latter[1]. Thus, this formal notice must above all not be confused with administrative sanctions, unlike administrative sanctions which aim to punish a breach, the formal notice constitutes a preventive measure whose purpose is to prevent an irreversible situation[2].Therefore, we find that the audiovisual public sector escapes the repressive power of the audiovisual regulatory authority, which is not likely to allow it to succeed in its mission of regulating the radio and television market.

In the same logic of repression, if the offending operator does not comply with the terms of the formal notice issued against him, despite the financial penalty imposed on him, theaudiovisual regulatory authorityproceeds by reasoned decision to suspend partial or total of the program broadcast, in the event that the breach concerns the content of the broadcasts, or the suspension of the authorization to broadcast[3]. However, the duration of this suspension cannot exceed one (1) month. Furthermore, the audiovisual regulatory authority is also empowered to suspend broadcasting authorizations immediately, without prior notice and before withdrawal thereof, in the cases mentioned in Article 103 of the 2014 law[4].

[1] Article 98 § 1 de la loi n° 14-04 du 24 février 2014, relative à l'activité audiovisuelle, op.cit.
[2] ZOUAÏMIA Rachid, Les instruments juridique de la régulation économique en Algérie, op.cit, p 165.
[3]See, , article 101 de loi n° 14-04 du 24 février 2014, relative à l'activité audiovisuelle, op.cit
[4]See, article 103 de loi n° 14-04 du 24 février 2014, relative à l'activité audiovisuelle, op.cit

In view of these provisions, it can be seen that the audiovisual regulatory authority is able to punishbreachesofprivateoperators, insofar as the nature of the sanctions it imposes on them has the double character of criminal sanctions, in this case punishment and deterrence.Consequently, this power of sanction seems adequate for carrying out the regulatory mission of the audiovisual regulatory authority.

Finally, theaudiovisual regulatory authority has another form of moral sanction[1], insofar as it is empowered to order the operator failing to fulfill these obligations to insert in the programs broadcast by it a press release addressed to the public, includingthebreachesattributed to the person in question as well as the sanctions pronounced against him[2] .

Indeed, this repressive competence constitutes an effective legal means to enable the regulator to carry out its regulatory mission, provided thatitisextended to include public sector operators.

[1] ZOUAÏMIA Rachid, Les instruments juridiques de la régulation économique en Algérie, op.cit, p 165.
[2] Article 106 de la loi n° 14-04 du 24 février 2014, relative à l'activité audiovisuelle, op.cit.

Conclusion :

However, during this study, several shortcomings were identified as a result of both the legal nature of the audiovisual regulator and the powers attributed to it. These are essentially revolve around the following points :

1. the absence of a legislative qualification of the audiovisual regulatory authority
2. In terms of independence, although the legislator has affirmed that it is indeed an « independent authority » However, we observe the fragility of the independence system, because at the organic level there is the association of authority with power that controls the appointment of its members, which consolidates the control of the executive power.

It should be noted that the inclusion of provisions Protection for monopoly operators does not encourage fair competition. Inddition, the main mission of the regulatory authorities is to establish and maintain free competition in the audiovisual market and the protection of pluralistic freedom of expression.

For the purposes of an appropriate legal framework for this body, some suggestions that we consider necessary :

1. give an administrative character, given that it aims to ensure the control of public freedoms, and this does not find a solution, except to register it among the constitutional public bodies
2. Consequently, it must be included as an independent body and its members must be appointed among independent personalities,
3. Recognized for its efficiency and integrity, with the integration of the category of professionals in the sector and magistrates
4. Extend its powers in terms of control by granting it the power to announce the candidacy, The selection of candidates as well as the issuance of licenses fall within its competence, because this limits the scope of intervention of the executive power.
5. Independent administrative authorities were created to regulate in order to liberate the audiovisual sector from the state empire, it should be highlighted that the privatization of the sector could not be carried out without a minimum state control**.**

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