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The Recognition of the Principle of Two-Tier Judicial Review in Administrative Cases

KEBBAB Mebarka *
Faculty of Law, University of Algiers 1
m.kebbab@univ-alger.dz

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ABSTRACT:

This research paper highlights the significance of the principle of two-tier litigation in the Algerian administrative judiciary as one of the most important constitutional and procedural guarantees for protecting litigants' rights and ensuring a fair trial. It explains that the constitutional and legislative reforms, particularly the 2020 Constitutional Amendment, have contributed to restructuring the administrative judiciary in a manner that reinforces this principle and enhances judicial oversight of court decisions.

The paper also examines the role of administrative courts as courts of general jurisdiction and the first instance of litigation in administrative disputes, outlining their organizational structure as well as their subject-matter and territorial jurisdiction. Furthermore, it discusses their competence in adjudicating actions for annulment, interpretation, judicial review of legality, and full jurisdiction claims, while highlighting the exceptions that fall within the jurisdiction of the ordinary courts or the Council of State. The study concludes that this judicial framework strengthens the principle of legality, provides greater procedural safeguards for litigants, and enhances public confidence in the administrative justice system by allowing judgments to be reviewed by higher judicial authorities.

key words: Two-Tier Litigation, Administrative Judiciary, 2020 Constitution, Administrative Disputes.

Introduction:

The principle of two-tier litigation is regarded as one of the fundamental procedural safeguards enshrined by the Algerian legislature within the judicial system, particularly in the field of administrative justice. This is due to the unique nature of administrative disputes, which arise from the inherently unequal relationship between public authorities and individuals. The recognition of this principle is the result of significant constitutional and legislative developments, most notably the 2020 Constitutional Amendment, which explicitly guarantees the right to litigation before two judicial levels. Consequently, the administrative judicial system underwent substantial restructuring to align with this constitutional framework.

Within this context, the Algerian administrative judiciary has evolved from a single-tier system into a hierarchical judicial structure designed to strengthen judicial oversight and improve the quality of judicial review. This transformation aims to ensure that errors relating to either the facts of the case or the application of the law can be corrected through appellate review. Accordingly, the administrative court system has been reorganized to give practical

* **Corresponding author**

effect to the principle of two-tier litigation by distributing jurisdiction among complementary judicial bodies.

Moreover, this reform extends beyond institutional restructuring to reflect the legislature's commitment to reinforcing the guarantees of a fair trial in administrative justice. By granting litigants the opportunity to challenge first-instance judgments before higher judicial authorities, the system enhances legal certainty, strengthens procedural safeguards, and promotes greater public confidence in the administration of justice.[1]

Based on the foregoing, the following research question arises: **To what extent has the Algerian legislature enshrined the principle of two-tier litigation within the administrative judiciary, and what legal and institutional mechanisms has it adopted to ensure its effective implementation?**

To address this question, the study is divided into two main sections. The first section examines litigation at the first level of jurisdiction by analyzing the role of the administrative courts as courts of first instance, together with their organization and jurisdiction. The second section focuses on litigation at the second level of jurisdiction, highlighting the role of the administrative courts of appeal in reviewing first-instance judgments and assessing their contribution to the effective implementation of the principle of two-tier litigation and the strengthening of fair trial guarantees within the Algerian administrative justice system.

THE FIRST TOPIC :Litigation at the First Level of Jurisdiction

Litigation at the first level of jurisdiction constitutes the cornerstone of the administrative judicial system, as it represents the initial stage at which administrative disputes are brought before the competent court for the first time. This stage is of particular importance because it marks the starting point of administrative proceedings, during which the facts are examined, the evidence is assessed, and the dispute is legally characterized, thereby laying the foundation for judicial review at subsequent levels of litigation. It also reflects the hierarchical structure of the administrative judiciary, which is designed to ensure the proper administration of justice and the efficient functioning of the judicial system.

In this context, litigation at the first level of jurisdiction is exercised through the administrative courts, which serve as the courts of first instance with jurisdiction over administrative disputes. These courts are responsible for examining both the factual and legal aspects of cases and for issuing first-instance judgments. This level of litigation is also closely connected with the Administrative Courts of Appeal in Algeria, whose role is to review judgments rendered by the administrative courts, thereby playing a fundamental role in implementing the principle of two-tier litigation and ensuring effective judicial oversight of first-instance decisions.

First Requirement: Administrative Courts as Courts of First Instance

Administrative courts constitute the primary judicial bodies vested with jurisdiction to adjudicate administrative disputes at the first level of litigation. They represent the starting point of administrative proceedings and play a central role in upholding the principle of legality and protecting the rights of individuals in their dealings with public authorities. The organization of these courts forms part of a broader legislative reform aimed at enhancing the effectiveness of the administrative judiciary and consolidating the principle of two-tier litigation, thereby

[1]- Dalila Makhtour, Fair Trial Guarantees under Ordinance No. 03-03 on Competition, Academic Journal of Legal Research, Vol. 13, No. 2, 2022, p. 429.

ensuring that judgments rendered by these courts may be reviewed by higher judicial authorities through the appellate process.[2]

1 .Organization of the Administrative Courts

Executive Decree No. 98-356 of 14 November 1998 was issued to establish the procedures for implementing Law No. 98-02. The Decree provided for the establishment of 31 administrative courts distributed across the national territory, with their gradual establishment being subject to the availability of the necessary conditions and resources to ensure their proper and effective functioning.

Administrative courts are the courts of first instance with jurisdiction to adjudicate administrative disputes. As such, they constitute the first level of litigation in the administrative judicial system and represent one of the fundamental pillars for establishing an independent administrative judiciary in Algeria, in accordance with Article 31 of Organic Law No. 22-10.

In Algeria, administrative courts are the courts of general jurisdiction in administrative matters. Article 1 of Organic Law No. 98-02 provides that administrative courts are established as courts of general jurisdiction in administrative litigation, meaning that they enjoy original and general jurisdiction over all administrative disputes, except for those matters that fall within the exceptional and specifically defined jurisdiction of the Council of State. This principle is further confirmed by Article 800 of the Code of Civil and Administrative Procedure (CCAP), which expressly recognizes administrative courts as the courts of general jurisdiction in administrative disputes.

2 .Jurisdiction of the Administrative Courts

Administrative courts have jurisdiction to hear administrative disputes as courts of first instance, and their judgments are subject to appeal. This jurisdiction applies whenever the State, a wilaya (province), a municipality, or a public administrative institution is a party to the dispute, as provided under Article 800(2) of the Code of Civil and Administrative Procedure.

These courts are also competent to hear actions for annulment, actions for interpretation, and actions for judicial review of the legality of administrative decisions issued by provincial authorities, decentralized state services at the provincial level, municipalities and their administrative departments, as well as local public administrative institutions. In addition, pursuant to Article 801 of the CCAP, their jurisdiction extends to actions falling within the scope of full jurisdiction (recours de pleine juridiction) and to all other matters assigned to them under special legislative provisions.

Nevertheless, certain disputes remain outside the jurisdiction of the administrative courts despite the involvement of an administrative authority. Such disputes fall within the jurisdiction of the ordinary courts, including traffic violations and claims for damages arising from accidents involving vehicles owned by the State, municipalities, or public administrative institutions, in accordance with Article 802 of the CCAP. Likewise, the disputes referred to in Article 901(1) of the same Code fall within the original jurisdiction of the Council of State, which has exclusive competence to hear actions for annulment, interpretation, and judicial review concerning decisions issued by central administrative authorities.

With regard to territorial jurisdiction, Article 803 of the CCAP provides that the applicable rules are those laid down in Articles 37 and 38 of the same Code. As a general rule, proceedings must be brought before the administrative court within whose territorial jurisdiction the

[2]- Saida Aarab and Abdelkrim Ben Mansour, "On the Extent of Adherence to the Principle of Two-Tiered Litigation in Administrative Matters," Ma'alim Journal for Legal and Political Studies, Vol. 5, No. 1, 2021, p. 32.

defendant is domiciled, the obligation is to be performed, or the event giving rise to the dispute occurred.

However, Article 804 establishes several exceptions applicable to specific categories of administrative disputes. Tax disputes must be brought before the court within whose jurisdiction the tax was imposed, while public works disputes are heard by the court in whose jurisdiction the works are carried out. In matters relating to administrative contracts, jurisdiction belongs to the court within whose jurisdiction the contract was concluded or performed.

This exceptional regime also extends to disputes involving public employees, medical services, procurement, public works, and technical services. In such cases, jurisdiction lies with the court where the appointment was made, the contractual obligation was performed, or the service was provided, depending on the nature of the dispute. Actions for compensation arising from tortious acts must be brought before the court having jurisdiction over the place where the harmful act occurred. Furthermore, disputes concerning the enforcement of administrative judgments are heard by the same administrative court that rendered the judgment in question, thereby ensuring the proper execution of judicial decisions.

Finally, pursuant to Article 805, the administrative court having territorial jurisdiction over the principal claim is likewise competent to hear ancillary, counterclaims, and incidental claims, provided that they fall within its subject-matter jurisdiction. The same court is also competent to decide jurisdictional objections falling within its authority. Moreover, Article 807 provides that both subject-matter jurisdiction and territorial jurisdiction of administrative courts are matters of public policy. Consequently, lack of jurisdiction may be raised at any stage of the proceedings, and the court is required to raise the issue on its own motion whenever it becomes apparent.

With regard to the organization of the administrative courts, Executive Decree No. 98-356 of 14 November 1998 provides[3], in Article 5, that each administrative court shall consist of one to three chambers, and that each chamber may be divided into a minimum of two and a maximum of four sections. The number of chambers and sections within each administrative court is determined by a decision of the Minister of Justice. Each administrative court also has a Registry Office (Greffe) responsible for the administrative and organizational functions necessary to ensure the proper functioning of judicial proceedings. This internal organizational structure contributes to the efficient management of cases, promotes judicial specialization, and enhances the accuracy and consistency of decisions in administrative disputes.

The composition of the administrative courts comprises two essential elements: the institutional composition of the court and the judicial panel responsible for adjudication, as provided by Law No. 98-02 on Administrative Courts.

Each administrative court is composed of a President appointed by Presidential Decree, assisted by judges holding the rank of Counsellor (Conseiller). It also includes a Chief Registrar and other registry officials responsible for the administrative management of the court and the recording of judicial proceedings. In addition, a Government Commissioner (Commissaire d'État) is attached to the court to represent the administrative prosecution service by presenting legal submissions and observations before the judicial panel.

According to Article 3 of Law No. 98-02, judgments of the administrative court are valid only when rendered by a collegiate bench composed of at least three judges, including a

[3]- Executive Decree No. 98-356 dated November 14, 1998, determining the modalities for implementing the provisions of Law No. 98-02 dated May 30, 1998, relating to administrative courts (Official Gazette No. 85 dated November 15, 1998), as amended by Executive Decree No. 11-195 dated May 22, 2011 (Official Gazette No. 29 dated May 22, 2011).

President and two associate judges holding the rank of Counsellor. This collegiate composition is intended to ensure collective deliberation, judicial impartiality, and a higher standard of legal reasoning in the adjudication of administrative disputes.

Second Requirement: Administrative Courts of Appeal in Algeria

The establishment of the Administrative Courts of Appeal constitutes one of the most significant reforms of the Algerian administrative judicial system. Their creation represents the practical implementation of the principle of two-tier litigation in administrative matters, particularly following the 2020 Constitutional Amendment, which required the restructuring of the administrative judiciary in order to ensure more effective judicial review of judgments rendered by the administrative courts. These courts occupy a pivotal position within the administrative judicial hierarchy, serving as an intermediate level between the administrative courts of first instance and the Council of State. As such, they strengthen the guarantees of a fair trial and reinforce the principle of judicial review of administrative judicial decisions.[4]

The Algerian legislature has not provided an explicit legal definition of the Administrative Court of Appeal. Instead, it has confined itself to establishing these courts and defining their jurisdiction, leaving the task of formulating a precise definition to legal scholarship and administrative jurisprudence. Accordingly, their concept may be understood by reference to the general notion of administrative courts and the role they perform within the administrative judicial system.

Administrative courts are courts of general jurisdiction in administrative disputes. They exercise original jurisdiction over cases in which the State, a wilaya (province), a municipality, or a public administrative institution is a party, and they render judgments that are subject to appeal. These proceedings possess a distinctive legal character, as they constitute an important mechanism through which individuals may safeguard the principle of legality and challenge the actions of public authorities, particularly by means of actions for annulment and actions for judicial review of the legality of administrative decisions[5].

Administrative justice, more broadly, is a specialized branch of the judiciary entrusted with adjudicating disputes involving public authorities acting in the exercise of public power. It applies the principles and rules of public law to administrative disputes and seeks to regulate the relationship between the administration and individuals in a manner that serves the public interest while maintaining a fair balance between governmental authority and the protection of individual rights.[6]

An appeal is the legal remedy through which a judgment rendered by a court of first instance is challenged before a higher court for reconsideration. The appellate court may uphold, reverse, or amend the judgment under appeal. Accordingly, the function of an appeal extends beyond merely reviewing the correctness of the lower court's decision; it involves a comprehensive re-examination of the case, including both the factual circumstances and the legal

[4]- Fatima Al-Zahra Al-Fassi, Administrative Courts of Appeal in Algeria: Foundations and Effects, Journal of Comparative Legal Studies, Vol. 9, No. 1, 2023, p. 320.

[5]- Boukouba Khaled & Goursas Marwa, "Organic and Functional Provisions Governing the Administrative Court of Appeal in Algerian Legislation: In Light of Recent Legal Developments Aligned with the 2020 Constitutional Amendment," *Al-Nibras Journal for Legal Studies*, Vol. 7, No. 2, 2024, p. 42.

[6]- Shahira Boulahia, "The Extent of Administrative Judiciary Authority over the Administration," *Journal of Judicial Precedent*, Vol. 2, No. 2, 2006, p. 277.

characterization of the dispute, thereby ensuring a more accurate and effective administration of justice.[7]

From these definitions, it is evident that the Administrative Court of Appeal serves as the intermediary judicial body between the court of first instance and the higher level of administrative litigation. It is entrusted with hearing appeals against judgments rendered by the administrative courts and functions as a court of merits, re-examining the dispute in its entirety after the issuance of the first-instance judgment.

Accordingly, the Administrative Court of Appeal may be defined as a recently established judicial institution created within the framework of the legislative and institutional reforms affecting the Algerian administrative judicial system, in implementation of the constitutional provisions. It was established as the second level of administrative litigation, with jurisdiction to hear appeals against judgments and orders issued by the administrative courts. In addition, it has been vested with competence to adjudicate matters specifically assigned to it by legislative provisions, reflecting the legislature's commitment to strengthening the principle of two-tier litigation and expanding judicial oversight over administrative action.

The primary function of the Administrative Court of Appeal is to conduct a full reconsideration of the dispute in both its factual and legal dimensions. Its role is not confined to reviewing the correctness or legality of the first-instance judgment; rather, it reassesses the case in its entirety, enabling it to uphold, amend, or set aside the appealed judgment and, where appropriate, render a new judgment on the merits. Consequently, the Administrative Court of Appeal occupies an intermediate position between the administrative courts and the Council of State, thereby contributing to a more balanced and effective system of judicial review. In most cases, its judgment constitutes the final and binding decision upon the parties, subject only to the exceptional remedies provided by law.[8]

With regard to the composition of the Administrative Courts of Appeal, the constitutional framers, through the most recent constitutional amendment, provided for their establishment without setting out their internal organizational structure in detail. The Constitution merely recognized them as judicial bodies within the administrative judicial system, leaving the determination of their organization and composition to subsequent legislative and regulatory enactments. In this context, several implementing regulations were issued to define the general framework of these courts, including provisions governing the appointment of their Presidents and Government Commissioners. This confirms that the Administrative Courts of Appeal are independent judicial institutions with their own organizational and functional autonomy, distinct from the Council of State, while the latter remains the highest administrative judicial authority entrusted with exercising judicial supervision over their decisions.[9]

Following the subsequent amendments to the Code of Civil and Administrative Procedure and the related implementing regulations, the legal framework governing the composition of the Administrative Courts of Appeal was more clearly defined. These reforms established the principal judicial structures of the courts, including their chambers and judicial formations, while also specifying the judicial personnel responsible for carrying out adjudicative functions within

[7]- Redha Chalali, Salma Latrach, and Ahmed Abderrahmane Ben Salem, "Challenging Criminal Judgments via Appeal and Its Role in Strengthening the Right to a Fair Trial under Algerian Legislation," *Afaq Journal for Sciences*, Vol. 6, No. 1, 2021, p. 210.

[8]- Narjis Aliwa and Rima Masikal, Application of the Principle of Two-Tiered Litigation in Felony Cases, Master's Thesis, Faculty of Law and Political Science, University of Skikda, 2024/2025, p. 36.

[9]- Linda Belhouchat, Administrative Courts of Appeal in Light of Law 22-13, International Journal of Legal and Political Research, Vol. 8, No. 3, 2024, p. 261.

them. This comprehensive organizational framework reflects the legislature's commitment to ensuring the effective operation of these newly established courts and enabling them to fulfill their role in consolidating the principle of two-tier litigation in administrative matters. It also demonstrates a balanced institutional approach that combines the functional independence of the Administrative Courts of Appeal with the supreme judicial supervision exercised by the Council of State.[10]

1. Organization of the Administrative Courts of Appeal

The organization of the Administrative Courts of Appeal constitutes one of the fundamental pillars of the two-tier litigation system in administrative matters. Their organization extends beyond defining their judicial composition to encompass the various internal structures necessary to ensure their proper functioning and the effective discharge of their judicial responsibilities. The establishment of these courts forms part of the broader legislative reforms introduced to modernize the Algerian administrative judicial system, with the objective of strengthening the guarantees of justice and providing more effective judicial scrutiny of judgments rendered by the administrative courts.[11]

Accordingly, a study of the organization of the Administrative Courts of Appeal requires, first, an examination of their judicial composition, which constitutes the institutional foundation of these courts. This includes the number of judges assigned to them, the conditions governing their appointment, and their professional ranks, all of which have a direct impact on the quality and consistency of the judgments they render. Secondly, such a study requires an analysis of their internal organizational structure, comprising both judicial bodies, such as the various chambers, and the administrative and support units that facilitate the efficient administration of justice. Together, these institutional components ensure coherence, specialization, and effectiveness in the adjudication of cases brought before the Administrative Courts of Appeal.[12]

2 .Judicial Composition of the Administrative Courts of Appeal

The judicial composition of the Administrative Courts of Appeal is governed by Article 900 bis of Law No. 22-13. Under this provision, these courts adjudicate cases through a collegiate judicial panel composed of at least three judges. This reflects the collective nature of decision-making at the appellate level in administrative litigation and is intended to strengthen the guarantees of a fair trial while enhancing the accuracy and quality of judicial decisions.

This organizational framework differs from certain forms of judicial composition adopted in the ordinary judiciary. Although the Courts of Appeal in the ordinary judicial system also hear appeals through collegiate panels, the legislature has placed particular emphasis on the specialized character of the administrative appellate bench by requiring a minimum number of judges without prescribing a maximum. This approach provides greater flexibility in organizing judicial work according to the complexity and significance of the cases before the court. It also demonstrates that the legislature sought not merely to preserve the principle of collegiality, but to adapt it to the distinctive nature of administrative justice, which requires specialized legal expertise in resolving disputes involving public authorities.

[10]- Bounaas Nadia, "Developments in Judicial Jurisdiction in Administrative Matters under Law 22-13 Amending and Supplementing the Code of Civil and Administrative Procedure," Journal of Legal and Political Thought, Vol. 7, No. 2, 2023, p. 31.

[11] - Ben Mansour Abdelkrim & Aarab Saida, "The Extent to Which the Principle of Two-Tiered Litigation Is Respected in Administrative Matters," Ma'alim Journal for Legal and Political Studies, Vol. 5, No. 1, 2021, p. 43.

[12]- Omar Ghoul, The Organization of Administrative Courts of Appeal Compared to Administrative Courts in Algeria, Eliza Journal for Research and Studies, Vol. 10, No. 1, 2025, p. 549.

Furthermore, the composition of the Administrative Court of Appeal is determined not only by numerical requirements but also by the professional qualifications and experience of its judges. The judicial panel must consist of a President and at least two associate judges, all of whom must hold the rank of Counsellor (Conseiller). This requirement reflects the legislature's intention to entrust appellate review to judges possessing a high level of professional competence, given the importance of appellate proceedings and their direct impact on the legal rights and positions of the parties.

This legislative choice confirms that the role of the Administrative Court of Appeal extends beyond a formal review of the first-instance judgment. Rather, it is empowered to undertake a comprehensive reassessment of the dispute in both its factual and legal aspects. Such a function requires judges with the expertise necessary to conduct careful legal analysis and apply the law accurately. Consequently, the requirement that all members of the judicial panel hold the rank of Counsellor demonstrates the legislature's commitment to ensuring the quality of judicial decision-making and enhancing the standard of judgments delivered by this court.

Accordingly, the Administrative Court of Appeal sits as a collegiate judicial body composed of at least three judges, including a President and two associate judges, all holding the rank of Counsellor. This composition reinforces the principle of judicial specialization and enhances the effectiveness of administrative justice at the appellate stage, thereby achieving an appropriate balance between safeguarding the rights of litigants and ensuring the proper administration of administrative justice.

3 .Organizational Structure of the Administrative Court of Appeal

The organizational structure of the Administrative Court of Appeal consists of a number of judicial and non-judicial bodies that operate in an integrated manner to ensure the efficient functioning of the administrative judiciary. This structure is based on a clear allocation of responsibilities within the court, thereby promoting efficiency, specialization, and accuracy in the adjudication of administrative disputes.

Among the judicial structures, the chambers constitute one of the principal organizational components of the Administrative Court of Appeal. Their organization is governed by Organic Law No. 22-10, whose Article 34 provides that each Administrative Court of Appeal shall be composed of a number of chambers determined according to the nature and volume of its judicial activity. The number of chambers is fixed by decision of the President of the competent judicial authority after consultation with the Government Commissioner (Commissaire d'État). Where necessary, these chambers may be divided into specialized sections in accordance with the requirements of judicial administration, thereby facilitating the allocation and specialization of cases according to their nature. This organizational flexibility reflects the legislature's intention to enable the Administrative Courts of Appeal to adapt efficiently to the volume and diversity of administrative disputes brought before them.

Another essential component of the court's judicial structure is the Government Commissioner, who performs a central role within the Administrative Court of Appeal. Article 36 of Organic Law No. 22-10 provides that the Government Commissioner shall exercise the functions assigned to him under the Code of Civil and Administrative Procedure and other special legislative provisions. Accordingly, the Government Commissioner plays an active role in administrative proceedings by presenting legal submissions, opinions, and observations that assist the court in reaching a well-founded legal determination of the disputes submitted for its consideration.

With regard to the non-judicial structures, the principal component is the Registry Office (Greffe), which serves as the administrative support body responsible for the organization and

management of judicial operations. Article 6 of Executive Decree No. 98-356 regulates this structure by defining the functions of the Registry Office, which is entrusted with the administration of procedural and administrative matters relating to cases. The Registry is headed by Chief Registrars, assisted by other registry officials, who perform their duties under the authority and supervision of both the Government Commissioner (Commissaire d'État) and the President of the Administrative Court of Appeal. This organizational framework underscores the essential role of the administrative apparatus in supporting judicial functions and ensuring the efficient management of case files and judicial proceedings.[13]

With regard to its jurisdiction, the Administrative Court of Appeal, pursuant to Article 29 of the Organic Law governing its organization, has jurisdiction to hear appeals against judgments and orders rendered by the administrative courts. It also has jurisdiction over matters expressly assigned to it by special legislative provisions. This appellate jurisdiction establishes the Administrative Court of Appeal as the second level of judicial review in administrative litigation, enabling it to re-examine administrative disputes in their entirety, thereby giving full effect to the principle of two-tier litigation and strengthening judicial oversight of decisions rendered by the administrative courts at first instance[14].

THE SECOND TOPIC: Litigation at the Second Level of Jurisdiction

Litigation at the second level of jurisdiction constitutes one of the fundamental pillars of the two-tier litigation system in administrative matters. Its principal objective is to strengthen judicial supervision over judgments delivered by courts of first instance by ensuring that administrative disputes are re-examined so that any factual or legal errors may be corrected. This level of judicial review reflects a significant development in the organization of the Algerian administrative judiciary through the establishment of a comprehensive judicial system based on a hierarchical structure for the examination and adjudication of administrative disputes.

A greater degree of institutional balance between the ordinary judiciary and the administrative judiciary has been achieved through the establishment of a specialized appellate body for administrative matters. This reform was formally enshrined by the Algerian legislature through the 2020 Constitutional Amendment, particularly Article 179 of the Constitution, which provides for the establishment of the Administrative Courts of Appeal.

This important legislative development requires an examination of the institutional framework governing this newly established judicial body, together with an analysis of the principal legal effects arising from appeals brought before it, particularly the suspensive effect and the devolutive effect of an appeal. The creation of the Administrative Courts of Appeal constitutes a legislative response to a number of practical and legal challenges that had previously hindered the effective implementation of the principle of two-tier litigation in administrative matters.

In this context, litigation at the second level of jurisdiction is exercised through two principal judicial bodies. The first consists of the Administrative Courts of Appeal, which are entrusted with reviewing judgments rendered at first instance by the administrative courts, thereby ensuring effective judicial scrutiny of those decisions. The second is the Council of State, the highest judicial authority within the administrative judiciary, which is responsible for

[13]- Khadija Laaribi, The Legal Framework of Administrative Courts of Appeal, Mentouri Brothers University – Constantine, Journal of Humanities, Vol. 34, No. 4, 2023, p. 329.

[14]- Haddad Nacer and Ben Aissa Saleh, Administrative Courts of Appeal, supplementary thesis for the Master's degree, specialization in Administrative Law, Faculty of Law and Political Science, Department of Law, Hadj Lakhdar University (Batna 1), 2023–2024, p. 29.

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ensuring the uniformity of judicial interpretation, supervising the proper application of the law, and adjudicating appeals brought against decisions of the administrative courts in accordance with the provisions of the law.

First Requirement: Administrative Courts of Appeal

The Administrative Courts of Appeal represent one of the most significant developments in the organization of the Algerian administrative judiciary, as they constitute the second level of administrative litigation and provide the practical implementation of the principle of two-tier litigation. These courts were established to strengthen judicial review of judgments rendered by the administrative courts and to ensure a comprehensive re-examination of administrative disputes within a legal framework that balances the protection of litigants' rights with the need to preserve the stability and consistency of judicial decisions. Their establishment therefore marks a major institutional advancement in the structure of the Algerian administrative justice system.[15]

In this regard, the study of the Administrative Courts of Appeal may be approached through two principal aspects. The first concerns their judicial jurisdiction, which defines the scope of their authority to hear appeals against judgments rendered by the administrative courts at first instance, as well as the powers vested in them to reassess the facts of the case and apply the relevant rules of law. The second concerns the procedural framework governing appellate proceedings, which is regulated by a set of substantive and procedural rules governing the institution of appeals and the conduct of proceedings before these courts. These rules are designed to safeguard the rights of the parties, ensure respect for the rights of the defence, and promote the proper administration of administrative justice.

1 .Judicial Jurisdiction of the Administrative Courts of Appeal

The determination of the judicial jurisdiction of the Administrative Courts of Appeal constitutes a fundamental aspect of the organization of the administrative judiciary, as it gives practical effect to the principle of two-tier litigation by defining the scope of these courts' authority to review judgments rendered by the administrative courts at first instance. The Administrative Court of Appeal is not merely an additional level within the judicial hierarchy; rather, it serves as a pivotal institution for ensuring the correct application of the law and promoting consistency and coherence in administrative judicial jurisprudence.[16]

The establishment of the Administrative Courts of Appeal formed part of the constitutional and legislative reforms undertaken to modernize the Algerian judicial system. These reforms were intended to redistribute jurisdiction among the various administrative judicial bodies in order to enhance the efficiency of dispute resolution and strengthen the guarantees of a fair trial. Accordingly, an examination of the judicial jurisdiction of the Administrative Courts of Appeal is of particular importance, as it defines both the categories of cases falling within their competence and the scope of their authority to review and reconsider judgments rendered by the administrative courts at first instance.[17]

A. Territorial Jurisdiction of the Administrative Courts of Appeal

[15]- Fatima Al-Zahra Al-Fassi, "Administrative Courts of Appeal in Algeria: Foundations and Effects," Journal of Comparative Studies, Vol. 9, No. 1, 2023, p. 319.

[16]- Nadia Bounaas, "Developments in Judicial Jurisdiction in Administrative Matters under Law 22-13 Amending and Supplementing the Code of Civil and Administrative Procedure," Journal of Legal and Political Thought, Vol. 7, No. 2, 2023, p. 42.

[17]- Farid Cherifi & Mohamed Salah Ben Aoumer, "The Establishment of Administrative Courts of Appeal in Algeria," Law and Society Journal, Vol. 12, No. 1, 2024, p. 142.

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The territorial jurisdiction of the Administrative Courts of Appeal in Algeria is determined on the basis of Law No. 22-07 on Judicial Organization, together with the relevant implementing regulations, particularly Executive Decree No. 22-435.[18] This is especially significant given the absence of a detailed and direct territorial allocation in Organic Law No. 22-10 on Judicial Organization or in Law No. 22-13 amending and supplementing the Code of Civil and Administrative Procedure. The territorial structure is based on the establishment of six Administrative Courts of Appeal, distributed in a manner intended to ensure nationwide coverage and facilitate access to appellate administrative justice.

Under this territorial division, the Administrative Court of Appeal of Algiers has jurisdiction over appeals arising from the administrative courts located in the wilayas of Algiers, Blida, Tizi Ouzou, Djelfa, Médéa, M'Sila, Boumerdès, Tipaza, and Aïn Defla.

The Administrative Court of Appeal of Oran has jurisdiction over the wilayas of Oran, Tlemcen, Tiaret, Saïda, Sidi Bel Abbès, Mostaganem, Mascara, El Bayadh, Tissemsilt, Aïn Témouchent, Relizane, and Chlef.

The Administrative Court of Appeal of Constantine has jurisdiction over the wilayas of Constantine, Oum El Bouaghi, Batna, Béjaïa, Jijel, Sétif, Skikda, Annaba, Guelma, Bordj Bou Arréridj, El Tarf, Souk Ahras, Mila, Tébessa, and Khenchela.

The territorial jurisdiction of the Administrative Court of Appeal of Ouargla extends to the wilayas of Ouargla, Ghardaïa, Laghouat, El Oued, Biskra, Ouled Djellal, Illizi, Touggourt, Djanet, El M'Ghair, and El Meniaa.

The Administrative Court of Appeal of Tamanrasset has jurisdiction over the wilayas of Tamanrasset, In Salah, and In Guezzam, while the Administrative Court of Appeal of Béchar has jurisdiction over the wilayas of Béchar, Adrar, Tindouf, Naâma, Timimoun, Bordj Badji Mokhtar, and Béni Abbès.

This territorial distribution is intended to achieve a more balanced geographical allocation of appellate administrative justice and to bring judicial services closer to litigants. It thereby enhances the effectiveness of the administrative judicial system and reduces the travel burden imposed on the parties.

B. Subject-Matter Jurisdiction of the Administrative Courts of Appeal

The subject-matter jurisdiction of the Administrative Courts of Appeal is determined by their status as the second-tier courts within the Algerian administrative judicial system. The Algerian legislature has conferred upon them general appellate jurisdiction to hear appeals lodged against judgments and orders rendered by the administrative courts. This jurisdiction is established under several legislative provisions, most notably Article 29 of the Organic Law on Judicial Organization and Article 900 bis of the Code of Civil and Administrative Procedure, as amended and supplemented by Law No. 22-13.[19]

Pursuant to these provisions, the Administrative Courts of Appeal are empowered to reconsider first-instance judgments with respect to both matters of fact and questions of law. This gives practical effect to the principle of two-tier litigation in administrative matters and ensures effective judicial review of decisions rendered at first instance.

[18]– Executive Decree No. 22-435 dated 17 Jumada al-Ula 1444, corresponding to December 11, 2022, defining the territorial jurisdictions of administrative courts of appeal and administrative courts; Official Gazette of the Algerian Republic, Issue No. 84, published on December 14, 2022.

[19]- Ahcene Gharbi, "Rules of Subject-Matter Jurisdiction for Administrative Courts under the Civil and Administrative Procedure Law: A Study in Light of the 2022 Amendment," Vol. 2, No. 3, December 2023, p. 241.

It should also be noted that the legislature has conferred additional subject-matter jurisdiction upon certain Administrative Courts of Appeal, particularly the Administrative Court of Appeal of Algiers. This court may adjudicate, as a court of first instance, certain actions relating to administrative disputes involving central public authorities, especially actions for annulment, interpretation, and assessment of legality. Judgments rendered in such cases may be appealed before the Council of State.

This allocation of jurisdiction reflects a form of functional hierarchy within the administrative judiciary, whereby certain judicial bodies combine two capacities: they act as courts of first instance within a limited sphere of jurisdiction, while generally serving as appellate courts. This arrangement contributes to greater efficiency in resolving disputes involving the central administration and, at the same time, strengthens judicial oversight of its actions.[20]

It is also noteworthy that the Algerian legislature adopted this new judicial framework with the objective of reducing the workload previously borne by the Council of State, which had formerly exercised original and final jurisdiction over certain disputes involving central public authorities. This constituted an exception to the principle of two-tier litigation. With the establishment of the Administrative Courts of Appeal, this principle has been significantly reinforced and more firmly embedded within the Algerian administrative judicial system.

During the transitional period, and in view of the recent establishment of these courts, Organic Law No. 22-10 provided that the Council of State would continue, on a temporary basis, to exercise appellate jurisdiction over judgments rendered by the administrative courts until the Administrative Courts of Appeal became fully operational. This transitional arrangement ensured the uninterrupted functioning of the administrative judicial system and preserved the continuity of the public judicial service.

2 .The Effects of Implementing the Principle of Two-Tier Litigation in Administrative Matters

The implementation of the principle of two-tier litigation in administrative matters gives rise to a number of legal and procedural consequences that reflect the essential role of appellate review in safeguarding the rights of litigants and ensuring effective judicial oversight of judgments rendered by courts of first instance. The filing of an appeal does not merely result in the re-examination of the dispute by a higher judicial authority; rather, its effects extend to the conduct of the proceedings and the enforcement of the challenged judgment, thereby maintaining an appropriate balance between the finality of judicial decisions and the litigant's right to have those decisions reviewed.[21]

Within this framework, the first effect of an appeal is its devolutive effect, whereby the dispute is transferred from the court of first instance to the appellate court for reconsideration of both the facts and the law, within the limits defined by the grounds of appeal. This effect gives practical expression to the principle of two-tier litigation. The second effect is the suspensive effect of the appeal, under which enforcement of the challenged judgment may be suspended in certain cases until a final decision is rendered on the appeal. This serves to protect the interests

[20]- Gharbi Ahsan, "The Distribution of Jurisdiction Among Administrative Judicial Bodies in Algeria," Journal of Humanities and Social Sciences, Vol. 1, No. 4, 2020, p. 161.

[21] - Ismail Latrach, "Activating the Principle of Two-Tiered Litigation in Administrative Matters and Its Impact under Algerian Legislation," Politics and Law Notebooks Journal, Vol. 16, No. 1, 2024, p. 81.

of the parties and to prevent the execution of a judgment that may subsequently be amended or overturned.

A. The Devolutive Effect of an Appeal

The lodging of an appeal in administrative matters gives rise to a fundamental procedural consequence, namely the transfer of the dispute from the court of first instance to a higher court for a fresh examination. This is commonly referred to as the devolutive effect of the appeal. It constitutes one of the most significant manifestations of the principle of two-tier litigation, as it ensures that the findings of the court of first instance are not regarded as conclusive, but instead allows the case to be re-examined within the scope of the issues challenged by the appeal.[22]

Legal scholars, including Professor Ahmed Abu Al-Wafa, have maintained that an appeal places the dispute before the appellate court for a fresh determination within the limits of the appellant's claims. In exercising its appellate jurisdiction, the court enjoys the same powers as the court of first instance with respect to examining the facts, evaluating the evidence, and applying the appropriate rule of law. This enables it to rectify any factual or legal errors that may have affected the first-instance judgment.

The effectiveness of this devolutive effect requires that the scope of the dispute before the appellate court remain fundamentally confined to the issues that were previously submitted to the court of first instance. As a general rule, new matters that would alter the nature or subject matter of the dispute may not be introduced, thereby preserving the principle of two-tier litigation and ensuring legal certainty. Likewise, the evidence and legal arguments presented before the court of first instance are transferred to the appellate stage. Nevertheless, the parties may raise new arguments before the appellate court, provided that they are connected to the original dispute and do not fundamentally alter its subject matter. This approach strengthens the right of defence while maintaining an appropriate balance between legal certainty and the interests of justice.

Furthermore, the principle of party disposition plays a significant role in defining the scope of the proceedings before the appellate court, as it is the parties themselves who determine the limits of the dispute through their claims and grounds of appeal. Consequently, only those parts of the first-instance judgment that have been challenged are transferred to the appellate court for review. Where the judgment contains several distinct components, the appeal may be directed against only a specific part, unless the different elements of the judgment are so closely interconnected as to be indivisible. Similarly, where the subject matter of the dispute is itself indivisible, the appeal transfers the entire dispute to the appellate court. Moreover, where the appeal is based on a plea of procedural nullity and the appellate court finds that the plea is well founded, it is required to proceed to determine the merits of the case.

here are, however, certain exceptions that limit the operation of the devolutive effect of an appeal. These include interlocutory decisions and procedural orders issued during the course of the proceedings that are not independently appealable, as they become subject to review only upon an appeal against the final judgment. Likewise, where a judgment is composed of interdependent elements, an appeal against one part may automatically extend to the related parts. Similarly, an appeal directed against the principal claim may also extend to ancillary or alternative claims that are legally dependent upon it.

[22]- Soumaya Kraoune & Asma Kraoune, "The Effects of Appealing Administrative Court Judgments Before the Council of State Under the Code of Civil and Administrative Procedure," Al-Bahith Journal for Academic Studies, Vol. 3, No. 2, June 2016, p. 529.

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B. The Suspensive Effect of an Appeal

In addition to its devolutive effect, an appeal also produces a suspensive effect. This means that, in certain circumstances, the lodging of an appeal suspends the enforcement of the challenged judgment or, at the very least, temporarily suspends its legal effects until the appellate court renders its final decision. The purpose of this effect is to protect litigants from the execution of a judgment that may subsequently be found to be defective or legally erroneous, thereby preventing harm that could otherwise prove impossible or difficult to remedy.[23]

This suspensive effect, however, is not absolute. Rather, it is subject to a number of statutory limitations established by law. The legislature may expressly provide that an appeal does not suspend enforcement in certain circumstances, particularly where the judgment is declared provisionally enforceable. Conversely, the appellate court may order the suspension of enforcement where specific legal conditions are satisfied, such as the existence of a risk arising from immediate enforcement or the presence of serious grounds supporting the appeal.

Accordingly, the suspensive effect serves as a mechanism for balancing the successful party's interest in the prompt enforcement of the judgment against the appellant's interest in avoiding the execution of a judgment that may subsequently be reversed or set aside. In this way, it reflects the legislature's commitment to achieving procedural fairness within the framework of the principle of two-tier litigation.

Second Requirement: The Council of State as the Supreme Level of Judicial Review

The Council of State occupies the highest position within the Algerian administrative judicial hierarchy, serving as the supreme judicial authority responsible for adjudicating administrative disputes. In addition to its judicial functions, it also performs important supervisory and advisory roles in matters relating to administrative action. The Council of State plays a pivotal role in upholding the principle of legality and ensuring the correct application of the law. It also constitutes a fundamental guarantee for maintaining the uniformity of administrative judicial jurisprudence and promoting the stability of legal principles, particularly within Algeria's dual system of judicial organization, which is based on the coexistence of separate administrative and ordinary courts.[24]

1 .Organization of the Council of State

The administrative judiciary in Algeria has undergone more than a partial institutional reform; it has experienced a comprehensive restructuring affecting all levels of its judicial hierarchy, with the primary objective of giving effective practical effect to the principle of two-tier litigation in administrative matters. These reforms encompassed the reorganization of the Administrative Courts, the establishment of the Administrative Courts of Appeal, and the redefinition of the position of the Council of State within this new judicial framework, reaffirming its status as the highest authority in the administrative judicial hierarchy.[25]

In this context, the Council of State no longer exercises the same role that it performed under the previous judicial framework. Its jurisdiction has instead been redefined in a manner consistent with the principle of judicial hierarchy. Article 2 of Organic Law No. 98-01, relating to the jurisdiction, organization, and functioning of the Council of State, as amended and supplemented, provides that the Council of State is the judicial body responsible for reviewing

[23]- Abdelhamid Amara, "The Devolutive Effect of Appealing a Criminal Court Judgment," Journal of Legal and Political Sciences, Vol. 10, No. 2, 2019, p. 231.

[24]- Alaoui Issa, "The Role of the Council of State in Administrative Justice," Afaq Journal for Sciences, Vol. 1, No. 5, January 2017, p. 50.

[25]- Warda Khelifi, "The Role of Newly Established Administrative Judicial Bodies in Readjusting the Judicial Structure in Algeria," Journal of Rights and Freedoms, Vol. 13, No. 1, 2025, p. 121.

the work of the administrative courts and acts as a court of law. Its principal function is to adjudicate appeals on points of law lodged against final judgments and decisions rendered by administrative judicial authorities. Its jurisdiction also extends to appeals on points of law assigned to it under special statutory provisions, as further confirmed by Article 9 of Organic Law No. 22-11 relating to the organization, functioning, and jurisdiction of the Council of State.

It may be observed that the legislature's use of the phrase "pursuant to special statutory provisions" reflects a degree of legislative flexibility in defining the jurisdiction of the Council of State. This wording allows new categories of cases to be brought within its jurisdiction in the future without requiring a direct amendment to the general legislative framework. Accordingly, any matter expressly assigned to the Council of State by a special law may automatically fall within the scope of its jurisdiction. This enhances the effectiveness of the administrative judicial system and enables it to adapt progressively to future legal and institutional developments.[26]

In addition to its function as a court of cassation, the Council of State also exercises appellate jurisdiction over decisions rendered by the Administrative Court of Appeal of Algiers in actions for annulment, interpretation, and review of the legality of administrative decisions issued by central governmental authorities, national public bodies, and national professional organizations, pursuant to Article 10 of Organic Law No. 22-11. Consequently, the Council of State now performs a dual judicial function, serving both as a court of cassation and, within a limited sphere of jurisdiction, as an appellate court.

This new institutional framework has fundamentally redefined the position of the Council of State within the Algerian administrative judicial hierarchy. It now acts as a second-tier court in certain categories of administrative disputes, particularly those involving decisions issued by central public authorities, whereas it had previously exercised original and final jurisdiction over such matters. This transformation constitutes a clear manifestation of the principle of two-tier litigation and reinforces the guarantees of judicial justice by allowing judgments to be reviewed by a higher judicial authority.

The establishment of the Administrative Courts of Appeal has also resulted in a more balanced allocation of judicial jurisdiction. It has relieved the Council of State of the substantial workload that arose from simultaneously exercising extensive original and appellate jurisdiction. Under the new framework, the Council of State performs a more specialized role, concentrating primarily on ensuring the correct application of the law as a court of cassation, while retaining appellate jurisdiction in a narrowly defined category of cases. Furthermore, this institutional reorganization has enhanced the efficiency of the administrative judiciary by transferring a number of original jurisdiction cases that had previously burdened the Council of State to the Administrative Courts of Appeal. This redistribution of judicial responsibilities has promoted a more effective allocation of judicial functions and contributed to the more expeditious resolution of administrative disputes.[27]

Accordingly, it may be concluded that the restructuring of the administrative judiciary in Algeria, particularly following the establishment of the Administrative Courts of Appeal, has produced several significant outcomes. Most notably, it has given full practical effect to the principle of two-tier litigation and has facilitated a more balanced distribution of jurisdiction among the various administrative judicial bodies. This institutional reform has promoted an

[26]- Laila Jamal and Jamal Maqrani, "The Fluctuation of the State Council's Judicial Jurisdiction Between the Constitution and Legislation," Journal of Research and Studies, Vol. 17, No. 1, 2020, p. 130.

[27]- Warda Khelifi, op. cit., p. 110.

appropriate balance between the efficiency of the administrative justice system and the protection of litigants' rights to challenge and obtain judicial review of court decisions.

2 .The Powers of the Council of State to Determine the Merits of the Dispute

The power to determine the merits of the dispute (pouvoir d'évocation) refers to the authority vested in the appellate court to decide an issue that has not previously been adjudicated by the court of first instance, notwithstanding its connection with the original dispute, where the appellate court considers that ruling on the matter would serve the proper administration of justice and lead to the final resolution of the dispute without unnecessarily prolonging the proceedings. Accordingly, this power constitutes an exception to the devolutive effect of an appeal, as it permits the appellate court to extend the scope of its review to include issues that were not determined by the court of first instance.[28]

Reference to the Code of Civil and Administrative Procedure reveals that the legislature expressly recognized this power in relation to the ordinary courts under Article 346, which provides" :When determining an appeal against a judgment that has ruled on a procedural objection and thereby terminated the proceedings, the Judicial Council may decide the issues that were not determined by the court of first instance if it considers that, in the interests of the proper administration of justice, doing so would provide a final resolution of the dispute, after ordering any necessary investigative measures where appropriate".

From the wording of this provision, it is evident that the legislature has conferred upon the appellate courts within the ordinary judiciary the authority to determine issues that were not adjudicated at first instance whenever the interests of justice so require. Although the legislature has not expressly provided for this power within the provisions governing the administrative judiciary, the administrative judge may draw guidance from Article 346 and apply its underlying principles where such application is compatible with the nature of administrative disputes and the fundamental principles governing administrative justice.

Nevertheless, the exercise by the Council of State of its power to determine the merits of the dispute remains subject to the limits of its jurisdiction as an appellate court. Accordingly, it may exercise this power only in matters falling within its statutory and subject-matter jurisdiction. If the Council of State concludes that the judicial body which rendered the appealed judgment lacked subject-matter jurisdiction, its role is confined to setting aside the challenged judgment on the ground of lack of jurisdiction. In such circumstances, it may neither determine the merits of the dispute nor refer the case to the competent judicial authority, unless expressly authorized to do so by law.

The jurisdiction of the Council of State in appellate proceedings comes to an end once it has rendered a final determination of the dispute on both the facts and the law. Its decision constitutes a final judgment enjoying the authority of res judicata and is not subject to a further appeal, since the Council of State occupies the highest position within the Algerian administrative judicial hierarchy. Nevertheless, its decisions remain subject to the extraordinary remedies provided by law, such as an application for retrial and the correction of material errors,

[28]- Hussein Kammoun, Lectures on Administrative Disputes, a publication intended for third-year Bachelor's students specializing in Public Law, Faculty of Law and Political Science, Akli Mohand Oulhadj University, Bouira, 2018–2019, p. 42.

within the limits and under the conditions prescribed by the Code of Civil and Administrative Procedure.[29]

Conclusion:

The entrenchment of the principle of two-tier litigation in administrative matters represents one of the most significant reforms of the Algerian judicial system, as it constitutes a fundamental safeguard for the protection of litigants' rights and the promotion of the principles of justice and the rule of law. This principle was significantly strengthened by the 2020 constitutional amendment, which expressly guaranteed the right to two-tier litigation. This constitutional development necessitated the reorganization of the administrative judiciary in a manner consistent with this objective, notably through the establishment of the Administrative Courts of Appeal and the completion of the administrative judicial structure.

This institutional framework has contributed to the establishment of a more effective system of administrative justice by enabling litigants to seek review of judgments rendered by courts of first instance before a higher judicial authority. In doing so, it reinforces the guarantees of a fair trial, reduces the risk of judicial error, and promotes greater consistency in administrative judicial jurisprudence, while enhancing the stability of legal relationships. At the same time, the Council of State continues to fulfil its role as the highest authority within the administrative judiciary by ensuring the proper application of the law and the uniformity of its interpretation, thereby strengthening legal certainty and reinforcing public confidence in the administrative justice system.

Accordingly, the entrenchment of the principle of two-tier litigation should not be regarded merely as a structural reform of the administrative judiciary. Rather, it constitutes a qualitative transformation in the development of administrative justice in Algeria, bringing the judicial system into closer alignment with constitutional principles and contemporary standards for the protection of rights and fundamental freedoms, while contributing to a more efficient, transparent, and effective system of administrative adjudication.

Recommendations

− Complete the legislative framework governing administrative litigation to ensure the effective implementation of the principle of two-tier litigation.

− Strengthen the Administrative Courts of Appeal by providing them with adequate human resources and material support to ensure the prompt adjudication of administrative disputes.

− Expand continuous training and professional development programmes for administrative judges and judicial personnel to keep pace with legislative and judicial developments.

− Promote the digital transformation of administrative litigation procedures in order to simplify judicial processes and facilitate the delivery of timely and efficient justice.

− Foster greater consistency in administrative judicial jurisprudence through the publication and dissemination of leading judicial decisions and legal principles, thereby enhancing legal certainty and promoting stability in administrative legal relations.

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