

Specialised Administrative Jurisdictions: Origin and Emergence with a Conceptual Foundation

الأقضية الإدارية المتخصصة: تأصيل للمفهوم وإبراز لكيفية النشأة والظهور

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Abstract:

Specialized administrative jurisdictions are exceptional bodies created by specific legal provisions to resolve particular conflicts, such as disciplinary and electoral disputes. These bodies function in two ways: administrative actions in their ordinary form, subject to administrative appeal in front of the competent administrative court, and "quasi-judicial" actions, subject to cassation appeal in front of the Council of State. They combine both administrative and judicial aspects. These jurisdictions differ from independent administrative authorities and diverge from ordinary administrative courts and specialized criminal judicial bodies. They have been clearly established in France, where the French Council of State has accepted their presence through various decisions. However in Algeria the concept of specialized administrative jurisdictions has a legislative origin, as the legislator has not explicitly clarified their existence.

Key words: Ordinary administrative judiciary- Council of State- Specialized administrative judiciary- Jurisdictions- Particular disputes- Disciplinary conflicts -Cassation appeal- Bayo decision- Bouguen decision- Special provisions.

Introduction:

The administrative judiciary originated in France and developed gradually accompanied by many reforms, starting from the phase of administrative justice, passing through the phase of reserved judiciary to the definitive judiciary stage. Over time, its characteristics as a judicial authority became clear, and it emerged as a judicial pyramid including three levels: administrative courts, appellate administrative courts, and the Council of State. It is well-known that the judicial authority is governed by the constitutional principles of the state, and it is important to ensure that the existence of administrative judiciary does not break the principle of separation of powers in general, and the principle of separation between the judicial authority and the executive authority in particular. This principle was established after the outbreak of the French Revolution in 1789, which prevented any contact between the judicial authority and the executive authority.

When the administrative body makes judicial decisions and practices judicial functions it is considered a violation of the principle of judicial independence and encroachment on its jurisdiction. But the administrative judiciary, particularly the administrative courts and the Council of State have faced so many cases due to the high number of cases and appeals brought

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before them. Additionally, certain administrative disputes require the presence of specialists in addition to the administrative judge to ensure an ideal resolution of the dispute. Consequently, French judicial precedents, represented by the decisions of the Council of State and even the French legal theories, have led to the creation and establishment of various specialized bodies in different fields. These bodies have a specific character and specialize in resolving certain specific administrative disputes, such as disciplinary and electoral disputes. Their decisions can be appealed in front of the Council of State through cassation appeal.

Algeria gradually adopted the judicial duality concept towards the end of the 1990s, and the 2020 constitutional amendment created the three levels of the administrative judiciary. However, there is a huge mystery, especially in Algeria, about the nature of these bodies. Are they specialized administrative judiciary exclusively dealing with specific administrative disputes, or are they just administrative bodies that sometimes perform quasi-judicial functions and obtain the status of quasi-judicial bodies in accordance with certain legal criteria and conditions?. This mystery arises from the fact that the Algerian legislator has not facilitated the task by keeping silent and providing explicit indications of the existence of such specialized bodies. In addition Algerian Council of State judges have not reached an unanimous opinion about these bodies. But the existence of these specialised administrative bodies is important in order to reduce the stress on the "ordinary" administrative judicial authorities and to focus on particular disputes, allowing for informed decisions based on a comprehensive understanding of the subject matter, precise knowledge of the relevant laws, and a thorough familiarity with the dispute.

We will discuss below the conceptual grounding of specialized administrative jurisdictions, highlighting their definition from different legal aspects and distinguishing them from other similar bodies such as independent administrative authorities and ordinary administrative jurisdictions. We will also examine their emergence in France and explore the most important French judicial precedents. Finally, we will discuss how they have appeared and been adopted in Algeria through various legislative texts.

1- The Concept of Specialized Administrative Jurisdiction

In the 1990s, the constitutional founder reintroduced the adoption of a dual judicial system and a dual judicial structure, after previously attempting to adopt a different concept and adhere to a unitary judicial system for a period of time after independence. The structure of administrative justice has recently been recognized by a series of reforms and legislations, including the constitutional amendment of 2020. It now consists of three levels: the Council of State, the appellate administrative courts, and the administrative courts. The administrative courts, in particular have general jurisdiction¹ and original competence in administrative disputes.

The increasing workload on the administrative courts and the "ordinary" administrative judicial authorities, as well as the rise in the number of administrative cases brought in front of them, have led to the creation of parallel bodies that sometimes possess a judicial character in addition to their inherent administrative nature. These bodies specialize in specific administrative disputes, such as disciplinary and electoral disputes, for example. They have gone under a number of names, such as specialized administrative judicial bodies. These specialized administrative jurisdictions serve to formalize the practice of granting judicial status to certain acts issued by these administrative bodies. Consequently administrative justice is composed of both "ordinary" administrative jurisdictions and specialized administrative jurisdictions².

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We shall examine what specialised administrative jurisdictions are and how they differ from other entities that are comparable.

1.1 definition of specialized administrative jurisdictions

Outside the framework of the administrative judicial structure, there have emerged what are known as specialized judicial bodies. According to the jurisprudence and administrative judiciary of France these organisations as unique ones that make decisions that have a strong resemblance to court decisions. This creates the opportunity for an appeal process that can be taken to the Council of State to consider these quasi-judicial decisions³. In France, some have considered that the existence of these specialized judicial bodies as another form of judicial duplication inside the administrative judicial structure. There are general administrative judicial authorities, such as administrative courts, and they are other specialized administrative judicial bodies; the categorization of these bodies is determined either by legislative text or judicial interpretation⁴.

Similarly, some legal academics⁵ have separated Algeria's administrative judicial system into two groups. Based on the organic criterion that forms the basis of Algerian administrative law, the first category comprises "normal" administrative judicial authorities, also known as "ordinary" courts. These courts have primary and general jurisdiction over the majority of administrative disputes. "Exceptional" specialised administrative judicial bodies that have been given jurisdiction over particular conflicts make up the second category. It is important to note that different legal academics have used different words to define these specialised judicial bodies. These terms include specialized judicial bodies, exceptional administrative judicial authorities, specialized administrative courts, or specialized jurisdictions.⁶ In all cases, the terms used are in the plural form, indicating the presence of multiple types of these bodies and not restricting them to a single category. Terms such as "bodies," "jurisdictions", "courts," or "authorities" highlight the existence of different kinds according to their jurisdiction, the kinds of issues they resolve, and the legal framework in which they function.

Following the definition and development of specialised administrative courts shows that the term is primarily belongs to the realm of judiciary and secondarily to the domain of jurisprudence. The absence of explicit legal texts, especially in Algeria, that specifically address and define these judiciary, along with the lack of direct and precise mention of their existence, has led to multiple jurisprudential definitions of these jurisdictions. In addition, there is no consensus on a unified definition due to the different criteria considered. Various criteria have emerged to define them, such as the formal or organic criterion and the substantive criterion.

Specialised administrative jurisdictions are defined as unique judicial bodies having the authority to deal with cases relating to specific fields and specialized disputes.⁷ Although these jurisdictions are administrative bodies by nature, characterized as judicial, and distinguished by their specialization in specific disputes, while general administrative courts retain their authority over general matters.

In addition it has been defined as separate bodies or entities functioning outside of the established administrative jurisdictions. These specialized jurisdictions possess both judicial and administrative competencies.⁸ So they differ from the traditional administrative judiciary structure which includes administrative courts, appellate administrative courts, and the Council of State. These specialised jurisdictions combine administrative and judicial functions.

From a different angle, specialised administrative jurisdictions are defined as entities to which the lawmaker has granted particular jurisdiction similar to the jurisdiction of administrative courts; by using many and specific legal provisions. These provisions grant these entities exceptional authority, deviating from the general principle of the jurisdiction of regular administrative courts. Accordingly, these specialized courts have the power to adjudicate specific

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administrative disputes.⁹ The concept of specialised administrative courts are expanded by this definition. it include Any entity that is outside of the jurisdiction of the normal administrative judiciary may be selected as a specialised administrative court as long as it is granted the authority to decide certain administrative disputes in accordance with particular legal provisions. This viewpoint even extends to regular courts, which are granted superb jurisdiction according to Article 802 of the Code of Civil and Administrative Procedure to resolve certain particular administrative disputes; such as traffic violations and disputes related to claims for compensation for damages caused by state-owned vehicles or their equivalents.

According to another definition, specialised administrative jurisdictions are exceptional judicial bodies granted by the legislator the authority to make final decisions in specific disputes, in accordance with the principle of specialization. These courts are equipped with certain judicial procedures and incorporate a judicial element into their structure in order to carry out this function. However, the Council of State, the superior administrative judicial body, has the authority to supervise their quasi-judicial acts through the appeals process¹⁰. This definition gives more details information because it combines both the substantive and objective criteria. It focuses on the exceptional nature of these bodies in terms of their jurisdiction over specific and specialized disputes and their position outside the structure of regular administrative judicial bodies. Further, it highlights that their human composition includes judges and the processes these courts follow are quite similar to those of the judiciary as a whole. Additionally, the acts issued by these courts under these conditions are subject to appeal before the Council of State, although the specific type and nature of the appeal are not specified in this definition. According to this definition, specialized administrative jurisdictions are administrative bodies with judicial procedures in specific disputes.

On the other hand, specialized administrative jurisdictions have also been defined as disciplinary bodies where the application of civil and administrative procedural law is not applicable. This is because special regulations defining exceptional procedures are in place; These procedures are similar to those used in front of regular judicial bodies.¹¹ This definition focuses on the procedures followed in front of specialized administrative jurisdictions and highlights the exclusion of the application of civil and administrative procedure law ,depending on similar procedures specified in special laws. This concept, however, faced criticism for eliminating other kinds of specialised judicial organisations and limited them to those that resolve disciplinary cases. For example, there are other types of specialized administrative jurisdictions, such as the accounting council, which is a specialized administrative judicial body in the field of public financial oversight¹² and other bodies specialized in electoral disputes.

Basing on the previous information, specialized administrative jurisdictions can be defined as exceptional and independent bodies that function independently of the regular administrative judicial bodies. They have the authority to decide specific disputes based on special provisions including disciplinary and electoral disputes. These entities produce two types of acts: administrative acts which are subject to administrative appeal in front of the competent administrative court, and "quasi-judicial" acts, which can be appealed through cassation in front of the Council of State. The specialized administrative jurisdictions combine both administrative and judicial aspects. These entities get their "judicial" character from the fact that their human composition includes judges and their procedures that resemble those used in ordinary courts, such as the right to be heard, the right to defense, and the principle of impartiality. They settle disputes in order to maintain the rule of law and provide the same procedural rules to guarantee the right to a fair trial.

In fact, the French Council of State made an effort to categorise and classify multiple types of specialised administrative jurisdictions. In France, there are over thirty specialised

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administrative jurisdictions. For example :The National Councils of the Medical and Legal Professions, the Central Committee for Social Assistance, the Supreme Judicial Council, the Supreme Council of National Education and the Disciplinary Sections of University Councils . The subject matter of administrative disputes handled by these courts can range from disciplinary disputes to social disputes, financial disputes, and even disputes involving foreigners.¹³ However in Algeria the types of specialized administrative courts are limited and restricted. There are those who insist on the necessity of not deviating from national law and not adhering to various jurisprudential standards. It is difficult to say that there is a specialised administrative judiciary without researching and analysing the legal regulations governing the creation of judicial bodies and their fundamental legislation. But regardless of the laws regulating them, the Algerian Council of State has published a number of judicial interpretations and decisions treating certain committees and bodies as specialised administrative judicial entities with a focus on the composition of the issuing authority, which includes judges. especially when their procedures are similar to those used in front of the judiciary. Therefore, appeals against their decisions are made through cassation, not annulment, in front of the Council of State¹⁴ .

However, especially in Algeria, recognising the existence of specialised administrative judicial institutions does not eliminate the confusion concerning their judicial character. It is still unclear if these organisations actually represent specialised administrative jurisdictions or are just administrative bodies that are characterised as quasi-judicial because of the procedures they follow, their human composition and the nature of the decisions they issue. . There is also a question about the method of appealing their judgments through annulment or cassation, particularly in the absence of a agreed-upon and unified standard¹⁵ . It would have been more appropriate for the legislator to define the nature and precise mechanisms of control, rather than leaving it to general legal texts. As a result, jurists have given these entities incoherent legal meanings, which caused the Council of State to offer a number of judicial interpretations some of which may be contradictory ;to close the legal gap.¹⁶ The legislator should be given authority to organise judicial entities by means of an organic law.¹⁷

It is unreasonable for the Council of State to establish a new judicial body that is not regulated by organic law. In addition, if the legislator establishes a particular organisation without specifically identifying it as a judicial body, that does not automatically negate its judicial nature. This raises questions about the value of judicial interpretations issued by the Council of State that contradict the legislator's intention. Can they be deemed unconstitutional for exceeding their constitutional jurisdiction? ¹⁸ In particular, the administrative judicial system includes only the Council of State, appellate administrative courts, and administrative courts; other bodies are not included in Article 4 related to Organic Law 22-10 on Judicial Organisation.¹⁹

In fact, the importance of specialized administrative jurisdictions lies in their ability to adjudicate specific administrative disputes because their jurisdiction and specialized composition, which includes individuals with professional expertise. They guarantee improved efficacy and efficiency for the administrative judicial system as a whole.

1.2- the difference between the specialized administrative jurisdictions and other entities:

It is important to talk about some organisations and entities that might resemble specialised administrative jurisdictions. Specifically, we can mention administrative judiciary bodies, specialized criminal judicial bodies, and independent administrative authorities.

- Distinguishing specialized administrative jurisdictions from regular administrative judiciary: It seems that the explicit mention of specialized administrative courts is not found in the constitutional text. However, the second paragraph of Article 179 of the Constitution, which

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talks of "other bodies that decide on administrative matters," implicitly recognises the existence of these specialised administrative judicial bodies. This may imply constitutional recognition of specialized administrative jurisdictions. These specialised administrative judicial bodies function under their own unique internal regulations and laws that are related to their respective domains, so They are not governed by a single body of law that encompasses all kinds of specialised administrative jurisdictions. in contrast the three regular administrative judiciary bodies—administrative courts, appellate administrative courts, and the Council of State—which are specifically mentioned in legislation. for example is that Law No. 98-02 applies to administrative courts in their entirety.

-Distinguishing Specialized Administrative jurisdictions from Independent Administrative Authorities: Independent administrative authorities are administrative bodies that rised in the 1990s and have a regulatory function. They are administrative entities with regulatory authority. They do not have a common legal system among them. These authorities exercise their powers extensively and independently, separate from any form of supervision, whether presidential or departmental. However, this does not negate the possibility of appealing by annulation some of their decisions in front of judicial bodies.²⁰ Their decisions are considered administrative decisions subject to appeal. These authorities regulate and supervise a wide range of activities in several domains, including the economy, finance, public freedoms, and human rights. There are several types of these authorities, such as the National Observatory for Human Rights, the Central Bank and Credit Board, the Competition Council, and the Supreme Council for Media. For example, the Supreme Council for Media exercises regulatory authority over print, audiovisual, visual, and electronic media.

They are identified by their extensive authority and oversight of regulatory duties. They are typically composed of administrative officials and often lack the presence of judges. On the other hand, specialized administrative jurisdictions have jurisdiction that is limited to specific areas, such as disciplinary and electoral matters. These entities generally include at least one judge in their composition.

- Distinguishing Specialized Administrative jurisdictions from Specialized Criminal Judicial Bodies: There are specialised criminal judicial bodies in addition to specialised administrative courts which only examine specialised administrative issues. The Supreme Court of the State is one of these numerous entities; it was created under the Article 183 of the Constitution. The Supreme Court of the State specializes in reviewing crimes and offenses committed by the Prime Minister and the President of the Republic in relation to the performance of their duties. The Criminal Court and the Military Court are two other examples of specialised criminal judicial entities. These are criminal courts which deal with military crimes, which are a particular kind of crime. They are characterized by their unique composition and procedures.

2- The emergence of Specialized administrative jurisdictions in France

The "narrow" and exceptional concept of administrative law is known to have originated in France; it is acknowledged as an unwritten and partially regulated law with judicial origins. Since the French Council of State became a judicial body in 1872, it has taken the lead in establishing numerous theories and principles of administrative law. This Council played an important part in the development of theories and notions of administrative law; it produced judgements in the form of judicial precedents on a variety of problems and disputes that were brought before it, which were not yet treated by legislation.

Indeed, judicial precedent plays a crucial role, especially in the field of administrative law. It frequently fills in the gaps left by legislation and provides the law its practical character, so the

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French Council of State's judicial precedents are extremely important, especially when it applies to specialised administrative jurisdictions. This Council has acted as a revealer and a foundation for these courts, based on the fundamental texts establishing and regulating these bodies. therefore, in discussing the emergence of specialized administrative courts, we will explore the decisions and judicial precedents issued by the French Council of State, which are numerous. However, we will focus specifically on two decisions: the Bouguen decision of 1943 and the Bayo decision, while briefly mentioning some other decisions.

2.1- The Bouguen decision

The concept of specialized administrative jurisdictions was not clear until the French Council of State published a number of judicial precedents and decisions about the idea of these entities. Among the earliest of these decision we mention the decision of bouguen, dated April 2, 1943, also known as the "Lagrange Report; the topic of specialised administrative judicial bodies was first raised in this decision. This decision is important because it concerns professionals disciplinary issues, the most major type of disputes handled by specialised administrative jurisdictions.

The case of "Bouguen" also known as the "Lagrange Report", originated from a dispute between the French Council of the Medical Association and a specialized doctor named Mr. Bouguen. He is a specialist in otolaryngology , he had opened two separate clinics in different locations one of which was situated in the town of "Pontrieux." After aware of this, the Medical Association prohibited the functioning of two independent clinics, noting violations of both their internal policies and the rules and regulations governing medical affairs. According to Article 27 of their laws, a doctor who operated a clinic in one municipality was not allowed to open another one in a different town. The request by Dr. Bouguen to retain a second clinic in a different municipality from his original clinic was rejected, As a result Dr. Bouguen was subject to penalties, and it was decided to shut down both clinics at the same time. Consequently, the doctor made an appeal in front of the French Council of State, appealing the Medical Association's resolution to shut down both clinics.

The apparent nature of the dispute is that it falls outside the jurisdiction of the Council of State, as it involves a conflict between an individual (the doctor) and a professional organization (not a public institution or administrative body). However, the French Council of State had a different legal interpretation or reasoning in this case.

The decision of the French Council of State said that without the need to rule on other grounds of appeal, and With respect to the fact that Article 27, paragraph 2, of the regulations on the duties of doctors, which were established by the High Council of the Medical Association, prevents a doctor who has a clinic within a municipality from opening another clinic within a different municipality, with the objective of determining one of the general rules applied to the geographic distribution of medical clinics, and so goes outside the authority granted to the High Council of the Association by Article 7 of the Law of October 7, 1940, which given it the exclusive responsibility of establishing all internal regulations required to accomplish the stated goals.²¹

In fact, the French Council of State came to the conclusion that the Law of October 7, 1940 had given the Medical Association more authority than it had been given. The main function of the Medical Association's authority is to establish internal rules that control medical practice. But the Council of State concluded that the Medical Association had overreached itself when it engaged in the process of developing and determining on general rules for the locations of medical clinics .As a result The Council of State's decision add that the Regional Council of the Northern Coast Doctors' Association, depending just on the mentioned text and the instructions issued for its application, ordered the closure of Dr. Bouguen's otolaryngologist's clinic in

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Pontrieux. This occurred without first determining whether the particular circumstances of the mentioned clinic justified its continued operation, as explicitly established by the mentioned article. Thus, it may be argued that the High Council itself abused its authority in granting this decision because it had a legal foundation. so, Dr. Bouguen has the right to assert that the High Council abused its jurisdiction.²²

Based on this decision, the decision to close the two clinics based on the rules governing the responsibilities of doctors, the Medical Council has been judged to have acted unlawfully or beyond its power. Because the Medical Council's supervision cannot be based on a specific or independent type of law. As a result, the Council of State, which represents the judiciary, must have the authority to supervise the professional authority represented by the Medical Council. Consequently, the Medical Council's decision to close Dr. Bouguen's clinics was declared invalid by the Council of State.

Indeed, the French Council of State implicitly²³ considered in this decision that the regulation of the medical profession and the control of its practice serve a public interest and need. It recognised that the Medical Association helps administer a public facility that offers a public service even though it is not a state owned public institution. Although its professional nature, the Medical Association represents a real public facility that goes beyond defending professional interests and imparts an administrative character to its decisions. Therefore, it is acceptable to appeal its decisions, such as the closure decision, in front of the Council of State. In consequence of this decision, the Council of State has vast control over professional disciplinary procedures, judgements and verifying the characterization of misconduct in the disciplinary proceedings of professional organizations. It recognises that these organisations regulate a wide range of liberal professions, including law and medicine, and in the process, serve the public. Consequently, they are considered public facilities that provide a service to the public. Moreover, these organizations possess a "public" character when imposing disciplinary penalties and sanctions on professionals. Therefore, their decisions in such cases are subject to administrative and judicial oversight.

it is true that this decision did not explicitly state the judicial nature of disciplinary decisions issued by professional organizations, but it merely allowed for disputes regarding them to be considered by the Council of State. But it indicated an important advance in their development. After this decision, the idea of administrative justice started to change, and in France, more than 40 specialised administrative judicial bodies were established, such as the Disciplinary Board for Budget and Finance.

2.2 the Bayo decision

The BAYO decision, published by the French Council of State on December 12, 1953, is among the most important judicial precedents establishing the concept of administrative judicial bodies, particularly in the field of disciplinary disputes.

The case of BAYO revolves around Mr. Bouchet, a veterinarian who appealed a decision to add another veterinarian to the list of veterinarians in the Paris region in front of the French Council of State.²⁴ Mr. Bouchet considered this registration as unfair competition and a threat to his clinic's business. The Regional Council of the Veterinary Doctors' Union answered by suggesting that a list of veterinarians be established who have declared their practice of veterinary medicine and who fulfil the legal and regulatory standards. Registration is done after verifying the applicants' addresses, and rejection can only occur with justified reasons. very year at the beginning, this list is updated. It was also mentioned that, in accordance with Article 13 of the professional law, the decision to register could be appealed.

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In this decision, the French Council of State decided that administrative decisions related to disciplinary penalties have a quasi-judicial nature. But There are two distinct types of actions that are issued by professional organisations: The decisions concerning punishment and discipline are considered as final judicial decisions that are subject to appeal to the Council of State. On the other hand, decisions in other domains such as management, contracting, and other subjects are considered administrative decisions that can be subject to scan through cancellation appeals, interpretation, and examination of legitimacy.

We can say that BAYO decision gives professional organizations full authority to impose disciplinary penalties without the need for approval from a higher authority when the decision is in the form of a collective decision. The disciplinary council's activities and the authority placed upon it have a closery resemblance to the authorities possessed by judicial bodies. So, the BAYO decision affirmed what was stated in the "Bouguen" judgment of 1943, that professional councils and organizations like medical, veterinary, and legal associations, become almost of a "professional" public entity when they impose disciplinary penalties, going beyond their responsibility to protect the public interest in addition to defending professional interests. Their disciplinary decisions take on the status of quasi-judicial nature.

In a related precedent known as the "Moineau decision," a medical organisation prohibited human doctor Mr. Moineau from practicing medicine and refused to register him in the doctors' registration. The Council of State concluded that the decision of the disciplinary chamber of the medical association is a judicial decision issued by a quasi-judicial body because it decided to reject registration in the professional registry, which constitutes a disciplinary dispute and falls under the objective criterion established by jurists. The medical organisation functioned as a specialised administrative jurisdictions in this instance, and its actions were considered judicial acts.

Besides from the Bouguen and Bayo decisions, the French Council of State issued a number of more decisions on this subject that have not used the objective criterion. One such decision is the one issued on July 12, 1929, where it established that the Administrative Justice Chamber of the Local Insurance Office follows judicial procedures that closely resemble the procedures applied before ordinary administrative justice bodies, such as the right to defense, examination of evidence, and oral hearings. Therefore, it determined that this chamber is a quasi-judicial body based on formal criteria.²⁵

3-Development of Specialized administrative jurisdictions in Algeria

The concept of specialized administrative jurisdictions originated in France, and recognized by the French Council of State. Many types of them emerged as a result of various legal interpretations and different jurisprudential criteria. However, because Algerian administrative law is unique in that it is primarily legislative in origin, the development of it in Algeria took a different and more restricted road. As a result, following their emergence in Algeria necessitates a careful analysis of the several legal texts that define and recognise their concept. In Algeria, there is no judicial interpretation without a legal basis. By reviewing the different legislative texts that address the concept of specialized administrative courts, the following can be found:

3.1- The Constitution

According to Article 179 of the Algerian Constitution²⁶ the Supreme Court is the competent body for the regular judicial functions of judicial councils and ordinary courts. The Council of State is considered as the competent body for administrative courts, administrative appellate courts, and other bodies that adjudicate administrative matters , according to the second paragraph of the same article .In the 2020 constitutional amendment, there were legislative

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deficiencies and gaps that the inventor of the constitution tried to fix. Using the words "other bodies that adjudicate administrative matters". So he indicated to the existence of additional judicial bodies outside of the administrative and appellate administrative courts in this article. The Council of State examines these bodies and carries out their judicial functions. This can be seen as an implication of the existence of specialized administrative courts that handle specific administrative disputes, aiming to address criticisms from a legal perspective.

3.2- The Organic and Ordinary Laws

Article 11 of Organic Law 98-01²⁷, dated May 30, 1998, regarding the powers, organization, and functioning of the Council of State, as amended by Law 11-13²⁸ dated July 26, 2011, states that the Council of State has jurisdiction to adjudicate appeals in cassation against final decisions issued by judicial bodies.

the second paragraph add that The Council of State has jurisdiction to consider appeals in cassation conferred upon it by virtue of specific provisions. As a result, this expanded the range of appeals in cassation before the Council of State and made it possible for bodies besides the usual administrative judicial bodies to use appeals in cassation to have decisions reviewed. The Council of State is thus given the status of an extraordinary specialised administrative judiciary. It should be mentioned that administrative decisions cannot be appealed in cassation; instead, the Council of State acts as a cassation judge just for final judicial decisions. Furthermore, it is worth mentioning that this organic law has mentioned the administrative judicial bodies or the specialized administrative jurisdictions, four times in Articles 02, 07, 10, and 11 without explicitly specifying them.

Regarding the Organic Law 05-11²⁹, dated July 17, 2005, which dealt with judicial organization, it only addressed specialized judicial bodies in criminal matters, such as the Criminal Court and the Military Court, and it restricted administrative jurisdiction to the Council of State and administrative courts. However, this law has been repealed and replaced by Organic Law 22-10, dated June 9, 2022, which, in its fourth article, states that the administrative judicial system includes the Council of State, appellate administrative courts, and administrative courts, without mentioning other bodies or specialized administrative entities.

It can be said that Organic Law 22-12, dated June 27, 2022, concerning the Supreme Judicial Council, implicitly considers it as a specialized administrative judiciary when it comes to disciplinary proceedings against judges, considering its composition, which is composed mostly of judges, and the quasi-judicial procedures involved.

In some ordinary legislations, there are references to specialized administrative jurisdictions using the term "administrative judicial bodies" in a general sense, without being limited to appellate administrative courts and administrative courts. It is also mentioned that appeals in cassation can be made before the Council of State based on specific provisions. As for the Code of Civil and Administrative Procedures, issued under Law 08-09 as amended and supplemented by Law 22-13, it specifies the jurisdiction of the Council of State to consider appeals in cassation in Articles 901 and 903.

Source: Name of author (year), full title of book, publisher, page.

Conclusion:

Specialised administrative courts were initially established in France as unique legal entities that were separate from other specialised criminal judicial bodies, independent administrative authorities, and regular administrative courts. They can be characterised as organisations that, in accordance with the specialisation principle, have been given the legal authority to decide and resolve certain issues. These courts are given certain judicial procedures,

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such as the right to defence and the principle of adversarial proceedings, which are similar to those listed in the Code of Civil and Administrative Procedure, in order to carry out this function. Typically, these courts include at least one judge and a judicial element. Through the appeals process, the Council of State has oversight over its "quasi-judicial" functions.

In fact, specialised administrative courts have been recognised by French legal precedent and established in a number of decisions by the French Council of State. One such decision is the Bouguen judgement from 1943, which permitted issues over disciplinary decisions made by professional organisations to be taken to the Council of State, although not explicitly expressing the judicial nature of such decisions. This decision marked a major qualitative jump.

Another important decision is the Bayou decision of 1953, which gave professional organizations full authority to impose disciplinary sanctions without the need for approval from a higher authority, as long as the decision was made collectively. In such cases, the actions and powers of these organizations closely resemble those of judicial bodies.

In other cases, as the Moineau decision, the Council of State made an argument that a professional union's chamber's disciplinary decision is a court decision made by a quasi-judicial authority. The possibility of using the cassation appeal procedure for appealing these decisions was recognised by the Council of State.

However, in Algeria, it can be said that the legislative framework for specialized administrative jurisdictions is still incomplete. The term "other bodies with jurisdiction over administrative matters" mentioned in Article 179 of the Constitution was unclear, ambiguous and broad. also, Article 4 of Organic Law 22-10, which concerns to judicial organization, completely ignored the mention of specific administrative judicial bodies and only referred to the administrative judiciary of the Council of State, appellate administrative courts, and administrative courts of first instance. The role of the administrative judge, particularly within the Council of State, is very important. But the judge is tied to respect the provisions of the law and is not authorized to interpret the law or decide contrary to it. he must obey its provisions.

Anyway, the presence of these specialized administrative jurisdictions mostly offers the advantages of relieving the charge on ordinary administrative judicial bodies, especially the Council of State. Having a specialized body in a specific dispute enables it to make more professional and expert decisions in the specialized conflict presented in front of it. Nevertheless, some jurists consider their existence as a violation by the executive branch on the judicial branch, as they adjudicate important cases. They warned that this could gradually lead to a return to the era of ministerial judges or administrative justice, gradually pulling jurisdiction from the regular administrative judiciary.

Citations:

¹ See Article 800 of Law No. 08-09, related by the Civil and Administrative Procedure Law, as amended and supplemented by Law No. 22-13 dated 13 Dhu al-Hijjah 1443 corresponding to 12 July 2022, Official newspaper No. 48 for the year 2022.

² فتحي قسمية ، الجهات القضائية الإدارية المتخصصة، مذكرة ماجستير، فرع الدولة و المؤسسات العمومية، جامعة الجزائر 1، يوسف بن خدة، 2011-2012، ص3.

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