Administrative Courts of Appeal: Composition and Jurisdiction

محاكم الإستئناف الإدارية: بين التشكيل والاختصاص



Kherroubi yassamina [1*]

[1] Faculty of Law and Political Science, University of Chlef, Algeria

kharroubi.yasmina@yahoo.com

https://orcid.org/0009-0003-0054-7778

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Abstract:

The Algerian judicial system has undergone numerous transformations since independence, beginning with a unified judiciary and transitioning to a dual judiciary system enshrined by the Constitution of 1996, whereby the administrative judicial order was separated from the ordinary judiciary, and administrative judicial bodies were established in the form of the Council of State and administrative tribunals.

With reference to the constitutional amendment of 2016, it is observed that it consecrated the principle of two-tier adjudication in criminal matters; however, it introduced no novelty regarding administrative justice until the year 2020. Under the most recent constitutional amendment, a modification of the administrative judicial system was introduced through the establishment of administrative courts of appeal as the second tier of adjudication in administrative matters. This led the Algerian legislator to amend numerous legal texts in order to bring them into harmony and conformity with the provisions of the 2020 constitutional amendment.

Keywords: Administrative Courts of Appeal, Two-Tier Adjudication, Subject-Matter Jurisdiction, Territorial Jurisdiction, Constitutional Amendment 2020.

ملخص:

عرف النظام القضائي الجزائري العديد من التغيرات منذ الاستقلال بداية من القضاء الموحد الى القضاء المزدوج الذي تم تكريسه بموجب دستور سنة 1996، بحيث استقل النظام القضائي الاداري عن القضاء العادي وتم انشاء جهات قضائية ادارية متمثلة في مجلس الدولة والمحاكم الادارية.

وبالرجوع الى التعديل الدستوري لسنة 2016 نلاحظ أنه كرس مبدأ التقاضي على درجتين في المادة الجزائية، الا أنه لم يأتي بالجديد بالنسبة للقضاء الاداري الى غاية سنة 2020 بموجب التعديل الدستوري الأخير نجد تعديل في النظام القضائي الاداري من خلال استحداث المحاكم الادارية الاستئنافية كدرجة ثانية من درجات التقاضي في المادة الادارية، الأمر الذي أدى بالمشرع الجزائري الى تعديل العديد من النصوص القانونية لتنسجم وتتلاءم بما ورد في أحكام التعديل الدستوري لسنة 2020.

الكلمات المفتاحية: محاكم الاستئناف الإدارية، التقاضي على درجتين، الاختصاص النوعي، الاختصاص الإقليمي، التعديل الدستوري 2020.

* **Corresponding Author**

Introduction:

The most recent constitutional amendment brought about changes in the structure of the judiciary through the establishment of a new jurisdictional body, namely the administrative courts of appeal, which resulted in amendments to the legal texts governing administrative disputes. The rationale for establishing this body is to reinforce the principle of two-tier adjudication in administrative litigation, thereby consolidating the principle of a fair trial.

Accordingly, this body was introduced within the hierarchy of the Algerian administrative judiciary as an institutional supervisory mechanism over administrative judicial rulings issued by administrative tribunals. Legislative texts have granted jurisdictions the authority to settle administrative disputes in which one of the parties is a legal person governed by public law, beginning at the administrative tribunal level by means of judgments subject to appeal before the administrative courts of appeal.

It is worth noting that the emergence of these courts in Algeria was the result of the influence exerted by the French legislator on the Algerian legislator in reforming the administrative disputes system through the creation of these courts under Law No. 87-1127.

The significance of studying this subject lies in demonstrating the important position occupied by the administrative courts of appeal under the 2020 constitutional amendment and their newly established legal regime, while highlighting their elevated standing within the hierarchy of legal norms.

The objective of studying this subject is to examine the legal texts governing the organic structure of the administrative courts of appeal and their functions within the administrative judiciary.

In light of the foregoing, the following central research question arises: given that the administrative courts of appeal hold a constitutional status as the second tier of adjudication in administrative justice, what constitutes the structure and jurisdiction of the administrative courts of appeal?

To address this research question, a legal analytical methodology was adopted through the analysis of legislative texts relating to the administrative courts of appeal.

To answer the aforementioned question, two axes have been examined: **the organic structure of the administrative courts of appeal and the jurisdictions of the administrative courts of appeal.**

the first Topic: The Organic Structure of the Administrative Courts of Appeal

The fundamental objective of establishing the administrative courts of appeal is, on the one hand, to alleviate the burden on the Council of State in adjudicating disputes and to reduce the workload of administrative tribunals at the second degree of jurisdiction, and, on the other hand, to bring justice closer to the citizen.[1]

The Algerian constitutional framers established the administrative courts of appeal in Article 179, paragraph 2 of the 2020 constitutional amendment, which provides: "The Council of State shall be the regulatory body overseeing the activities of the administrative courts of appeal, the administrative tribunals, and other specialized bodies in administrative matters.[2]"

The provisions of the Constitution were confirmed by Law No. 22-07 in Article 8, which stipulates: "Six (06) administrative courts of appeal are hereby established, with their seats located in Algiers, Oran, Constantine, Ouargla, Tamanrasset, and Béchar."[3]

Law No. 22-07 and the Algerian Constitution thus both addressed the creation of the administrative courts of appeal, with this law confirming their legal foundation and formalizing their installation within the structure of the administrative judiciary.

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[1]- Mohammed Saghir, Saadaoui, (2023), Exceptional Jurisdiction of Administrative Court of Appeal of Algiers in context of Algerian legislator's consecration of principle of two-tier adjudication in administrative matters through administrative courts of appeal, Journal of Law and Development, Tahri Mohammed University, Béchar, vol. 4, no. 2.

[2]- Presidential Decree No. 20-442 of 30 December 2020 on Constitutional Amendment, Official Gazette, no. 82, 2020.

[3]- Law No. 22-07 of 5 May 2022 on Judicial Division, Official Gazette, no. 32, 2022, p. 5.

With reference to Articles 33 to 38 of Law No. 22-07 and Law No. 22-13, it is noted that these provisions address the composition of these courts.

The first requirement: The Judicial Composition of the Administrative Courts of Appeal

Law No. 22-13 addressed the judicial composition of the administrative courts of appeal in Article 900 *bis* 5, which encompasses sitting judges and public prosecution judges known as Commissioners of State.[1]

First section: Sitting Judges (Judges of the Bench)

The sitting judges are composed of:

a. The President of the Court, holding at minimum the rank of Counsellor at the Council of State;
b. One or two Vice-Presidents, as required;
c. Presiding judges of chambers, and presiding judges of sections, as required;
d. Counsellors.

The Second section: Commissioners of State

a. The Commissioner of State, holding at minimum the rank of Counsellor at the Council of State;
b. One or two Assistant Commissioner(s) of State, as required.[2]

Article 36 of Organic Law No. 22-10 provides that the Commissioner of State attached to the administrative court of appeal shall perform the duties assigned to him under the Code of Civil and Administrative Procedure.

The Second Requirement: The Administrative Composition of the Administrative Courts of Appeal

The administrative composition of the administrative court of appeal consists of the General Secretariat and the Registry (Greffe).

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[1] - Law No. 22-13 of 12 July 2022 amending and supplementing Organic Law No. 08-09 on Code of Civil and Administrative Procedure, Official Gazette, no. 48, 2022, p. 8.

[2]- Organic Law No. 22-10 of 9 June 2022 on Judicial Organization, Official Gazette, no. 41, 2022, p. 9.

First section: The General Secretariat of the Administrative Court of Appeal

A General Secretariat has been established as a non-judicial body within the administrative court of appeal, managed by a Secretary-General placed under the authority of the Commissioner of State. The Secretary-General of the administrative court of appeal serves as the secondary authorizing officer of the court's budget, and his post is classified in the category of director within the central administration.[1] This is confirmed by Article 6 of Executive Decree No. 23-120 on the modalities of administrative and financial management of the administrative courts of appeal[2].

The Second section: The Registry (Greffe) of the Administrative Court of Appeal

Article 34 of Organic Law No. 22-10 addressed the administrative composition, providing: "The administrative courts of appeal shall be organized into chambers, which may be subdivided into sections[3]." The Registry is responsible for this organization in accordance with Executive Decree No. 98-356.

The Registry is a non-judicial body that plays an essential role in ensuring the proper functioning of judicial structures, with its organization referred to the regulatory domain. Pursuant to Executive Decree No. 98-356, Article 6 provides that each registry shall be headed by a Chief Registrar, assisted by a registrar under the authority and supervision of the Commissioner of State and the President of the administrative tribunal. Article 7 stipulates that registrars are subject to the basic statute applicable to registrars in all other jurisdictions, while Article 8 grants both the Commissioner of State and the President of the Court the responsibility of distributing registrars among the chambers and sections[4].

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[1]- Linda, Belhouichat, (2024), Administrative Courts of Appeal in light of Law No. 22-13, Chahid Hamma Lakhdar University, El Oued, vol. 8, no. 3, p. 259.

[2]- Executive Decree No. 23-120 of 18 March 2023 on modalities of administrative and financial management of administrative courts of appeal and administrative tribunals, Official Gazette, no. 18, 2023, p. 6.

[3]- Law No. 22-10, op. cit., p. 9.

[4]- Executive Decree No. 98-356 of 14 November 1998 fixing modalities of application of provisions of Law No. 98-02 on administrative tribunals, Official Gazette, no. 85, 1998, p. 6.

The Third section: The Legal Aid Office

This office has been established at the level of the administrative courts of appeal to ensure the right of indigent litigants to access justice before these jurisdictions. Applications for legal aid are submitted to the permanent secretariat of the office against a receipt, as provided for by Law No. 22-03 on legal aid.[1]

In addition, the legal aid office plays an important role in guaranteeing equality before administrative justice by providing assistance to litigants who lack sufficient financial resources. Through this mechanism, eligible applicants may benefit from the coverage of judicial expenses and the assistance of a lawyer, which facilitates their access to administrative courts of appeal. This system reflects the principle of fairness and ensures that the right to litigation is effectively exercised by all individuals regardless of their economic situation.

the Second Topic: The Jurisdictions of the Administrative Courts of Appeal

The administrative courts of appeal play an essential role in the administrative judicial system by reviewing decisions issued by lower administrative courts. Their jurisdiction is defined by specific legal rules that determine the scope of their authority. In this context, the administrative courts of appeal exercise two main types of jurisdiction: subject-matter jurisdiction and territorial jurisdiction.

The First Requirement: Subject-Matter Jurisdiction

Subject-matter jurisdiction determines the types of administrative disputes that the courts of appeal are authorized to hear. It ensures that individuals can seek judicial protection against administrative decisions through a legally defined framework.

First Section: General Overview

The subject-matter jurisdiction of administrative tribunals refers to the settlement of disputes of an administrative nature, as the legal avenue granted by

[1]- Law No. 22-03 of 25 April 2022 amending Order No. 71-75 on Legal Aid, Official Gazette, no. 30, 2022, p. 9.

the legislator to individuals to protect their rights against the administration through the courts. [1]

Article 29, paragraph 1 of Law No. 22-10 of 9 June 2022 on judicial organization addresses the subject-matter jurisdiction of the administrative courts of appeal, providing: "The administrative court of appeal constitutes an appellate tier in that it rules on appeals concerning judgments and orders issued by administrative tribunals." [2]

Second Section: Specific Competences

As for the second paragraph of Article 29, it establishes that the court has the power to adjudicate cases pursuant to special texts. As an example, the administrative court of appeal for the city of Algiers has been granted by the legislator the competence to rule, by way of a decision, on actions for annulment, interpretation, and assessment of the legality of administrative decisions issued by central administrative authorities, national public bodies, and national professional organizations.

Regarding the subject-matter jurisdiction of the administrative court of appeal in Algiers, Article 900 bis addresses this jurisdiction, providing that the court shall have first-instance competence to adjudicate actions for annulment, interpretation, and assessment of the legality of regulatory or individual administrative acts issued by central administrative authorities, national public bodies, and national professional organizations. [3]

It is noteworthy that the Algerian legislator has conferred upon the administrative court of appeal in Algiers the competence to adjudicate disputes that previously fell under the jurisdiction of the Council of State, which formerly ruled on them in first and final instance. [4]

Furthermore, granting the Council of State jurisdiction to hear appeals against decisions of the administrative court of appeal in Algiers in its first-instance capacity will not affect the Council of State's functioning as a cassation court, given the limited number of cases brought before the administrative court

[1]- Mohammed Saghir, Baali, (2007), Administrative Justice The Action for Annulment, Dar El Ouloum for Publishing and Distribution, Algeria, p. 61.
[2]- Law No. 22-10, op. cit., p. 9.
[3]- Law No. 22-13, op. cit., p. 8.
[4]- Bouzid, Ghlabi & Mekki, Hamcha, (2023), Legal regime of administrative court of appeal in Algeria, Al-Fikr Journal, Mohamed Khider University, Biskra, vol. 18, no. 1, p. 308.

of appeal in first instance rather than as an appellate court, as these cases are linked to the central authorities of the State.

The Second Requirement: Territorial Jurisdiction

Territorial jurisdiction defines the geographical scope within which each administrative court of appeal exercises its authority. It ensures that administrative justice is accessible to litigants across all regions of the country.

First Section: Establishment and Scope

Law No. 22-07 established six (06) administrative courts of appeal with their seats located in Algiers, Oran, Constantine, Tindouf, Tamanrasset, and Béchar respectively. A group of administrative tribunals falling within the territorial jurisdiction of each administrative court of appeal has been placed under the supervision of the corresponding court, as determined by Article 10 of Law No. 22-07 and Executive Decree No. 22-435.[1] The administrative tribunals falling within the jurisdiction of each administrative court of appeal are divided as follows:

a. **Jurisdiction of the Algiers Court of Appeal:** Algiers, Blida, Bouira, Tizi Ouzou, Djelfa, Médéa, M'Sila, Boumerdès, Tipaza, Aïn Defla.
b. **Jurisdiction of the Oran Court of Appeal:** Oran, Tlemcen, Tiaret, Saïda, Sidi Bel Abbès, Mostaganem, Aïn Témouchent, Relizane, Chlef.
c. **Jurisdiction of the Constantine Court of Appeal:** Constantine, Oum El Bouaghi, Batna, Béjaïa, Jijel, Sétif, Skikda, Annaba, Guelma, Bordj Bou Arreridj, El Tarf, Souk Ahras, Mila, Tébessa, Khenchela.
d. **Jurisdiction of the Tamanrasset Court of Appeal:** Tamanrasset, Aïn Salah, Aïn Guezzam.
e. **Jurisdiction of the Béchar Court of Appeal:** Béchar, Adrar, Tindouf, Naâma, Timimoun, Bordj Badji Mokhtar, and Béni Abbès.

The objective of establishing these courts is to bring the judicial apparatus closer to litigants, in contrast to the situation in previous years[2]. In the context of

[1]- Executive Decree No. 22-435 of 11 December 2022 determining territorial jurisdictional areas of administrative courts of appeal and administrative tribunals, Official Gazette, no. 84, 2022, p. 5 et seq.

[2]- Salah, Melouk, (2023), Legal regime of administrative courts of appeal, Al-Ijtihad Journal of Studies, University of Tamanrasset, Algeria, vol. 12, no. 3, p. 234.

determining the territorial jurisdiction of these courts, Article 10 of Law No. 22-07 confirmed that the delineation of the jurisdictional areas of administrative tribunals shall be determined by regulation.[1]

Figure 01: Territorial Jurisdiction (Textual Map)

This table illustrates the geographical distribution of the six administrative courts of appeal according to Law 22-07 and Executive Decree 22-435, reflecting the objective of bringing justice closer to litigants throughout the territory of the Republic.

Number of Courts	Affiliated Wilayas	Court of Appeal
10	Algiers, Blida, Bouira, Tizi Ouzou, Djelfa, Médéa, M'Sila, Boumerdès, Tipaza, Ain Defla	**Algiers**
12	Oran, Tlemcen, Tiaret, Saïda, Sidi Bel Abbès, Mostaganem, Ain Témouchent, Relizane, Chlef, Mascara, El Bayadh, Tissemsilt	**Oran**
15	Constantine, Oum El Bouaghi, Batna, Béjaïa, Jijel, Sétif, Skikda, Annaba, Guelma, Bordj Bou Arréridj, El Tarf, Souk Ahras, Mila, Tébessa, Khenchela	**Constantine**
3	Tamanrasset, Ain Salah, Ain Guezzam	**Tamanrasset**
7	Béchar, Adrar, Tindouf, Naâma, Timimoun, Bordj Badji Mokhtar, Béni Abbès	**Béchar**
11	Ouargla, Ghardaïa, Laghouat, El Oued, Biskra, Ouled Djellal, Illizi, Touggourt, Djanet, El M'Ghair, El Menia	**Ouargla**

Source: The Table designed by the researcher

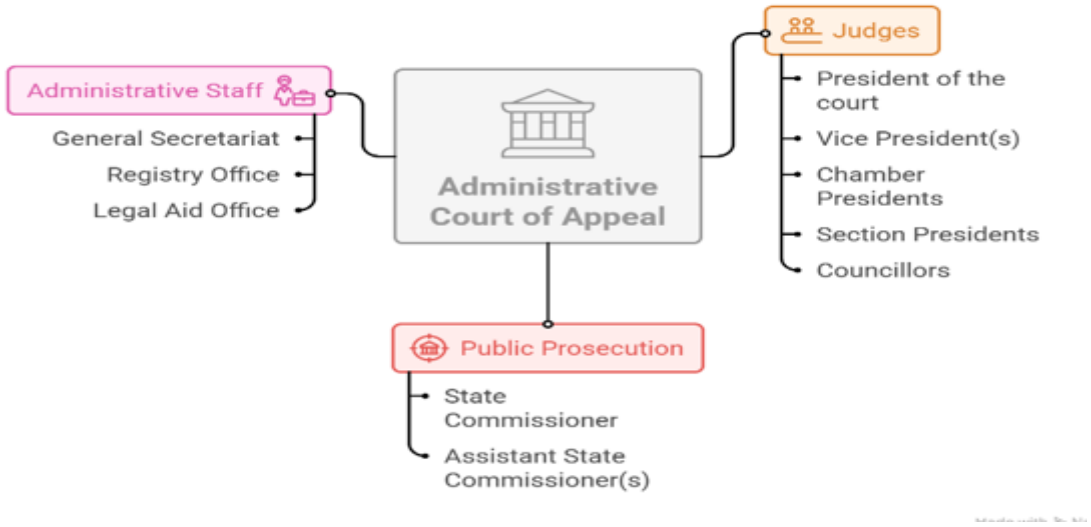
[1]- Law No. 22-07, op. cit., p. 5.

In application thereof, Executive Decree No. 22-435 was issued, the first article of which provides that the territorial jurisdictional areas of the administrative courts of appeal shall be determined in accordance with Annex I appended to the said decree.[1]

With reference to Article 37 of Law No. 22-10, territorial jurisdiction is vested in the court within whose jurisdictional area the defendant is domiciled. If no known domicile exists, jurisdiction is vested in the court of the defendant's last known domicile. In the case of an elected domicile, jurisdiction reverts to the court within whose area the elected domicile is situated. In the event of multiple defendants, territorial jurisdiction is vested in the court within whose jurisdictional area one of them is domiciled.[2]

Figure 02: The Regional Distribution of the Composition of the Administrative Court of Appeal

This diagram reflects the organic composition of the administrative court of appeal as stipulated in Organic Law No. 22-10 and Law No. 22-13, and is divided into three main components.



Source : Figure designed by the researcher

The administrative courts of appeal play a crucial role in reviewing decisions from lower administrative courts, exercising both subject-matter and

[1]- Executive Decree No. 22-435, op. cit.
[2]- Salah, Melouk, op. cit., pp. 234–235.

territorial jurisdiction. Subject-matter jurisdiction allows them to adjudicate administrative disputes, including annulment, interpretation, and legality of administrative acts. Territorial jurisdiction ensures the courts serve specific geographic areas, bringing justice closer to litigants across Algeria.

Conclusion:

In conclusion, it appears that the creation of the administrative courts of appeal has produced numerous positive effects on the administrative judiciary, including alleviating the burden on the Council of State by relieving it of the obligation to rule on certain administrative matters, in addition to providing genuine guarantees for a fair trial in administrative litigation.

The establishment of the administrative courts of appeal thus represents one of the most significant reforms to have impacted the field of Algerian administrative justice, through the consecration of the two-tier adjudication system and the provision of greater guarantees for litigants.

On this basis, the study has reached the following conclusions and recommendations:

Findings:

1. The Algerian legislator has distributed jurisdiction among the bodies of the Algerian administrative judiciary in a manner that consolidates the principle of two-tier adjudication.
2. The workload of the Council of State in adjudicating disputes has been reduced.
3. A regional character has been adopted in the distribution of the seats of the administrative courts of appeal.

Recommendations:

1. It is necessary to pay greater attention to the training of judges adjudicating administrative disputes, rather than relying solely on their transfer based on seniority and experience acquired within ordinary judicial bodies.
2. The granting of an advisory jurisdiction to the administrative courts of appeal, as is the case in France.
3. The permanent withdrawal of appellate jurisdiction from the Council of State, given the substantial scope of responsibilities associated with this function.

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3. Law No. 22-07 of 5 May 2022 on Judicial Division, Official Gazette, no. 32, 2022.
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