

Jurisdiction Over Disputes Involving Economic Control Bodies

الاختصاص القضائي بمنازعات هيئات الضبط الاقتصادي

PhD Student. Messaid Khayreddine *

Pro. Djebaili Sabrina

Laboratory of Legal, Political, and Sharia Research
Abbas Laghrour University of Khenchela, Algeria

Abbas Laghrour University of Khenchela, Algeria

E-mail: Khayreddine.messaid@univ-khenchela.dz

E-mail: sabrina.djebaili@univ-khenchela.dz

The date of Submission: 2026/04/25

The date of revision: 2026/07/07

date of publication: 15-07-2026

Abstract:

Although economic control authorities operate outside the scope of presidential authority and administrative supervision due to their organizational and functional independence, they nevertheless remain subject to judicial review. Their independence does not place them beyond the jurisdiction of the courts. This underscores the importance of the present study, which seeks to highlight the role of the judiciary in overseeing these authorities in the exercise of their powers and in adjudicating the disputes arising from them, particularly within the framework of a dual judicial system. Such oversight is essential to maintaining institutional coherence and reinforcing the principles of legality and the rule of law. Judicial intervention therefore constitutes a fundamental safeguard against the potential abuse of public authority.

Keywords: Economic Control Authorities, Judicial Oversight, Disputes, Ordinary Judiciary, Administrative Judiciary.

الملخص:

رغم تموقع هيئات الضبط الاقتصادي خارج نطاق الرقابة الرئاسية والوصاية الإدارية لما تتمتع به من استقلالية عضوية ووظيفية، إلا أنها ليست في حصانة من الرقابة القضائية، فخاصية الاستقلالية لا تمنع اختصاص القاضي، ومنه تظهر أهمية هذه الدراسة التي تهدف من خلالها إلى إبراز دور القضاء في الرقابة على هيئات الضبط الاقتصادي بمناسبة ممارستها لاختصاصاتها، وما ينشأ عن ذلك من منازعات خصوصاً في ظل ازدواجية القضائية، وذلك من أجل المحافظة على تجانس النظام وتكريس مبدأ المشروعية وسيادة القانون، إذ يمثل تدخل القاضي ضماناً أساسية ضد كل تعسف في استعمال امتيازات السلطة العامة.

الكلمات المفتاحية: سلطات الضبط الاقتصادي، الرقابة القضائية، منازعات، القضاء العادي، القضاء الإداري.

*Corresponding Author.

INTRODUCTION:

The traditional model of public administration, characterized by vertical hierarchy and bureaucratic rigidity, has proven ineffective in responding promptly to evolving needs. This, together with the failure of conventional state mechanisms in managing the economic sector, became evident during the crisis of the welfare state in the 1980s and the events that followed, most notably the October 1988 uprisings. In response, the Algerian state began to explore alternative methods for regulating economic life. This transition involved a gradual departure from centralized administrative control, a retreat from direct economic intervention, and the adoption of a market economy based on free competition and openness to the private sector. This shift marked a transition from an interventionist state to a regulatory state.

In this context, the state assumed a regulatory role through the establishment of modern administrative institutions, namely economic regulatory authorities, designed to keep pace with ongoing transformations. These bodies, entrusted with overseeing economic activities, differ fundamentally from traditional administrative institutions such as public service bodies. Their regulatory oversight extends across a wide range of sectors, including stock market operations, postal and telecommunications services, both wired and wireless, electricity and gas distribution, insurance, mining, competition, and the hydrocarbons sector.

The legislature has vested these bodies with regulatory and supervisory powers, including the power to impose sanctions. Although they enjoy organizational and functional independence from both the executive and legislative branches and are not subject to hierarchical control or administrative supervision in the same way as traditional administrative bodies, the need to uphold legality and the supremacy of the law has led the legislature to subject their acts to judicial review. In a state governed by the rule of law, judicial oversight of such authorities is a fundamental requirement. Their exemption from hierarchical or ministerial supervision does not eliminate the need for legal accountability. On the contrary, such oversight reinforces their legitimacy and ensures their conformity with the legal order.

Given that economic regulatory bodies display characteristics typical of administrative entities, disputes arising from the exercise of their broad and varied powers generally fall within the jurisdiction of the administrative judiciary. Nevertheless, jurisdiction over certain disputes has been granted to the ordinary judiciary, particularly those involving the Competition Council and violations related to anti-competitive practices, despite the Council's status as an administrative body. This gives rise to the following key question:

How has the Algerian legislature defined the rules governing judicial jurisdiction over disputes involving economic regulatory authorities?

This question will be examined through an analytical approach, according to the following outline:

- 1- Jurisdiction of the administrative judiciary over disputes involving economic regulatory authorities.
- 2- Jurisdiction of the ordinary judiciary over disputes involving economic regulatory authorities.

1. Jurisdiction of the Administrative Judiciary over Disputes Involving Economic Control Bodies

Pursuant to Article 800 of (Law No. 22-13, 2022), and in accordance with the organic criterion, the administrative judge is, in principle, competent to hear disputes involving public administration. The administrative judiciary therefore has original jurisdiction over such matters. Since economic control bodies display characteristics that reflect their administrative nature (1.1), disputes arising from the exercise of their various powers fall within the jurisdiction of the administrative judiciary. This jurisdiction derives primarily from legislative authority (1.2) and also has a clearly defined scope (1.3).

1.1- Classifying Economic Control Bodies within National Public Bodies

It is well established that economic control authorities cannot, under any circumstances, be classified as part of the central administrative bodies. These include institutions that constitute the core of the central administration and executive authority, such as the Presidency of the Republic, the Office of the Prime Minister, and the various ministries. Likewise, they do not fall within the category of national professional organizations, such as the Bar Association, the National Chamber of Notaries, or the National Chamber of Judicial Officers (Baali, 2012, p. 60).

Accordingly, the most appropriate classification for these authorities is that of national public bodies. Several indicators support the characterization of these entities as national public bodies, including the following:

- The national scope typical of such bodies, which is also a defining feature of economic control authorities, whose powers and jurisdiction extend across the entire national territory.
- The administrative nature of economic control authorities, within which two main categories may be distinguished:

1.1.1- The Competition Council:

The legislature not only granted this body financial and administrative independence, but also enshrined this status in the foundational legal instrument that originally established the Council (Order No. 95/06, 1995).

Following the enactment of the revised Competition Law, Order No. 03-03, and specifically under Article 23, the legislature expressly described the Competition Council as an “independent administrative authority” placed under the minister responsible for trade. It is also endowed with legal personality and financial autonomy. Accordingly, the Competition Council qualifies as a public body (Order No. 03-03, 2003).

1.1.2- The Regulatory Authority for Postal and Wired and Wireless Telecommunications; the Electricity and Gas Regulatory Commission; the Commission for the Organization and Supervision of Stock Exchange Operations; the Monetary and Banking Council; the Transport Regulatory Authority; and the Insurance Supervisory Commission:

In these cases, the legislature did not expressly define their administrative character. Nevertheless, the Council of State addressed this legislative silence in a ruling in the case of *Union Bank v. Governor of the Bank of Algeria*, in which it affirmed that the Banking Commission was, in fact, an administrative authority, despite the absence of any explicit provision to that effect in the former Law on Money and Credit (Rachid Z. , 2013, pp. 38-39).

In addition, legal scholars have developed two fundamental criteria for establishing the administrative nature of economic control authorities when the legislature refrains from making such a designation:

- **The Organic Criterion**

This remains one of the most authoritative criteria in legal doctrine for establishing the administrative character of public entities, including economic control bodies. Under this criterion, a body is considered administrative if it forms part of the state's administrative structure, or if it possesses legal personality under public law and is created by a legal or regulatory instrument to perform duties and exercise powers falling within the sphere of public authority.

On this basis, economic control authorities in Algeria, such as the Regulatory Authority for Postal and Wired and Wireless Telecommunications, the Audiovisual Regulatory Authority, and the Commission for the Organization and Supervision of Stock Exchange Operations, are regarded as administrative public bodies of a special type. They are established by specific legislative acts, possess legal personality and financial autonomy, and perform regulatory and supervisory functions that contribute to the realization of the public interest. Nevertheless, they remain, in principle, subject to state oversight through both judicial and executive authorities.

- **The Functional Criterion**

This criterion examines the nature of the functions and powers exercised by a body, as well as the decisions it issues, in order to determine whether its character is administrative. When applied to economic control bodies in Algeria, it becomes evident that their activities are clearly administrative in nature. This is because the majority of the tasks, powers, and decisions carried out by these authorities fall squarely within the essential functions of the state's administrative apparatus, namely the regulation and organization of economic sectors in order to safeguard the public interest.

These bodies also engage in regulatory activity through the issuance of decisions that establish the conditions of competition and define the principles of transparency. In addition, they exercise supervisory functions by monitoring operators and economic actors to ensure compliance with the applicable legal and regulatory frameworks. They are also empowered to adopt administrative measures, such as imposing financial penalties or temporarily withdrawing licenses in cases of violation. Through these actions, they exercise prerogatives of public authority in pursuit of the public interest and within the framework of national law.

Accordingly, the functional criterion confirms that economic control bodies in Algeria are unequivocally administrative in nature, as reflected in their missions, powers, and fields of intervention. They therefore fulfill a modern regulatory role in the governance and supervision of the national economy.

1.2- The Legislative Basis for the Administrative Judge's Jurisdiction

1.2.1- Article 29 of Organic Law No. 22-10 and Article 900 bis of Law No. 22-13

The administrative judicial system in Algeria was previously composed of the Council of State and the administrative courts. Within this framework, the Council of State was vested with jurisdiction to examine and decide, at first and final instance, disputes involving national public bodies. However, pursuant to Article 179(2) of the 2020 constitutional amendment, the system underwent reform through the creation of administrative courts of appeal, thereby

giving effect to the principle of two-tier litigation. To implement this constitutional requirement, a series of legislative measures was adopted.

Law No. 22-07 on judicial division introduced the principle of two-tier litigation within the administrative judiciary, resulting in the creation of six administrative courts of appeal. Moreover, Organic (Law No. 22-10, 2022) concerning judicial organization clarifies in Article 29, contained in Chapter One of Title Four, that administrative courts of appeal serve as second-instance courts empowered to hear appeals against judgments rendered by courts of first instance in administrative matters. In doing so, they provide litigants with an additional level of protection by allowing administrative decisions to be reviewed before they are brought before the Council of State. This development establishes a genuine two-tier administrative judiciary while reducing the caseload previously borne exclusively by the Council of State in its role as an appellate body.

The same article further provides that administrative courts of appeal may, under special legislative provisions, be granted original jurisdiction, enabling them to hear certain cases directly, without recourse to the first-instance administrative courts. This is expressly confirmed in the second paragraph of Article 900 bis of (Law No. 22-10, 2022), which aims to adapt administrative justice to the specific nature of certain categories of disputes without requiring continual amendments to procedural law.

Unlike the other administrative courts of appeal, the Administrative Court of Appeal of Algiers enjoys original jurisdiction over a specific category of disputes. In such cases, claimants bring their actions directly before this court, bypassing the lower administrative courts; in other words, these matters are not brought before it by way of appeal. Article 900 bis identifies three categories of administrative decisions whose disputes fall within the jurisdiction of the Administrative Court of Appeal of Algiers acting as a court of first instance: decisions issued by central administrative authorities, national professional organizations, and national public bodies, which, as previously discussed, include economic control bodies.

Thus, Articles 900 bis and 901 constitute the foundation of the most recent reform of the administrative judiciary. They have redefined the role of the Council of State, transforming it from an appellate body into a court of cassation. This shift restores its original function as a court responsible for reviewing legality rather than re-examining the merits of cases.

With regard to the powers of the Council of State, Article 10 of the Organic Law governing the jurisdiction, organization, and functioning of the Council of State, as amended and supplemented by (Organic Law No. 22-11, 2022), confers jurisdiction on the Administrative Court of Appeal of Algiers to hear actions for annulment, interpretation, and review of legality concerning administrative decisions issued by central administrative authorities, national public bodies, and national professional organizations. The Council of State, in turn, is vested with jurisdiction to adjudicate appeals against judgments rendered by the Administrative Court of Appeal of Algiers.

1.2.2- The Foundational Laws Governing Economic Control Authorities

An examination of the legislative texts establishing economic control bodies reveals that most of these laws expressly provide for judicial review of the acts issued by such authorities. This further reinforces the jurisdiction of the administrative judge over disputes involving

these entities. Several examples may be drawn from the statutory provisions through which the legislature has conferred jurisdiction on the administrative judiciary over such disputes, as defined by the foundational laws governing these bodies.

a- The Competition Council:

Article 19 of Order No. 03-03 of 19 July 2003 on competition, as amended and supplemented by Law No. 08-12 and Law No. 10-05, authorizes the Council to approve a concentration, reject it by means of a reasoned decision, or approve it subject to conditions designed to mitigate any anti-competitive effects. Notwithstanding these powers, the legislature permits challenges to decisions rejecting a concentration through appeals before the Council of State. This right of challenge is not limited to decisions refusing concentrations, but also extends to other decisions adopted by the Council in the exercise of its powers (Bouhmada, 2020, p. 276).

b- The Monetary and Banking Council:

Articles 65 and 67 of (Law No. 23-09, 2023) establishing monetary and banking law provide that any regulation issued by the Governor of the Bank of Algeria, once it becomes effective following notification to the Minister of Finance within two days of the Council's approval, may be subject to an action for annulment. Such an action, which has no suspensive effect, must be brought by the Minister of Finance before the Administrative Court of Appeal of Algiers. In addition, the Minister of Finance has a period of ten days to request amendments before the regulation enters into force. Furthermore, natural or legal persons affected by decisions issued by the Governor in the field of banking activities may also bring actions for annulment before the same court.

In the exercise of its supervisory powers over banks and financial institutions, the Banking Commission issues administrative decisions of both a regulatory and a disciplinary nature. As an independent administrative authority, its decisions are, in principle, subject to review by the administrative judiciary. This is expressly confirmed by Article 119 of (Law No. 23-09, 2023), which confers exclusive jurisdiction on the Administrative Court of Appeal of Algiers to hear challenges against the Commission's decisions, whether they concern disciplinary or regulatory measures.

c- The Media Regulatory Authorities:

The Regulatory Authority for the Printed Press and Electronic Press is empowered to impose regulatory and disciplinary measures in the form of administrative sanctions, such as formal warnings that must be complied with within a specified period. If the media outlet fails to comply, the authority may decide to suspend the printing or publication of the print or electronic periodical for up to thirty (30) days. It may also order the temporary or permanent cessation of activity by means of an immediately enforceable decision issued through the competent judicial authority. Similarly, the Audiovisual Regulatory Authority is authorized to issue warnings to license holders and audiovisual communication services concerning their obligations under the applicable laws and regulations. These warnings may be issued either on the authority's own initiative or in response to notifications submitted by professional or trade union organizations in the audiovisual sector, associations, or political parties.

Should the license holder or audiovisual communication service fail to comply with the warning within the prescribed period, the authority is entitled to impose a financial penalty and set a deadline for payment. It may also issue a legally reasoned decision ordering the

partial or total suspension of the programme in breach, or of all programmes offered by the audiovisual communication service concerned, provided that such suspension does not exceed thirty (30) days. However, where the license holder or audiovisual communication service commits certain violations set out in Article 78 of (Law No. 23-20, 2023), the Audiovisual Regulatory Authority refers the matter to the competent judicial authority for the purpose of licence withdrawal, without issuing any prior warning.

It should also be noted that (Law No. 23-19, 2023) does not specify the judicial body competent to hear violations on the basis of which decisions are made to suspend temporarily or permanently the activities of periodical publications or electronic newspapers. Nor does it designate the court having jurisdiction over disputes relating to decisions issued by the Regulatory Authority for the Printed Press and Electronic Press. The same legislative silence is found in (Law No. 23-20, 2023) with regard to situations in which the Audiovisual Regulatory Authority refers cases to the judiciary for licence withdrawal. However, this silence may be addressed by reference to the general principles governing judicial jurisdiction, as set out in the Code of Civil and Administrative Procedure and the Constitution. These principles support the exclusive jurisdiction of the administrative judiciary, given that the functions of both media regulatory authorities are purely administrative in nature and therefore fall within the scope of the principle of legality and administrative judicial review. From a legislative perspective, it would be advisable for a future amendment to include an interpretative provision expressly affirming the jurisdiction of the administrative judiciary, specifically the Administrative Court of Appeal of Algiers, in order to strengthen legal certainty and ensure access to justice.

Accordingly, the aforementioned legislative texts, together with Organic Law No. 98-01 defining the powers, organization, and functioning of the Council of State, as amended and supplemented, confirm the original jurisdiction of the administrative judiciary to exercise review over the acts of economic control authorities. These authorities act in the name of and on behalf of the state, and, by virtue of their administrative nature, their acts fall within the application of the organic criterion (Bouhmada, 2020, p. 277).

1.3- The Scope of Review Exercised by the Administrative Judge

A review of the founding texts of economic control bodies reveals that, while they affirm the possibility of contesting their decisions before the administrative judiciary, they do not define the specific nature of such challenges. The actions brought before the administrative courts may involve requests for annulment of administrative decisions issued by these bodies, resulting in a ruling with general and absolute authority, (Baali, 2012, p. 28) or they may seek to suspend the enforcement of the challenged decisions, even if only provisionally.

1.3.1- Annulment Review

The jurisdiction of the administrative judiciary, exercised through the Administrative Court of Appeal of Algiers, extends to the annulment of administrative decisions issued by economic control bodies, whether regulatory or individual, through judicial review of the legality of such decisions.

a- Regulatory decisions:

These decisions govern important aspects of the economic sphere. Although the authorities that issue them enjoy institutional independence, their decisions remain subject to

annulment review. For example, Article 33 of Legislative Decree No. 93-10, as amended and supplemented, is drafted in broad terms and does not specify the categories of persons entitled to challenge the relevant regulations. As a result, it allows any person with standing and a legitimate interest, in addition to the Minister of Finance, to challenge these regulations. It also does not designate the judicial body before which such challenges must be brought. Nevertheless, given the administrative nature of economic control authorities, the Administrative Court of Appeal of Algiers has original jurisdiction to adjudicate challenges brought against their decisions (Khadija, 2012, p. 129).

With regard to regulations issued by the Monetary and Banking Council, the Algerian legislature expressly provides that they may be challenged before the administrative judiciary by a specific party, namely the minister responsible for finance, as previously noted (Council of State Decision No 002138, 2000, pp. 75-79).

b- Individual decisions:

These include punitive and arbitral decisions, as well as decisions refusing licenses and accreditations, issued by economic control bodies.

b.1- Punitive decisions:

The Algerian legislature has identified specific areas in which economic control authorities are empowered to exercise punitive functions. For example:

- **The Competition Council:** The Council is empowered to take all necessary measures, which may be punitive in nature, to eliminate practices that restrict competition. Where investigations into the implementation of legislative and regulatory provisions on competition reveal that their enforcement gives rise to anti-competitive effects, the Council may adopt appropriate measures to put an end to such practices (Order No. 03-03, 2003).
- **The Banking Commission:** Article 126 of (Law No. 23-09, 2023) provides: “If any regulated entity violates a legislative or regulatory provision relating to its activity, fails to comply with an order, or disregards a warning, the Banking Commission may impose one of the following sanctions: ...” Within this framework, the Commission operates as a professional sanctioning authority in the field of regulation, reflecting the state’s approach to the implementation of new mechanisms for economic regulation. More broadly, the punitive powers exercised by these authorities constitute an extension of the prerogatives of public authority.

It is worth noting that the Algerian legislature has adopted several approaches regarding the subjection of punitive decisions issued by these bodies to administrative judicial review. In certain cases, the legislature expressly provides that all punitive decisions fall within the jurisdiction of the administrative judiciary. This applies, for instance, to decisions of the Competition Council concerning the rejection of concentrations under Article 19 of Order No. 03-03, as amended and supplemented, and to disciplinary sanctions issued by the Banking Commission, which are subject to the exclusive review of the Administrative Court of Appeal of Algiers (Law No. 23-09, 2023).

b.2- Arbitral decisions:

The Algerian legislature’s position on the reviewability of arbitral decisions issued by economic control bodies varies according to the context. For example, the legislature has excluded arbitral decisions rendered by the Electricity and Gas Regulatory Commission from

administrative judicial review. Article 137 of Law No. 02-01, cited above, provides that decisions rendered by the Commission's Arbitration Chamber are not subject to appeal and are therefore enforceable (Dawoud, 2016, p. 345).

An evolution may be observed in the legislature's position concerning the disciplinary and arbitral decisions of the Disciplinary and Arbitration Chamber of the Commission for the Organization and Supervision of Stock Exchange Operations. Initially, under Article 57 of Legislative Decree No. 93-10, as amended and supplemented, such decisions were subject to challenge. This was later changed by Article 57, as amended by Law No. 03-04, to allow actions for annulment against the Chamber's disciplinary decisions before the Council of State within a one-month time limit.

With regard to the Regulatory Authority for Postal Services and Electronic Communications, the legislature has made all decisions issued by its council subject to judicial review before the Council of State. This includes decisions rendered in the context of arbitration between operators, or between operators and users. Challenges must be brought within one month from the date of notification and do not have suspensive effect (Law 18-04, 2018).

1.3.2- The Administrative Liability Action

The exercise of powers by economic control authorities may cause harm to economic operators subject to their regulatory oversight. In the absence of legal provisions expressly conferring on the administrative judiciary jurisdiction to hear actions of full jurisdiction or claims for compensation, through which an injured operator may seek redress for damage caused by the acts or decisions of these authorities and obtain a judgment awarding damages, significant legal uncertainty arises.

Given the administrative nature of these bodies, the general principles governing the establishment of administrative liability must apply to them (Samira, 2014, p. 69), even in the absence of express provisions addressing this issue in their foundational texts. Such liability may be based on fault, or it may arise without fault.

For the administrative liability of economic control authorities to be established on the basis of compensation, it must be connected to an administrative fault, commonly referred to as a service-related fault. This type of fault arises where negligence or a deficiency causing harm is attributable to the public service itself, in this case, the economic control bodies. Such fault may result in harm to an economic operator, for example, through the issuance of administrative decisions that deprive the operator of an economic advantage or diminish its competitiveness. The operator must then prove the damage suffered by establishing a causal link between the fault committed by the regulatory authority and the resulting harm.

Liability may also arise in the absence of fault, namely liability based on risk or on the principle of equality before public burdens. This occurs where these authorities adopt regulatory measures intended to serve the general economic interest, yet such measures inadvertently cause harm to one or more economic operators.

It is also important to note that the state bears responsibility for the harmful acts of those economic control bodies to which the legislature has not granted legal personality or standing to sue or be sued, namely the Monetary and Banking Council and the Insurance Supervisory Commission. By contrast, other economic control bodies possess legal personality, financial autonomy, and legal standing; accordingly, they are liable for the

consequences of their acts and decisions, including the obligation to provide compensation where harm is caused.

Finally, it is worth recalling that the compensation action enables the administrative judge, albeit indirectly, to contribute to the process of economic regulation through the judicial oversight exercised in reviewing the decisions of economic control bodies and ensuring that these authorities comply with the procedures legally required for decision-making (Walid, 2011, p. 187).

2. Jurisdiction of the Ordinary Judiciary over Disputes Involving Economic Control Bodies

Pursuant to the principle of the proper administration of justice, the Algerian legislature adopted the approach followed by its French counterpart by conferring jurisdiction over certain disputes involving economic control authorities on the ordinary judiciary. This applies in particular to certain decisions issued by the Competition Council, which constitute an exception to the general rule that such matters fall within the jurisdiction of the administrative judiciary. In this context, the legislature vested jurisdiction over disputes arising from these decisions in the Commercial Chamber of the Court of Algiers, despite the fact that the Competition Council is an independent administrative authority.

This naturally gives rise to the need to examine the rationale that led the Algerian legislature to adopt such an exception (2.1), followed by an analysis of disputes relating to anti-competitive practices (2.2).

2.1- Jurisdiction as a Legislative Tradition and an Application of the Principle of the Proper Administration of Justice

The transfer of jurisdiction remains limited, both in scope and in subject matter. The Algerian legislature has confined this transfer to certain disputes involving the Competition Council when exercising its punitive powers, thereby following the French model.

2.1.1- The Legislative Tradition of the French Legislator

The earliest indications of this legislative trend emerged with the enactment of Order No. 95-06, now repealed, which demonstrates that the Algerian legislature adopted the substantive content of French Law No. 87-499 of 6 July 1987. That French law transferred jurisdiction over decisions of the French Competition Council relating to injunctions and interim measures in competition matters from the administrative judiciary to the ordinary judiciary, specifically the Paris Court of Appeal, whereas such decisions had previously been subject to review by the French Council of State under Order No. 86-1243 on competition and price freedom. In doing so, the Algerian legislature incorporated the same principles and legal framework introduced by the French legislature in the field of competition (Hicham, 2015, p. 148).

Following the 1996 constitutional amendment and the entry of the Algerian judicial system into a new phase marked by judicial dualism under Article 152, with the establishment of the Council of State as the supreme judicial body competent to adjudicate administrative disputes, and with the enactment of Order No. 03-03, as amended and supplemented, which repealed Order No. 95-06, the Algerian legislature drew a distinction between two categories of decisions issued by the Competition Council in the exercise of its powers: decisions authorizing or rejecting economic concentrations, and decisions relating to anti-competitive practices.

Accordingly, the legislature subjected decisions of the Competition Council concerning the refusal of economic concentrations to review by the administrative judiciary, which has general jurisdiction over challenges brought against economic control bodies by virtue of their classification as national public bodies. The legislature therefore conferred jurisdiction on the Council of State to examine appeals against decisions approving or rejecting concentrations, pursuant to Article 19, paragraph 3, of Order No. 03-03, as amended and supplemented, as previously noted (Rachid Z. , 2005, p. 131). By contrast, under French law, jurisdiction over appeals relating to concentrations is assigned to the Council of State because such decisions, whether approving or rejecting a concentration, are issued by the Minister of the Economy rather than by the French Competition Council, and therefore constitute central administrative acts. This legal rationale was affirmed by French Constitutional Council Decision No. 86-224, which held that jurisdiction remains with the administrative judge so long as concentration does not give rise to extensive litigation and does not fall within the category of practices restricting competition. The justification lies in the application of the principle of the proper administration of justice to disputes concerning concentration (French Constitutional Council, Decision No. 86-224 DC of 23 January 1987, 1987).

As for the Algerian legislature's rationale in assigning jurisdiction over decisions concerning the approval or rejection of concentrations, it appears to amount to little more than a replication of the French model, particularly given that, in Algeria, such decisions are issued by the Competition Council itself and not by the minister responsible for trade. Conversely, the Algerian legislature retained the jurisdiction of the ordinary judiciary to hear appeals against decisions concerning anti-competitive practices issued by the Competition Council. This is provided for in Article 63, paragraph 1, of Order No. 03-03, as amended and supplemented, which allows parties affected by such decisions, whether issued by the Competition Council or by the minister responsible for trade, to challenge them before the Commercial Chamber of the Court of Algiers within one month from the date of receipt of the decision.

Accordingly, the transfer of jurisdiction over disputes involving the Competition Council was not based on clearly articulated legal reasoning or justification; rather, it reflects the Algerian legislature's uncritical adoption of the French model through the transplantation of rules applicable to the French Competition Council. In fact, there appears to be no compelling necessity to divide jurisdiction between two separate judicial bodies for the purpose of reviewing decisions issued by the Competition Council. Furthermore, the rationale underlying the French legislature's decision to transfer certain powers from the administrative judiciary to the ordinary judiciary in this area was primarily based on the objective of unifying jurisdiction within a specific legal field in order to ensure the effective functioning of the justice system.

2.1.2- Implementing the Principle of the Proper Administration of Justice

The origin of the principle of the proper administration of justice lies in French law. The French constitutional judge has consistently invoked this principle as the most persuasive justification for the transfer of judicial jurisdiction (Ezzedine, 2015, p. 67). It emerged as a functional legal concept aimed at unifying judicial interpretation by entrusting all disputes and proceedings relating to a particular subject matter to a single judicial body. The objective is to

avoid jurisdictional conflicts by assigning the most specialized authority to adjudicate such cases.

It is difficult to identify an explicit textual statement of the principle of the proper administration of justice serving directly as a justification for transfers of jurisdiction. Rather, the foundation of the principle may be traced to French Constitutional Council Decision No. 86-244, which transferred jurisdiction over disputes involving the French Competition Council from the Council of State to the Paris Court of Appeal. This ruling led to a legislative amendment of 20 December 1986 concerning Articles 12 and 15 of Order No. 86-1243 on competition and freedom of prices. As a result, Article 12 allowed both parties affected by decisions of the Competition Council and the Minister of the Economy to challenge such decisions before the Paris Court of Appeal, while Article 15 expressly provided that decisions issued by the Competition Council may be appealed before that court (Alain, 2000, p. 179).

Through these provisions, the French legislature removed the entire body of decisions issued by the Competition Council from the jurisdiction of the Council of State and assigned them to the ordinary judiciary, represented by the Paris Court of Appeal. Since this transfer was consistent with the requirements of the proper administration of justice and responded to the need to define precisely the powers transferred from the administrative judge to the ordinary judge, the French Council of State supported the change, particularly because it did not violate the principle of separation of powers (Abdelhamid & Qiraa, 2021, p. 653). However, certain members of the French National Assembly submitted a plea of unconstitutionality before the French Constitutional Council, arguing that the amendment failed to provide for the possibility of requesting a stay of execution of the contested decisions before the Paris Court of Appeal. The absence of such a mechanism, regarded as a fundamental safeguard of the rights of the defence, was said to undermine both the principle of equality and the guarantees inherent in judicial proceedings.

In response, the French legislature intervened and enacted Order No. 87-499 of 6 July 1987, incorporating the observations of the Constitutional Council, which had declared the amendment of 20 December 1986 unconstitutional. The subsequent order reaffirmed the essential guarantees of the rights of the defence that had previously been overlooked, while also adhering to the Constitutional Council's case law, which permits the legislature, where the proper administration of justice so requires, to consolidate jurisdictional rules within the judicial order best suited to deal with disputes arising from the application of particular legislative or regulatory provisions, especially where such application leads to a fragmentation of jurisdiction between the administrative and ordinary judiciary.

Turning to the Algerian legislature, it is evident that no justification was provided for transferring jurisdiction to hear appeals against decisions of the Competition Council concerning the repression of anti-competitive practices from the Council of State to the ordinary judiciary. Rather, the legislature appears to have adopted the conclusions previously reached by the French legislature through jurisprudential developments in this field. Furthermore, considering the organic criterion applied by the Algerian legislature under Article 800 of Law No. 08-09, as amended and supplemented, which confines the jurisdiction of the administrative judiciary to cases involving public administrative persons such as the state, wilayas, municipalities, or administrative public establishments, this approach appears to conflict with Article 9 of Organic Law No. 98-01, as amended and supplemented, which

expressly grants the Council of State jurisdiction to adjudicate actions for annulment brought against decisions of national public bodies. The Competition Council is one such body, as established by Order No. 03-03, as amended and supplemented (Mohamed Cherif, 2022, p. 338).

However, the Algerian legislature addressed this departure from the organic criterion through the recent amendments introduced into the Code of Civil and Administrative Procedure by (Law No. 22-13, 2022), which revised Article 800. In addition to its first paragraph, which introduced an exception to the principle that administrative courts enjoy general jurisdiction over administrative disputes by acknowledging the existence of disputes assigned to judicial bodies other than administrative courts, the second paragraph was amended to include national public bodies and national professional organizations among the institutions whose disputes fall within the jurisdiction of the administrative courts through judgments subject to appeal. Likewise, Organic Law No. 98-01, as amended and supplemented by (Organic Law No. 22-11, 2022), revised Articles 9 and 10. The latter conferred jurisdiction on the Administrative Court of Appeal of Algiers to hear actions for annulment against decisions issued by national public bodies, including the Competition Council. The Council of State now adjudicates appeals against decisions rendered by that court, whereas, prior to the amendment, actions for annulment involving such bodies fell within the jurisdiction of the Council of State as a court of first and final instance.

2.2- Decisions of the Competition Council and the Procedures for Challenging Them

The Competition Council is vested with the authority to address practices that restrict competition and the disputes arising therefrom. This will be explained below, together with the mechanisms available for challenging its decisions.

2.2.1- Disputes Relating to Restrictions on Competition

With the enactment of Order No. 95-06 and the establishment of a legal framework for competition, and given that a market economy is inherently founded on the principle of free competition, a new administrative body was created to safeguard competition and penalize restrictive practices. The Competition Council was empowered to impose sanctions in the form of financial fines, while the authority to impose certain other sanctions remained vested in the judiciary. In this context, the judicial authorities were empowered to impose custodial sentences ranging from one month to one year where it was established that a natural person bore personal responsibility for anti-competitive conduct, in addition to the criminal judge's jurisdiction to rule on offences affecting transparency and the integrity of commercial practices.

With the adoption of Order No. 03-03, which repealed (Order No. 95/06, 1995), criminal sanctions were abolished. The legal framework no longer contained provisions criminalizing restrictive competition practices. Consequently, the criminal judge was definitively excluded from the process, and the provisions relating to transparency and commercial integrity were removed from the competition framework and incorporated into separate legislation. Under the current framework, sanctions are limited to the imposition of financial fines by the Competition Council.

These financial penalties represent the punitive dimension of the power to sanction, as they also serve a corrective function intended to compel natural and legal persons found liable

to cease, or refrain from engaging in, practices that distort competition (Competition Council, 2000, p. 13).

Law No. 08-12, which amended and supplemented Order 03-03, increased the maximum fines applicable to perpetrators of anti-competitive practices from a rate not exceeding 7% to one not exceeding 12% of turnover, exclusive of taxes, calculated on the basis of the most recently closed financial year. In addition, the legislature doubled the fixed fine, increasing it from a maximum of three million dinars to six million dinars in cases where the economic operator has no recorded turnover.

Order 03-03 also expanded the range of individuals subject to these sanctions, Article 57 provides that any natural person who fraudulently participates in organizing or implementing practices contrary to competition shall be liable to a financial fine of two million dinars.

However, the most significant difficulty lies in the Algerian legislature's failure to define clear criteria to guide the Competition Council in determining the appropriate level of financial penalties, particularly in accordance with the principle of proportionality. This principle was adopted by the French legislature through the revision of Article 13 of the 1986 Order, which required that financial sanctions be proportionate to the seriousness of the anti-competitive conduct, the harm caused to the market and the wider economy, and the specific circumstances of the sanctioned undertaking or entity (Jehid, 2006, p. 131).

2.2.2- Procedures for Challenging Decisions of the Competition Council

As previously noted, the Algerian legislature distinguished between two categories of decisions issued by the Competition Council: decisions refusing concentrations, which fall within the jurisdiction of the administrative judiciary, and decisions relating to practices restricting competition, as defined in Articles 6, 7, 10, 11, and 12 of Order No. 03-03, which fall within the jurisdiction of the Court of Algiers.

a- Challenge before the Administrative Court of Appeal of Algiers

Under Order No. 95-06, all decisions of the Competition Council were subject to review by the Court of Algiers, which had jurisdiction to hear appeals against such decisions. However, with the adoption of Order No. 03-03, jurisdiction was divided: the Algerian legislature assigned to the Council of State the power to hear appeals against decisions either approving or refusing economic concentrations. Nevertheless, the legislature did not expressly establish in that Order the procedures to be followed for bringing such appeals before the Council of State.

Consequently, reference had to be made to Article 40 of Organic Law No. 98-01, as amended and supplemented. This provision referred to the procedural rules of the Code of Civil Procedure, Law No. 66-154, through Article 231, paragraph 2, which granted the Supreme Court, formerly the Administrative Chamber of the Supreme Court, jurisdiction to hear actions for annulment on grounds of abuse of power against decisions issued by central administrative authorities. On this basis, most appeals concerning refusals of concentrations were previously brought as actions for annulment before the Council of State. Today, such matters fall within the jurisdiction of the Administrative Court of Appeal of Algiers.

Under the current Code of Civil and Administrative Procedure, (Law No. 08-09, 2008), as amended and supplemented, no provision expressly defines the procedure for challenging decisions of the Competition Council before the Council of State. However, Article 900 bis, paragraph 3, by conferring jurisdiction to hear actions for annulment against decisions issued

by national public bodies, including the Competition Council, upon the Administrative Court of Appeal of Algiers, has effectively reduced the role of the Council of State. The Council of State now exercises appellate jurisdiction over decisions rendered by that Court of Appeal. Moreover, such appeals operate at the appellate level and have suspensive effect with regard to the enforcement of the annulment judgment.

b- Challenging decisions relating to practices restricting competition

An examination of Article 63 of Order No. 03-03, as amended and supplemented, shows that jurisdiction to adjudicate disputes arising from decisions of the Competition Council concerning anti-competitive practices has been vested in the Court of Algiers, specifically its Commercial Chamber. However, the article does not specify the procedural steps required for bringing an appeal before the Court of Algiers. Given that this court functions as an appellate judicial body and lies outside the framework of administrative litigation, and in light of Article 64 of the same Order, which provides that the procedural rules of the Code of Civil Procedure govern proceedings before the Court of Algiers, it is most likely that the applicable procedural framework is that governing ordinary appeals.

This constitutes a legislative deficiency, as the provision was not revised following the repeal of Order No. 66-154 establishing the Code of Civil Procedure and its replacement by the Code of Civil and Administrative Procedure, (Law No. 08-09, 2008), as amended and supplemented. Under Articles 539 to 542 of the latter, read together with Article 17, an appeal is lodged by means of a written petition filed with the registry of the judicial council. The petition must bear the stamp and signature of a licensed lawyer and must contain a concise statement of the facts, the appellant's claims, and the legal grounds on which the appeal is based. A copy of the contested decision must also be attached. In addition, the appellant is required to serve notice on the opposing parties through a judicial officer.

Articles 65, 66, and 67 of Order No. 03-03, as amended and supplemented, further establish special procedures for disputes before the Commercial Chamber, alongside those provided under the Code of Civil and Administrative Procedure. Once the appeal has been lodged, a copy must be sent to the President of the Competition Council and to the Minister responsible for trade, provided that the latter is not already a party to the case. The case file relating to the contested decision is then transmitted to the President of the Court of Algiers within the time limits specified by the latter, through the President of the Competition Council.

The reporting judge in the Commercial Chamber is responsible for forwarding a copy of all newly exchanged documents between the parties to both the President of the Competition Council and the Minister of Trade in order to invite any observations they may wish to make. Where such observations are submitted, they must be filed in writing within the time limit fixed by the reporting judge and communicated to all parties concerned.

Article 68 of Order No. 03-03, as amended and supplemented, also permits persons affected by a decision of the Competition Council, who were not originally parties to the appeal, to intervene in the proceedings at any stage, provided that such intervention takes place before judgment is delivered.

Conclusion:

The evolution of the roles and functions of economic control authorities, together with the reform of their foundational legal texts, has contributed to strengthening judicial oversight over their acts. The legal basis for administrative judicial review of acts issued by these bodies is reflected primarily in legislation, particularly Organic Law No. 98-01, as amended and supplemented, governing the jurisdiction, organization, and functioning of the Council of State, as well as in the constitutive laws establishing the economic control authorities themselves.

In carrying out their missions and exercising their powers, economic control authorities issue regulatory and disciplinary decisions directed at economic operators, with potential repercussions for the undertakings concerned. Accordingly, the Algerian legislature has granted all interested parties the right to challenge these decisions through actions for annulment, whether the decisions in question are regulatory, individual punitive, or arbitral in nature. Since these decisions, and the authorities issuing them, fall within the category of national public bodies, they are, as a general rule, subject to review by the administrative judiciary, specifically by the Administrative Court of Appeal of Algiers.

However, the Algerian legislature did not succeed in replicating the French model with regard to the allocation of judicial jurisdiction over disputes involving economic control authorities. This transposition was not based on clearly articulated legal principles or structural justification, but instead amounted to an uncritical imitation, particularly in the transfer of jurisdiction over disputes relating to anti-competitive practices from the administrative judiciary to the ordinary judiciary, represented by the Commercial Chamber of the Court of Algiers. These provisions mirror those applicable to the French Competition Council.

In light of the foregoing findings, and on the basis of the conclusions reached in this study, the following proposals are put forward:

- The need to subject all decisions of economic control authorities to review by the administrative judiciary, represented by the Administrative Court of Appeal of Algiers, in view of the legal nature of these authorities and in accordance with the principle of the proper administration of justice.
- From a legislative perspective, it is essential to affirm expressly the jurisdiction of the administrative judiciary, represented by the Administrative Court of Appeal of Algiers, over disputes involving economic control authorities through specific amendments to their foundational texts, as a means of reinforcing the principle of legal certainty and safeguarding the right of access to justice.
- The need to ensure effective protection for economic operators by strengthening procedural safeguards against certain disciplinary decisions issued by economic control authorities, particularly with regard to the stay of execution, which remains one of the most fundamental guarantees of procedural fairness.
- The importance of ensuring that administrative judges receive specialized training in economic regulation, given the technical complexity that characterizes the activities of economic control authorities.

List of references:

- Abdelhamid, S., & Qiraa, A. (2021, 9). "Judicial Oversight of Economic Control Authorities as a Guarantee of Economic Rights and Freedoms". Journal of Legal and Social Sciences, Ziane Achour University, Djelfa, 9.2021 (3).
- Alain, G. (2000). practice of national and community competition law. Paris: LITEC Editions.
- Baali, M. S. (2012). Administrative Judiciary: The Annulment Action. Annaba, Alegria : Dar Al-Ulum for Publishing and Distribution.
- Bouhmada, M. S. (2020). The Role of Economic Control Authorities in Establishing Legal, Doctoral thesis. Faculty of Law: Economic Public Law, Ghardaïa University.
- Competition Council. (2000). The Annual Report of the Competition Council for 2000 (unpublished). Algeria: Competition Council.
- Council of State Decision No 002138. (2000). dated 08 May 2000, in the case of Union Bank v. Bank of Algeria, Council of State Journal, No. 06, Algeria, 2005.
- Dawoud, M. (2016). Legal Mechanisms for Regulating Economic Activity in Algeria, Doctoral dissertation in Law, specialization: Business Law,. Faculty of Law and Political Science, Biskra: University of Biskra.
- Ezzedine, A. (2015). Judicial Oversight of the Repressive Power of Independent Administrative Bodies in the Economic Field, Doctoral dissertation. Faculty of Law and Political Science, tizi ousou: Mouloud Mammeri University, Tizi Ouzou.
- French Constitutional Council, Decision No. 86-224 DC of 23 January 1987. (1987, 1 23). Consulté le 04 17, 2025, sur Law transferring to the judicial courts the litigation concerning decisions of the Competition Council: <http://www.conseil-constitutionnel.fr>
- Hicham, M. (2015). The Relationship Between Independent Administrative Authorities and the Judiciary in Algerian Law, Master's thesis. Faculty of Law and Political Science, Abderrahmane Mira University, Bejaïa .
- Jehid, S. (2006). Practices Contrary to or Restrictive of Competition Between Order 95-06 and Order 03-03, Master's thesis. Faculty of Law, Jijel: University of Jijel.
- Khadija, f. (2012). The Regulatory Competence of Economic Control Bodies Between Legal Texts and Reality, National Symposium on Economic Transformations and the National Legal System. Faculty of Law and Political Science, University of Jijel, 30 November and 01 December.
- Law 18-04. (2018). dated 10-05-2018, Relating to the general rules governing postal services and electronic communications, Official Gazette No. 27, dated 13 May 2018.
- Law No. 08-09 containing the Code of Civil and Administrative Procedure, Official Gazette No. 21 ,dated 23 April 2008. Amended and supplemented by Law No. 22-13, dated 12 July 2022 Official Gazette No. 21
- Law No. 08-12 Amends and supplements Order No. 03-03, relating to competition, Official Gazette No. 36 Official Gazette No. 36 of 2008
- Law No. 22-10. (2022). relating to judicial organization, dated 09 June 2022, Official Gazette No. 41, 2022.

- Law No. 22-13. (2022). amending and supplementing Law No. 08-09 containing the Code of Civil and Administrative Procedure, dated 12 July 2022, Official Gazette No. 48, 2022.
- Law No. 23-09. (2023). dated 11-07-2023, containing the Monetary and Banking Law, Official Gazette No. 43, 2023.
- Law No. 23-19. (2023). dated 02-12-2023, Relating to the written press and the electronic press, Official Gazette No. 77, 2023.
- Law No. 23-20. (2023). dated 02-12-2023, Relating to audiovisual activity, Official Gazette No. 77, 2023.
- Mohamed Cherif, K. (2022). Practices Contrary to Competition in Algerian Law: A Comparative Study with French Law. Idara Journal (02), p. 338.
- Order 03/03, d. (2003, 7 19). Order 03/03, dated 19 July 2003, relating to competition. Official Gazette No. 43 dated 20-07-2003.
- Order No. 03-03. (2003, 7 19). Relating to competition. Official Gazette No. 43, 2003.
- Order No. 95/06, O. N. (1995, 1 25). Order No. 95/06, dated 25 January 1995, relating to competition. This adaptation is also included in the text in French: « Le conseil de la concurrence est une institution jouissant de l'autonomie administrative et financière » While the Arabic wording does not include the term “authority,” the legislator stipulated that “the Competition Council enjoys financial and adminis . Official Gazette No. 09, 1995.
- Organic Law No. 22-11. (2022). dated 9 June 2022, amends and supplements Organic Law No. 98-01, dated 30 May 1998, relating to the organization, operation, and jurisdiction of the Council of State, Official Gazette No.41,2022.
- Rachid, Z. (2005). Independent Administrative Authorities and Economic Regulation in Algeria (Vol. 1). Algiers: Houma Editions.
- Rachid, Z. (2013). Independent Regulatory Authorities: In Light of Governance Requirements (Vol. 1). Dar El Beida, Algiers: Belkies Editions.
- Samira, M. (2014). isputes Involving Administrative Regulatory Authorities in the Economic Field, Master’s thesis, specialization: Administrative Disputes Law,. Faculty of Law and Political Science, tizi ouzou: University of Tizi Ouzou.
- Walid, B. (2011). Economic Control Authorities in Algerian Law,. Algeria: Dar Belkeise, Algeria.