

New provisions in the two- *degree* litigation process before the administrative judiciary in the law 22.13

Dahel Wafia

Mouhamed Lamine Debaghine University, setif 2,
Research and Studies Laboratory on Contemporary Public Activity, o.dahel@univ-setif2.dz

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Abstract:

Two-degree litigation is one of the most important principles required for a fair trial, without distinction between ordinary and administrative courts. This prompted the Algerian legislator to establish administrative courts of appeal, after judgments were previously appealed before the Council of State, which impacted its mission to unify judicial precedent.

The research problem revolves around the extent to which the Algerian legislator has succeeded in implementing this principle in light of the legal reforms that began in 2020. It was concluded that despite the positive aspects of the transformation and the advantages achieved, both for the citizen, as it is considered one of the most important rights guaranteed to him constitutionally, and for the State Council, whose role in overturning administrative judicial judgments has been strengthened, It also contributed to simplifying procedures by approving the transitional effect of the appeal, but the legislator still has some work to improve in order to properly apply the principle of two-degree litigation.

Keywords: *Two-degree litigation; administrative courts; appeal; fair trial*

1. Introduction:

The principle of a fair trial requires adherence to a set of rules and regulations, the foundation of which is the protection of citizens' fundamental rights and freedoms and the prevention of deviations from the principle of legality.

Therefore, administrative judges are bound by a set of rules that guarantee a minimum level of protection, which may not be waived in order to achieve administrative justice.

Among the most important objectives of the 2020 constitutional amendment are facilitating access to justice, simplifying litigation procedures, and adhering to the principles of a fair trial, the most important requirement of which is respect for the principle of two-degree litigation in both the ordinary and administrative judiciary.

On this basis, our research paper will be limited to the descriptive and analytical approaches. We will attempt to answer the following question: To what extent has the Algerian legislator implemented the

principle of two-degree litigation in light of the legal amendments starting in 2020? This will be done through three topics:

The first deals with the concept of two-degree litigation, the second is devoted to examining the conditions for establishing the principle of two-stage litigation before the administrative judiciary in accordance with the Civil and Administrative Procedures Law. And the third one Customized to specify the effects of establishing the principle of two-degree litigation in administrative matters.

2. The concept of two-degree litigation:

The first appearance of the principle of two-degree litigation occurred in the ordinary judiciary and then spread to the administrative judiciary, where its importance is more apparent in the latter, given the imbalance between the two parties to an administrative dispute, one of which must necessarily be a public legal entity enjoying the privileges of public authority in order to achieve the public interest which necessitates reviewing the first-degree rulings through appeal.

2.1. Importance and definition of the two-degree litigation:

2.1.1 The definition the two-degree litigation principle

Two-degree litigation is one of the most important guarantees of a fair trial enshrined in international conventions. The International Covenant on Civil and Political Rights allows anyone convicted of a crime, according to law, to have recourse to a higher tribunal to review the conviction and sentence imposed.

It is also a basic safeguard against potential errors by first-instance judges. Judges are prone to making mistakes, and

given the serious consequences of the decisions they make, it is best to have them reviewed by a higher-ranking judge with greater knowledge and experience to correct any errors that may have occurred in the first judgment (Mounir AlArabi 2022, p 204)

The principle of two-degree litigation represents one of the most important aspects of the proper administration of justice through the review of initial judgments. Furthermore, the proper application of the law does not mean merely applying it literally; rather, careful interpretation and careful analysis of the facts are required, linking them to relevant legal provisions. Indeed, legal texts themselves may sometimes contain ambiguity or contradiction (Shankaba Souad bin Jaloul Mustafa 2025, p 492)

Two-degree litigation means that the lawsuit is first filed with a court called the first-degree court. The convicted person then has the right to appeal the judgment to a higher court called the second-degree or appellate court, where the dispute is brought before it again for a final judgment. (Bouras Adel Bouchnafa Jamal 2018, p 294)

An appeal is a means by which the principle of two-degree litigation is applied. The losing party files the appeal, whether in whole or in part, before a higher court than the court that issued the contested judgment, with the aim of reviewing it and re-examining the dispute in terms of fact and law. (Snousaoui Soumia 2017, p 242)

Courts of appeal are second-instance courts relative to first-instance courts. Thus, appeal constitutes the only

means of presenting a dispute to second-instance courts (Amara Mounir Hazzaba Nadia 2024, p 2063). Consequently, the Court of Cassation does not constitute a third level of litigation, as the judge's authority in a dispute is limited to examining the application of the law without addressing the facts.

2.1.2. The importance the two-degree litigation principle

Despite the justifications for the two-degree litigation principle, its importance, and the validity of the considerations upon which it is based, it has been subjected to severe criticism. A section of jurisprudence has strongly objected to the two-degree litigation principle, both in terms of the increased costs of litigation and the slowness of procedures, which in turn prolongs the litigation process and the resulting burdensomeness for the litigants.

Or with regard to the type of judgment, as there is no guarantee that a judgment from the second instance court will be better than the first instance judgment, and in fact the latter may be more in accordance with the law. As for time, if the second-instance court judges are closer to being right, the best solution is to submit the dispute directly to that court, rather than wasting time and increasing the expense of litigation before the first-instance court, not to mention the contradiction between the judgments of the two-degree litigation. (Bouras Adel Bouchkafa Jamal, p 295)

Despite the validity of this criticism, there is no doubt that the second-instance court is less likely to make an error than the first-instance court, because it is

composed of more numerous and more experienced judges. Moreover, the fact that the dispute is heard by two courts of two different levels reduces the chances of error, which enables litigants to reach a stage of legal certainty that the judicial judgments issued in the dispute are consistent with the actual facts.

2.2. The legal basis of the principle in Algerian law

The sound organization of any legal institution requires that it be organized theoretically and legislatively in order to be in harmony with the main objective of its establishment. Considering that the purpose of litigation at two degrees is to review the contested judgment in fact and law, the legislator had to restructure the administrative judiciary apparatus to be in line with the application of the principle, whether in the constitution at the top of the legal hierarchy or at the level of laws.

2.2.1. The principle of two-degree litigation in Algerian constitutions

The importance of the principle of two-degree litigation has led French jurisprudence and judiciary to consider it one of the general principles of law related to public order, and it is not permissible to depart from it except by virtue of a text of the rank of law.

Despite its implicit approval in the various Algerian constitutions, the 2016 constitutional amendment also established this principle but limited it to criminal matters, despite the recognition of the application of judicial dualism since the 1996 amendment. Thus, the 2016 constitutional amendment did not translate the principle of two-degree litigation structurally or functionally (Bouras Adel

Bouchkafa Jamal, p293), which raised several practical, legal, and logical problems. However, this step, although small, grants the principle of two-tiered litigation constitutional immunity derived from the supremacy of the constitutional rule itself. (Snousaoui Soumia 2017, pp244-245)

The Constitutional amendment of 1996 limited its recognition of only two bodies in the administrative judiciary: the administrative courts as courts of first instance, and the Council of State as both an appellate and cassation body (Douaa Assia 2024, p 44). Is it reasonable for a judge to be both an appellate judge and a cassation judge? This necessitated a subsequent review of the structure of the administrative judiciary in Algeria, Especially since the structure of the judicial judiciary includes three structures, starting with the primary courts, then the judicial councils, which are the second degree, and above them the Supreme Court at the top of the judicial pyramid, noting that the French judicial system had become aware of this since 1987, by establishing administrative courts of appeal.(in accordance with Law No. 87/1127 dated December 31, 1987.The failure to recognize the principle of two-degree litigation in administrative matters, while recognizing the duality of the judiciary, can be attributed to several reasons, the most important are the lack of political will and the lack of material and human resources. While the second argument was acceptable in the early years of independence, it was a weak argument at the time of the issuance of the constitutional amendment of 1996. The real reason was the lack of political will

to implement the principle first and foremost, and the influence of the French system. Furthermore, the lack of specialization, competence, and experience in the field of administrative law contributed to the failure to create the legal foundation before the structure for litigation at two degrees in administrative disputes.

The evidence for this is that the legislator, by amending the Civil Procedure Code in 1990, had created the five regional administrative chambers, which could have been transformed, by virtue of subsequent texts, into a second degree of litigation against judgments issued by local administrative chambers, This was not included in the 1996 constitutional amendment, which resulted in its abolition, eliminating the benefit of its experience in the field of administrative disputes for nearly six years.

The 2020 constitutional amendment explicitly stipulated this principle, ensuring that the law guarantees two-degree litigation and specifies the conditions and procedures for its implementation (Constitutional Amendment, 165/3)

It also established administrative courts of appeal to appeal judgments issued by administrative courts. (Constitutional Amendment, 179)

2.2.2. The principle of two-degree litigation in laws:

The Civil and Administrative Procedures Code established the principle of two-degree litigation under Article 6, which considered it the principle unless the law stipulates otherwise. Granting primary jurisdiction to administrative courts, subject to appeal, and considering them the

holders of general jurisdiction in administrative disputes, is an embodiment of bringing justice closer to the citizen and an enshrinement of the litigant's right to the second degree of litigation. This is, of course, if we disregard the structural enshrinement of the principle.

After the issuance of the constitutional amendment of 2020, the Elections Law is considered the first legal text that established the existence of administrative courts of appeal in implementation of the constitutional text. It becomes clear through an examination of the Elections Law that the Algerian legislator has established for the first time the principle of two-degree litigation in electoral disputes as a basic guarantee for litigants, the establishment of which has long been called for by legal professionals. (Mouassa Sonia Nadia, pp 4-6) Where it was acknowledged that the judgments issued by the administrative courts of appeal with regional jurisdiction may be appealed. (Order 2021, A129-186)

This order was issued even before the issuance of the Judicial Division Law (Law 2022, 07), which established six administrative courts of appeal, each of which has administrative courts within its jurisdiction, and whose jurisdictions are determined by the organization. (Law 2022,07 A9, 10)

The Organic Law on Judicial Organization, after defining the administrative judicial organization bodies represented by the Council of State, the Administrative Courts of Appeal, and the Administrative Courts, stipulated the jurisdiction of the Administrative Courts of Appeal, their composition, and the

procedures followed before them. (Law 2022, 10, A4, 29). It also authorized the organization to specify the methods of their financial and administrative management. (Law 2022, 10)

Law No. 22/13 was also issued to embody this, amending the Civil and Administrative Procedures Law, which devoted Chapter One bis to the procedures followed before the administrative courts for appeal. (Law 2022, 13, A7)

2.2.3. Exceptions to the principle of two-degree litigation before the administrative judiciary.

The Civil and Administrative Procedures Law issued in 2008 granted the State Council final preliminary jurisdiction to hear appeals against certain decisions. It is responsible for hearing annulment cases against decisions of central administrative authorities, interpreting them, assessing their legality, and other cases delegated to it by special provisions. (Law 2008,09, A 901)

However, the amendment of Law 08/09 by Law 22/13 granted jurisdiction to consider the same appeals to the Administrative Court of Appeal of the city of Algiers, but with only preliminary jurisdiction, which confirms the legislator's desire to enable the litigant to exercise his right to litigate before the second instance, which is the Council of State in this case (Law 2022, 13, A900 bis)

The Council of State may exercise its final primary jurisdiction only if it is granted to it by special texts in accordance with what is stipulated in Article 903 of the same law. Given that this jurisdiction was withdrawn by Law 22/13 and granted

initially only to the Administrative Court of Appeal of the city of Algiers.

3. Conditions for establishing the principle of two-degree litigation before the administrative judiciary in accordance with the Civil and Administrative Procedures Law:

The application of the principle of two-degree litigation before the judiciary requires the creation of a second stage of litigation to enable the litigant to exercise his right to appeal the initial judgment, simplify the rules of jurisdiction, and ensure that appeal procedures respect the principle of reasonable time limits.

3.1. Establishing Administrative Courts of Appeal

The establishment of administrative courts of appeal is a correct approach by the legislator. It can be said that with the issuance of the 2020 constitutional amendment, the principle of two-degree litigation has become routinely applied before administrative bodies. Before that, practical experience had shown that when a cassation appeal was filed before the Council of State after the appeal, the litigant finds himself before the same body that heard the appeal. (Larbi Wardia 2024, p 1293)

In practice, the State Council would refuse to receive an appeal in cassation on a matter that it had decided on appeal, because in this case the dispute would have to be returned to the body that had heard it in the appeal. In this way, it would return the dispute to itself and would have practically combined three jurisdictions: appeal, cassation, and reconsideration of the dispute, as it is an appellate body to which the dispute had

been returned after cassation. In this way, it would hear the same dispute twice. (Saadaoui Mohamed Asghir 2023, p 28).

Although the French administrative judiciary did not know the application of the principle of litigation at two degrees until 1987 with the creation of the administrative courts of appeal, its justification for that is historical and linked to the development of the function of the Council of State, which before 1872 considered the decisions of the regional councils as a second level without having the authority to issue final judgments on them. Rather, its role was limited to expressing its opinion, which means that it cannot be said to be an appellate body.

In 1953, these councils were transformed into administrative courts under judicial reform. These courts have general jurisdiction over administrative disputes as a first instance, and their judgments are appealed before the Council of State. This has led to an accumulation of cases before it, resulting in lengthy adjudications of lawsuits, which necessitated judicial reform in 1987 by establishing administrative courts of appeal. (Bouras Adel Bouchnafa Jamal 2018, p 298)

However, we find no logical justification for the failure to adopt administrative courts of appeal in Algeria since the 1996 constitutional amendment, in which the founders adopted the principle of dual jurisdiction, especially given its stipulation of the principle of two-degree litigation. It is illogical to adopt this principle before ordinary courts rather than administrative courts.

3.2. Strengthening the procedural system for appeals

The application of the principle of two- degree litigation requires the existence of three levels of judicial structures. Therefore, the constitutional founder had to establish the jurisdiction of the general administrative courts of appeal to review the initial judgments issued by the administrative courts. It is also necessary to specify the deadlines for appeal in a manner that ensures its effectiveness.

3.2.1. Establishing the general jurisdiction of the appellate courts to simplify the rules of jurisdiction.

Law 22/13 stipulates that the Administrative Courts of Appeal have jurisdiction to hear appeals of judgments and orders issued by administrative courts and of cases delegated to them by special provisions. It also recognizes their jurisdiction to hear disputes related to the suspension of the implementation of administrative decisions. Meanwhile, the Council of State has jurisdiction to hear appeals of judgments issued by the Administrative Court of Appeal of Algiers.

Thus, it has deepened the jurisdiction of the emergency judge in the administrative courts of appeal to adjudicate the original dispute and end the dispute, and it has also empowered them to consider lawsuits related to the administration's failure to implement judicial judgments.

However, the question is whether the claim that administrative courts have jurisdiction to appeal cases granted to them under special provisions opens the possibility of appealing judgments from

ordinary courts of first instance? Especially since the article does not stipulate the administrative nature of these disputes? And to what extent is this consistent with the constitutional principle that recognizes judicial dualism?

The answer is, of course, no. The jurisdiction of administrative courts of appeal does not open the door to appealing judgments of ordinary courts of first instance, as the latter are subject to the ordinary judicial council. The specific provisions that grant administrative courts of appeal the authority to consider certain cases do not imply any deviation from the administrative nature of the dispute. Rather, these are limited exceptions and do not include civil or criminal cases, which is in line with the constitutional principle of judicial duality that distinguishes between ordinary courts and administrative courts, and granting administrative courts of appeal powers under special provisions does not contradict this principle; rather, it reflects legislative flexibility to cover certain disputes of a special administrative nature.

3.2.2. Appeals procedures respect the principle of reasonable deadlines.

Procedures are an important mechanism for ensuring legal security for individuals and society, and an important guarantee for achieving equality among individuals by setting reasonable and short deadlines for filing, processing, and adjudicating appeals, whether original or urgent.

It is noted through the Civil and Administrative Procedures Law is the legislator's endeavor to establish the principle of resolving disputes within

reasonable timeframes by controlling the timeframes for resolving lawsuits and appeals across the various degrees of litigation, from investigations and issuing judgments and appeals to reports from state governors.

Article 950 of Law 22/13 stipulates that the deadline for appeal before the administrative courts of appeal is one month, and before the Council of State is two months, from the date of official notification of the order, judgment or decision to the person concerned, and from the date of expiry of the opposition if it was issued in absentia.

Article 937 of Law 22/13 also stipulates that orders issued by the administrative court in urgent matters may be appealed before the administrative courts of appeal within 15 days from the date of official notification or notification, and the period for deciding them must not exceed 10 days.

As for urgent orders issued in the first instance by the Administrative Court of Algiers, they may be appealed before the Council of State within 15 days from the date of official notification or notification, and the Council must decide within 15 days unless there are special legal texts (Law 2022, 13, A 950)

Through the articles, it becomes clear that the legislator has linked the deadlines to notification of the initial judgment, which may leave the appeal deadlines open as a result of failure to notify or failure to comply with the correct notification procedures.

Therefore, it is advisable not to link deadlines to notification of the judgment, as the Algerian legislator, like the

Tunisian legislator, can set a maximum deadline for appeal, such as six months from the date of entry of the contested judgment into the electronic system, and this will result in the appeal being rejected for falling outside the deadline. (Mounir AlArabi, 2017, p 231)

4. Effects of establishing the principle of two-degree litigation in administrative matters

Filing an appeal before the administrative judiciary authorities results in the case being transferred to the state it was in before the issuance of the appealed judgment with regard to what was appealed, and the implementation of the appealed judgment is suspended, except for what is excluded by the text.

4.1. Transitional effect of the appeal.

It is well established that an appeal transfers the case to the state it was in before the issuance of the appealed judgment. Appealing the initial judgments also suspends their implementation, except for what is exempted from that pursuant to the law.

An appeal is a normal recourse that transfers the entire dispute adjudicated by the first instance courts to the second-instance courts, which reconsider it in terms of fact and law, in accordance with the transitional effect of the appeal. So, the entire dispute is re-submitted to the second instance court in terms of the requests, pleas and evidence. Furthermore, the requirements of justice and the proper functioning of the judiciary require that the execution of the first instance judgment be suspended until it becomes final.

Law No. 22/13 stipulates that an appeal, whether before the Administrative Courts of Appeal or before the Council of State, has the effect of transferring the dispute. (Law 2022, 13, A 900 bis2)

4.1.1. Applying the rule that there is no transition except within the limits of what was ruled:

The transitional effect of the appeal allows the dispute to be re-adjudicated by the Administrative Court of Appeal from both the factual and legal perspectives. However, this does not mean that all the claims and facts included in the dispute must be reconsidered. Rather, it is limited to what was ruled by the Administrative Court of First Instance.

Therefore, the Algerian State Council ruled in 2010 that the declaration of the first-instance judges' lack of jurisdiction, despite one of the parties being a public person, constitutes a violation of the law that requires the annulment of the judgment. And because the Council's judgment on the case for the first time would deprive the litigants of the benefits of litigation at two degrees, the Council decided to refer the case and the parties to the same court for judgment. (Bouras Adel Bouchnafa Jamal 2018, p312)

This rule or principle finds its justification in the idea of ensuring the stability and continuity of the dispute and what this requires in terms of not making any change in the elements of the dispute until a final judgment is issued in it. Among the elements of the dispute are the parties, the reasons for the lawsuit, its facts and the requests of the parties.

An appeal may only be filed by those with the capacity and interest in the

appeal. Accordingly, anyone who was not a party in the preliminary stage cannot file an appeal. The same applies to intervention or joining in the dispute. (Mounir AlArabi 2017, p 237)

4.1.2. Applying the principle of no transfer except within the limits of what was appealed:

However, this rule finds its limits in what may be raised before the appeal judge regarding issues related to public order, whether by the parties or by the court itself. According to the Civil and Administrative Procedures Law, it is possible to invoke the rules of public order relating, for example, to subject-matter or territorial jurisdiction, capacity, interest and deadlines at any stage of the lawsuit.

4.2. Waiver of the suspensive effect of the appeal

It is an established principle in litigation that an appeal suspends the implementation of the appealed initial judgment, except for what is excluded by text. However, Law 08/09 explicitly stipulated the lack of a suspensive effect of an appeal before the Council of State pursuant to Article 908 thereof. As for the amended Article 908, it stipulates that an appeal before the Council of State has a transferring and suspensive effect on the judgment.

Article 900 bis 2 also stipulates the same before the administrative courts of appeal. Thus, we note that the Algerian legislator has amended the suspensive effect of appeal.

By referral to the application of Article 833 of Law 08/09 to the administrative courts of appeal, the appeal filed before them does not lead to the

suspension of the implementation of the contested administrative decision, except for what is excluded by the text. However, it enables the court to order the suspension of the implementation of this decision based on the request of the person concerned. (Law 2022, 13, A 900 bis8)

The State Council may also, when considering the case as an appeal body, order the suspension of implementation of administrative decisions or the lifting of the suspension of implementation. It may also order the lifting of the suspension of implementation immediately if it would harm the public interest or the rights of the appellant, until the appeal is decided. (Law 2022, 13, A 911)

However, the legislator has authorized the State Council, in accordance with Article 914 of the Code of Civil and Administrative Procedures, and upon the request of the appellant, to order the suspension of the execution of the judgment if the grounds for appeal appear, through investigation, to be serious and would lead, in addition to the annulment or amendment of the judgment, to the rejection of requests for annulment due to the abuse of power imposed by the judgment.

Article 945 also allows the State Council and the Administrative Courts of Appeal, as the case may be, to order the suspension of the implementation of an order granting a financial advance if its implementation would lead to irreparable results, and if the issues raised appear, through the investigation, to be serious and of a nature to justify its cancellation and the rejection of the request.

The theoretical basis for the principle of the suspensive effect of appeal is the assumption that the administration is committed to respecting the obligations of the rule of law and the principle of legality by applying strict rules in all its actions, especially in administrative decisions issued with a presumption of health and safety until proven otherwise by a final judicial ruling. This ensures the continuity of the operation of public facilities and the achievement of public interest objectives.

The basis on which the suspensive effect depends, which is characterised by a procedural nature, is that it is possible to suspend the implementation of contested administrative decisions even at the appeal stage, as suspending the implementation of the administrative decision is a temporary judicial procedure of a precautionary nature taken in respect of situations characterised by their aim to protect the rights in dispute until the dispute is resolved. (Mounir AlArabi 2017, p 248)

It can be said in general that the failure to suspend the implementation of the initial ruling by appeal is a logical consequence of the rule that judicial rulings do not affect the executive force of the administrative decision, which can be traced back to historical considerations related to the emergence of the appeal for annulment and appeals for full jurisdiction and the non-interference of the judiciary in the work of the administration, Theoretical considerations are represented by the distinction of the administrative decision in terms of its nature from the activities of individuals, while practical considerations stem from the necessity of granting the

administration the necessary authority to achieve the objectives of the public interest. (Bouras Adel Bouchnafa Jamal 2018, p311)

5. Conclusion:

The principle of two-degree litigation was not truly applied in Algeria in administrative disputes, as the litigant did not have the right to appeal the judgments issued in his case before a second level. This was the case during the period of application of the system of the unified judiciary, when the adjudication of cases was entrusted to the administrative chambers at the level of the judicial councils, and to the administrative chamber at the level of the Supreme Court. Even after the implementation of the dual judicial system, the right to two-degree litigation before the administrative judiciary was not respected until the latest constitutional amendment, which resulted in the creation of administrative courts of appeal.

Among the advantages of the amendments that Algeria witnessed starting in 2020 in order to achieve the real application of the principle of two-degree litigation:

- For the citizen: Although the Algerian constitutions have recognized the principle of two- degree litigation, it has only been applied in ordinary judicial disputes since the first Code of Civil and Administrative Procedure. However, the citizen's exercise of this right in all lawsuits has not been embodied in practice except through the recent legal amendments.
- Regarding the State Council: Before the latest reforms, the State Council did not

perform its function as the body evaluating the work of the administrative judiciary bodies, which is its original jurisdiction under the Constitution. It was entrusted with the task of appealing judgments and orders issued by the administrative courts that cover all parts of the country, which transformed it into a judge of facts rather than a judge of law. However, assigning the jurisdiction to appeal to the administrative courts of appeal has made it possible to resolve this legal problem and has strengthened the role of the Council of State in overturning administrative judicial rulings, a role it had previously refrained from undertaking as the body to which the appeal is brought.

- Regarding simplifying procedures: The legislator did well to recognize the transitional effect of the appeal, which is what was embodied in previous texts on civil and administrative procedures. He is also credited with reversing his refusal to recognize the effect of the appeal of the appealed judgments, and imposing the principle of reasonable deadlines in appeals, whether for judgments or urgent orders.

Despite the positives contained in the legal texts regulating appeal after the recent constitutional amendment, we recommend the following:

- Increasing the number of administrative appeal courts, which is considered small compared primarily to the geographical factor.
- Taking into account the demographic factor in distributing jurisdiction among them.
- Expanding the electronic system to include, in addition to restricting the filing

of lawsuits, the notification of judgments, and setting a maximum deadline for appeals based on it, to avoid the deadlines remaining open.

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