

RESEARCH ARTICLE
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THE PRINCIPLE OF LITIGATION IN TWO DEGREES IN ADMINISTRATIVE DISPUTES, BETWEEN THE CENTRALIZATION AND DECENTRALIZATION OF THE APPEAL COURT IN ALGERIA
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Abstract:

The administrative judicial structure in Algeria, since the adoption of the 1996 Constitution of the dual judicial system, has revealed several shortcomings related to the principle of litigation to two degrees, which prompted the legislator to seek to address them under the 2020 constitutional amendment. The latter reviews the rules for the distribution of administrative judicial jurisdiction to adapt to its provisions, especially the establishment of administrative courts of appeal, which we will attempt to study through this article to determine the extent of the Algerian legislator's success in defining and controlling these rules in a way that serves the principle of litigation in two degrees in administrative disputes.

Keywords: Judicial jurisdiction; Principle of litigation in two degrees; Administrative courts of appeal.

Résumé :

L'organisation juridictionnelle administrative en Algérie depuis l'adoption de la Constitution de 1996 a révélé plusieurs insuffisances liées au principe du double degré de juridiction, auxquelles le législateur a cherché à remédier dans le cadre de la révision constitutionnelle de 2020, qui a révisé les règles de répartition de la juridiction administrative pour les adapter à ses dispositions, notamment la création des cours administratives d'appel, que nous tenterons d'étudier à travers cet article pour déterminer dans quelle mesure le législateur algérien a réussi à définir ces règles et à les

aménager pour servir le principe du double degré de juridiction en matière de contentieux administratif.

Mots-clés : Compétence judiciaire ; Principe du double degré de juridiction ; Cours administratives d'appel

1– Introduction

Since independence, the Algerian legislature has been concerned with administrative litigation and the development of its judicial system. After the introduction of the system of administrative chambers at the level of judicial councils and what was known as the Supreme Council, after the adoption of the 1996 Constitution, Algeria adopted a dual judicial system. There is an ordinary judiciary that deals with ordinary cases and an administrative judiciary that deals with administrative cases, with administrative courts at the base as a general rule with general jurisdiction over administrative litigation, and the

Council of State at the top as a body that regulates the work of administrative judicial bodies.

However, this administrative judicial structure, consisting of administrative

courts at the base and the Council of State at the top, soon revealed a number of legal and practical issues, mainly related to the principle of two-tier litigation and fair trial.

This prompted the Algerian legislator to remedy these shortcomings and resolve the issues posed by them, under the constitutional amendment of November 1, 2020, where administrative courts of appeal were created, which as a general rule, as indicated by their name, are responsible for hearing appeals against first-instance judgments issued by administrative courts, after they were the original competence of the Council of State, and in line with this, the Algerian legislator issued several laws related to the administrative judicial system, as the Judicial Organization Law 22/07, the Organic Law on Judicial Division 22/10 and the Organic Law on the Council of State 22/11 amending and supplementing Organic Law 98/01 on organizing the administrative judiciary in Algeria.

Therefore, the question of this article is: "To what extent has the Algerian legislator succeeded in adjusting and distributing the rules of jurisdiction between the administrative judicial structures, especially after the creation of administrative courts of appeal, in a way that serves the principle of two-tier litigation in administrative disputes?"

To address this issue, I relied on the analytical approach, by analyzing various information and legal texts to extract the most important provisions. And the

descriptive approach when describing and synthesizing these provisions related to the subject of the research, within the framework of the following methodological plan:

- CENTRALIZATION OF THE APPEAL COURT
- DECENTRALIZATION OF THE APPEAL COURT

2. DECENTRALIZATION OF THE APPEAL COURT

requires addressing the jurisdiction of the administrative courts and then the jurisdiction of the administrative courts of appeal, as follows:

2. 1 The Administrative Courts

The jurisdiction of administrative courts is divided into subject-matter jurisdiction, and Territorial jurisdiction as follows:

2.1.1- Rules for the distribution of the subject-matter jurisdiction of administrative courts

By examining Articles 800 and 801, as amended and supplemented by virtue of the Civil and Administrative Procedures Law 22/13, we find that the administrative courts, as a general rule, have general jurisdiction to consider all disputes in which one of the administrations mentioned in paragraph 2 of Article 800, as amended and supplemented, is a party under a judgment subject to appeal. It specializes in:

Actions for cancellation, interpretation, and examination of the legitimacy of administrative decisions issued by administrative bodies mentioned in Article 801, amended and supplemented by Law 22/13.

The first paragraph of the amended and supplemented Article 801 relates to decentralized administrative bodies that naturally exist at the local level within the regional and service decentralization framework.

- Adjudication of full judicial claims, that is, claims aiming to establish administrative liability and request compensation

- It is concerned with all cases to all cases assigned to them by special texts assigned to them by special text. This paragraph opens a wide scope for administrative courts to extend their judicial jurisdiction, In addition, all cases that are primarily within the jurisdiction of the ordinary judiciary in accordance with the organic criterion contained in Article 800, as amended and supplemented, which the legislator has delegated to the administrative judiciary in derogation from this criterion, are included within the framework of the cases delegated to the administrative courts by virtue of special texts, including, but not limited to, Article 6 of Presidential Decree 15/247 containing the Public Procurement and Public Service Delegations Law, which has given administrative character to contracts concluded by public institutions subject to the provisions of the

Commercial Code when the latter carries out operations financed in whole or in part, with a permanent or temporary contribution from the state or regional groups, thus making them within the jurisdiction of the administrative judiciary in derogation from the organic criterion stated above.

Thus, this article also expanded the jurisdiction of the administrative judiciary to include existing disputes regarding concession contracts concluded by public economic institutions to manage public property, although these institutions do not fall within the organic criterion contained in the amended and supplemented Article 800. In this regard, it is worth mentioning that the legislator has defined the subject-matter jurisdiction of the administrative courts in the manner indicated above, but on the other hand, he has assigned the task of examining some disputes to the ordinary judiciary, even though the administration is an appellant and appellee, in derogation from what is stated in the amended and supplemented Articles 800 and 801 mentioned above. Some of these exceptions were stipulated in the Civil and Administrative Procedures Law 08/09, amended and supplemented by virtue of Article 802 thereof, while others were issued by virtue of separate special texts.

2.1.2- Territorial jurisdiction of administrative courts

The territorial jurisdiction of administrative courts refers to the

geographical scope to which their judicial jurisdiction extends or the territorial area in which administrative

courts can exercise their judicial jurisdiction. In any case, the Algerian legislator has defined the territorial jurisdiction of the administrative courts as follows:

- General rule:

Based on a material criterion represented by the idea of domicile, which is the same criterion adopted in civil matters. This is by virtue of the referral stipulated in Article 803 of the Code of Civil and Administrative Procedure 08/09, as amended and supplemented, to Articles 37 and 38 of the same law, within the framework of the common provisions applied in the ordinary and administrative judiciary.

- The exception to the domicile criterion
In contrast to this rule, which requires the plaintiff to sue the defendant before the administrative court within whose jurisdiction the latter's domicile is located, Article 804 of the Code of Civil and Administrative Procedure 08/09, as amended and supplemented, stipulates some exceptions regarding the location of the competent administrative court regionally, where it stipulates, in departure from the rule of the defendant's domicile, that the lawsuit must be filed before the court within whose jurisdiction the materials specified in Article 804 of the Code of Civil and Administrative Procedure 08/09, as amended and supplemented, are located, which in its

meaning is contrary to the provisions of Article 803 above, lawsuits must be filed before the administrative courts within whose jurisdiction the materials specified in the content of the Article mentioned above 804 are located.

2.2 The Administrative Courts of Appeal

Administrative Courts of Appeal did not exist before the 2020 constitutional amendment within the administrative judicial structure. This is a new mechanism that aims to support the principle of two-level litigation in administrative matters. In addition, they aim to relieve pressure on the Council of State in its judicial duties to devote itself to the basic judicial task for which it was established, which is to evaluate the work of administrative judicial bodies and unify judicial interpretation. Accordingly, we address the following: defining the administrative courts of appeal and the rules for distributing their judicial jurisdiction, as follows:

2.2.1- Definition of administrative courts of appeal

The administrative courts of appeal find their main legal basis in the provisions of the 2020 constitutional amendment under Article 179 thereof,

which is the first constitutional text establishing the administrative courts of appeal since the adoption of the 1996 Constitution of judicial duality (Zahra, 2023). However, this reference to the existence of a new judicial structure within the structures of the administrative judicial system does not mean that the 2020 constitutional amendment has established administrative courts of appeal, and therefore they are not constitutional institutions according to the legal concept regulated by organic laws and subject to prior oversight by the Constitutional Court, but rather they are judicial structures established by legislative texts, but they were mentioned in Article 179 of the Constitution in the context of enumerating the structures whose work is subject to the evaluation of the Supreme Court and the Council of State, as they are two constitutional institutions. (Awatif, 2022)

In contrast to this constitutional text, many legal texts were issued related to administrative courts of appeal, starting with Law 22/07, which includes judicial division. (22/07, 2022), which is stipulated in Article 8, the creation of six administrative courts of appeal in the cities of Algiers, Oran, Constantine, Ouargla, Tamanrasset, and Bechar. Their territorial jurisdiction is determined by regulation, since Article 179 of the constitutional amendment included only a reference to the administrative courts of appeal when it addressed the jurisdiction of the Council of State as an evaluating body.

For the work of the administrative judiciary bodies, Law 22/10 on the judicial organization was issued, which determined the composition and method of operation of the administrative courts of appeal. (22/10, 2022)

It is worth noting that Order No. 21/01 relating to the electoral system (Order No. 21/01 of March 10 2. a., 2012), pursuant to Articles 129 Paragraph 9, Article 183 Paragraph 5, and Article 186 Paragraph 5 thereof, which stipulate the possibility of appealing against rulings issued by administrative courts in electoral matters before the regionally competent administrative court of appeal, is therefore the first text referring to the principle of litigation at two levels before the administrative courts of appeal, since the ratification of the 2020 constitutional amendment established the latter. (Zahra, 2023)

By examining the texts mentioned above related to the administrative courts of appeal, we find that the Algerian legislator did not provide a definition for them. However, the legal texts in their entirety states that the administrative courts of appeal are administrative judicial bodies created by virtue of the 2020 constitutional amendment, which undertake the task of considering appeals as a general rule regarding the orders and initial rulings issued by the administrative courts, in addition to what is authorized to them by virtue of special texts. They are; thus, an embodiment of the principle of

litigation at two levels in administrative matters and its confirmation.

2.2.2– Rules for the distribution of jurisdiction of administrative courts of appeal

As is the case with administrative courts, the jurisdiction of administrative courts of appeal is divided into subject-matter jurisdiction, and territorial jurisdiction.

- Subject-matter jurisdiction of administrative courts of appeal**

The subject-matter jurisdiction of the administrative courts of appeal is determined by Article 29 of Organic Law No. 22/10 relating to judicial organization, as well as Article 900 bis of Law 22/13 amending and supplementing the Code of Civil and Administrative Procedure 08/09. By referring to these two articles, the subject matter jurisdiction of the administrative courts of appeal can be addressed as follows:

- General rule: The appellate jurisdiction of the administrative courts of appeal: This is the jurisdiction of the six administrative courts of appeal mentioned above to consider appeals against judgments and judicial orders issued by the administrative courts. In addition to its jurisdiction which considers all cases granted to it by special texts, the Algerian legislator kept the jurisdiction of the administrative courts of appeal open to every case referred to it by special texts in the application of the rule that the special restricts the general.

- Exception: Primary Jurisdiction

This relates to the Administrative Court of Appeal of Algiers and no other, in addition to the latter's jurisdiction to consider appeals against judgments and judicial orders issued by the administrative courts that fall within its territorial jurisdiction, as well as jurisdiction to consider cases granted to it by special texts, as indicated above as a general rule. In addition, the Algerian legislator has assigned the Administrative Court of Appeals in Algiers, pursuant to Article 900 Bis of Law 22/13 mentioned above, to rule as a first instance on lawsuits to annul, interpret, and examine the legality of administrative decisions issued by central administrative authorities, national public bodies, and national professional organizations.

It is worth noting that this judicial jurisdiction, which was assigned to the Administrative Court of Appeal of Algiers, was transferred to the jurisdiction of the Council of State as a first-instance judge, a final primary judge. In this context, a major question arises: Did the Algerian legislator succeed in withdrawing this jurisdiction from the Council of State and assigning it to the Administrative Court of the Appeal of Algiers? The answer, in my opinion, is no, for two reasons:

- + First, the Algerian legislator, by assigning this jurisdiction to the Administrative Court of Appeal of Algiers, embodied the principle of two-level litigation, where it is possible to appeal what is issued by this

court before the Council of State as an appeal judge. On the other hand, it deprived litigants of an important means of appeal: the appeal of cassation;

Second, this jurisdiction assigned to the Administrative Court of Appeals in Algiers solved a problem that had been raised before the establishment of the Administrative Courts of Appeals, which related to the principle of litigation at two levels. However, it created problems related to burdening this court with judicial files for this jurisdiction, which were added to the files related to its original jurisdiction to consider appeals issued by administrative courts that fall within its territorial jurisdiction.

Therefore, it would have been better for the Algerian legislator, in order to avoid these problems, to assign the jurisdiction to consider lawsuits to annul, interpret, and examine the legality of administrative decisions issued by the central administrative authorities, national public bodies, and national professional organizations, to the Administrative Court of Algiers, which issues judgments that are subject to appeal before the Administrative Court of Appeal of Algiers, instead of the latter considering them as first instance as indicated above. In this regard, we would have embodied the reality of the principle of two-tier litigation, which the Administrative Courts of Appeals were originally established to embody.

- **Territorial jurisdiction of administrative courts of appeal**

The territorial jurisdiction of the administrative courts of appeal is determined under Article 10 of Organic Law 22/10 relating to judicial organization by way of organization. In light of this, Executive Decree No. 22-435 was issued to determine the territorial jurisdiction of the administrative courts of appeal, the first appendix of which determined the territorial jurisdiction of each administrative court of appeal in a manner that included 58 administrative courts distributed across the entire national territory.

3. CENTRALITY OF THE APPEAL BODY

3.1 Jurisdiction of the Council of State

The jurisdiction of the Council of State is determined by Articles 09, 10, and 11 of Organic Law 22/11 amending and supplementing Organic Law 98/01 relating to the organization, functioning, and jurisdiction of the Council of State, which correspond to Articles 901, 902, and 903 of Law 22/13 amending and supplementing Law 08/09 containing the Code of Civil and Administrative Procedure. This shows that the Council of State exercises its jurisdiction either as a cassation judge, an appeal judge, or as a

first and last instance judge (specialized judge), which we will address below.

3.2 State Council as a cassation judge

Article 09 of Law 22/11 amending and supplementing Organic Law 98/01 relating to the organization, functioning, and jurisdiction of the State Council is identical to Article 901 of Law 22/13 amending and supplementing Law 08/09 containing the Code of Civil and Administrative Procedures. (It is noted that the content of both Article 09 and Article 901 before the amendment is completely different from that after the amendment, as the latter, as shown in the text, made the two articles address the jurisdiction of the State Council as a cassation judge, and before the amendment it addressed the jurisdiction of the State Council as a final, primary judge, and in my opinion the legislator did well in this matter as he began with the constitutional and original jurisdiction of the State Council as a cassation judge), and through the above articles we conclude that the legislator has recognized the State Council's authority to consider cassation appeals directed against:

- First-final judgments issued by administrative judicial authorities

If we want to examine the term final judgments in the administrative judiciary, we find that they are issued in the most common situation by the Council of State in the form of judicial decisions in its capacity as a competent judge and in its

capacity as an appeal judge, as well as by the administrative courts of appeal in its capacity as an appeal judge. Administrative courts do not issue final judgments as a general rule, but rather their judgments are preliminary according to Article 28 of Law 98/02, except in specific exceptional cases, in which case they issue final preliminary judgments (Al-Saeed, 2014). The important note that we must record in this matter is that the State Council, in a decision issued by the Fifth Chamber, decided that all final decisions issued by it could not be appealed by cassation except by way of a request for reconsideration and correction of material errors. (Al-Saeed, 2014)

- Second, Cassation appeals to it by virtue of special texts:

The State Council's jurisdiction to consider every cassation appeal granted to it by virtue of special texts makes its jurisdiction as a cassation judge open, which is a positive thing because it came within the framework of the original jurisdiction for which the State Council was established, which is to evaluate administrative judicial work, not only those issued by administrative courts and administrative courts of appeal but also those issued by what are known as specialized administrative judicial bodies such as decisions of the Audit Council, decisions of the National Appeal Committee in the Bar Association, and decisions of the Supreme Judicial Council in its disciplinary formation. (For more details, see Mokhtar, 2023)

3.3 State Council as an appeal judge

This is stipulated in Article 10 of Law 22/11 amending and supplementing Organic Law 98/01 on the organization, functioning, and jurisdiction of the Council of State, and Article 902 of Law 22/13 amending and supplementing Law 08/09 containing the Code of Civil and Administrative Procedure. The two articles are literally identical, as the Council of State is competent to adjudicate appeals against judicial decisions issued by the Administrative Court of Appeal in Algiers related to lawsuits to annul, interpret, and examine the legality of central administrative decisions, national public bodies, and national professional organizations. The observation that we can record on the jurisdiction of the Council of State as an appeal judge as stated in the two articles above is that although this jurisdiction is limited to what is issued by the Administrative Court of Algiers when exercising its jurisdiction as a primary judge in lawsuits to annul, interpret, and examine the legality of central administrative decisions, national public bodies, and national professional organizations. This is much better, and not compared to what was prevalent before the 2020 constitutional amendment, where the Council of State exercised jurisdiction over the primary rulings issued by all administrative courts. However, the recognition of the Council

of State's authority to consider appeals, even those related to the Administrative Court of Appeal of Algiers in lawsuits to annul, interpret, and examine the legality of central administrative decisions, national public bodies, and national professional organizations, still raises, from a legal perspective, the same problems that it raised before the establishment of administrative courts, which are: (Boudiaf, 2009)

- Changing the functional and legal nature of the State Council from a court of law to a court of facts. This is contrary to the provisions of the Constitution, which made it a supreme judicial body that evaluated the work of administrative judicial bodies.
- The increasing number of files submitted to the State Council results in the exhaustion of advisors at its level, which negatively affects the basic constitutional function of the State Council, which is represented in judicial interpretation and contribution to the legislative aspect.
- Depriving the litigant of exercising one of the methods of appeal represented by the appeal by cassation before the State Council since it is legally established that the appeal by cassation is before a judicial body higher than the body that issued the decision subject to the appeal.

3.4 State Council as a Competent Judge

Article 11 of Law 22/11 amending and supplementing Organic Law 98/01 on the organization, functioning, and jurisdiction of the Council of State, which is identical to Article 903 of Law 22/13 amending and supplementing Law 08/09 containing the Code of Civil and Administrative Procedure, states the following: *"The Council of State is competent to adjudicate cases delegated to it by special texts."* Accordingly, the Council of State is considered a competent judge, a final primary judge, and a first and last-instance judge in all cases delegated to it by special texts. This constitutes a violation of the provisions of Article 179 of the 2020 constitutional amendment, which made the Council of State a body that evaluates the work of the administrative judiciary, and also constitutes a serious violation of the principle of litigation in two degrees, and deprives litigants of exercising an important means of appeal, namely the appeal in cassation. In general, some disputes can be mentioned that are decided by the State Council as competent judges, such as banking disputes in decisions issued by the Monetary and Credit Council, including individual decisions issued by the Governor of the Bank of Algeria in his capacity as the Chairman of the Monetary and Credit Council, as well as disciplinary decisions issued by the Banking Committee.

4. CONCLUSION

Ultimately, it can be concluded that Algerian lawmakers aimed to regulate the procedures for allocating administrative jurisdiction in a way that benefits litigants in administrative cases. This was particularly true following the 2020 constitutional amendment and the creation of administrative courts of appeal, which the lawmakers used to attempt to implement the idea of two-tiered litigation. As a result, the 2020 constitutional amendment's new constitutional provisions were taken into consideration when reviewing and updating the jurisdictional rules. The tripartite administrative judiciary structure, which included administrative courts of appeal, eliminated or at least lessened many of the issues brought up by the administrative judiciary's dual structure, which the legislator was able to address.

Though these reforms are of utmost importance, there are still issues that need to be reviewed and amended in the future with the current laws governing the distribution of administrative jurisdiction within the administrative judicial framework, especially to bring the right to trial to the pinnacle when it comes to administrative conflicts.

Finally, the researcher provides a list of conclusions and recommendations which are listed below as follows:

- **The Results**

- The organic criterion is the broad guideline used by Algerian legislators to establish administrative jurisdiction. While this criterion is straightforward to understand, the number of individual legislation that departs from it obscures it;
- In contrast to their jurisdiction in cases of cancellation, interpretation, and legitimacy examination, which is restricted to decisions made by decentralized administrative bodies specified in the text of Article 801 of the Code of Civil and Administrative Procedure 08/09, as amended and supplemented, administrative courts' specific jurisdiction is broad in full judicial cases, encompassing all actions of administrative bodies regardless of whether they are centralized or decentralized;
- An issue that had been brought up before the establishment of the Administrative Court of Appeal in Algiers was resolved by the authority granted to it to rule as a first instance on appeals for annulment, interpretation, and examination of the legality of administrative decisions issued by national public bodies, national professional organizations, and central administrative authorities of the Administrative Courts of Appeal, which had to do with the idea of two-degree litigation, but it also caused issues with this court's workload because it had to review appeals from administrative courts that are under its territorial jurisdiction in addition to files about its original jurisdiction;
- Although the Administrative Court of Appeal in Algiers embodied the principle of dual-level litigation, allowing appeals of decisions made by this court to be heard by the Council of State as an appeal judge, the assignment of jurisdiction to this court also deprived litigants of a crucial avenue of appeal: cassation appeals;
- Acknowledging the Council of State's judicial authority of jurisdiction, a cassation judge, an appeal judge, and its advisory jurisdiction impede the Council of State's ability to carry out its constitutional duty of assessing the performance of administrative judicial bodies.

• Recommendations

- Examining the organic standard that was established as a general guideline for establishing administrative jurisdiction, making necessary adjustments to lessen the exceptions, and making it easier for litigants to understand the guidelines for allocating administrative jurisdiction to the administration;
- Central administrative judgments can be included in the administrative courts' jurisdiction in situations of annulment, interpretation, and validity examination by drawing an analogy with the administrative courts' particular jurisdiction in full judicial matters. This includes:
 - Coming up with a fix for the issues brought up by the recognition of the Administrative Court of Appeal in Algiers, which is primarily represented by

the volume of files on this body, and deprives litigants of a crucial avenue of appeal, namely the appeal for cassation. The administrative court of appeal in Algiers has primary jurisdiction to consider cases of annulment, interpretation, and examination of the legitimacy of central decisions.

- The Council of State's final primary jurisdiction and appeal judge authority are eliminated, and its constitutional responsibilities as a body tasked with assessing the performance of administrative judicial bodies and harmonizing judicial reasoning are fully fulfilled, in addition to its advisory role.
- Expanding the number of administrative appeal courts to provide citizens with more access to justice.

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