

AN APPROACH BETWEEN ECONOMIC REGULATION IN ALGERIA AND THE PRINCIPLES OF GOVERNANCE (BETWEEN RESPONSE INDICATORS AND THEIR LIMITATIONS)

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Abstract:

Many countries, including Algeria, have witnessed a transformation of the state in economic and legal affairs and in the relationship between them. As a result, they have adopted a regulatory approach that expresses the new role of the state, manifested in the establishment of a hybrid institutional framework known as economic regulators to achieve the efficiency of its intervention and the effectiveness of its economic performance in the regulated sectors. This is linked to the extent of their responsiveness to the way in which the principles of good governance are exercised, which has been introduced in the context of comprehensive reforms, including the entrenchment of governance requirements.

This concurrent reform depends to some extent on the consideration of the solutions of these categories that replace the traditional bodies in organising this area as a legal context for achieving good governance. This requires research into the existence of indicators of this responsiveness through an approach between, on the one hand, the principles of governance and, on the other hand, the practice of regulation through the multiplicity of powers granted to it within a legal framework, in order to arrive at the reality that economic regulation is considered a mechanism for governance.

However, this responsiveness has been affected by some constraints that have touched the regulatory framework of economic regulators, through the ambiguity surrounding them and the relativity that has characterised their independence, in addition to the fluctuation recorded in the exercise of judicial control over their decisions and its restraint from the legislative authority.

Keywords: *Economic regulation, governance requirements, regulatory powers, indicators.*

INTRODUCTION:

Algeria's adoption of a regulatory approach aimed at providing a legal framework for the economy that balances the achievement of economic public order and the efficiency and effectiveness of economic sectors, while ensuring the rights of practitioners, has also paralleled a modern concept of reform. This reform has emerged amidst the impact of globalisation on various political systems, resulting from scientific and technological developments in various fields. This has manifested itself in the emergence of new concepts based on principles and foundations emanating from various international organisations and bodies, through which indicators of good governance and administration in the management of state affairs can be measured, in accordance with the public interest and the achievement of development in its various forms, while respecting individual rights and the participation of various social stakeholders. This is expressed through the practice of the concept of good governance, or "governance" for short.

To explore the link between the economic regulatory approach and the requirements of governance, and the positive impact that each has on the economy as a whole by achieving efficiency and effectiveness, protecting the rights of economic actors and enhancing their confidence, it is necessary to assess the extent to which economic regulators respond to the requirements of governance. The aim is to understand the degree of responsiveness between them, expressing the new role of the state through the regulatory mechanism and the principles and requirements of



governance, by examining the indicators and sources of deficiencies that impede and affect this responsiveness.

Based on your detailed explanation, I understand that there is a research problem that deals with the indicators of economic regulation as a mechanism of governance, as well as the obstacles to the entrenchment of governance through the approach of economic regulation in Algeria. I will try to respond to this problem in the following way:

The first axis: indicators of economic regulation as a governance mechanism

Many countries around the world have undergone radical transformations involving reform steps in the economic field, aimed at defining a sound macroeconomic framework that consolidates the disengagement of the State from the direct management of the economy and a re-examination of its role and relationship with it, by devising a new method represented by “economic regulation”, which has also been accompanied by the introduction of a new reformist concept and method known as the practice of “good governance” or what is known as “governance”.

First: The reformist dimension of economic regulation and governance

The organisation and reform of economic life is considered one of the most important issues for all countries, with the aim of controlling domestic markets and protecting them from forms of illegal practices. The crisis of the welfare state has been addressed by adopting the model of the regulatory state, which regulates the economic sector. Algeria has followed these reforms by importing this legal technique in response to the demands of the international market and the institutions compatible with this system¹.

In addition, in order to reinforce this orientation, it became necessary to resort to the policy of governance, which has become an essential requirement and a new approach to rationalising modern public administration². By adopting it, it becomes the link between the State, society and the market, in order to achieve efficiency in the economic sectors and meet the needs of society³.

Accordingly, economic regulation and governance are two reformist approaches, each of which is related to the transformations of the state and the relationship between the authorities of the central state, as well as the administrative method from an economic perspective. This leads to a reality of interactions between the two approaches, where each is affected by the other in the midst of these reforms.

1. Economic regulation is an innovative method of intervention.

Economic regulation is a relatively new concept in the legal field, where it is part of the law of regulation, which is conceptually equivalent to the rules of free competition and the rules of public law. It appeared in the United States in 1889, and interest in it increased immediately after the economic crisis of 1929, and then the term underwent a remarkable expansion after the Second World War⁴.

Regulation is a new idea to describe the profound changes that have taken place and that have escaped the familiar categories of law. The term “regulation” is common, but its value in the legal

¹- Samiya Qalousha, “The Extent of Independence of Independent Administrative Authorities”, Master’s thesis in Advanced Administrative Law, Faculty of Law and Political Science, Department of Law, Aboubakr Belkaid University, Tlemcen, Academic Year: 2016-2017, p. 1.

²- Arzeki Tabri, “The National Authority for the Prevention and Fight against Corruption and Governance Policy”, Master’s thesis in Law, Public Law Branch, Faculty of Law and Political Science, Abdelrahman Mira University, Bejaia, defended on: 10-04-2014, p. 7.

³- Amina Mernache, “The Status and Role of the Algerian State in the Economy: Rupture or Continuity?” Doctoral thesis in public law, Doctoral School (OMI), University of Paris-Est Créteil Val de Marne, academic year: 2016-2017, p. 33.

⁴- Tahar Mimoun, “The Role of Economic Regulation in Achieving Fair Competition in Public Network Services Markets - Application to the Postal and Telecommunications Regulatory Authority in Algeria”, Doctoral thesis in Commercial Sciences, Specialisation in Commercial Sciences, Faculty of Economic, Commercial and Management Sciences, Department of Commercial Sciences, Mohamed Boudiaf University, M’Sila, defended on: 16-11-2016, p. 147.



sciences has increased because it suggests new developments in the way the state intervenes in all areas⁵.

The commitment to regulatory transformation requires the application of a competition policy by the public authorities in the market, after the liberalisation of the economies of the States, in order to avoid anti-competitive practices. As a result, the State has become an intervening, active, managing, opposing and judging party at the same time, with the opening of markets to competition to ensure effective and productive competition, with flexible rules adapted to reality, away from the classical interventionist approaches based on the direct management of economic activities through mandatory and strict rules and regulation⁶. The direct intervention of the administration in decisions relating to production, trade and investment is reduced, leaving the initiative to the market, which remains the only one capable of imposing these decisions⁷.

The reformist dimension of economic regulation manifests itself in the fact that, according to economic theory, it combines and balances economic dimensions related to correcting market failures and eliminating its shortcomings, and non-economic objectives such as consumer protection and achieving the public interest⁸.

Perhaps its most important reformist manifestations are:

1.1 Economic regulation as a guarantor and companion of the soundness of market opening: This appears in the definition of the legal and professional rules that constitute the balanced liberal economic system, in line with the economic public interest, as the most effective form of State intervention, since it seeks to ensure respect for economic freedom and to restore the balance of power through regulatory functions as an expression of economic police justified by access to competition and its preservation, based on the idea of balancing and correcting market imperfections by eliminating its shortcomings⁹, protecting it from the various risks to which it and the actors in it are exposed and absorbing the pressures, as well as protecting some threatened interests, which makes it work to organise the market in the face of the interests of the historical operator with public monopolies and to facilitate the entry of new actors and protect them¹⁰.

1.2 Consumer protection and public interest: These are seen as further dimensions of economic regulation. On the one hand, consumer protection involves compliance with its basic principles relating to the protection of consumers' health, safety, economic interests and contractual will. Regulation intervenes to protect the weaker party (the consumer) between them and the economic agents in case of imbalance. Also, protection in the face of the problems posed by the market economy, from the diversity and complexity of goods and services offered for consumption. The intervention of regulation is thus not only in the face of the bad faith of the economic agent, but also in the face of his abuse of his strong economic position¹¹.

⁵- Nour Eddine Bri, "Lectures on Economic Regulation Law", for second-year Master's students, Specialisation in Business Law, Faculty of Law and Political Science, Abdelrahman Mira University, Bejaia, academic year: 2015-2016, p. 4.

⁶- Ilham Kharshi, "Independent Administrative Authorities under the Regulatory State", Doctoral Thesis in Public Law, Faculty of Law and Political Science, University of Setif 2, Academic Year: 2015-2016, p. 60.

⁷- Mansour Dawood, "Legal Mechanisms for Regulating Economic Activity in Algeria", Doctoral thesis in Law, Specialisation in Business Law, Faculty of Law and Political Science, Mohamed Khider University, Biskra, Academic Year: 2015-2016, p. 3.

⁸- Tahar Mimoun, cited above, p. 148.

⁹- Abdelhaq Mazdari, "Independent Regulatory Authorities in Algeria and Morocco (Comparative Study)", Doctoral Thesis in Administrative Law, Faculty of Law and Political Science, Larbi Tebessi University, Tebessa, Academic Year: 2017-2018, pp. 51-52.

¹⁰- Radia Chibouti, "Independent Administrative Authorities in Algeria (Comparative Study)", Doctoral thesis in Public Law, Specialisation in Political and Administrative Institutions, Faculty of Law and Political Science, Mentouri Brothers University, Constantine, Academic Year: 2014-2015, p. 23.

¹¹- Saleh Lakhal, "The Extent of State Withdrawal from the Economic Field", Doctoral Thesis in Public Law, Faculty of Law and Political Science, Mouloud Mammeri University, Tizi Ouzou, defended on: 14 May 2018, pp. 254-256.



On the other hand, in terms of serving the public interest, regulation is not limited to purely economic objectives (best price, best service), but also extends to the pursuit of economic stability and security, which are not achieved at the expense of the public interest. The function of regulation allows for the harmonisation and coordination of interests, the reconciliation of conflicting elements and the integration of competition concerns at the heart of the public interest. The concept of the public interest is thus broadened and refined to include consumer protection, environmental protection, social and economic cohesion and the common values that society defends¹².

2. Governance: A New Approach to the Practice of Good Administration

The current transformations in the international scene, dictated by various political, economic and social circumstances, have highlighted the values of democracy and market economy mechanisms and ideas introduced by globalisation, as well as the opposition to bureaucracy in traditional administration, which has weakened the political and administrative institutional structure of states and caused the absence of accountability and transparency. These factors have contributed to the emergence of some new reformist-oriented concepts, the most important of which is governance, with its various dimensions.

The term “governance” is very old, dating back to the time of Aristotle¹³. The abbreviated translation that has become common for the term “corporate governance” is “governance”, “wise governance” or “good governance”¹⁴. The accepted scientific translation of this term is “the method of exercising the powers of sound administration”, knowing that governance is one of the terms of good governance that emerged in France in the thirteenth century as a synonym for government, with its many definitions¹⁵.

Governance has attracted the attention of many researchers in various fields, such as social and political sciences, as well as various legislators and international institutions¹⁶. The connotation of governance is not limited to one aspect, but rather the requirements of governance seek to achieve comprehensive development in its various dimensions, whether in the legal and political dimension, in addition to the administrative, economic and social dimensions.

2.1 The dimensions of governance:

The legal dimension: This is reflected in the subjection of governing bodies to the principle of legality, i.e. the rule of law and the sovereignty of the law, as well as the need to work on legislative immunity and to open the way for civil society organisations and the private sector to participate in decision-making¹⁷.

The political dimension: This refers to the way and mechanism of formulating public policies and how decisions are taken within this framework and implemented by both formal and informal political actors within the state. It also relates to how the government is chosen, how its performance is monitored and how it can be replaced if necessary. It measures the degree of trust in political institutions and the extent to which they serve the public good.

¹²- Radia Chibouti, cited above, p. 24.

¹³- Hanane Bouttouati, “Introduction of good governance criteria in the management of local communities in Algeria”, *Algerian Journal of Public Finances*, Vol. 10, No. 01, 2020, p. 91.

¹⁴- Hafiza Achach, “Economic Regulatory Authorities and Governance”, Master’s thesis in Law, Public Law Department, Faculty of Law and Political Science, Abdelrahman Mira University, Bejaia, defended on: 30-11-2014, p. 3.

¹⁵- The Algerian legislator defined it in Law No. 06/06 of 20 February 2006, the City Orientation Law, as “a set of written and unwritten rules that have become the preferred and stimulating topic in many national meetings, conferences and scientific workshops, in addition to public opinion”. It was also defined in the same law as “the governance by which the administration takes care of the concerns of the citizens and works for the public interest in a transparent manner”. See: Abdel Karim bin Ramadan, “Regulatory Mechanisms for Distributing Competence in Organising the Field of Economic Regulation”, Doctoral Thesis in Public Law, Specialisation in Economic Public Law, Faculty of Law and Political Science, Department of Law, Ghardaia University, defended on: 28 February 2018, academic year: 2017-2018, p. 105.

¹⁶- Darine Bakkour, “An Attempt to Define the Concept of Governance”, *Journal of Studies and Syntheses*, L A M T A, No. 05/2013, France, December 2013, p. 2.

¹⁷- Arzeki Tabri, cited above, p. 22 and beyond.



The administrative dimension: This relates to the functioning of the public administration, its efficiency, effectiveness and the performance of its duties with full transparency and independence. It takes into account the fight against administrative corruption, the elimination of bureaucracy and the establishment of constraints and controls that define the rights and duties of public employees. It also measures the independence of the administration from political and economic authorities, ensuring that it is subject only to the law and is not heavily influenced by the prevailing system of government¹⁸.

4. The economic and social dimension: This is manifested in the disclosure of the methods of economic decision-making by the state and economic relations with other relevant countries, in terms of the distribution of production, goods and services to members of society. This dimension is also linked to the nature of civil society and its degree of independence from the state, as well as the nature of public policies in the economic and social spheres and their impact on citizens in terms of poverty and quality of life. It also includes the relationship between these policies and the external economy and other societies¹⁹.

These dimensions are interrelated and intertwined in the production of good governance. Effective public administration cannot be conceived without its independence from political influence, and political administration alone, without effective public administration, cannot achieve success in public policy. The dominance of the state over civil society and its marginalisation will result in the absence of a key component in influencing public policy, monitoring and holding political and administrative authority to account. On the other hand, economic and social policies cannot be managed without participation, accountability and transparency²⁰.

2.2 The principles of governance:

The World Bank has used several criteria in the form of principles to determine the extent to which governance and its requirements are embodied²¹. However, it has focused most of its studies on six (06) principles: the principle of accountability and responsibility, the principle of political stability and government effectiveness, the rule of law, the fight against corruption and the quality of economic regulation²².

The United Nations Development Programme, on the other hand, has adopted nine (09) principles, and we will focus on those that do not overlap with the World Bank's principles and those that the World Bank has not addressed: the principle of participation and transparency²³, the principle of equity²⁴, the principle of responsiveness, and the principle of strategic²⁵ vision and consensus²⁶.

It also encompasses the relationship between these policies and the external economy and other societies.

¹⁸ - Hussein Abdelkader, "Good Governance in Algeria and the Problem of Local Development," Master's thesis in Political Science, Specialization in Euro-Mediterranean Studies, Faculty of Law and Political Science, Department of Political Science, Aboubakr Belkaid University, Tlemcen, Academic Year: 2011-2012, p. 45.

¹⁹ - Basma Nizar, Mohammed Ben Said, "Mechanisms for Applying the Principles of Good Governance and Developing Local Government Management," *Al-Bahith Journal for Academic Studies*, Issue 13, University of Sidi Bel Abbès, Algeria, June 2018, p. 82.

²⁰ - Al-Yassine Boujarda, "The Reality and Requirements of Good Governance in the Arab World," *Algerian Journal of Sociological Studies*, Department of Sociology and Demography, University of Jijel, Algeria, pp. 265.

²¹ - For more details, see Abdel Karim Ben Ramadan, previously cited, pp. 105/114.

²² - Arzeki Tabri, previously cited, pp. 17-18.

²³ - Arzeki Tabri, previously cited, pp. 19-21.

²⁴ - Souhila Amansouran, "Economic Corruption and the Problem of Good Governance and Their Relationship to Economic Growth: An Analytical Economic Study - The Case of Algeria," Master's thesis in Economic Sciences, Faculty of Economic Sciences and Management, Department of Economic Sciences, University of Algiers, Academic Year: 2005-2006, pp. 136-137.

²⁵ - Nabila Sasan, Hakima Halimi, "The Choice of Good Governance in the Context of the Twin Phenomena of Economic Corruption and Rent - The Case of Algeria," *Al-Bashaer Economic Journal*, Vol. 4, No. 3, 2019, p. 712.

²⁶ - Redha Hamza Boujana, Ibrahim Barqoui, "Good Governance as an Approach to Combat Corruption and Achieve Economic Growth: An Empirical Study of a Sample of Arab Countries," *Al-Bahith Journal*, Issue 18, Higher School of Statistics and Applied Economics, Center for Applied Economic Research, Algeria, 2018, p. 155.



Accordingly, all of these principles outlined by the World Bank or the United Nations Development Programme are considered essential and central mechanisms for enabling governance, which requires a degree of integration, interconnectedness and consistency among them. The absence of any of them, or working with them only formally rather than substantively, leads to distortion and avoidance of their application, transferring them from the theoretical to the practical realm and rendering them merely formal.

Second, the interaction between economic regulation and governance.

Giving a greater role to the market and its mechanisms for managing economic activity, and the consequent transformation in the functions of the state, abandoning some of its traditional functions in favour of taking on new ones²⁷, in response to globalisation and its impact on the economic aspect of the state, according to the new liberalism, and limiting its role to its existence as a balance within the market²⁸, in addition to what was imposed by the Bretton Woods agreement on the need to move towards the new form of intervention represented by economic and financial regulation and the obligations associated with the adoption and embodiment of the principles and rules of good governance²⁹, interacting and influencing each other. This is reflected in several phenomena, including the fact that the authorities of economic regulation are a guarantee of meeting the requirements of communication and participation, and that the structural legal system of these authorities contributes to meeting the requirements of efficiency and effectiveness.

1- The authorities of economic regulation are a guarantee for the achievement of the requirements of communication and participation.

In order to avoid the disadvantages of the traditional institutional organisation, such as the distance between the competent administration that issues the decisions relevant to the economy and the addressees, and the dispersion of the decision-making centres within this system, as well as the non-participation of the actors and stakeholders involved, this has led to the dispersion, lack of coherence and harmony between the decisions issued by them, which affects the proper course of the economic system, especially since they are issued in the form of strict rules. This has led the proponents of the new liberalism to emphasise, on the one hand, the importance of links and coordination between the bodies responsible for drawing up standards and the entities to which they are addressed, through flexible participatory rules³⁰.

On the other hand, although there is a difference in the definition of the concept of economic regulation, the agreed elements express the phenomenon of the aggregation of many competences in the hands of the regulatory bodies, which responds to the needs and requirements of participation and the elimination of the phenomenon of the dispersion of structures involved in economic activity³¹. The exercise of these competences by structures closely linked to the sector they regulate is also imposed by the need for communication and participation³², which is achieved through the legal adaptation of the powers of economic regulation, giving them an authoritative and administrative character.

2- The structural autonomy of regulators helps to meet the requirements of efficiency and effectiveness.

The traditional institutional structure is no longer able to respond to interventions that require effectiveness, flexibility and speed in the face of the rapid evolution of markets, sciences, techniques, management methods and financial instruments. On this basis, the efficiency and

²⁷- Kouider Maizi, "State Intervention in Economic Activity in the Context of Market Economy," *Journal of New Economy*, Issue 08_2013, May 2013, pp. 151-154.

²⁸- Saleh Lakhal, "The Extent of State Withdrawal from the Economic Field," Doctoral thesis in Public Law, Faculty of Law and Political Science, Mouloud Mammeri University, Tizi Ouzou, defended on: May 14, 2018, pp. 237-238.

²⁹- Ilham Kharshi, "Independent Administrative Authorities under the Regulatory State," Doctoral thesis in Public Law, Faculty of Law and Political Science, University of Setif 2, Academic Year: 2014-2015.

³⁰- Abdel Karim Ben Ramadan, previously cited, pp. 61, 109-110.

³¹- Hafiza Achach, previously cited, p. 19.

³²- Abdel Karim Ben Ramadan, previously cited, p. 110.



effectiveness factor requires the exclusion of the traditional administration from the sphere of economic regulation, since it is not qualified to carry out regulatory functions due to its lack of expertise and qualifications. In addition, the effectiveness and efficiency of general management or public administration requires the empowerment of the regulatory function within the state apparatus due to the specificity of this task. Regulation is not an ordinary administrative task, it requires expertise in sectors that are undergoing rapid and successive transformations as a result of changes in the global financial markets³³.

2-1 Specialisation and expertise in the composition of economic regulators.

There is no doubt that the complexity of relationships, the diversity of issues and the conflicts of interest in the context of an accelerating market pace require specialised intervention to resolve them. As a result, the composition of the regulatory authorities was a response to these requirements. It is noted that these authorities were born at the heart of a legislative system characterised by pluralism, which is reflected in their composition, which has become a space for pluralism and specialisation. The ability to organise, arbitrate and supervise requires technical competence and moral authority, transforming the expert into a wise decision-maker³⁴.

Accordingly, the Algerian legislator has established the element of competence and expertise in specialisation as a condition for membership of independent regulatory authorities, since their work requires technical expertise and sectoral competence to help them carry out the tasks assigned to them in the various economic and financial fields in the best possible way and in a manner that improves their efficiency.

2-2 The administrative nature of economic regulators

The administrative nature of independent regulatory authorities does not involve the direct management of a public service, but rather the transfer of specific functions to the administrative level. They are responsible for enforcing the law in the specific area entrusted to them³⁵.

An examination of the texts establishing independent administrative authorities in Algerian legislation reveals a certain inconsistency in the legislator's intention to give these bodies an administrative character. While some, such as the Competition Council, are explicitly recognised as such, others, such as the Banking Commission, are not explicitly defined.

A close look at the laws establishing the regulators and their internal regulations reveals a general structural organisational similarity. A common feature of this organisation is the existence of a deliberative body composed of all the members of the regulator, which takes decisions by a simple majority vote, with the chairman's vote being decisive in the event of a tie, in order to bridge the gap of division within the body³⁶.

The multiplicity of the members of these authorities, the diversity of their positions and the different entities proposing their appointment, together with the principle of neutrality and their fixed term of office³⁷, constitute a guarantee of their independence. The principle of the collective composition of these authorities is in itself a guarantee of their independence, since it imposes the principle of the diversity of members, which leads to the diversity of ideas and thus to the achievement of balanced and consensual solutions. In practice, it is difficult to influence the whole group of members, whereas it is easier to do so with a single person³⁸.

3- The move towards autonomy as a response to the requirements of impartiality and transparency.

The concept of orientation towards the achievement of the idea of the independence of economic regulators refers to the non-subordination of these bodies to the presidential authority or to the

³³- Hafidha Achach, cited above, p. 13.

³⁴- Radia Chebouti, cited above, p. 88.

³⁵- Rabih Boucharek, Kahina Beznia, cited above, p. 58.

³⁶- Radia Chebouti, cited above, p. 92.

³⁷- Rafik Khawi, cited above, p. 20.

³⁸- Ilham Kharshi, cited above, p. 146.



administrative guardianship³⁹. The degree of independence of the economic regulators varies from one regulator to another and, if we refer to the texts establishing these regulators, we find that the legislator has expressly recognised this independence for some of them, which is presumably manifested in two aspects: organic and functional independence.

Organically, it is embodied in the collective nature of the composition of these authorities, as well as in the entity that proposes their appointment and its multiplicity, which should affect the principle of neutrality, not inclining towards any entity or party, which enshrines this principle of impartiality, which in turn includes the system of incompatibility and the procedure of abstention⁴⁰. The system of incompatibility refers to the technique that excludes some members of the regulatory authorities from participating in the deliberations of the institutions being monitored⁴¹, on the basis of their personal position towards them. In addition to the term system, it refers to the legal term granted to the members to exercise their functions during this period, since they cannot be removed, suspended or dismissed during this period, except in the case of a serious error, and this ensures that they are not subject to the arbitrariness of the central authority, away from the presidential authority and the guardianship authority, and this ensures the fulfilment of the requirements of neutrality and impartiality.

With regard to the orientation towards achieving independence in the exercise of the functional competences of the economic regulators, it manifests itself in the financial means available to them, represented by the legislator's recognition of their financial independence, in addition to the legal means represented by their enjoyment of the power to establish their internal system and the recognition of their legal personality⁴², which grants them independence in the exercise of the regulatory functions conferred on them, as a reflection of the transparency of the exercise of their regulatory functions, whether in relation to the normative and decision-making powers conferred on them or in the exercise of their deterrent, arbitration and supervisory functions.

The second axis: obstacles to the entrenchment of governance through economic regulation.

The main obstacles to the entrenchment of governance through economic regulation are related to the lack of organisational and functional autonomy of these authorities, and to their lack of influence and shielding, by empowering them with neutrality and preserving their independence from any influence on their composition or the exercise of the powers assigned to them.

First: Obstacles to the achievement of organisational autonomy for economic regulators.

A review of the legal systems of the various economic regulators, whether in France or Algeria, as well as some practical practices, reveals the relative neutrality of these authorities, due to some factors that limit their organisational autonomy, which we can see in several manifestations that confirm the relativity of this autonomy, such as the influence of the central administrative representation in these authorities, the power of sole appointment of their members, in addition to the absence of a system of mandate and the absence of the recusal procedure, among others.

1- Central administrative representation in economic regulators.

The establishment of economic regulators as independent administrative bodies is an attempt to develop a new administrative formula characterised by a certain originality, represented by their independence from the central administration. The specificity and sensitivity of their functions have led the legislator to separate the tasks of the central administration, which are limited to the formulation of sectoral policies and planning, from the tasks of supervision and regulation, which remain within the competence of the economic regulators due to their independence and impartiality⁴³.

³⁹- Radia Ait Wart, cited above, p. 40.

⁴⁰- Mansour Daoud, "Legal Mechanisms for Regulating Economic Activity in Algeria", cited above, p. 174.

⁴¹- Aljia Chamoun, "The Position of Independent Regulatory Authorities Among Public Law Entities in Algerian Law", Doctoral thesis in Public Law, Specialisation in Administration and Finance, Faculty of Law, University of Mohamed Bougara, Boumerdes, defended on: 10 September 2018, p. 254.

⁴²- Radia Ait Wart, cited above, p. 49.

⁴³- Walid Boujmline, cited above, p. 90.



For example, with regard to the Competition Council, the presence of a representative of the central administration - a representative of the Minister of Trade - is not justified, although this matter only concerns the Competition Council. However, it is considered a fundamental reference when creating or amending any law relating to a regulatory authority in this field, since this Council is not an ordinary body, but rather a body that, by virtue of its horizontal competence, replaces all sectoral regulatory authorities⁴⁴.

2. The monopoly of the executive over the power of appointment.

One of the fundamental manifestations that limits the organic independence of independent administrative authorities is the dominance of the State's executive apparatus over the power to appoint the chairperson and members of the collective structure. This is the case in France, which has led the National Assembly's Public Policy Evaluation and Monitoring Committee to recommend that this issue be re-examined and that the legislative authority be involved by sharing the power to appoint members of regulatory bodies between the executive and the legislature⁴⁵.

We note that all the chairmen of financial and economic regulatory bodies are appointed by presidential decree issued by the President of the Republic, with the exception of the Stock Exchange Regulatory and Supervisory Commission, whose chairman is appointed by executive decree adopted by the Council of Government on a proposal from the Minister of Finance. The same applies to the members appointed by presidential decree, with the exception of the members of the Securities and Exchange Commission, who are appointed by decree of the Minister of Finance, and the members of the Electricity and Gas Regulatory Commission, who are appointed by the Ministers of Energy and Justice⁴⁶.

3. The absence of rules on terms of office.

The legal system and the diversity from one authority to another can only be described as fragile, given the lack of universalisation of the system of terms of office for members of all regulatory authorities. With the exception of the Competition Council, the Securities and Exchange Commission and, to a certain extent, the Banking Commission, the members of the remaining authorities do not benefit from any term of office or immunity from the discretionary powers of the authority concerned⁴⁷. Consequently, these individuals are subject to dismissal at any time, which may affect their job stability and limit their independence and impartiality⁴⁸.

4. Absence of the objection procedure in the deliberations.

Despite the importance of this procedure in the deliberations of economic regulators, especially those with adjudicative powers such as the Securities and Exchange Commission, it is completely absent or non-existent in the case of the criminal jurisdiction, except for the category of judges⁴⁹.

5. Intervention of the executive authority in the establishment of internal regulations.

The lack of independence of some independent administrative authorities is manifested by the intervention of the executive authority in the establishment of their internal regulations⁵⁰. Such a method of establishing their internal rules subordinates these authorities to the executive authority, thus undermining their independence, which can be said to be almost non-existent in this matter⁵¹. This is the case of the Competition Council, from which the legislator has withdrawn the power to adopt its internal regulations, in accordance with Article 31 of the amended and supplemented

⁴⁴- Mansour Daoud, "Legal Mechanisms for Regulating Economic Activity in Algeria", cited above, p. 170.

⁴⁵- Abdelwahab Mrabet, "Practical Justifications for the Establishment of Economic Regulatory Authorities: A Comparative Study Between Algeria and France", *Journal of Communication in Economics and Law*, Issue 42, June 2015, p. 125.

⁴⁶- Walid Quahoush, "Control over the Actions of Independent Administrative Authorities", Master's thesis in Law, Specialisation in State and Institutions, Faculty of Law, University of Algiers 1, academic year 2016-2017, p.

⁴⁷- Walid Boujmline, cited above, p. 92.

⁴⁸- Abdelhak Mezderi, cited above, p. 393.

⁴⁹- Radia Ait Wart, cited above, p. 48.

⁵⁰- Previously cited, p. 54.

⁵¹- Abdelhaq Mezderi, cited above, p. 408.



Decree 03-03 on competition. This regression can be interpreted as the legislator's wish to place this council under the supervision of the government, thus transforming it into a public institution of a special nature, as described by Professor Zouaimia Rachid⁵².

6. Relative financial independence.

Economic regulators that are able to finance their activities themselves are more independent of other public authorities in the State than those financed by the State budget. The resources provided by the State to finance all or part of these authorities place them in a position of dependence on the executive authority, since any deficit they may suffer could open the door to these directives, causing them to lose this independence⁵³.

In Algeria, the legal texts governing the economic regulators have maintained this dependency, but to varying degrees. For example, the Electricity and Gas Regulatory Commission prepares its annual budget, but it is subject to the approval of the Minister of Energy. It can also benefit from financial advances from the Treasury on a reimbursable basis. The Monetary and Exchange Council and the Banking Commission do not enjoy financial independence and therefore do not have their own budget, their financial burdens being borne by the Bank of Algeria. Similarly, the budget of the Insurance Supervisory Commission is covered by the State budget⁵⁴.

Second: Obstacles to the achievement of functional independence of economic regulators

One of the manifestations that impede the performance of economic regulators in the exercise of their functions and make their entrenchment relative, thus affecting and even impeding the application of the principles of governance in this field, is where we see its impact mainly in the supervision of annual activities and in the various forms of supervision imposed on the exercise of the regulatory functions of these authorities, which affects the effectiveness of their existence and the exercise of their activities.

1- Supervision of annual activities

We find this type of supervision at the level of many economic regulators, where they prepare an annual report that is sent to the government⁵⁵. This procedure is considered to limit the independence of these authorities by imposing a form of executive control over them. For example, Article 27(1) of Decree 03-03 on competition, as amended and supplemented, stipulates that the Competition Council must submit an annual report on its activities to the legislative body⁵⁶, the Prime Minister and the Minister of Trade, with a view to its publication in the Official Gazette or other media. Similar supervision applies to the Electricity and Gas Regulatory Commission, which submits its annual report on its activities and market developments to the Minister of Energy, and the Banking Commission, which submits its annual report on its supervision of banks and financial institutions to the President of the Republic⁵⁷.

2. Control over their regulatory functions.

The regulatory function is mentioned here because the legislator has exclusively granted some regulatory authorities, such as the Monetary and Credit Council and the Committee for the Regulation and Supervision of Stock Exchange Operations, the power to establish their legal and regulatory rules as secondary subordinate regulations and to supervise the sectors under their jurisdiction. However, the reality of their practice is dominated by the control of the executive authority through several influential means, including

2-1. The second reading procedure.

⁵²- Ilham Kharshi, cited above, p. 185.

⁵³- Abdelhaq Mezderi, *supra*, at 423.

⁵⁴- Ahsan Gharbi, "The Relativity of the Functional Independence of Independent Administrative Authorities", *Journal of Human Research and Studies*, Issue 11, University of Skikda, 2015, p. 255.

⁵⁵- Mansour Daoud, "Legal Mechanisms for Regulating Economic Activity in Algeria", cited above, p. 174.

⁵⁶- Decree No. 03-03 of 19 July 2003 on competition, Official Journal of the Algerian Republic, No. 43 of 20 July 2003, as amended and supplemented by Law No. 08/12 of 25 June 2008, Official Journal of the Algerian Republic, No. 36 of 19 July 2008, and Law No. 10-05 of 15 August 2010, Official Journal of the Algerian Republic, No. 46 of 18 August 2010, p. 29.

⁵⁷- Ahsan Gharbi, cited above, pp. 253, 254.



This procedure is evident in the way in which banking regulations are issued by the Monetary and Credit Council, since we note that the regulations issued by the Council are not executable from the day they are approved by the Council, but are merely draft regulations that are sent to the Minister of Finance, who has the right to request their modification after what is known as the “second reading” before they are issued.

Under Law 90-1⁵⁸ on Money and Credit, this process was carried out as follows: the draft regulations prepared for publication in accordance with the provisions of Article 44 are sent to the Minister of Finance within two days of their approval by the Council. The Minister has the right to request their modification and to inform the Governor thereof within three days.

The Governor must therefore convene the Council within two days and present the amendment requested by the Minister of Finance⁵⁹.

In the case of Order 03-11 on Money and Credit, we note that these regulations are repealed by the Governor to the Minister of Finance in the form of draft regulations within two days of their approval by the Council, and the Minister has a period of 10 days to request their amendment before their issuance, and the Governor must then convene the Council to meet within 5 days.

The Minister’s proposed amendment shall be submitted to him, and the new decision of the Council shall be enforceable regardless of its content.

Thus, the second reading by the Minister has taken place in order for these regulations to acquire executive force and, consequently, to be published in the Official Journal⁶⁰.

It follows that the amendment proposed by the Minister of Finance can be accepted or rejected. The Council is therefore not subordinate to the executive. And in the event of the Minister’s silence within ten (10) days, these regulations acquire executive force from their publication in the Official Journal, which means that the executive authority does not have the right to amend the regulations issued by the Council of Currency and Credit, but its right is limited to requesting a second reading.

However, this may raise two points:

- a. The second reading is merely a procedure which obliges the Minister of Finance and the Council of Currency and Credit not to oppose the proposals initiated by the former. There is no doubt that the Council of Currency and Credit has never opposed the proposals of the Minister of Finance.
- b. It is inconceivable that the Council of Currency and Credit would oppose or ignore the proposals initiated by the Minister of Finance after the second reading, since the members of the Council are appointed by the executive authority by presidential decree.

2-2 The approval process:

While the regulations of the Monetary and Credit Council are subject to a second reading before being issued, the regulations of the Stock Exchange Regulatory and Supervisory Commission are subject to a different procedure - approval. Article 32 of Legislative Decree No. 93-10 on the Stock Exchange states that this Commission exercises its powers by issuing regulation⁶¹, but after approval by the Minister of Finance⁶².

⁵⁸- Article 46 of Law 90-10 of 14 April 1990 on currency and credit, Official Gazette, No. 16, 18 April 1990, repealed.

⁵⁹- Ben Latrash Mouna, “Independent Administrative Authorities in the Banking Sector: A New Face of the State Role”, Journal of Administration, Algeria, issue 02, 2002, p. 65.

⁶⁰- Article 63 of Decree No. 03-11 of 26 August 2003 on currency and credit, Official Journal of the Algerian Republic, No. 52 of 2003, published on 27 August 2003, amended and supplemented by Decree No. 10-04 of 26 August 2010, Official Journal of the Algerian Republic, No. 50 of 2010, published on 1 September 2010, and supplemented by Law No. 17-10 of 11 October 2017, Official Journal of the Algerian Republic, No. 57 of 2017, published on 12 October 2017, amended and supplemented.

⁶¹- Article 32 of Law No. 93-10 of 23 May 1993 on the stock exchange, Official Journal of the Algerian Republic, 34, 1993, published on 23 May 1993, as amended and supplemented by Law No. 03-04 of 17 February 2003, Official Journal of the Algerian Republic, 11, 2003, published on 19 February 2003.

⁶²- Article 1 of Executive Decree No. 96-102 of 11 March 1996 implementing Article 32 of Legislative Decree No. 93-10 on the stock exchange, Official Journal of the Algerian Republic, number 18, published on 20 March 1996.



This means that the regulations prepared by the Commission must be approved by the Minister of Finance before they are published in the Official Gazette together with the Minister's approval decision.

The French legislator has also given the authority to issue regulations to the Telecommunications Regulatory Authority, but after approval by the competent Minister and with mandatory publication in the Official Journal.

On the other hand, there are other authorities, such as the Audiovisual Council and the Electricity Regulatory Commission, to which the legislator has conferred the power to issue regulations without subjecting them to an approval procedure.

Thus, the regulatory power of the Securities and Exchange Commission is subject to ministerial approval. Regulatory power is thus divided between the ministerial authority responsible for approval and the Commission, to which the law has granted regulatory power. The intervention of the executive authority renders the Commission subordinate to it and prevents it from effectively exercising its regulatory power.

2-3 Submission to the executive authority through the power of substitution

The Algerian legislator has empowered the executive authority, through the power of substitution, to replace the regulatory authorities in the economic field⁶³. It has recognised the power of substitution to replace and take over the powers of the Commission for the Regulation and Supervision of the Stock Exchange in certain cases⁶⁴.

The power of substitution is used for compelling and temporary reasons beyond the control of the administration, such as illness, absence or any other impediment that prevents the original authority from directly exercising its competence. Substitution takes place by operation of law as soon as the original authority is unable to exercise its powers, in order to ensure the continuity of public services. It ends by operation of law as soon as the original authority resumes its duties and responsibilities. The decisions taken by the substituting authority have the same force as those taken by the original authority, since they have the same rank⁶⁵.

With regard to the substitution of the economic regulator by the executive authority, the Algerian legislator has authorised the exercise of this prerogative in certain cases specified in Decree-Law No. 93-10. Firstly, in the event of an incident (in which the Commission is unable to control the situation in the event of a major incident leading to a disruption of the operation of the stock exchange or irregular price movements) requiring a suspension of more than five full days, the Minister of Finance becomes the competent authority by virtue of the power of substitution granted to him by law. The same power is granted to the Minister of Finance when the incapacity or shortcoming of the Commission is proven⁶⁶.

The previous cases provided for the executive authority are embodied in the Minister of Finance, and on his own initiative, to replace the Committee. These cases relate to the Committee's obvious shortcomings or failure to fulfil its duties in the adoption of the appropriate system, since it is qualified by the legislator to supervise the protection of the stock market and to determine the rules of professional ethics to be observed in the regulations. With the end of these cases⁶⁷, which are a warning to the Committee to carry out the regulatory process in the best possible way, and which at the same time are a factor in reducing the functional independence of the Committee with regard to the exercise of its regulatory competence⁶⁸, we wonder when the Committee will be able to carry out its duties.

⁶³- Ridouani Nassima, 'The Regulatory Authority of Independent Administrative Authorities', Master's thesis in law, specialisation in administration and finance, Faculty of Law, Ahmed Bouguerra University, Boumerdes, academic year 2009-2010, defended on: 12 October 2011, p. 119.

⁶⁴- Mohammed Fanouh Mohammed Othman, "Delegation of Administrative Authorities: A Comparative Study", 1st edition, Al-Manar Publishing and Distribution, p. 23.

⁶⁵- Fanous Khadija, cited above, p. 111.

⁶⁶- Dhib Nadira, cited above, p. 100; Fanous Khadija, cited above, p. 111.

⁶⁷- Article 49 of Decree-Law No. 93-10, cited above, p. 09.

⁶⁸- Fanous Khadija, cited above, p. 111.



Accordingly, we wonder when the Committee can be considered incapable of fulfilling its duties and when it can be considered negligent. From the expressions used, we conclude that the legislator is extending the Committee's discretion in this matter, thereby reducing its independence⁶⁹, or that it is casting doubt on the Committee's ability to face up to situations or take the necessary measures in exceptional circumstances⁷⁰.

2-4 Subordination to the executive authority through the right to overrule decisions.

This type of functional dependency can be seen when the executive authority intervenes by means of certain procedures that impede the powers of the control authorities. The non-revocability or modification by the executive authority of the decisions taken by the independent control authorities as a guarantee is not enshrined in most authorities in the field of economic contro⁷¹. Evidence of this can be found in the Competition Council, where the government has the right to overrule its binding decisions to refuse authorisation of economic concentration operations, as in Article 21 of Decree No. 03-03 on Competition⁷², i.e. its intervention in the concentration authorisations rejected by the Competition Council, which makes the dominance of the executive authority over the acts of the Competition Council evident.

This is not what we find in Law No. 95-06 on competition, since, according to the text of Article 11, the Competition Council has the power to grant or refuse merger authorisations without the intervention of the executive authority. The government does not have the power to modify, annul or revoke the decisions of the Competition Council. In the event of a refusal to authorise an economic concentration, the designated institution has the right to appeal to the courts against the decision to refuse the concentratio⁷³.

CONCLUSION:

The adoption of the economic regulatory approach as a reform idea is linked to the transformations of the state in the economic sphere, which also has implications for political and legal thought, as well as other fields. It also intersects with another reform idea related to the governance of many sectors within the state.

The imperative of the state's withdrawal from the economic and financial spheres, which Algeria has tried to enshrine in the service of these reforms and transformations, by adopting new principles that somewhat correspond to and touch upon the principles of governance, is correspondingly strong. Thus, the solutions of the economic regulatory authorities, which replace the traditional bodies in the organisation of this field, can be seen as a legal context to achieve this, expressing prominent indicators in the regulatory context and the legal nature of these authorities. However, the realisation of these reforms faces obstacles and influences that do not serve the achievement of economic effectiveness and efficiency in the regulated sectors. To achieve these principles, some results can measure the indicators of responsiveness and obstacles:

- Economic regulation is a new approach that expresses the legal response to the requirements of governance, due to its connection with economic reforms and transformations of the state in the management, organisation and structure of the economic, financial and legal sectors. This is due to the limitations and inability of traditional methods to achieve this, even in theory, as this approach involves reforms towards the adoption of new principles that allow adaptation to these requirements and challenges.

The legal framework for these reforms, in particular the regulatory authority, and its application to the Algerian experience: An attempt to consolidate it shows an interactive response to the requirements of governance, but it is flawed, as demonstrated by the following:

⁶⁹- Dhib Nadira, cited above, p. 100.

⁷⁰- Ridouani Nassima, cited above, p. 119.

⁷¹- Hafidha Achach, "Economic Regulatory Authorities in Algeria and Governance", Master's thesis in Public Law, Specialisation in Public Institutions and Governance, Faculty of Law and Political Science, University of Abderrahmane Mira, Bejaia, 2014, p. 92.

⁷²- Article 21 of Decree No. 03-03 on Competition, p. 28.

⁷³- Dhib Nadira, cited above, p. 101.



- The vacillation observed in the definition of the legal nature of the economic regulators, which is supposed to distinguish them from other traditional administrative bodies, renders them mere advisory bodies like the existing traditional ones, which hinders the entrenchment and activation of the participation and communication approach with economic actors.
 - The inadequate representation of experts, specialists and economic operators in their composition is incompatible with the requirements of efficiency and effectiveness in a field characterised by its technical nature, specialisation and rapid development.
 - In spite of the requirement of organic and functional independence in some aspects, it is relatively unrealistic and constitutes an obstacle to the realisation of the requirements of impartiality and transparency, which affects the credibility of its decisions and the effectiveness of its interventions.
 - The regression of the State from the idea of the legal nature of economic regulators to commercial regulators, and the dominance of classical administrative control over economic control, indicate the existence of obstacles to effectiveness.
 - Subjecting the exercise of economic regulators in the performance of their regulatory functions to a series of constraints and obstacles hinders their responsiveness to the requirements of governance, in particular the principle of accountability and the effectiveness of control, affecting the guarantee of non-interference in the interests of economic actors and the empowerment of their rights.
- In order to achieve a real responsiveness of the economic regulators to the needs of governance, in line with the reality of the Algerian experience, we propose the following:
- The constitutional recognition of economic regulators to ensure a precise adaptation and classification of these authorities and to improve various aspects of their legal framework to enable them to respond to the needs of governance.
 - To consolidate and activate the role of governance in the public administration system by constitutionalising it and establishing a system of wise administrative authorities in all areas, especially in the economic and financial fields.
 - Submitting the field of economic regulation to the requirements of Islamic governance by entrenching its principles in the financial and banking sectors and extending them to other sectors.