

THE ROLE OF THE COUNCIL OF STATE IN ACHIEVING THE BALANCE BETWEEN THE PROTECTION OF RIGHTS AND THE PRESERVATION OF PUBLIC ORDER IN MATTER OF POLITICAL PARTIES DISPUTES

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Abstract:

In order to preserve rights and freedoms- in particular those in relation to the creation of a political party- the legislator granted the State Council several powers vis-à-vis the administration, considering the power of decision in appeals concerning political parties' disputes. The legislator has in fact surrounded these disputes with specific measures, in organic law n° 12/04 relating to political parties. Although the desired objective of this judicial control is the strengthening of the principle of legitimacy and the achievement of the balance between the preservation of rights and freedoms on the one hand, and the requirements of the preservation of public order on the other hand. It is however clear that this involves certain difficulties likely to reduce the effectiveness of the role of the Council of State in protecting the right to create a political party.

Keywords: Council of State - Political party - Disputes - Procedures - Administration -Public order.

INTRODUCTION:

The right to establish a political party is one of the rights enshrined in the Constitution¹, as stipulated in Article 57². However, the exercise of this right is not absolute, due to the existence of rules and constraints, provided for the requirements of preserving social peace. As a result, the constitution provides for certain conditions to be taken into consideration when creating a political party³, just as it conferred on the legislator the mission of defining the mechanisms for creating political parties.

By virtue of these constitutional requirements, the legislator established the right to create a political party and defined certain conditions and organizational measures, through Organic Law 12/04 relating to political parties⁴.

Through the procedures imposed by the legislator to establish a political party, the public administration enjoys broad powers, as the Minister in charge of the Interior has the authority to make the final decision based on several administrative decisions, which he takes throughout the various stages that the political party must go through.

¹-The adoption of this right came in accordance with the requirements of party pluralism, as Algeria adopted it since the 1989 Constitution, as confirmed by the various constitutional amendments that followed it. See: Yassin RABOUH, Political parties in Algeria, Development and organization, Dar Belquis, Algeria, 2010, p.p. 61 and seq.

²- Presidential decree no° 20-442 of 12/30/2020 relating to the issuance of the constitutional amendment approved in the referendum of 11/01/2020, Official Journal of the Republic of Algeria, No° 82, issued on 12/30/2020.

³- Among the most important of them is: It is not permissible to establish a political party on a religious, linguistic, ethnic, sexual, professional, or regional basis.

⁴- Organic law no°12-04 of 01/12/2012, relating to political parties, Official Journal of the Algerian republic, No°02, Year 2012, issued on 01/15/2012.



Although these powers conferred on the Administration fall within the framework of the administrative control mission with a view to preserving public order⁵, a certain judicial control, faced with the possibility of abuse by the Administration has been planned.

In this context, it is worth noting the role of the administrative judge in protecting rights and freedoms⁶, through his oversight of the decisions of the administrative authorities. This the role is assumed by the State Council in the field of political party disputes, as it is the judicial authority competent to decide on various appeals related to political parties' disputes, as the State Council has several powers vis-à-vis the administration, and it also decides according to special procedures, in accordance with what is stipulated in the Political Parties Law.

Accordingly, the problem at hand is: What is the legal organization for the oversight of the State Council in the area of political party dispute and how effective is it in achieving a balance between protecting the right to establish a political party and maintaining public order That's why, the powers of the State Council and the procedures followed in the field of political parties' disputes will be exposed (in a first section), then the effectiveness of the role of the State Council in achieving a balance between protecting the right to establish a political parties' and preserving public order (in a second section) is examined.

Section one: The powers of the State Council and the procedures followed in matter of political parties' disputes:

In accordance with the requirements of protecting rights and freedoms, the legislator has paid clear attention to monitoring the right in establishing political parties. In this context, the legislator granted the State Council the task of adjudicating various appeals related to political party disputes, where the State Council decides on these appeals initially and finally, that is, as a first and last judge.

The importance of oversight granted to the State Council appears in view of the importance of judicial oversight in itself as one of the most important legal guarantees for the protection of rights and freedoms, especially in view of the principle of judicial independence and impartiality⁷, and its rulings having the authority of the matter decided⁸.

Its importance also appears in view of the role of the administrative judge in achieving a balance between conflicting interests, as the matter here requires taking into account the protection of the right to establish political parties on the one hand, and taking into account the requirements of maintaining public order on the other hand⁹.

The role of the Council of State as a guarantee of preserving the right to create a political party through the powers it enjoys vis-à-vis the Administration. This role is conferred by certain provisions conferred by the legislator on disputes between political parties. This will be explained as follows:

The first requirement: The powers of the State Council in matter of political parties' disputes:

⁵ - The principle of public order is considered as one of the principles that a political party must adhere to, in accordance with what is stipulated in article 46 of organic law no. 12-04 relating to political parties, previously mentioned.

⁶ - Martine LOMBARD, Gilles DUMONT, Administrative law , 8th edition, Dalloz, Paris, 2002, p.p.385-386 ; Pierre LAURENT FRIER, Jacques PETIT, The précis in the administrative law, 4th edition, Montchrestien, Paris, 2006, p.p.393.

⁷ - Tayeb KABAILI, Explanation of the code of civil and administrative procedures, Dar Belquis, Algeria, 2019, p. 35.

⁸ - These are the same guarantees and objectives that are achieved through the oversight of the State Council as a judicial authority. See: Nasr al-Din BIN TIYFOUR, The legal nature of the State Council and Its impact on the protection of rights and freedoms, Journal of the State Council, No. 09, 2009, p. 26.

⁹ - Jamel SABBABH, Legal guarantees for the freedom to establish political parties in Algeria under the law organic no°12-04, Journal of human research and studies, Chadli Ben Jadid University, El Taref, n° 12, year 2016, p. 115.



The State Council is considered as the competent authority to decide on various appeals related to political parties' disputes. Through this jurisdiction, the State Council has several powers vis-à-vis the administration within the various political parties' disputes, whether related to the stage of establishing and approving the party, or related to the stage after its approval. This will be discussed below:

Part one: Powers of the State Council in matter of disputes related to establishing and approving a party:

Disputes related to the stage of establishing and approving a political party are linked to appeals against several administrative decision issued by the Minister in charge of the Interior, as it relates to the decision to refuse authorization for establishment, the decision to refuse authorization to hold the founding meeting, the decision to refuse to extend the deadline for holding the founding conference, as well as the decision to refuse accreditation, and the decision to stop party activities before the party is approved. It is worth noting that the various decisions under challenge fall within the framework of the administration's exercise of its control authority.

Among the most important powers that the State Council has when deciding these appeals are the following:

First: The authority to cancel illegal administrative control decisions in the field of political parties:

The powers granted to the Minister in charge of the Interior are at the stage of establishing a political party, even if it comes for the requirements of maintaining public order, the administration may be arbitrary, leading to a violation of the right to establish a political party. Such a violation occurs whenever the administration's behavior is in violation of the law, especially when it violates the procedures legally imposed on them. Accordingly, the State Council assumes the authority to cancel illegal administrative decisions, through an annulment lawsuit, through which it searches for aspects of appeal against the annulment¹⁰, whether related to external or internal legality.

1-The State Council's oversight of the external legality of the Control decision:

Aspects of external legitimacy relate to the element of jurisdiction, form and procedures. The Council of State governs decision is invalidated if it is issued by a non-competent party. In this context, it should be noted that the legislator granted the authority to issue the various decisions required by the process of establishing a political party and approving them rests with the Minister in charge of the Interior, taking into account that he has the original and sole authority to issue these decisions, as the legislator did not indicate any possibility of delegation.

The State Council also monitors the form and procedures, especially the essential ones, the most important of which is the obligation is to deliver a receipt by the Minister in charge of the Interior, when the file is deposited by the founding members, which constitutes a means of material proof for them. The legislator also restricted the administration to short deadlines for issuing its decision to ensure speedy procedures¹¹. The legislator gave effect to the silence of the administration and equated it with approval, which means taking it with the idea of implicit decision. The legislator also required notification of the administration's decisions, from which the appeal deadlines begin. The legislator indicated that the administration can request completion of the file, or replace or withdraw any member who does not meet the conditions¹². Also, one of the most important procedures imposed by the legislator on the administration is giving reasons for its decisions containing rejection, as this

¹⁰ - Taheri HUSSEIN, A brief explanation of the procedures followed in administrative matters, Dar Al-Khaldounia, Algeria, 2005, p. 102.

¹¹ - Articles 20 and 29 of organic law no°12-04, Previously mentioned; See also: Rachid ZOUAIMIA, Marie Christine ROUAULT, Administrative law, Editions Berti, Alger, 2009, p.p. 258-259.

¹² - This procedure aims to avoid rejecting the application as a whole, to protect the rights of other founding members who meet the conditions.



procedure is considered one of the most important administrative guarantees approved by the legislator to protect the right to create a political party¹³.

Violation of these essential forms and procedures renders the decision illegal and therefore invalid and gives right to appeal against the annulment before the Council of State.

2- The State Council's oversight of the internal pillars of the regulatory decision in the field of political party disputes:

The internal elements of the control decision are conditioned by reason, subject and goal (objective).

With regard to the control of the element of reason, the Council of State verifies the material existence of the facts, as well as its legal adaptation to which is added its compatibility with the circumstances, in particular when the Administration has a power discretionary.

The State Council also monitors the *raison*, checking the extent of the Administration violation of the law, in particular law No. 12-04 relating to political parties. As for the goal, it should be related, regarding the administration control, to maintaining public order, otherwise the decision will be invalid.

It is legally provided that the power of the Council of State in annulment appeals is limited to the annulment of illegal administrative decisions, since there are other powers conferred on the Council of State¹⁴ in relation to other remedies, especially the interpretation claim, through which the State Council is responsible for giving the interpretation and exact meaning of the contested decision, by removing the ambiguity. There is also the case for assessing the legality of the decision, where the State Council verifies the legality of a decision.

The State Council also has the authority to award compensation, and in this regard, it should be noted that, although full justice claims are referred to the administrative courts¹⁵, with reference to the requirements of the text of Article 75 of Organic Law No. 12-04, which grants the State Council the jurisdiction to settle various disputes related to the application of this law, the jurisdiction to award compensation in lawsuits related to political party disputes also devolves to the State Council.

Second: The authority of the State Council to approve a political party:

A political party does not have legal personality until it is approved. However, the party's accreditation takes place either pursuant to an administrative decision issued by the competent administrative authority, whether by an explicit or implicit decision, or approved by the State Council. This is what the legislator approved, as the State Council's acceptance of the appeal introduced by the founding members against the Minister of the Interior's decision to refuse accreditation is considered as an accreditation of the political party¹⁶. There is no doubt that this authority falls within the framework of strengthening judicial guarantees to protect the right to create a political party. However, the matter requires the intervention of the Minister in charge of the Interior to deliver the accreditation immediately and notify it to the party.

Third: The powers of the State Council as a referee judge in political party disputes:

If the legislator, within Organic Law No 12-04 relating to political parties, has subjected all disputes related to political parties to the object jurisdiction, he granted however the exception of

¹³ - Articles: 21 to 34 of organic law no° 12-04, Previously mentioned.

¹⁴ - In addition to the power of cancellation, the State Council has enjoys the power to interpret and assess the legitimacy of administrative decisions. See: Omar SADOUC, The development of administrative Judicial organization in Algeria, Dar Al-Amal for printing and publishing and distribution, Algeria, 2010, p.p. 39 and seq.

¹⁵ - Article 902 of the Civil and Administrative procedures law did not refer to the jurisdiction of the State Council with full judicial claims. See: Law no° 08-09 of 02/25/2008, which includes the law of civil and administrative procedures, O.J.R.A., Issue no. 21, Year 2008; Amended and supplemented by law n° 22-13 of 07/12/2022, O.J.R.A., No° 48 of 2022.

¹⁶ - Jamel SABAH, Previous reference, p. 131.



competence to the Council of State by deciding on urgent cases, the matter being related to appealing the decision to refuse extending the term of a deadline to hold a founding conference. In this context, it is worth noting the powers in summary proceedings of the administrative judge for protecting fundamental rights and freedoms, as stipulated in Article 920 of the civil and administrative procedures code, where the legislator allowed the administrative judge to have an urgent decision when he decides on a request to stop the implementation of the administrative decision, whenever urgent circumstances exist, to order all necessary measures to preserve basic freedoms violated by public legal persons, or various bodies subject to jurisdiction in their prosecution administrative judiciary while exercising its powers, whenever these violations constitute serious and unlawful infringement to freedoms¹⁷. The various powers granted to the urgent administrative judge are considered as an important guarantee to protect the right of establishing a political party.

Section Two: The authority of the State Council to suspend the party after its approval:

The powers of the State Council do not stop at disputes related to the establishment of a political party. It also extends beyond its adoption. The most important power that the State Council has is the power to suspend the party and solve it.

First: The authority of the State Council to suspend the party after its approval:

If the approved party violates the law, a decision will be issued to suspend it, which is issued by the council of State, after being notified by the Minister in charge of the Interior.

Moreover, the powers of the State Council are expanded in view of the effects of the arrest decision, where other necessary decisions are issued by the State Council, including the decision to suspend all party activities, as well as the decision to close the party's headquarters. This is considered as an important judicial guarantee for practicing political activity, especially against the administration.

Second: The authority of the State Council to dissolve the political party:

In addition to the power to suspend the party's activities, the State Council has the power to dissolve the party in several cases, the most important of which are the party's violation of the law and the failure to submit candidates for at least four consecutive legislative and local elections and, as well as in the case of repeated violations of the law and failure to carry out the activities stipulated in the party statutes. The Council of State, which decides urgent cases, also has the power to cancel precautionary measures that may be taken by the Minister in charge of the Interior, before the Council of State decides on the request to dissolve the political party.

Granting jurisdiction to the State Council to suspend the party, dissolve it, or close its headquarters, even if this case is taken against the founding members, but at the same time it is considered a guarantee in favor of the political parties facing the administration¹⁸.

These are the most important powers granted to the Council of State, and their importance appears especially in the face of disagreement administrative rivalry centers in the field of political party disputes, where the administration acts as detainer of the authority, which makes her often a defendant, while the founding members are often pretenders. This requires the intervention of the State Council in order to achieve a balance between conflicting interests.

The second requirement: The procedures followed before the State Council in political party disputes:

Depending on the importance of procedures as a mean of resorting to justice, and according to the special nature of political parties' disputes, the legislator has given them special procedures, which are included in organic law no 12-04 related to political parties. Noting that these procedures are followed before the State Council as responsible authority for adjudicating various appeals

¹⁷ - Hussein BIN SHEIKH ATH MALOUYA, Administrative procedures law, Dar Al Houma, Algeria, 2012, pp. 467-468; Abdul Rahman BARBARA, Explanation of the civil and administrative procedures law, 1st edition, Baghdad publications, Algeria, 2009, p. 466-467.

¹⁸ - Yassin RABOUH, Previous reference, pp. 80-81.



related to political party disputes. Therefore, the most important procedures will be discussed as follows:

Section One: The rule of appointment in the field of political party disputes:

The legislator has stipulated several provisions related to deadlines, depending on the diversity of political parties disputes and the multiple administrative decisions subject to appeal.

As for the decision to refuse permission to hold the founding meeting, an appeal must be made before the State Council within a maximum deadline of thirty days since the date of its notification¹⁹, where the decision to refuse accreditation, will be appealed by the founding members within two months from the date of its notification²⁰. While the decision to refuse the declaration of foundation, the legislator focused on mentioning the admissibility of the appeal before the Council of State, without specifying the time limit for appeal.

Furthermore, the legislator did not set a deadline for appealing the decision to suspend the party, and simply noted that the Council of State issues the decision to suspend the activities of the Party after notification by the Minister of the Interior.

The Council of State does not rule on the suspension decision until the offending Party has been given formal notice by the Minister responsible for the Interior and the end of the deadline set to meet the requirements of the Law relating to political parties.

This is the same case as for the decision to suspend a political party where the legislator did not specify the deadline for filing the appeal and simply noted the reasons why the Minister of the Interior can dissolve the political party by the Council of State.

The State Council shall decide on the various issues presented to it within a period of two months, starting from the date of filing the opening petition, in accordance with Article 76 of the same law.

What is observed from the dates approved by the legislator relating to political parties disputes is that they are characterized by their shortness²¹, especially compared to the appeal deadline stipulated in the general rule within the Civil and Administrative Procedures Law, which is 4 months from the day of publication or notification. This confirms the legislator's consideration of the urgent nature of the field of political parties disputes²².

In the same context, the legislator limited the time limit set for the summary appeal while remaining content with the competence of the Council of State in this matter by setting the time limit for appeal for refusal to extend the deadline for holding the constitution conference, i.e. 15 days, in accordance with article 26 of Law 12-04 relating to political parties²³.

Section two: The effects on the appeals for political parties:

¹⁹ - See: the last paragraph of article 21 of organic law no°12-04, Previously mentioned.

²⁰ - See: Article 33 of organic law no°12-04, Previously mentioned.

²¹ - Samir AHFAIDHIA, Political party disputes, A comparative study, Doctoral thesis, Specializing in constitutional Judiciary and constitutional disputes, Faculty of law and political sciences, University of Mohamed Lamane Debaghin , Setif 2, 2020-2021, p. 73.

²² - This also explains why the legislator does not consider prior grievances in the area of political parties, as it may lead to prolonging the period of settling the dispute.

²³ - Regarding other urgent procedures, reference should be made to the civil and administrative procedures law, especially articles 923 to 935 thereof. See: Rachid KHALLOUFI, Administrative Disputes law, Administrative disputes, Administrative urgency, Alternative Methods for Resolving Administrative disputes, Part 3, Office of University Press, Algeria, 2011, p. 153 and seq.



Contrary to the general rule established within the Civil and Administrative Procedures Law, which with a non suspensive effect of the appeal in matters of administrative cases²⁴, the appeal before the State Council in political party disputes has a positional effect, in accordance with the to the second paragraph of Article 76 of Organic Law No. 12-04 relating to political parties.

The importance of this rule is evident since that it leads to the activation of the judicial protection established for the right In creating a political party, taking into account the exception approved by the legislator, related to the appeal against the precautionary measures taken by the Minister in charge of the Interior before deciding on the subject of the case for dissolving the political party, the appeal in this case having no stopping effect.

These are the most important provisions related to the oversight of the State Council, which fell within the framework of the established guarantees to protect the right to establish a political party. However, the matter requires questioning the effectiveness of this judiciary control, especially in light of the requirements of achieving a balance between protecting rights and freedoms and preserving public order, and this will be discussed below.

The second Section: The effectiveness of the role of the State Council in protecting the right to establish political parties:

The role of the State Council in protecting the right to establish political parties cannot be denied, which is evident through the set of powers granted to him vis-à-vis the administration, as well as the procedures followed before him. This oversight may sometimes encounter some problems, which could reduce the effectiveness of the role the Council of State.

It should be noted, however, that most of these problems concern the regulatory organization of this control, the problem arises both with regard to the powers conferred on the Council of State and the procedures to be followed and this is what will be discussed below:

The first requirement: The lack of effectiveness of the powers granted to the State Council in the field of political parties disputes:

The legislator has granted the Council of State several powers vis-à-vis the administration in order to protect the right of establishing a political party. However, these powers are insufficient, especially with regard to its power to approve a political party, as well as his powers in the field of emergency justice, and this will be clarified as follows:

Section one: The problem of the party's judicial accreditation:

The approval of the political party by the State Council may not be sufficient, especially since it requires the intervention of the Minister in charge of the Interior to issue the accreditation decision. The legislator obligated the Minister of Interior to deliver the accreditation immediately, according to a decision. He also obligated him to report it to the relevant political party²⁵, which means returning to the same situation, with the administration issuing a rejection decision, or remaining silent.

In the same context, it is worth noting the problem related to the decisions of the State Council, especially if it decide canceling the rejection decision issued by the Minister of the Interior, does the administration in this case have to issue the accreditation decision, which means returning to what the situation was before the appeal, or does this mean that the party obtains accreditation without a clear procedure by the administration, and in this case also a problem arises, relating to the difficulty of proof given the lack of physical existence of the decision.

Section Two: The narrow scope of urgent judicial protection for the right to establish a political party:

The State Council decides most political party disputes as a subject matter judge, with the exception of appeals in the decision to refuse to extend the holding of the founding conference,

²⁴ - See: Article 833 of law no°08-09 relating to the Amended and supplemented civil and administrative procedures law, Previously mentioned.

²⁵ - See: The second paragraph of article 33 of organic law No°12-04, Previously mentioned.



which is decided by the State Council as a judge of urgency. This means that the legislator narrowed the scope of urgent judicial intervention in the area of political party disputes, and therefore narrowing the scope of urgent protection, despite its importance, especially in the establishment stage, which takes on an urgent aspect.

Accordingly, it is important to expand the powers of the urgent administrative judge, taking into account the position of the legislator who was ambiguous at times when determining the jurisdiction of the State Council, especially whether it decided as a substantive judge, or as a judge of urgency, as is the case with the decision to stop a party before its adoption.

In this case, logic dictates that jurisdiction must be granted to the urgent judiciary, according to the requirements of Article 64 of Organic Law No. 12-04, which emphasizes the urgent nature of the reasons for suspension of a Party²⁶.

The second requirement: Problems related to the procedures followed before the State Council in political party disputes:

The legal organization of the procedures followed before the Council of State are not without asking some problems that may reduce the effectiveness of its role in protecting the right to establish a political party. The most important of these problems are the following:

Section One: The problem related to the rule of deadline and implicit administrative decisions:

One of the most important problems raised by the procedures followed before the Council of State in the field of political parties is:

First: The problem related to the rule of deadline:

The dates set forth in Organic Law No. 12-04 relating to political parties ask many problems and difficulties, the most important of which is that the legislator does not set certain deadlines, such as the deadline for filing an appeal against a decision of refusal of the founding declaration of the party. Thereof this raises a problem, as in this case it is necessary to refer the procedures of civil and administrative Law, especially Article 829, which stipulates a period of four (4) months from the day of publication or notification. There is no doubt that this period is considered long, and may be longer if a grievance is resorted to and this is not in line with the requirements of speed in the field of political parties. Accordingly, the legislator must intervene to set the deadlines for various appeals.

Otherwise, the period granted to the State Council to decide on the dispute, estimated at two (2) months from the filing date of the opening petition is insufficient, especially since it requires giving the opponents a deadline each time to be able them to exchange notes.

This is in addition to the period granted to the state governor to review the file and then scheduling it. This leads to the case not being ready for adjudication except in the last week of the month as stipulated by the legislator. Therefore, it is advisable to amend the article to make it relatively longer.

Second: The problem of the implicit administrative decision relating to political parties' disputes:

The legislator, through Organic Law No. 12-04, adopted the idea of an implicit decision, as Scott considered after the expiration of the 60-day period available to it, the administration issues as a decision authorizing the establishment, which is considered as a license for the founding members to work on holding the founding conference. Considering that the implicit decision is a moral decision, it raises a problem because it is difficult to prove from a material standpoint. This makes it difficult for the founding members to implement the obligations imposed on them by law and then how to publish the implied licensing decision in this case since the one-year period granted for holding the founding conference runs from the date of publication of the authorization decision. So the solution could be provided by stipulating the obligation of the Administration to notify the explicit authorization to hold the constituent meeting after the expiry of the deadline, in order to allow the founding members to publish it. The solution could also be provided by dispensing with the publication process and adopting the idea of implicit authorization, although this in turn raises a difficulty of proof.

²⁶ - Samir AHFAIDHIA, Previous reference, p. 73.



It is the same problem related to the decision to implicitly accredit the party, as the legislator considered the administration's silence after the expiration of a period of 60 days after submitting the accreditation application file constitutes accreditation for the party²⁷. The Minister must commit to notify the decision to the leadership body of the political party and publishing it in the Official Journal. This means that the administration cannot claim implicit or explicit rejection, but rather it must initiate notification and publication procedures as if it were an explicit accreditation, since the party is accredited by force of law. In this case, it is difficult to adopt an implicit party.

Moreover, article 31 of the same law did not mention the impact of the failure of the Minister in charge of the Interior to do so by publishing the accreditation decision in the Official Journal, which leads to the question of whether the party's founders have the right to file a law suit against the Minister of the Interior.

In these various cases that raise problems, it is difficult for the administrative judge to prove, which leads to a violation of rights and freedoms.

Section Two: Violation of the principle of two-tier litigation in the field of political party disputes:

Within Organic Law No. 12-04, the legislator considers litigation at one level²⁸, where the Council of State decides in various political party disputes, initially and finally, that is, as a first and last judge.

This would affect an important constitutional principle related to the principle of two-tier litigation²⁹, which is considered one of the most important guarantees established for litigants, as it guarantees them opportunities to obtain their rights, which leads to enhancing the protection of rights and freedoms³⁰.

The Council of State's recognition of final jurisdiction blocks the path of appeal, as well as the path of appeal by cassation, given the absence of a judicial body above the State Council, which results in unequal opportunities between litigants, including diminishing the effectiveness of established judicial oversight.

Accordingly, the matter requires amending Organic Law No. 12-04 relating to political parties³¹, ensuring the principle of two-tier litigation. The necessity of the amendment appears, especially in light of the conflict that exists today between the legal texts, as Organic Law No. 12-04 related to political parties is no longer in line with the current legal developments. In particular, we note the creation of administrative courts of appeal pursuant to the Constitutional Amendment of 2020, in addition to the amendment to the Civil and Administrative Procedures Law³² which grants

²⁷ - See: Articles 23 and 34 of organic law no° 12-04, Previously mentioned.

²⁸ - Contrary to the situation that was stipulated in ordinance no. 97-09 related to political parties, where the appeal was made before the administrative Court of Algiers (Formerly the administrative Chamber of Algiers judicial council), while the appeal was made before the Council of State, which guaranteed the principle of litigation on two levels. See: Ordinance no. 97-09 of 03/06/1997, containing the organic law relating to political parties, , O.J.R.A. , no. 12, issued on 03/06/1997 (Repealed.).

²⁹ - Ammar BOUDIAF, The organic criterion and its legal issues in light of the code of civil and administrative procedure ,Journal of the State Council, n°10, 2012, p.28.

³⁰ - Hussein BELHAIRESH, Lectures on the Law of civil and administrative procedures, Dar Belqis, 2019, pp. 30 and seq. Ali Youcef Muhammad AL-ALWAN, Two-level litigation and its role in preserving individual rights and freedoms, Journal of Sharia and law studies, University of Jordan, N°1, Year 2016, pp. 185-186.

³¹ - Organic law no. 12-04 is consistent with what is stipulated within the organic law relating to the State Council, in terms of granting jurisdiction to the State Council to decide, initially and finally, on decisions issued by the central administrative authorities. See: Article 09 of organic law no°98-01 of 05/30/1998 relating to the powers, Organization and work of the State Council, J.O.R.A. No°37, issued on 06/01/1998; Amended by organic law n°11-13 of 07/26/2011, J.O.R.A., no°43, issued on 03/08/2011; Amended and supplemented by organic law no. 18-02 of 03/04/2018, J.O.R.A. No°. 15, issued on 03/07/2018.

³² - Law no°22-13 of 07/12/2022, amending the civil and administrative procedures law, J.O.R.A., N°48 of 2022.



the Administrative Court of Appeal in Algeria the task of initially adjudicating appeals against decisions issued by the central administration.

This requires granting jurisdiction to adjudicate political parties disputes of Algiers Administrative Court of Appeal. This is based on the fact that the decisions issued in the field of political parties are decisions issued by a central administrative authority, represented by the Minister in charge of the Interior. This would guarantee appeal, and then ensuring the principle of two-tier litigation, through which the established protection of the right to establish a political party is strengthened.

CONCLUSION:

The importance of the legal regulation assigned by the legislator to political parties disputes cannot be denied pursuant to Organic Law No. 12-04, both in terms of the broad powers granted by the legislator to the State Council, and in terms of the judicial procedures followed, constitutes an important guarantee to protect the right to establish a political party. However, the matter is not without some problems as a result of the shortcomings and ambiguity surrounding some legal provisions, which requires the legislator to intervene to amend them in order to activate judicial oversight and strengthen the protection established for this constitutional right.

Noting that the amendment to Organic Law No. 12-04 related to political parties became today an urgent necessity, imposed by the requirements of achieving compatibility and harmony between legal texts, especially in light of the developments brought about by the Constitutional Amendment of 2020, as well as the amendment to the Civil and Administrative Procedures Law.

As part of the upcoming amendment to Organic Law No. 12-04, the following could be proposed:

- Granting the jurisdiction to adjudicate political party disputes to the Administrative Court of Appeal of Algeria, to decide as the first instance, provided that the appeal is made before the Council of State, ensuring the principle of two-level litigation.
- Determine the deadline for each appeal filed before the State Council, taking into account that these deadlines are short, including the deadline for adjudicating the case.
- Expanding the powers of the urgent administrative judge in the field of political parties' disputes, as well as determining urgent procedures to be taken.
- Paying attention to the administrative judge's specialization in the field of political parties disputes, because of its importance both when applying the law, and during the process of jurisprudence.

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