THE ALGERIAN ADMINISTRATIVE JUSTICE SYSTEM AND ITS PROCEDURES ACCORDING TO THE LATEST AMENDMENTS TO THE CIVIL AND ADMINISTRATIVE PROCEDURE LAW 22/11

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Abstract:
The Algerian legislator adopted the principle of judicial duality in the 1996 Constitution (1) by establishing an administrative judiciary independent of the ordinary judiciary. This system was embodied by the establishment of judicial structures represented by the Administrative Court and the Council of State, where the issue of interference with the principle of judicial duality was raised, as well as the violation of the constitutional principle based on the principle of judicial duality as embodied in the ordinary judiciary, with the court as the first instance and the Council of State as the second instance for litigation, and the Supreme Court as the court of cassation.
This made it necessary to examine whether the legislator had actually enshrined the principle of the two-tier system of litigation in the Constitution of 2020 by providing for administrative courts of appeal and, consequently, making the Council of State a judicial body that evaluates the actions of the administrative judicial authorities.
Keywords – judiciary, necessary , embodied, Council

INTRODUCTION:

The Algerian legislator enshrined the system of judicial duality in the 1996 Constitution[1] by establishing two judicial systems: the ordinary judicial system and the administrative judicial system. In 2005, Organic Law No. 05/11 on the organisation of the judiciary was enacted, which stipulates that the judicial system comprises the ordinary courts, the administrative courts and the conflict tribunal.

In order to materialise this system, Organic Law No. 98/01 of 30 May 1998 on the Jurisdiction, Organisation and Operation of the Council of State[2], Law No. 98/02 of 30 May 1998 on the Administrative Courts[3] and Law No. 98/03 of 30 May 1998 on the Conflicts Tribunal[4] were enacted.

When we say that an administrative justice system has been established, it means that there is an organisation independent of the ordinary justice system, with a specific human composition for the administrative justice system, whether it be clerks or judges, and that there are legal rules that apply procedurally and substantively, i.e. the rules of public law apply to the latter and not the rules of private law that apply to the ordinary justice system[5].

There have been major difficulties in the implementation of the judicial system, both in terms of structural organisation, including the fact that the administrative courts were not set up all at once throughout the country, but gradually.

The principle of a two-tier court system has also not been fully implemented in the administrative justice system. The administrative structural organisation includes the administrative court as the first instance of litigation and the Council of State as the second instance of litigation. The latter acts as the first and last instance in some disputes, in accordance with Article 901 of the Code of Civil and Administrative Procedure before the amendment of 2022, so that there is no possibility of appeal or cassation in these disputes, which constitutes a violation of the principle of the two-tier system.

With the promulgation of the Constitution of 2020 by Presidential Decree 20/422 of 30/12/2020, published in the Official Gazette No. 82 of 2020, it provided indications of the administrative structural reorganization through the provision of Article 179, which states that “The Supreme Court shall be the evaluating body for the acts of the judicial councils and courts, and the Council of State shall be the evaluating body for the acts of the administrative courts of appeal, administrative courts

and other bodies that decide on administrative matters. The Supreme Court and the Council of State ensure the unification of judicial jurisprudence throughout the country and respect for the law. The Court of Conflicts decides on cases of conflicts of jurisdiction between the bodies of the ordinary judiciary and the bodies of the administrative judiciary"[6].

We will therefore look at the organisation of the administrative judiciary under the 2020 Constitution and its recent amendments, in accordance with the Algerian Code of Civil and Administrative Procedure and the various legal texts applicable to it, in order to determine the extent to which the Algerian legislature has actually enshrined the principle of a two-stage judicial process within the framework of the 2020 Constitution, including the Code of Civil and Administrative Procedure and its recent amendments.

First Axis: Administrative Courts

We will explain the peculiarities of litigation before the Administrative Tribunal, which differ from the jurisdiction of the ordinary courts and include

The subject matter jurisdiction of the Administrative Court and the peculiarities of its composition:

First: Jurisdiction of the Administrative Tribunal:

The jurisdiction is divided into subject-matter jurisdiction and territorial jurisdiction, and we will deal with each of them:

1. Subject-matter jurisdiction of the administrative courts:

In subject-matter jurisdiction, there is a general rule and an exception to this rule.

1.1 The general rule of subject matter jurisdiction:

According to Article 31 of the Judicial Organisation Act, the administrative court is the court of first instance for disputes in administrative matters, and there are currently 48 administrative courts throughout the country. Article 1/1 of Law 98/02 on Administrative Courts states that administrative courts are established as public law courts in administrative matters. The term "public law" caused some ambiguity, so the legislator avoided this term and corrected it in the Code of Civil and Administrative Procedure, in article 800, with the expression "general jurisdictions", which states that "the administrative courts are the general jurisdictions for administrative disputes"[7].

The Algerian legislator addressed the subject matter jurisdiction of the administrative courts in the Code of Civil and Administrative Procedure in three articles between articles 800 and 801, and defined the exception in article 802, all under the first section entitled "On subject matter jurisdiction".

The administrative courts are the general jurisdictional bodies for administrative disputes, with the exception of disputes entrusted to other jurisdictional bodies. The administrative courts have jurisdiction to rule at first instance, with the possibility of appeal, in all cases in which the State, the wilaya (province), the municipality or one of the administrative institutions or national public bodies and national professional organisations are parties.

They also have jurisdiction, in accordance with article 801, to rule on: actions for annulment, interpretation and review of the legality of decisions taken by the wilaya and the decentralised services of the State at the level of the wilaya, the municipality, the regional professional organisations and the local public administrative bodies."Full jurisdictional actions"[8].

1.2 Exception to subject matter jurisdiction:

While the general rule is the general jurisdiction of administrative courts in administrative disputes when one of the public legal entities is a party to the dispute, as mentioned above, Article 802 of the Code of Civil and Administrative Procedure constitutes an exception to this general rule[9].

The action is brought before the ordinary courts, regardless of whether the public legal person is the plaintiff or the defendant, in the following cases

1. Violations of public rights of way: If someone infringes on a public road, the administration brings an action against the infringer before the ordinary courts.

2. Car accidents: Article 802 of the Code of Civil and Administrative Procedure stipulates that disputes relating to any claim for damages caused by a vehicle belonging to the State, a province, a municipality or a public administrative body shall be brought before the ordinary courts.

This position rather reflects the idea of adopting the organic criterion in the determination of the administrative dispute and, consequently, in the determination of the rules of jurisdiction[10].

2. Territorial jurisdiction of administrative courts:

With regard to the provisions of the Code of Civil and Administrative Procedure (CCAP) in this area, Article 803 refers the question of determining territorial jurisdiction to Articles 37 and 38, which deal with the general rule, i.e. the domicile of the defendant. If the defendant has no known domicile, his last known domicile is taken into account. If the defendant has a chosen domicile, the chosen domicile is taken unless the law provides otherwise. If there is more than one defendant, the domicile of one of them is taken into account. This is the general rule.

Article 804 of the CCAP provides for exceptions that must be taken into account, as the preamble to Article 804 states: "Contrary to the provisions of Article 803 above, actions in the following matters must be brought before the administrative courts...", which are as follows:

- In matters of taxes or fees, before the court of the place where the tax or fee is levied.
- In matters relating to public works, in the court for the place where the works are carried out.
- In matters relating to administrative contracts of any kind, before the court in whose jurisdiction the place of performance of the contract is situated.

The subject-matter and territorial jurisdiction of administrative courts are matters of public policy. The plea of lack of jurisdiction may be raised by either party at any stage of the proceedings and the judge must raise it sua sponte, in accordance with Article 807 of the CCAP. This is a specificity compared to the jurisdiction of the ordinary courts, where the subject matter jurisdiction is a matter of public policy, but the territorial jurisdiction is not, according to Article 47 of the CCAP[11].

Second: The Composition of the Administrative Court:

The Administrative Court differs from the ordinary court by its special composition. According to Article 32 of the Law on the Organisation of the Judiciary, it is composed of judges and government commissioners, which is unusual in the regular judiciary.

The Administrative Court hears cases in a panel of at least three judges, including a president and two associates, unless the law provides otherwise, in accordance with Article 814 bis of the Civil and Administrative Procedure Code 2022. It is organised into divisions, and these divisions may be further subdivided into sections, in accordance with Article 34 of the Judicial Organisation Act of 2022. As for the government commissioner, his role is to prepare a written report on each case referred to him by the rapporteur judge, in which he may propose solutions to resolve the dispute. The government commissioner also makes oral comments on each case before the end of the hearing, in accordance with articles 897 and 898 of the Code of Civil and Administrative Procedure[12].

Thirdly, the types of administrative cases heard by the Administrative Tribunal:

- Actions for annulment
- Actions for interpretation
- Actions for review of legality
- Urgent actions, including actions to suspend the execution of an administrative decision
- Actions for full jurisdiction
- Actions for the correction of material errors

Fourth: Initiation of the action before the Administrative Court:

Obviously, a case cannot be brought before the Administrative Tribunal unless the plaintiff has the legal capacity and interest, in accordance with the provisions of Article 13 of the Code of Administrative Procedure, and the petition respects the information stipulated in Article 15 of the Code of Administrative Procedure, under penalty of inadmissibility of the petition in form, in accordance with Article 816 of the Code of Administrative Procedure.

- The action shall be brought before the Administrative Tribunal by means of a written petition or by electronic means, the latter being provided for by the amendment of Article 815 of the Code of Administrative Procedure in 2022.
- When the State, the province, the municipality, the public institution of an administrative nature or the national and regional professional associations are parties to the case, either as plaintiff or defendant, they are represented by the minister concerned, the Wali (governor), the president of the People's Municipal Council and, in the case of institutions of an administrative nature, by the legal representative.

- Following the repeal of the provisions of Article 826 of the Code of Administrative Procedure[13], it is no longer compulsory to be represented by a lawyer before the Administrative Tribunal.
- The petition is deposited with a copy in the case file after it has been entered in a special register, and the court clerk issues a receipt attesting to its deposit, after the court fees have been paid, unless otherwise provided, and the date and registration number of the petition are recorded therein, in accordance with Articles 818 and 823 of the Code of Administrative Procedure. However, the date of the hearing is not fixed as in ordinary jurisdiction, except in the case of urgent administrative proceedings, in accordance with Article 16 of the Code of Administrative Procedure.
- In the case of an action for annulment, interpretation or review of the legality of an administrative decision before the Administrative Tribunal, the contested administrative decision must be attached to the petition, on pain of inadmissibility, unless there is a justified impediment in accordance with Article 819 of the Code of Administrative Procedure. If the impediment is due to the refusal of the administration to provide the plaintiff with the contested decision, the reporting judge shall order its production at the first hearing and shall draw the legal consequences of this refusal.

An appeal to the Administrative Court does not suspend the execution of the contested administrative decision, unless the law provides otherwise. However, the execution of the administrative decision may be suspended by an order of the court at the request of the party concerned by means of a separate action (Articles 833 and 834 et seq.).

- The request to file an action must be registered with the Land Registry if it relates to the cancellation, release, modification or revocation of property rights in registered contracts (Article 519 of the Code of Civil Procedure).
- There is a time limit for filing an action to annul an administrative decision, which must be filed within 4 months from the date of notification of the decision to be annulled, if it is an individual decision, or from the date of its publication, if it is a collective or regulatory decision, in accordance with Article 832 of the Code of Civil Procedure. However, this time limit does not apply to actions with full jurisdiction.
- It is possible to file an appeal against the administrative decision with the issuing administrative authority within 4 months from the date of its notification, which should be attached to the petition (Article 830 of the Code of Civil Procedure).

Fifth: The administrative judicial procedure:

The judicial procedure in administrative matters is characterised by the fact that it is not based on the adversarial principle as in ordinary justice, except in the case of urgent administrative proceedings.

The judicial procedure is divided into two phases: the investigation phase and the planning phase.

Sixth: The investigation phase:

- Immediately after the registration of the petition initiating the case, the President of the Administrative Court appoints the bench that will hear the case and the reporting judge, who sets a deadline for the parties to submit their responsive memoranda (Article 844 of the Code of Civil Procedure). The reporting judge or the President of the Administrative Tribunal may, if the circumstances of the case so require, set the date for the conclusion of the investigation, which would exempt the parties from the investigation (Article 847 of the Code of Civil Procedure).
- Judicial proceedings in administrative matters begin when the plaintiff officially notifies the bailiff of the petition initiating the proceedings, and the bailiff deposits the proof of notification in the court registry.This differs from ordinary justice, where the parties are summoned to appear at least 20 days before the first hearing.

The second aspect of data protection is that, during the investigation phase, the notices and replies, together with the attached documents, are communicated to the opponents through the Registry under the supervision of the reporting judge, pursuant to Article 838 of the Code of Civil and Administrative Procedure (CCAP). According to the latest amendment, the investigative measures and procedures must be communicated to the opponents by all legally available means, including electronic means, as provided for in Article 840 of the CCAP. And if one of the opponents does not

respect the time limit granted for the submission of the memorandum, the judge may send him a notice of default through the available means, as provided for in Article 849 of the CCAP.

In addition, the unique aspect of the administrative procedure is that the role of the reporting judge is proactive. This judge issues notices by all available means in order to rectify the deficient petition, provided that it can be rectified, in accordance with Article 849 of the CCAP. If the plaintiff does not submit the memorandum, he is deemed to have waived his right to reply, in accordance with Article 851 of the CCAP.

When the case is ready for adjudication, the file will be transmitted to the State Counsel, who will submit their conclusions after review by the reporting judge, in accordance with Article 846 of the CCAP.

The president of the panel of judges sets the date for the end of the investigation by means of an order which is not subject to appeal and communicates it to the opponents by all legally available means within a period of not less than 15 days before the date set for the end of the investigation, in accordance with the amended Article 852 of the CCAP.

Once the date for the closure of the investigation has been set, the opponents are not allowed to file new requests or memos, except after filing a request to extend the investigation.

In addition, no intervention will be accepted after the end of the investigation, as provided for in Article 870 of the CCAP.

The Administrative Court cannot issue a certificate of waiver submitted after the investigation has been closed, unless it is ordered to reopen the proceedings, as provided for in Article 873 of the CCAP.

The new notes and requests after the end of the investigation are not accepted, but the investigation proceedings can be resumed upon the decision of the president of the adjudicating panel or upon the request of the opponents to extend the investigation, as provided for in Article 854 of the CCAP[14].

Seventh: Scheduling of the case and the course of the hearing:

- The President of the Judicial Panel shall set the schedule for each hearing before the Administrative Tribunal, inform the State Commissioner and notify the parties through the Registry at least 10 days before the date of the hearing when the case will be called. (Article 876, Code of Administrative Procedure)
- On the day of the hearing, the reporting judge reads the prepared report on the case, the parties may make oral statements, and the defendant speaks during the hearing after the plaintiff. The president of the judicial panel may hear and have clarification from administrative officials and, exceptionally, may ask for clarification from any person present whom one of the parties wishes to hear. (Article 884, Code of Administrative Procedure)
- The State Commissioner then presents the parties' submissions and the judgement is pronounced.

In addition, Decree No. 22/435 of 11/12/2022 has defined the regional jurisdictions of the Administrative Courts of Appeal and the Administrative Courts[15], in application of the provisions of Article 10 of Law No. 22/07 of 05/05/2022 on the judicial division[16].

The second axis: The Administrative Court of Appeal

The Administrative Court of Appeal was first mentioned in Article 179 of the 2020 Constitution, which enshrines the principle of a two-tier judicial system.

We will first explain the jurisdiction of the Administrative Court of Appeal and then its composition:

First: The jurisdiction of the Administrative Court of Appeal:

The Algerian legislator established six administrative courts of appeal at the national level, and the administrative courts of appeal are generally the appellate body, but the legislator gave the Administrative Court of Algiers two jurisdictions: it is a second instance for the judge and also has original jurisdiction in certain disputes.

1. The Administrative Court of Appeal as the second level of litigation:

Article 29 of Law No. 22/10 on the organisation of the judiciary stipulates that it is an appellate body for judgments and orders issued by the administrative courts and is competent to rule on cases granted by special legal provisions[17].

6 At the national level, administrative appeal courts have been set up in Algiers, Oran, Constantine, Bechar, Ouargla and Tamanrasset pursuant to Article 8 of Law No. 22/07 of 5 May 2002 on the judicial system. Article 900 bis of the CPC&A, as amended and supplemented, stipulates that the Administrative Court of Appeal has jurisdiction to hear and determine appeals against judgments and orders of the administrative courts, as well as cases assigned to it by special provisions[18].

This means that the Algerian legislator was right to create the six administrative courts of appeal, which now hear appeals against judgments of the administrative courts in accordance with their territorial jurisdiction, after the Council of State had been the body empowered to hear appeals against judgments of the administrative courts prior to the entry into force of the Code of Civil and Administrative Procedure in 2022.

2 - The Administrative Court of Algiers as a court of appeal:

The Algerian legislator has given the Administrative Court of Appeal in Algiers another role, notwithstanding the fact that it is a court of appeal, in that it hears appeals against judgments handed down by the administrative courts under its jurisdiction, according to the jurisdictions defined in the annex to Decree No. 22/435 of 11 December 2002, which defines the territorial jurisdiction of the administrative courts of appeal.

The Administrative Court of Appeal of Algiers is also competent to rule at first instance on actions for annulment, interpretation and assessment of the legality of administrative decisions issued by central administrative authorities, national public bodies and national professional bodies, in accordance with the provisions of article 900 bis of the Code of Civil and Administrative Procedure, as amended and supplemented. The six administrative courts of appeal at the national level act as appellate courts and constitute the second level of jurisdiction, unless they have specific jurisdiction under special provisions.

With regard to the Administrative Court of Appeal in Algiers, it is considered to be the second level of jurisdiction, i.e. it has jurisdiction as a court of appeal against judgments and orders issued by the administrative courts, and it is also considered to be a court of first instance which rules on actions for annulment, interpretation and review of the legality of decisions issued by central administrative authorities, national public bodies and national professional organisations. Appeals against its decisions and rulings are lodged with the Council of State, which is the second level of jurisdiction.

Second: The composition of the Administrative Court of Appeal:

The Administrative Court of Appeal is composed of judges and prosecutors:

1. Judges:

- A President with at least the rank of Counsellor at the Council of State.
- One or two deputy presidents, as required.
- The presidents of the chambers, the presidents of the sections, if necessary, and the counsellors.

2. Public prosecutors:

- A Prosecutor of at least the rank of Counsellor in the Council of State.
- One or two Assistant Public Prosecutors, as required.

They are organised in chambers determined by order of the President of each court, according to the nature and volume of administrative activity.

The Administrative Court of Appeal sits in a collective composition, unless the law provides otherwise, and is composed of at least three (03) judges, including a president and two assistants with the rank of counselor (art. 900 bis of the Code of Civil and Administrative Procedure).

Thirdly, the initiation of the case and the conduct of the proceedings before the Administrative Court of Appeal and the judgment of the case:

The Algerian legislator has laid down the same procedures for the initiation of proceedings before the Administrative Court of Appeal, the time limits and the suspension of the execution of administrative decisions, and even for the judgment of the case, as before the Administrative Court, in accordance with articles 900 bis 6 to 900 bis 9 of the Code of Civil and Administrative Procedure[19].

The Third Axis: The Council of State

The Council of State is considered the apex of the administrative-judicial organisation and was provided for in the provisions of Article 152 of the 1996 Constitution. Organic Law 98/01 of

30/05/1998, which establishes the organisation of the Council of State, defines its jurisdiction and operation, and was later amended by Organic Law 22/11 of 09/06/2022[20], which amended and supplemented Organic Law 98/01 of 30/05/2022 on the organisation of the Council of State. We will deal with the competence of the Council of State and its composition.

It should be noted that article 179 of the 2020 Constitution stipulates that "... the Council of State shall be the body that evaluates the work of the administrative courts of appeal and the administrative courts and other bodies that rule on administrative matters... The Supreme Court and the Council of State shall ensure the unification of judicial jurisprudence throughout the country and respect for the law...".

We will look at the organisation and administration of the Council of State, and then at its jurisdiction:

First: Organisation and administration of the Council of State:

The Council of State enjoys financial and administrative independence and is subject to the rules of public accounting in its financial management. As far as the organisation of the Council of State is concerned, it is organised as a judicial body and as an advisory body[21].

First: The organisation of the Council of State as a judicial body:

The Council of State is organised as a judicial body in the form of chambers and collective chambers, and we will explain its competences according to the latest amendments.

1. Organisation of the Council of State in chambers:

The Council of State carries out its duties within its judicial competence in the form of chambers, which may be divided into sections, each of which requires the presence of at least 3 members in order to decide on the case before it. The Presidents of the Chambers and Sections draw up the lists of cases referred to them, and the Presidents of the Chambers determine the cases to be examined at the level of the Chambers and Sections and preside over their meetings. In addition to the chambers composed of judges, there is another body, the State Conservancy, which is supervised by the State Conservator. It is made up of the following departments: 1. a secretariat, headed by an official appointed by decision of the Council of State on a proposal from the State Conservator[22].

2. Organisation of the Council of State in the form of collective chambers:

The Council of State holds its sessions in the form of all the Chambers meeting together, and this is done in cases of necessity, especially in cases where the decision taken would constitute a regression of a previous judicial effort.

The Council of State is composed, in accordance with the text of Article 02 of Organic Law No. 22/11 of 09.05.2022, amending and supplementing Organic Law No. 98/01 on the organisation, functioning and powers of the Council of State, and in particular Article 32 thereof, of the President of the Council of State, the Vice-President, the Presidents of the Chambers, the Dean of the Heads of Sections, the reporting State Counsellor concerned with the case.The President of the Council of State prepares the cases submitted to the Council of State when it sits as a collective chamber. The State Counsellor and the Assistant State Counsellor in charge of the case attend the meeting of the Council of State in plenary session and submit their memoranda.The decision cannot be taken without the presence of at least half of the members of the composition of the collective chambers and the reporting State Counsel concerned with the file.

The amendment added the necessity of the presence of both the Reporting State Counselor concerned with the file and the Assistant State Counselor in charge of the file, in order to closely observe the case.

3 - Organisation and functioning of the Council of State as an advisory body:

The Council of State is organised as a consultative body in the form of a General Assembly and a Permanent Committee to give its opinion on draft laws and decrees.

a- The General Assembly:

The Council of State has a consultative role and gives its opinion on draft laws and decrees submitted to it by the General Secretariat of the Government. The General Assembly is chaired by the President of the Council of State and is composed of him, his deputy, the Keeper of the Seal, the Presidents of the Chambers and 5 State Counsellors. Ministers may also attend, in person or through their

representatives, specialised meetings to discuss matters relating to their areas of competence. A quorum of at least half of the members of the General Assembly is required for the deliberations to be valid[23].

b- The Permanent Committee:

The Standing Committee is composed of a President with the rank of Head of Chamber and at least four State Counsellors. The Keeper of the Seal or one of his assistants attends the meetings and deliberations and submits his memoranda in accordance with the provisions of article 38 of the Organic Law. The Standing Committee is responsible for examining draft laws in exceptional cases where the Head of Government indicates its use. Its deliberations are carried out by a majority of the votes of the members present, with the President casting the deciding vote in the event of a tied vote, in accordance with the provisions of Article 37 of the Organic Law on the competence of the Council of State. It should be noted that the Council of State is also organised as an administrative body in the form of an office, a registry, technical departments and administrative services.

Second: Jurisdiction of the Council of State:

The Council of State, as already mentioned, is organised as a judicial body in the form of chambers and combined chambers. In the exercise of its functions in the form of chambers, it has judicial jurisdiction. Articles 9, 10 and 11 of Organic Law 22/11 define the competences of the Council of State, as Articles 901, 902 and 903 of the Code of Civil and Administrative Procedure have been amended in the latest revision concerning the competences of the Council of State[24].

Its powers may be summarised as follows:

1- Jurisdiction of the Council of State as a court of cassation:

The principle is that the Council of State, which is the counterpart of the Supreme Court in the regular judiciary, has as its primary mission the role of reviewing and overturning the decisions of the administrative courts. In other words, its main function is to rule on appeals in cassation against final judgments and decisions of the administrative courts. The same articles stipulate that it has jurisdiction to hear and determine appeals for cassation granted to it by special provisions, as provided for in Article 9 of Organic Law 22/11 on the Jurisdiction of the Council of State, which corresponds to Article 901 of the amended Code of Civil and Administrative Procedure. An appeal to the Council of State does not have the suspensive effect provided for in Article 909 of the Code of Civil and Administrative Procedure.

2 - The competence of the Council of State as a court of appeal:

Prior to the amendment of the Code of Civil and Administrative Procedure and the creation of the Administrative Court of Appeal, the Council of State was responsible for hearing appeals against first instance decisions of the administrative courts. However, after the creation of the Administrative Courts of Appeal, its role as an appellate body was reduced. Nevertheless, it remains competent to hear appeals against decisions of the Administrative Court of Appeal in Algiers in cases concerning the annulment, interpretation and assessment of the legality of administrative decisions taken by central administrative authorities, national public bodies and national professional organisations. Before the amendment of the Code of Civil and Administrative Procedure, these disputes were heard by the Council of State as a first and final instance[25].

The Council of State, as an appellate body, examines the merits of the dispute, since the appeal before it transfers the dispute and suspends the execution of the judgment, in accordance with the provisions of article 908 of the amended and supplemented Code of Civil and Administrative Procedure.

3 - Jurisdiction of the Council of State as the competent court (first and last instance)

The Algerian legislator has not specified the circumstances in which the Council of State is competent to rule on a dispute as a court of first and last instance, as was the case in the Code of Civil and Administrative Procedure.However, from the provisions of Article 11 of Organic Law 22/11 on the Council of State and its jurisdiction, which corresponds to the provisions of Article 903 of the Code of Civil and Administrative Procedure, it can be concluded that the Council of State has jurisdiction to hear the case on the merits, i.e. as the competent court in cases granted to it by special provisions.Cases are brought before the Council of State in accordance with the same procedures as

before the Administrative Court, and petitions, appeals and memoranda must be submitted through a lawyer accredited with the Council of State, except in the case of public legal entities.

CONCLUSION:

The application of the principle of judicial duality requires the existence of a structural organisation of the administrative justice system and the presence of sufficient human resources, in particular the existence of specialised judges trained in administrative disputes. These judges are subject to the basic law of the judiciary, but they are trained in administrative disputes and they only move between the structures of the administrative judicial system, not between the ordinary and the administrative judicial system. The reason for this is that administrative litigation is very broad and is spread over several laws, such as the law on expropriation in the public interest, the law on public procurement, the tax law, the electoral law, the laws on real estate, etc. These laws are subject to several amendments. These laws are subject to several amendments, which may even extend to the existence of amendments to the annual and supplementary finance laws, as there is no single law that covers all the laws that are the subject of administrative disputes.

Since the judicial system is autonomous, it was necessary to create a special procedural law for it, the Administrative Procedure Law, in order to avoid any ambiguity or legal vacuum that would lead to the issuance of contradictory judgments in similar cases.

The legislator also had to put an end to the ambiguity regarding the possibility of an appeal to cassation against the decisions of the Council of State when it rules as a court of appeal in the case before it, which relates to the provisions of Article 900 bis of the Code of Civil and Administrative Procedure.The legislator has done well with this amendment, since prior to the amendment of the Code of Civil and Administrative Procedure, these disputes came under the jurisdiction of the Council of State as the first and final instance, which was a flagrant violation of the principle of the two-stage litigation, since it was not possible to appeal or appeal in cassation against its decisions when it was considered to be the jurisdiction, i.e. the first and final instance, in these disputes.However, the problem still exists due to the legal vacuum surrounding the possibility of a cassation appeal against the Council of State's decisions in these disputes, as the legislator did not specify the authority before which the cassation appeal is lodged and whether the cassation appeal can be lodged with the Council of State as a cassation court, given that its main role is to evaluate the acts of the administrative judiciary.

Footnotes:

[1]- See the 1996 Constitution.

[2]- Organic Law No. 98-01 of 30 May 1998 on the powers, organisation and functioning of the Council of State.

[3]- Law No. 98-02 of 30/05/1998 on the Administrative Courts.

[4]- Law No. 98-03 of 03/05/1998 on the powers, organisation and operation of the Court of Conflicts.

[5]- Souleiman Mohamadi Al-Tamawi, Administrative Justice, Book One, Dar Al-Fikr Al-Arabi, Cairo, Egypt, undated, p. 35 et seq.

[6]- Presidential Decree 20/442 of 30/12/2020 containing the Constitution of 2020, Official Gazette No. 82, 2020.

[7]- Abdel Ghani Bassiouni Abdullah, Administrative Justice, Al-Maaref Establishment, Alexandria, Egypt, 1996, p. 121 et seq.

[8]- Massaoud chihoub, General Principles of Administrative Disputes, Theory of Competence, University Press, 1998, p. 366.

[9]- Massaoud chihoub, General Principles of Administrative Disputes, Theory of Competence, University Press, 1998, p. 366.

[10]- Mohamed Al-Saghir Baali, Administrative Law, Al-Uloom, Annaba, 2004, p. 20 et seq.

[11]- Mohamed Saleh Kharaz, Rules of Jurisdiction for the Administrative Emergency Judge, Master's thesis, Faculty of Law, University of Algiers, p. 123.
[12]- Organic Law No. 22-13 of 12.05.2007, amending and supplementing Law No. 08/09 of 25.02.2008, containing the Code of Civil and Administrative Procedure.
[13]- Although some consider that administrative courts should be organised by an organic law, see Rashid Khloufi, Administrative Judiciary, Organisation and Competence, D.M.G Algeria, 2002, p. 159.
[14]- Massaoud chihoub, General Principles of Administrative Disputes, Theory of Competence, cited above, p. 96
[15]- Decree No. 22/435 of 11.12.2002, establishing the territorial jurisdiction of the administrative courts of appeal and the administrative tribunals.
[16]- Organic Law No. 22-07 of 05/06/2022 on the division of jurisdiction.
[17]- Organic Law No. 22-10 of 09/06/2022 on the Organisation of the Judiciary.
[18]- Decree No. 98-356 of 24 Rajab 1419 of 14 November 1998, laying down the procedures for implementing Law No. 98-02 of 4 Safar 1419 of 30 May 1998 on administrative courts, Official Gazette No. 85.
[19]- Bashir Mohammed, Appeal as a Regular Means of Challenging Administrative Judgments in Algeria, Master's thesis in law, Department of Administration and Finance, Faculty of Law, University of Algiers, 1983, p. 73.
[20]- Organic Law No. 22-11 of 09/05/06/2022 on the organisation, functioning and jurisdiction of the Council of State.
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