

## **Reform of the Administrative Judicial System in Algeria – A Study of the Structures of Judicial Organization and the Related Rules of Jurisdiction –**

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### **Abstract:**

In line with the process of judicial reform in Algeria, and the profound changes it has enshrined at the level of the structuring of this system, the constitutional constituent in Algeria, on the occasion of the 2020 constitutional amendment, moved toward introducing reforms that affected the structure of the bodies of the administrative judiciary and their jurisdictions.

Proceeding from the significant importance that this process has enjoyed, whether from the structural perspective—whose most prominent outcomes were represented in the establishment of administrative courts of appeal as a second level of litigation—or from the perspective of updating legal texts, particularly in procedural aspects, it became imperative to accelerate the activation of the various reforms adopted within the same framework, with the aim of entrenching the concept of legal certainty among litigants in administrative matters.

This research paper seeks to answer the issue embodied in attempting to identify the backgrounds of the national legislative vision for reforming the Algerian administrative judicial system and to highlight its new developments, whether with regard to the institutional structural aspect, in addition to clarifying the developments that have occurred in the related rules of jurisdiction, with a view to drawing conclusions and recording proposals aimed at improving administrative judicial practice in Algeria.

### **Keywords:**

Judicial Reform – Administrative Judicial Jurisdiction – Administrative Courts – Administrative Courts of Appeal – Council of State.

### **Introduction:**

In parallel with the numerous reforms witnessed in the field of ordinary judiciary in Algeria, which allowed for profound changes in the structuring of this system—following the adoption of the 2016 constitutional amendment introducing the principle of two-tier litigation in criminal matters, enshrined by Law 17-07 (Law No. 17-07, 2017, Article 248), and the adoption of consensual justice through the establishment of judicial mediation in both civil and criminal matters (Law No. 08-09, 2008, Article 994, as amended by Law No. 22-13, 2022)—the

constitutional constituent in Algeria, on the occasion of the 2020 constitutional amendment, moved toward introducing similar changes in the structure of the administrative judiciary and its jurisdictions. This came nearly a quarter of a century after the adoption of the administrative judicial system under the 1996 constitutional amendment. This profound change affecting the structure and jurisdictions of administrative judicial bodies in 2020 had a significant impact both on the structures of the administrative judicial system and on the rules of jurisdiction in administrative matters.

Given the considerable importance of the process of reforming the administrative judicial system in Algeria, whether in terms of strengthening its functional structures—which had long lacked one of its essential components, namely the second degree of litigation—or in terms of reviewing its legal texts, which suffered from notable deficiencies in many aspects, especially procedural ones, it became imperative to accelerate the adoption of this comprehensive reform movement. This was necessary to keep pace with the rapidly evolving global developments in administrative judicial systems, which have become a fundamental criterion in determining the stability of legal certainty and the protection of rights and freedoms.

Based on this, this research paper will attempt to identify the most significant features of the reform process of the administrative judicial system adopted in light of the 2020 constitutional amendment in Algeria, while defining the nature of the new developments introduced by this reform process, through the following main research question: **What are the features of the newly established national legislative vision in the field of Algerian administrative judiciary?**

Two subsidiary questions fall under this central question:

- What are the characteristics of the new structural organization of administrative judicial bodies in Algeria?
- What are the main developments affecting the rules of administrative judicial jurisdiction, and to what extent are they sufficient to achieve a fair trial?

To answer the above questions through analysis and study, the research will adopt the descriptive and analytical methodologies to describe and analyze the various variables related to this topic, particularly the restructuring of administrative judicial bodies on one hand and the updating of the rules defining jurisdiction among them on the other, in order to assess their impact on the reality of litigation in administrative matters and ultimately draw conclusions.

The research will follow a methodological plan consisting of two sections: the first section will clarify the justifications for reforming the administrative judicial system in Algeria and explain its new structure, followed by a second section highlighting the developments in the jurisdictions of administrative judicial bodies in Algeria after the 2020 constitutional amendment. The study will conclude by deriving a set of findings and presenting a series of recommendations aimed at improving judicial practice in Algeria.

## **Section One:** **Justifications for Reforming the Administrative Judicial System in Algeria and Outline of Its New Structure**

During the 2020 constitutional amendment, the constitutional constituent in Algeria moved toward introducing profound changes in the structure of administrative judicial bodies and their jurisdictions. This reform process was driven by a set of justifications, which will be clarified in the first subsection. Subsequently, we will outline the main features of the new structure adopted for the administrative judicial bodies in the second subsection.

### **Subsection One: Justifications for Reforming the Administrative Judicial System in Algeria**

Like other legal frameworks that always require keeping pace with contemporary developments and addressing issues that usually arise during practical application, the administrative judicial system in Algeria went through an initial phase of its existence, spanning from 1996 to 2020. During this period, a number of significant problems and deficiencies emerged, which necessitated the adoption of a comprehensive reform process. The following will highlight the main justifications that led to the implementation of this reform.

#### **First: Harmonization of Texts Related to the Administrative Judicial System with the Content of the 2020 Constitutional Amendment**

In affirmation of the principle of legality, which requires that all rules and legal texts in the state comply with the hierarchy of laws—wherein constitutional texts take precedence over other legislative and regulatory texts—the 2020 constitutional amendment established that “the Council of State represents the body that oversees the work of the Administrative Courts of Appeal, the Administrative Courts, and other authorities adjudicating administrative matters.” (Constitutional Amendment, 2020, Article 179, paragraph 02)

It became apparent that a number of legislative texts related to the administrative judicial system were in conflict with the new constitutional amendment, foremost among them being **Order 97-11**, which governs judicial division (Ordinance No. 97-11, 1997), as well as **Organic Law 98-01**(Organic Law No. 98-01, 1998) concerning the competencies, organization, and functioning of the Council of State, **Law 98-02** regarding administrative courts (Organic Law No. 98-02, 1998), and **Organic Law 05-11** related to judicial organization (Organic Law No 05-11, 2005). These various texts contained rules inconsistent with the new structure of the administrative judicial system, primarily by omitting the new category of administrative judicial bodies, namely the Administrative Courts of Appeal, and by assigning the full set of competencies of this new body to other administrative judicial authorities, namely the Administrative Courts and the Council of State.

With the issuance of the 2020 constitutional amendment, applying these outdated texts became inconsistent with the Constitution. This prompted the legislator to correct the situation by enacting new legislative texts that harmonized the legal framework of the administrative judicial system with constitutional rules. Accordingly, one of the main legal justifications for reforming the administrative judiciary in Algeria was to ensure the legality and constitutional conformity of the texts governing this field.

#### **Second: Establishment of the Principle of Two-Tier Litigation in Administrative Matters**

The principle of two-tier litigation is one of the most fundamental principles in various comparative judicial systems and a prominent indicator of the structural framework for a fair trial (Awatif. S, 2023, p. 213). The 2020 constitutional amendment in Algeria adopted this principle by stipulating that the law guarantees litigation on two levels (Constitutional Amendment, 2020, Article 165, paragraph), whereas previously, the constitutional recognition of two-tier litigation was limited to criminal matters only (Constitutional Amendment, 2016, Article 160, paragraph 02). Thus, the constitutional constituent expanded the application of this principle to administrative matters, which had previously been adjudicated at a single level: the Administrative Courts, overseen by their supervisory body, the Council of State.

Following the example of **Law No. 87-1127** concerning the reform of the administrative judiciary in France, issued on December 31, 1987 (Law No. 87-1127, 1987, Article No. 01), which established five (05) Administrative Courts of Appeal to achieve several objectives—primarily to reduce the burden on the Council of State as a court of appeal, avoiding its preoccupation with accumulated appeals at the expense of its advisory administrative function (Mohamed Refaat. A, 2011, p. 140) \_ providing opinions on draft laws\_ alongside its role in overseeing the work of administrative judicial bodies—the Algerian legislator moved in the same direction.

The establishment of Administrative Courts of Appeal in Algeria creates, similar to the ordinary judiciary structure, three ascending levels of dispute resolution within the administrative judiciary: the first level of litigation represented by the Administrative Courts, the second level represented by the Administrative Courts of Appeal, and the highest third level, represented by the possibility of filing a cassation appeal against the rulings of the Administrative Courts of Appeal before the Council of State in its capacity as a court of cassation. (Mohamed Refaat. A, 2011, pp. 140.141)

### **Third: Simplification of Litigation Procedures in Administrative Matters and Bringing Them Closer to Individuals**

Unlike the litigation system in ordinary matters, which is characterized by simplicity and clarity due to the hierarchical structure of its judicial bodies, the lack of consistency and alignment between administrative judicial bodies and their ordinary counterparts imposed a significant burden on individuals. This burden arose both in understanding the competencies of the bodies forming this judicial system and the scope of each of their authorities, and in the differences in litigation procedures at each level depending on the subject of the dispute, whether it is considered a first or second instance, whether its rulings are preliminary or final, and whether they are appealable or not.

Moreover, the process of appealing preliminary rulings issued by the Administrative Courts before the Council of State had a significant negative impact on litigants, who were forced to bear the costs of transporting their lawyers, accredited with the Council of State, to its headquarters in the capital to file their appeals. This imposed substantial expenses, particularly for provinces located in the far south of the country (Law No. 08-09, 2008, Article 905). The root of this issue lay in the deficiencies of the 1996 judicial reform, which undermined the principle of two-tier litigation by stipulating that appeals should be filed before the Council of State, which simultaneously serves as a court of cassation for other judicial decisions. This arrangement placed the entire burden of a single appellate court at the central level on the litigants. (Ammar. B, 2018, p. 177)

## Subsection Two:

### The New Structural Organization of Administrative Judicial Bodies in Algeria

After nearly a quarter of a century of Algeria's adoption of the dual judicial system, which was managed through a judicial structure composed of only two types of judicial bodies—first, a central body represented by the Council of State, and second, a local grassroots body represented by a group of Administrative Courts located in most provinces—the constitutional constituent, with the adoption of the first reform of the administrative judicial system, moved to strengthen its structure by introducing a new body: the Administrative Courts of Appeal. This addition represents a significant enhancement to the administrative judicial system.

In this context, we will address the components of the administrative judicial structure in Algeria following the judicial reform accompanying the 2020 constitutional amendment, by defining each of these bodies.

#### First: The Administrative Courts

The Administrative Courts constitute the fundamental base of the pyramid of administrative judicial bodies in Algeria. The 2020 constitutional amendment explicitly recognized this principle for the first time by referring to them under the designation “Administrative Courts” at the conclusion of its presentation of the administrative judicial system (Constitutional Amendment, 2020, Article 179, paragraph 02), whereas in the 2016 constitutional amendment, they were previously described under the same position as “administrative judicial authorities.” (Constitutional Amendment, 2016, Article 11, paragraph 02)

The first specific legal text concerning Administrative Courts was issued in 1998 under **Law 98-02**, which detailed the methods of organizing and forming these bodies, defining their units and internal divisions, as well as their human resources composition (Ammar. B, 2018, p. 167). The Administrative Courts thus served as the foundational building block in constructing the administrative judicial system. To implement this law, **Executive Decree No. 98-356** (Executive Decree No. 98-356, 1998, Article 02) was issued, officially establishing 31 Administrative Courts, which were gradually inaugurated. They were later reaffirmed in the Organic Law on Judicial Organization as a core component of the administrative judicial system (Organic Law No. 05-11, 2005). In 2011, their number was subsequently increased to 48 Administrative Courts. (Executive Decree No. 11-195, 2011, Article 02)

The Administrative Courts issue their rulings through collegiate formations composed of at least three judges (a president and assistants), unless the law provides otherwise (Law No. 22-13, 2022, Article 04 / amended paragraph of Article 814 bis). Furthermore, while **Law 98-02** (Law No. 98-02, 1998, Article 03) previously required that judges of the Administrative Courts hold the rank of Councilor, this requirement was abolished following the repeal of that law under **Organic Law 22-10** on Judicial Organization. (Organic Law No. 22-10, 2022, Article 32)

#### Second: The Administrative Courts of Appeal

The Administrative Courts of Appeal represent the second level of litigation in administrative matters. They were established by the 2020 (Constitutional Amendment , 2020, Article 179, paragraph 02) constitutional amendment as a new tier within the administrative judicial system,

which, from this stage onward, became structurally similar to the ordinary judicial system based on the principle of two-tier litigation—a feature considered a significant advancement in the judicial systems of countries with established democracies.

Previously, the Council of State handled appeals against rulings issued at the first instance by the Administrative Courts, which imposed a heavy burden due to the accumulation of cases. In line with the content of the 2020 constitutional amendment, the Algerian legislator addressed this issue through **Organic Law No. 22-07** on judicial division, which for the first time established six Administrative Courts of Appeal, located in Algiers, Oran, Constantine, Ouargla, Tamanrasset, and Bechar.

This legislation was subsequently complemented by a series of other legislative texts regulating the organization and functioning of the Administrative Courts of Appeal, such as **Organic Law 22-10**, which defined the general framework regarding their powers and composition (Organic Law No. 22-10, 2022, Articles 29 and 30), and **Law No. 22-13**, which detailed the various competencies and procedures applicable before these courts.

### Third: The Council of State

The Council of State constitutes the apex of the administrative judicial organization in Algeria. It was first mentioned in the 1996 constitutional amendment (Constitutional Amendment, 1996, Article 152, paragraph 02), which established the Council of State as the supervisory body for the work of administrative judicial authorities. Its primary functions include unifying judicial interpretation in administrative matters and ensuring compliance with the law. The same amendment stipulated that the organization, functioning, and additional competencies of the Council of State would be determined by an organic law, which was implemented through **Organic Law 98-01**. This law defined its judicial competencies, primarily consisting of overseeing the work of administrative judicial bodies, in addition to its advisory competencies, such as providing opinions on draft laws.

To ensure the independence of the Council of State as a constitutional institution, it was granted financial and administrative autonomy, with provisions for the necessary financial and material resources to manage and develop its activities. Human resources were also emphasized (Organic Law No. 98-01, 1998, Article 13), foremost among them being judges, who are subject to the fundamental law governing the judiciary during the exercise of their duties, thereby guaranteeing their independence.

In performing its judicial functions, the Council of State convenes sessions in the form of joint chambers when necessary, such as in cases where a decision represents a departure from a previous judicial interpretation. It also meets in the form of chambers and divisions when adjudicating cases presented to it. (Organic Law No. 98-01, 1998, Articles 30–33)

In carrying out its advisory role, the Council of State relies on deliberative mechanisms, either in the form of a general assembly when providing opinions on draft laws, or through a permanent committee for reviewing draft laws in exceptional cases flagged as urgent by the Prime Minister (Organic Law No. 98-01, 1998, Articles 35–38). It is worth noting that **Law 22-11** overlooked amending this provision by replacing the term “Prime Minister” with “Prime Minister or Head of Government, as the case may be,” reflecting the possibility that the government may be led by either office depending on the nature of the majority resulting from

the legislative elections, whether a parliamentary majority or a presidential majority. (Constitutional Amendment, 2020, Articles 103 and 110)

## **Section Two:** **The Evolution of the Competencies of Administrative Judicial Bodies in Algeria**

Given the significant importance of rules of jurisdiction in public law in general, and in judicial organization in particular—since they are considered mandatory rules that cannot be contravened due to their connection with public order—various legislations regulating the work of administrative judicial bodies have sought to clarify the scope of their authority and to keep pace with all related developments.

Considering the profound changes experienced during the first phase of the administrative judicial system in Algeria, spanning from the 1996 constitutional amendment to the most recent amendment, both in terms of the structural organization of the system and the deep transformations in the areas of competence of each judicial authority, it became necessary to reconsider the methods of distributing competencies among each body.

### **Subsection One:** **Competencies Assigned to the Administrative Courts**

The process of determining the competencies of the Administrative Courts in Algeria requires reference to the legislative texts regulating the work of these bodies and defining their scope of intervention, both in terms of subject-matter \_material jurisdiction\_ and territorial jurisdiction. Foremost among these texts is **Law No. 98-02**, which provides that the Administrative Courts are judicial authorities of public law in administrative matters. Additionally, **Amended Law 08-09** stipulates in its Article 803 that the determination of the territorial jurisdiction of the Administrative Courts is subject to Articles 37 and 38 of the same law, which simultaneously address the jurisdiction of ordinary courts.

#### **First Branch:** **Determination of the Subject-Matter Jurisdiction of the Administrative Courts**

The Administrative Courts generally serve as the primary authorities for adjudicating various administrative disputes, except for certain cases assigned to other judicial bodies.

The concept of general jurisdiction implies that the Administrative Courts handle first-instance cases in all disputes in which the state, the province –wilaya–, the municipality, a public institution with administrative character, or national public bodies and professional organizations are parties, with rulings subject to appeal before the Administrative Courts of Appeal. (Law No. 22-13, 2022, Article 800)

Here, it is notable that the legislator relied on the **organic criterion** in assigning subject-matter jurisdiction to the Administrative Courts, by stipulating that these courts adjudicate disputes in which at least one party is a legal person governed by public law.

Furthermore, the Administrative Courts are competent to rule on actions for annulment, interpretation, and review of the legality of decisions issued by the province –wilaya– and

decentralized state services at the level of provinces, municipalities, regional professional organizations, and local public institutions with administrative character (Law No. 22-13, 2022, Article 801, paragraph 01), in addition to full-judicial actions and other cases granted to them under specific legal provisions. (Law No. 08-09, 2008, Article 801, paragraphs 02 and 03)

Again, the legislator applied the **organic criterion** in assigning jurisdiction to the Administrative Courts, stipulating that they handle annulment, interpretation, and legality review of decisions issued by the provinces, decentralized state services, municipalities, regional professional organizations, and local public institutions with administrative character, as well as all full-judicial actions in which at least one party is a public-law entity, whether local or central. The legislator granted these courts jurisdiction over full-judicial actions involving national public bodies and national professional organizations, while reserving the authority to annul, interpret, or review the legality of decisions issued by these bodies for the **Administrative Court of Appeal in Algiers**. (Fatima Zahra. K, 2023, p. 10.)

### **Second Branch: Determination of the Territorial Jurisdiction of the Administrative Courts**

Regarding the territorial jurisdiction of the Administrative Courts, the Algerian legislator, under **Article 803 of Law 08-09**, referred the determination of this jurisdiction to Articles 37 and 38 of the same law, which are also used to define the territorial jurisdiction among ordinary judicial authorities. This means that the territorial jurisdiction of the Administrative Courts is subject to the same rules.

In this context, two main situations are distinguished:

1. **Single Defendant Case:** Jurisdiction is assigned to the judicial authority in whose area the defendant's domicile is located. If the defendant has no known domicile, jurisdiction is transferred to the judicial authority encompassing the last known domicile. If the defendant chooses a domicile, jurisdiction is assigned to the judicial authority of the chosen domicile.
2. **Multiple Defendants Case:** Territorial jurisdiction is assigned to the judicial authority in whose area the domicile of one of the defendants falls.

However, contrary to the general referral in Article 803 of Law 08-09 to the general principles governing the determination of territorial jurisdiction among judicial authorities, the Algerian legislator established **specific rules of territorial jurisdiction** for a defined set of matters linked to particular subjects (Law No. 22-13, 2022, Article 804)

This can be considered a flexible approach to determining territorial jurisdiction, applying an objective criterion as a supplement alongside the personal criterion.

### **Subsection Two: Competencies Assigned to the Administrative Courts of Appeal**

In a manner similar to the discussion of the rules governing the assignment of competencies to the Administrative Courts in Algeria, this section aims to highlight the main competencies granted to the Administrative Courts of Appeal, as well as their areas of intervention in terms

of both subject-matter and territorial jurisdiction. These competencies are primarily derived from **Law No. 22-13**, which amends and supplements **Law No. 08-09**.

**First Branch:**  
**Determination of the Subject-Matter Jurisdiction of the Administrative Courts of Appeal**

Based on the position of the Administrative Courts of Appeal within the pyramid of the administrative judicial system—situated between the two traditional bodies that previously held all competencies related to adjudication in administrative matters—this newly established body was assigned a set of competencies. These competencies can, in our view, be divided into two categories:

1. Competencies related to the court's position as a second-instance authority within the administrative judicial system.
2. Competencies considered exceptions to the general jurisdiction of the Administrative Courts.

**First: Competencies Related to the Position of the Administrative Courts of Appeal as a Second Instance**

In line with their position as second-instance courts in administrative matters, the Algerian legislator explicitly recognized the competencies of the Administrative Courts of Appeal associated with this role. These courts are designated as appellate authorities for judgments and orders issued by the Administrative Courts, in addition to their jurisdiction over cases assigned to them under specific legal provisions (Organic Law No. 22-10, 2022, Article 29). These competencies were also reaffirmed in the latest amendment to the Code of Civil and Administrative Procedures. (Law No. 22-13, 2022, Article 900 bis, paragraphs 01 and 02)

Regarding urgent orders, the legislator assigned the Administrative Courts of Appeal the authority to hear appeals against such urgent orders issued by the Administrative Courts, within a period of fifteen days from the date of official notification or service (Law No. 22-13, 2022, Article 937, paragraph 03) . This provision was reiterated elsewhere in Law 22-13, though without reference to the element of urgency (Law No. 22-13, 2022, Article 934), despite its inclusion in the section of the law dedicated to appeals against urgent orders.

It is clear from these rules that the assignment of such competencies aligns with the courts' position within the administrative judicial system, particularly as a second instance of litigation.

**Second: Competencies Assigned to the Administrative Courts of Appeal as Exceptions to the General Jurisdiction of the Administrative Courts**

In parallel with the competencies granted to the Administrative Courts, which exercise general jurisdiction over various administrative disputes, a set of exceptions has been established, assigning certain matters to other judicial bodies—primarily the Administrative Courts of Appeal. In this context, it is stipulated that if the Administrative Courts receive claims they consider outside their jurisdiction but within the competence of the Administrative Courts of Appeal, the president of the Administrative Court must transfer the file to the competent Administrative Court of Appeal as soon as possible (Law No. 22-13, 2022, Article 813,

paragraph 01). This indicates that the Administrative Courts of Appeal do not hold these competencies by virtue of general jurisdiction but rather as exceptions to the general jurisdiction of the Administrative Courts.

The Algerian legislator linked the adjudication of disputes referred to the Administrative Courts of Appeal by the Administrative Courts due to lack of jurisdiction to a prior determination of whether the dispute falls within their jurisdiction. If the Administrative Court of Appeal finds that the dispute is within its competence, it rules on the matter; if not, it remands the case to the Administrative Court for adjudication of all or part of the claims (Law No. 22-13, 2022, Article 813, paragraph 02). On a mandatory basis (Law No. 22-13, 2022, Article 814, paragraph 01). This prioritization of determining jurisdiction before ruling on the substance of the dispute reinforces the principle of general jurisdiction of the Administrative Courts and the respect for jurisdictional rules, which are tied to public order.

Additionally, the legislator stipulated that if the Council of State rules on jurisdiction and refers the dispute to the competent Administrative Court of Appeal, the latter cannot declare lack of jurisdiction (Law No. 22-13, 2022, Article 814, paragraph 02). Thus, the Algerian legislator addressed the specific subject-matter jurisdiction of the Administrative Courts of Appeal in a hierarchical and subsidiary manner: all matters outside the general jurisdiction of the Administrative Courts, and those falling within what may be termed the “special jurisdiction” of the Council of State, are assigned to the Administrative Courts of Appeal.

Regarding disputes referred through appeals against first-instance rulings, such as urgent orders (orders for suspension of execution), these may be appealed before either the Administrative Courts of Appeal or the Council of State, depending on the case, within a maximum period of fifteen days from notification. (Law No. 22-13, 2022, Article 837, paragraph 03).

Furthermore, the authority to receive motions for the recusal of a judge who serves as president of an Administrative Court has been assigned to the Administrative Court of Appeal (Law No. 22-13, 2022, Article 837, paragraph 03). If the judge in question consents, substitution is applied; if the judge objects, the president of the Administrative Court forwards the file to the president of the Administrative Court of Appeal within ten days (Law No. 08-09, 2008, Article 881), who then decides on the recusal in a consultation chamber.

It should also be noted that the Administrative Court of Appeal in Algiers has been granted first-instance jurisdiction over annulment, interpretation, and review of the legality of administrative decisions issued by central administrative authorities, national public bodies, and national professional organizations (Law No. 22-13, 2022, Article 900 bis, paragraph 03)—a jurisdiction previously reserved for the Council of State before the establishment of the Administrative Courts of Appeal.

## **Second Branch:** **Determination of the Territorial Jurisdiction of the Administrative Courts of Appeal**

Regarding the territorial jurisdiction of the Administrative Courts of Appeal, the Algerian legislator addressed this in **Law 22-13** under the section titled “On the Nature of Jurisdiction.” The law organizes this aspect for the Administrative Courts of Appeal according to the same provisions found in **Article 807 of Law 08-09**, which initially established that the subject-

matter and territorial jurisdiction of the Administrative Courts constitutes public order (Law No. 08-09, 2008, Article 807, paragraph 01). This confirms that the Administrative Courts of Appeal possess a territorial jurisdiction that must be respected, which can be raised by any party at any stage of the proceedings, and must also be raised *ex officio* by the judge.

It should be noted that, in our view, relying on the content of this article is not entirely appropriate, particularly in light of granting first-instance jurisdiction over annulment, interpretation, and review of the legality of administrative decisions issued by central administrative authorities, national public bodies, and national professional organizations to the Administrative Court of Appeal in Algiers. This is based on **Articles 37 and 38 of Law 08-09**, which determine territorial jurisdiction according to the defendant's domicile. In these cases, the defendant corresponds to central administrative authorities, national public bodies, or national professional organizations (Law No. 22-13, 2022, Article 900 bis, paragraph 03), which necessitates travel to Algiers to appeal their decisions.

Therefore, addressing this situation requires assigning the competence to adjudicate such appeals to **all Administrative Courts of Appeal**, rather than exclusively to the Administrative Court of Appeal in Algiers. Additionally, Articles 37 and 38 of Law 08-09 should be amended to also consider the **plaintiff's domicile** as a basis for determining territorial jurisdiction when one of the parties to the dispute is a central administrative authority, national public body, or national professional organization.

### **Subsection Three: Competencies Assigned to the Council of State**

Given the significant legal position of the Council of State within the structure of the Algerian administrative judicial system—as the supervisory body overseeing the work of the Administrative Courts of Appeal, the Administrative Courts, and other authorities adjudicating administrative matters—the Algerian legislator has assigned it a wide range of diverse competencies, which have evolved according to each stage of development of the administrative judicial system in Algeria.

In this context, we will highlight the most prominent competencies of the Council of State, particularly its judicial functions, as shaped by the judicial reforms enacted in light of the 2020 constitutional amendment. These are primarily established in **Organic Law No. 22-11**, which amends and supplements **Organic Law No. 98-01** on the organization, functioning, and competencies of the Council of State, as well as **Law No. 22-13**, which amends and supplements **Law No. 08-09**.

The competencies of the Council of State can be classified into:

1. **Competencies as a court of cassation (judicial review).**
2. **Competencies as a court of appeal.**

Meanwhile, its advisory competencies remain unchanged.

### **First Branch: Competencies Assigned to the Council of State as a Court of Law**

In line with the constitutional recognition of the Council of State's supervisory role over the work of the Administrative Courts of Appeal, the Administrative Courts, and other authorities adjudicating administrative matters, the primary objective of establishing this body within the structure of the administrative judicial system is its function of **overseeing the work of judicial authorities and unifying judicial interpretation**. This serves to ensure legal security for litigants in administrative matters.

This oversight is exercised through two main mechanisms:

1. **Appeal in cassation (judicial review).**
2. **Resolution of disputes arising between administrative judicial authorities.**

### **First: Competencies Assigned to the Council of State as a Court of Cassation**

The Council of State exercises judicial review over final judgments and decisions issued by administrative judicial authorities. Additionally, it holds competence to adjudicate appeals in cassation specifically granted to it under special legal provisions (Organic Law No. 22-11, 2022, Article 09, amending and supplementing Organic Law No. 98-01, 1998), such as appeals against decisions of the Court of Auditors, which were explicitly mentioned in Organic Law No. 98-01. (Organic Law No. 98-01, 1998, Article 11)

This competence is reaffirmed in Law 22-13, which stipulates that the Council of State rules on appeals in cassation concerning both final judgments and decisions issued by various administrative judicial authorities, as well as appeals in cassation specifically granted by special provisions. (Law No. 22-13, 2022, Article 901)

It should be noted that elsewhere in Law 22-13, the Council of State is granted authority to rule on matters assigned by special provisions without specifying whether this role is as a court of cassation or appeal (Law No. 22-13, 2022, Article 903). This can be considered a reserve mechanism, allowing the Council to encompass any temporary or emerging competencies that may be provided by future special provisions.

A review of the two laws, separated by nearly a quarter of a century—the lifespan of the administrative judicial system in Algeria—shows the stability of the legislator's position in this area. This consistency helps unify judicial interpretation and ensures legal positions for all parties active or in dispute in administrative matters.

Despite judicial practice adopting the principle that orders and decisions issued by the Council of State as an appellate authority are not subject to appeal in cassation—given the impossibility of combining the roles of ruling on disputes through final decisions and reviewing them as a court of cassation simultaneously, as highlighted by the Council of State's ruling in the case of Sh. M. vs. Directorate of Education, Wilaya of Batna (Council of State, 2002, Decision No. 7304), which confirmed that it is neither reasonable nor logical for the Council of State to rule on a cassation appeal against a decision it issued (Djamel. S & Rachid. Kh, 2015, pp. 210–211)—the law allows the Council to act in review cases.

Specifically, the Council of State may receive appeals from a party affected by a final judgment or decision—acting in its appellate capacity—to correct a material error that constitutes a fundamental flaw affecting the rights and duties of the parties and attributable to

the judicial body (Law No. 22-13, 2022, Articles 963 and 966). This power is limited to two cases:

When it is discovered that the decision was issued based on forged documents presented for the first time to the administrative judicial authority.

When a party was judged due to failure to submit decisive documents that were in the possession of the opposing party.

### **Second:**

#### **Competencies Assigned to the Council of State as a Settling Authority in Cases of Disputes Arising Within or Between Administrative Judicial Authorities**

In addition to the prominent role played by the Council of State in supervising the work of administrative judicial authorities as a court of law—where it rules on appeals in cassation against final judgments and decisions issued by various administrative judicial authorities and other bodies granted this power under special provisions—the Council of State is also endowed with **competencies to adjudicate disputes arising within or between administrative judicial authorities**.

These competencies can be clarified according to the following classification.

#### **1- Competencies Related to Adjudicating Cases of Judge Recusal**

In line with the significant role played by administrative judges in issuing rulings and decisions, and considering the potential defects that may arise when a judge encounters a conflict of interest preventing them from adjudicating certain disputes at various levels of litigation, the **President of the Council of State** has been granted the competence to rule on **motions for the recusal of an administrative judge** when the judge serves as president of an Administrative Court of Appeal. (Law No. 22-13, 2022, Article 877, paragraph 03)

Similarly, it is stipulated that the **President of the Council of State** has the authority to rule within **ten days** from receipt of the file on motions to recuse judges of the Administrative Courts of Appeal, in cases where the judge concerned objects to the recusal decision issued by the president of the Administrative Court of Appeal (Law No. 22-13, 2022, Article 882, paragraph 04). Additionally, the President of the Council of State has competence to adjudicate recusal requests against judges of the Council of State itself, following the same procedure applied to judges of the Supreme Court. (Law No. 08-09, 2008, Article 244, paragraph 01)

The basis for these provisions, in our view, lies in the need to **consolidate the principle of hierarchical authority**, exercised by the head of each judicial body over its members, whether within the same judicial authority or at a lower level.

#### **2- Competencies Related to Adjudicating Disputes Arising Between Administrative Judicial Authorities**

**Law 22-13** establishes that the **President of the Council of State** has the authority to resolve **cases of conflict of jurisdiction** arising between two Administrative Courts under the jurisdiction of two different Administrative Courts of Appeal. (Law No. 22-13, 2022, Article 808, paragraph 02)

Similarly, the President of the Council of State is competent to adjudicate disputes of jurisdiction arising between any Administrative Court and an Administrative Court of Appeal (Law No. 22-13, 2022, Article 808, paragraph 03). In this context, a question arises regarding whether the Administrative Court in question falls under the jurisdiction of the Administrative Court of Appeal.

The **Council of State in full session** is competent to rule on conflicts of jurisdiction between any two Administrative Courts of Appeal, or between any Administrative Court of Appeal and the Council of State itself. (Law No. 22-13, 2022, Article 808, paragraph 04)

The President of the Council of State is also competent to resolve cases of **connection conflicts**, which occur when two Administrative Courts of Appeal are simultaneously notified of independent claims that are related and fall within the territorial jurisdiction of both courts (Law No. 22-13, 2022, Article 811, paragraph 02). This constitutes a form of positive conflict requiring the intervention of a neutral authority.

Furthermore, the Council of State has jurisdiction over cases in which an Administrative Court refers claims to an Administrative Court of Appeal on the basis that they fall within its jurisdiction. The Administrative Court of Appeal may rule on jurisdiction and the substance of the case if it considers the matter within its competence, or it may remit the claims to the relevant Administrative Court for total or partial adjudication if it declares lack of jurisdiction.

It should also be noted that the President of the Council of State is competent to rule on motions for the recusal of an administrative judge serving as president of an Administrative Court of Appeal (Law No. 22-13, 2022, Article 877, paragraph 03). In our view, this reflects the need to **consolidate the principle of hierarchical authority**, exercised by the head of each judicial body over lower judicial bodies.

**Second Branch:**  
**Competencies Assigned to the Council of State as an Appellate Authority (Court of Substance)**

In parallel with the various competencies assigned to the Council of State as a court of law, it has been endowed with a wide range of competencies in its capacity as an **appellate authority**, with jurisdiction over ordinary decisions and urgent orders issued by the Administrative Courts of Appeal.

**First:**  
**Competencies Assigned to the Council of State as an Appellate Court Regarding Ordinary Administrative Judicial Decisions**

Initially, it is stipulated that the **President of the Council of State** has the authority to rule on appeals related to **connection orders**, whereby the president of an Administrative Court of Appeal determines jurisdiction in cases where two Administrative Courts notify him simultaneously of independent but related claims that fall within the territorial jurisdiction of both courts. After the Administrative Court of Appeal issues a connection order, if applicable, identifying the competent court(s) to adjudicate the claims, **appeals against this connection order** are referred to the President of the Council of State. In such cases (Law No. 22-13, 2022,

Article 811, paragraphs 04 and 05), the orders issued by the President of the Council of State are **final and not subject to appeal**. (Law No. 22-13, 2022, Article 812, paragraphs 02 and 03)

The Council of State is also competent to hear **appeals against decisions issued by the Administrative Court of Appeal of Algiers** in matters concerning the annulment, interpretation, or assessment of the legality of administrative decisions issued by central administrative authorities, national public bodies, and national professional organizations (Law No. 22-13, 2022, Article 902). Previously, the Council of State acted as the final authority for these cases, issuing **initial and final rulings not subject to cassation**, as combining the roles of adjudicating final decisions and acting as a court of cassation was deemed legally impossible, according to prior judicial practice.

Following this transformation—granting the Administrative Court of Appeal of Algiers competence to rule on annulment, interpretation, and legality assessment cases—the Council of State now functions as the **appellate authority** for these decisions. However, it can be argued that this competence should ideally have been assigned to **all Administrative Courts of Appeal**, rather than being limited to the Algiers court, to facilitate and bring administrative justice closer to citizens. This could be achieved by amending **Articles 37 and 38 of Law 08-09**, determining territorial jurisdiction for such cases based on the **plaintiff's domicile** instead of the defendant's.

Regarding the **enforcement of contested administrative decisions**, the Council of State is competent to receive appeals against **stay-of-execution orders** issued by the Administrative Courts of Appeal that fall within its jurisdiction, and to rule on them **within fifteen days** from the date of notification.

Finally, the Council of State also has jurisdiction to hear **objection proceedings** against orders and decisions issued in absentia, in its capacity as an appellate authority. (Law No. 22-13, 2022, Article 953) This mechanism preserves the rights of parties unable to attend litigation sessions due to force majeure or other unavoidable circumstances

### Second:

#### Competencies Assigned to the Council of State as an Appellate Court Regarding Urgent Judicial Orders

Initially, the Algerian legislator has stipulated that **urgent orders** issued in the first instance by the Administrative Court of Appeal of Algiers are subject to appeal before the **Council of State** within **15 days** from the date of official notification (Law No. 22-13, 2022, Article 937, paragraphs 03 and 04). The Council of State must adjudicate these appeals **within fifteen days** (Law No. 22-13, 2022, Article 938), with this period extendable to **one month** if the urgency of the request is not established. (Law No. 08-09, 2008, Article 924, paragraph 01)

The Council of State also has the authority to **order the suspension or lifting of the suspension of administrative decisions** when acting as an appellate body in urgent matters (Law No. 22-13, 2022, Article 910). This intervention constitutes a **separate judicial procedure** in the urgent aspect of the dispute, even though it is linked to the appeal process.

By examining the Council of State's authority to lift a suspension ordered by the Administrative Court of Appeal of Algiers—upon being notified of a petition in this regard—and its reliance on **preventing harm to public interest or to the rights of the appellant** until the appeal is adjudicated (Law No. 22-13, 2022, Article 911), it can be concluded that the Council of State's competence in this context represents a **distinct intervention in the urgent nature of the dispute**, despite its connection to the appeal proceedings.

## Conclusion:

Through our concise review of the major structural transformations experienced by the administrative judiciary in Algeria in light of the reform process following the **2020 constitutional amendment**, and the developments introduced in various legislative texts regulating the allocation of competencies among the bodies constituting this system, a set of results and recommendations can be drawn as follows:

### I. Achieved Results:

- The reform of the administrative judiciary introduced by the **2020 constitutional amendment** represents a **mandatory, rather than optional, transformation**, aimed at correcting the deficiencies that had characterized the Algerian administrative judicial experience, which lasted for nearly a quarter of a century (from 1996 to 2020).
- Limiting the structure of the administrative judiciary in Algeria to **two bodies**—one classified as the trial level and the other as both a supervisory body and simultaneously competent for appellate matters—led to the inadequacy of both bodies in fulfilling their intended roles, whether in terms of improving judicial administrative work, developing jurisprudence capable of resolving complex issues, or in assessing and unifying judicial practice.
- The absence of **two-tier litigation in administrative matters** transformed the **Council of State** into a de facto court of first instance, due to its engagement in appeals against various decisions and orders, distancing it from its primary role as a supervisory body and unifier of judicial precedent, and weakening its advisory function.
- The establishment of **Administrative Courts of Appeal** created a structural balance between administrative and ordinary courts, contributing to the **strengthening of rights and protection of freedoms** and consolidating the principle of **legal certainty** in related disputes.

### II. Recommended Proposals:

- **Gradually increase the number of Administrative Courts of Appeal** to ensure optimal and faster handling of various appeals against judgments issued by administrative courts.
- **Expand the jurisdiction to hear cases concerning annulment, interpretation, and assessment of the legality of administrative decisions** issued by central administrative authorities, national public institutions, and national professional organizations to include **all Administrative Courts of Appeal** instead of restricting it to the Administrative Court of Appeal of Algiers. This could be achieved by amending **Articles 37 and 38 of Law 08/09**, determining territorial jurisdiction based on the

plaintiff's residence instead of the defendant's, to facilitate and bring administrative justice closer to citizens.

- **Link recruitment to administrative judicial positions with the requirement that candidates have held an administrative post within the control ranks for at least ten years**, to enhance judicial competence, which necessitates prior practical and applied experience.

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