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Decentralization of the Appellate Authority in the Algerian Administrative Judiciary

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***Abstract*—**This article examines the fundamental transformation of the Algerian administrative judicial system under Law No. 22-13, which amends Law No. 08-09—the Code of Civil and Administrative Procedure—specifically the shift toward decentralizing the appellate jurisdiction in administrative justice, through the establishment of administrative courts of appeal as the cornerstone of this transformation and granting them jurisdiction to rule on appeals in place of the Council of State. This has directly contributed to bringing the appellate authority closer to litigants and expediting the adjudication of appeals; however, the lack of specialization among administrative judges and the limited number of these courts remain obstacles to achieving the actual objective of this transformation.

***Keywords*—**Administrative Judiciary, Administrative Courts of Appeal, Decentralization of the Appellate Authority, Code of Civil and Administrative Procedure.

INTRODUCTION

Algeria implemented a dual-track judicial system with the 1996 constitutional amendment, establishing administrative courts, the Council of State, and the Court of Disputes. The administrative courts serve as the first instance for administrative disputes, while the Council of State exercises various judicial functions, exercising original jurisdiction over disputes involving central administrative authorities, serving as the appellate body for first-instance judgments issued by administrative courts, and acting as the court of cassation for final judgments of administrative courts.

However, the establishment of the administrative judiciary and the distribution of jurisdiction among its structures as described above has created numerous legal problems, the most significant of which was the centralization of the appellate authority by making the Council of State the appellate body for first-instance judgments, and the resulting change in the legal nature of the Council of State, which shifted from performing its constitutional powers as a body reviewing the actions of administrative judicial bodies to acting as a court with full jurisdiction to review the merits brought before it. The centralization of the appellate authority also led to a backlog of cases before the Council of State, as well as the distance of the appellate body from litigants, forcing them to travel to the capital when appealing administrative court rulings.

Following the adoption of the 2020 constitutional amendment, Article 179 thereof included changes to the structure of the administrative judiciary, by providing for the establishment of administrative courts of appeal and designating them as the appellate body within the administrative judiciary hierarchy. This is in addition to the administrative courts, which constitute the first instance of litigation, and the Council of State, which serves as the court of cassation within this hierarchy. Pursuant to this provision, Law No. 22-13, dated July 12, 2022, was enacted to amend and supplement Law No. 08-09, dated

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February 25, 2008, containing the Code of Civil and Administrative Procedure, which redistributed jurisdiction among the administrative courts, transferring the authority to rule on appeals to the Administrative Courts of Appeal instead of the Council of State, which is now dedicated to exercising its powers as the court of cassation for the decisions of these courts.

Consequently, the adoption of the 2020 constitutional amendment and the amendment to the Code of Civil and Administrative Procedure led to the decentralization of the appellate jurisdiction to address the legal issues caused by the centralized nature of the appellate jurisdiction prior to the aforementioned amendments. Hence, the central issue of this article revolves around the following question: To what extent has the decentralization of the appellate authority, in light of the amendment to the Code of Civil and Administrative Procedure, contributed to resolving the legal issues faced by the Algerian administrative judiciary?

To address this issue, we have relied on an analytical approach to identify the amendments made to the legislative texts relevant to the subject of this article, and to analyze them to identify the legal mechanisms through which the legislature implemented the transition to a decentralized appellate system and the implications of this for the redistribution of jurisdiction among administrative courts, in order to avoid the legal issues arising from the Council of State's exercise of its judicial powers prior to the enactment of the aforementioned amendments.

This issue will be addressed by dividing the article's subject matter into two main sections: the first section covers the transition to a decentralized appellate system through the establishment of administrative courts of appeal, while the second section addresses the implications of this decentralization in light of the amendment to the Code of Civil and Administrative Procedure.

Section I: Transition to a Decentralized Appellate Authority Through the Establishment of Administrative Courts of Appeal

The centralization of the appellate system under Law No. 08-09, dated February 25, 2008, containing the Code of Civil and Administrative Procedure[1], prior to its amendment placed a heavy burden on the Council of State, which negatively affected its ability to exercise its constitutional jurisdiction as a court of cassation, as well as the timeframes for resolving administrative disputes and the principle of bringing justice closer to litigants. To address this situation, the legislature decided to move toward decentralizing the appellate authority by adopting a structural reform of the administrative judiciary hierarchy through the creation of administrative courts of appeal (first), which are empowered to rule on appeals filed against first-instance judgments of administrative courts (second).

First: The Establishment of Administrative Courts of Appeal

The Administrative Court of Appeal constitutes the second tier of adjudication in administrative matters and hears appeals against first-instance judgments issued by the administrative courts, exercising full jurisdiction over the merits of the cases [2], Its establishment was announced by the 2020 Constitutional Amendment, pursuant to which numerous legal and regulatory texts were issued to form the legislative framework for these courts and define their organizational structure.

1. THE LEGISLATIVE FRAMEWORK FOR ADMINISTRATIVE COURTS OF APPEAL

Article 179 of the 2020 Constitutional Amendment is considered the first legislative provision to refer to the Administrative Courts of Appeal as one of the organs of the administrative judiciary in Algeria. The second paragraph of this article stipulates that the Council of State has the authority to oversee the work of the administrative courts and the Administrative Courts of Appeal, Consequently, this article marked the establishment of the administrative courts of appeal as the second level of administrative litigation[3].

Following this article, numerous legislative texts were also issued that explicitly referred to the establishment of this new judicial structure within the administrative judiciary. Organic Law No. 22-07, dated May 5, 2022, was enacted, setting forth the judicial division[4],

Article 8 of which provided for the establishment of six administrative courts of appeal in the following Wilayas: Algiers, Oran, Constantine, Ouargla, Tamanrasset, and Bechar. Organic Law No. 22-10, dated June 9, 2022, concerning judicial organization[5], was also enacted, Chapter I of Title IV of which, entitled "Administrative Courts of Appeal," defined the subject-matter jurisdiction of these courts and their composition. Subsequently, Law No. 22-13 was enacted, amending Law No. 08-09 on Civil and Administrative Procedure[6], and its Title I bis

sets forth the procedures for litigation before the Administrative Courts of Appeal.

In addition to the aforementioned legislative provisions, Executive Decree No. 22-435, dated December 11, 2022, was issued, defining the territorial jurisdictions of the Administrative Courts of Appeal and the administrative courts[7], This decree specified which administrative courts fall under the jurisdiction of each of the six administrative courts of appeal to prevent any overlap in the territorial jurisdiction of these courts. Subsequently, Executive Decree No. 23-120, dated March 18, 2023, was issued, defining the administrative and financial management procedures for the administrative courts and the administrative courts of appeal[8]. It provided for these courts to be equipped with a General Secretariat headed by a Secretary-General, who oversees the financial and administrative management of these courts to ensure their financial and administrative independence from the central authority.

2. ORGANIZATIONAL STRUCTURE OF THE ADMINISTRATIVE COURTS OF APPEAL

The administrative courts of appeal comprise both judicial and non-judicial structures.

A. The Judicial Structures of the Administrative Courts of Appeal

The Administrative Courts of Appeal comprise judges of the Bench and Magistrates of the State. Judges of the Bench are appointed by presidential decree issued by the President of the Republic. Pursuant to Article 30 of Organic Law No. 22-10 on the Judicial Organization, the President of the Court, his deputy or deputies as needed, the presidents of the chambers, the heads of divisions, and the counsellors, who are part of the court's judicial panels when it adjudicates cases brought before it.

As for Magistrates of the State, they are the State Commisioner and his assistant or assistants, as appropriate, who perform the duties assigned to them under the Code of Civil and Administrative Procedure.

B. Non-Judicial Structures of the Administrative Courts of Appeal

Like other judicial bodies, the Administrative Courts of Appeal include a court clerk's office, which is responsible for maintaining the court's records and attending hearings alongside the adjudicating panel. The Administrative Courts of Appeal also include a General Secretariat established pursuant to Executive Decree No. 23-120, which sets forth the administrative and financial procedures for administrative courts and administrative courts of appeal. It is headed by a Secretary-General, who serves as the secondary authorizing officer of the court's budget and is assisted in his duties by the heads of departments.

Second: Jurisdiction of the Administrative Courts of Appeal

An examination of the jurisdiction of the Administrative Courts of Appeal requires consideration of both their subject-matter and territorial jurisdiction.

1. SUBJECT-MATTER JURISDICTION OF THE ADMINISTRATIVE COURTS OF APPEAL

This is defined in accordance with Article 900 bis of Law No. 22-13, which amends the Code of Civil and Administrative Procedure. Under this provision, the six administrative courts of appeal exercise joint jurisdiction to rule on appeals filed with them against first-instance judgments of the administrative courts, while the Administrative Court of Appeal in Algiers has exclusive jurisdiction to act as the court of first instance in cases involving the annulment, interpretation, and assessment of the legality of administrative decisions issued by central administrative authorities, national public bodies, and national professional organizations, This jurisdiction, which previously belonged to the Council of State as the court of first and final instance, had been criticized by legal scholars, as the Council of State's exercise of it led to a violation of the principle of two-tier litigation, since its decisions in these cases are final and not subject to appeal[9], Furthermore, the Council of State's exercise of this jurisdiction complicated judicial proceedings for litigants due to the distance of the courts from them and the considerable time needed to resolve cases[10].

2. TERRITORIAL JURISDICTION OF THE ADMINISTRATIVE COURTS OF APPEAL

The territorial jurisdiction of the administrative courts of appeal is determined in accordance with the provisions of Executive Decree No. 22-435, which defines the regional jurisdictions of the administrative courts of appeal and the administrative courts. This decree specifies the administrative courts that fall under the territorial jurisdiction of each administrative court of appeal; For example, the Administrative Court of Appeal in Algiers has territorial jurisdiction extending to the following administrative courts: Algiers, Blida, Bouira, Tizi Ouzou, Djelfa, Medea, M'Sila, Boumerdès, Tipaza, and Aïn Defla.

It should be noted, however, that the legislature has not achieved a satisfactory distribution of administrative courts of appeal and the definition of their regional jurisdiction, as some courts cover areas with high population densities. This hinders the adjudication of cases and overburdens the judges of these courts, necessitating an increase in the number of administrative courts of appeal[11].

Section II: The Impact of Decentralizing the Appellate Authority Under the Civil and Administrative Procedure Law

The establishment of administrative courts of appeal and the granting of the aforementioned judicial powers to them have given effect to the principle of two-tier litigation in administrative disputes and have also affected the judicial powers of the Council of State. This has resulted in the achievement of expedited adjudication in appeals and has brought appellate justice closer to the litigants.

First: Expanding the Scope of Application of the Two-Tier Litigation Principle in Administrative Disputes

Determining the impact of the establishment of administrative courts of appeal on the application of the two-tier litigation principle in administrative disputes requires addressing the following elements:

1. THE CONCEPT OF THE TWO-TIER LITIGATION PRINCIPLE

The two-tier litigation principle refers to granting the parties to a lawsuit the right to appeal a judgment issued by the court of first instance to a court of second instance, so that the latter may reconsider the dispute and issue a new judgment as it deems appropriate[12], Under this concept, this principle ensures the proper application of the law by the judiciary, as second-instance judges can correct errors made by first-instance judges by overturning or modifying the judgment issued by the latter and reexamining the subject matter of the case[13], Hence the importance of the principle of two-tier litigation, which is one of the fundamental principles upon which the judicial system is based.

2. The Impact of the Establishment of Administrative Courts on the Implementation of the Principle of Two-Tier Litigation in Disputes Involving Central Administrative Authorities

The establishment of administrative courts of appeal has helped give effect to the principle of two-tier adjudication in disputes involving central administrative authorities.

This was achieved by granting jurisdiction over disputes involving central administrative authorities, national public bodies, and national professional organizations to the Administrative Court of Appeal in Algiers, as the court of first instance for such disputes, pursuant to Article 900 bis of Law No. 22-13 amending the Code of Civil and Administrative Procedure, but the Council of State now adjudicates these disputes only as an appellate body, whereas prior to the enactment of the aforementioned amendment, it adjudicated cases involving central administrative authorities as the court of first and final instance, issuing judgments that were not subject to appeal, which resulted in a violation of the principle of two-tier litigation in disputes involving central administrative authorities[14].

Second: Other Implications of Decentralizing the Appellate Authority Under the Civil and Administrative Procedure Law

The establishment of administrative courts of appeal has had other implications, which can be summarized as follows:

1. ACHIEVING THE ADVANTAGE OF EXPEDITED ADJUDICATION OF APPEALS

The Council of State’s exercise of its functions as an appellate court had a negative impact on the time required to adjudicate the cases brought before it, as the adjudication of appeals takes a long time—potentially more than two years—which adversely affects the rights of the litigants[15], However, following the establishment of the Administrative Courts of Appeal and the transfer of jurisdiction over appeals to them, this has resulted in a reduction in the duration of disputes and ensured that these appeals are resolved within reasonable timeframes, We say “reasonable” rather than “short” because the existence of six administrative courts of appeal—whose regional jurisdiction covers all administrative courts—remains insufficient to ensure the prompt adjudication of the appeals brought before them.

2. THE COUNCIL OF STATE'S RETURN TO ITS CONSTITUTIONAL FUNCTION

The Council of State previously exercised various judicial powers, primarily defined by Organic Law No. 98-01, dated May 30, 1998, concerning the powers, organization, and functioning of the Council of State[16], as amended and supplemented by Organic Law No. 11-13, dated July 26, 2011[17], and in the Code of Civil and Administrative Procedure, acting as a court of first and last instance, as a court of appeals, and as a court of cassation[18], The Council of State's exercise of these powers has resulted in it being overburdened with adjudicating the merits of cases, in violation of the Constitution, which designates it as a court of law responsible for ruling on cassation appeals and unifying judicial precedent in administrative matters.

However, the changes to the structure and jurisdiction of the administrative judiciary following the 2020 constitutional amendment and numerous subsequent legislative provisions have also affected the apex of the administrative judiciary by redistributing jurisdiction between it and the administrative courts of appeal, which have become the appellate instance within the administrative judiciary hierarchy, with the Council of State now serving as the court of cassation for their final decisions and, as an exception, as the appellate court for their first-instance rulings. Consequently, the narrowing of the Council of State's jurisdiction following the establishment of the administrative courts of appeal has resulted in the unification of the judicial roles of the Council of State and the Supreme Court, as both now adjudicate cassation appeals and ensure the uniformity of judicial precedent.

3. BRINGING THE APPELLATE AUTHORITY CLOSER TO LITIGANTS

The centralization of the appellate authority prior to the establishment of the administrative courts of appeal created a problem: the distance between the appellate authority—the Council of State—and the litigants, which led litigants to refrain from exercising their right to appeal due to their inability to bear the financial costs and travel burdens involved in exercising this right, even when they were not satisfied with the first-instance judgment[19].

However, following the establishment of the administrative courts of appeal, the appellate body has become somewhat more accessible to litigants—though only to a limited extent—because the appellate bodies in the ordinary courts, namely the judicial councils, are distributed across all the wilayas of the country, making them more accessible to litigants in the ordinary courts,unlike litigants before the administrative courts, who must endure the hardship of traveling to a province other than their own to pursue an appeal related to their case. This necessitates increasing the number of administrative courts of appeal by establishing a single court in each wilaya.

CONCLUSION:

The Algerian legislature's move toward decentralizing the appellate jurisdiction—under the 2020 constitutional amendment and Law No. 22-13, which amended Law No. 08-09 containing the Code of Civil and Administrative Procedure—constitutes a profound structural reform of the institutional framework of the Algerian administrative judiciary, This was achieved by establishing administrative courts of appeal and granting them jurisdiction to rule on appeals in place of the Council of State, a development that has had a positive impact on the conduct of administrative proceedings. Based on the main points of this article, we can draw the following conclusions:

- The decentralization of the appellate authority has brought the appellate body closer to the litigants, sparing them the burdens and obstacles of traveling to the capital to exercise their right to appeal first-instance rulings of the administrative courts.

- The decentralization of the appellate authority has simplified the procedures for appealing administrative court rulings and accelerated the pace at which these appeals are adjudicated by the administrative courts of appeal.

-The decentralization of the appellate authority within the Algerian judicial system has resulted in the implementation of the two-tier litigation principle in disputes involving central administrative authorities.

-The move toward decentralizing the appellate jurisdiction in administrative justice, despite its practical importance, faces the reality that judges adjudicating administrative disputes are generally not specialized in this field; their lack of familiarity with the specifics of administrative law hinders the achievement of the objectives of the reforms to the structure of the Algerian administrative judiciary.

However, despite the positive outcomes achieved by the structural reform of the Algerian administrative judicial system—through the move toward decentralizing the appellate jurisdiction within this system—the realization of this reform's objective depends on correcting certain imbalances that still plague the Algerian administrative judiciary, specifically through the following:

- The need to increase the number of administrative courts of appeal to ensure that the appellate jurisdiction is more accessible to litigants, particularly in the southern wilayas.

- The implementing of electronic litigation for administrative courts of appeal, as is the case for other judicial bodies.

- Ensuring the proper training of judges serving within the administrative judiciary, including the administrative courts of appeal.

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