



Jurisdiction of the Administrative Court of Appeal of Algiers in Disputes Involving the Monetary and Banking Council, Pursuant to Laws Nos. 23-09 and 22-13.

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Abstract: The Monetary and Credit Council is one of the independent administrative authorities established by Law No. 90-11 concerning currency and credit. This law has been amended and supplemented by Law No. 23-09, which relates to the Monetary and Banking Council. The latter operates as an independent monetary body. This results in the issuance of individual and regulatory decisions in an atmosphere of independence. Given the risks arising from decisions affecting individuals' rights, the legislator has granted oversight rights to the Administrative Court of Appeal in Algiers. This court's decisions are subject to appeal before the Council of State.

Keywords: Administrative judiciary; Administrative courts of appeal; Council of State; Monetary and Banking Council.

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Introduction

The Monetary and Banking Council is considered one of the independent administrative authorities entrusted by the legislator with regulating economic activities. Therefore, an authority is necessary to ensure a balance between freedom of competition and the protection of the rights and freedoms of economic operators. When exercising its regulatory powers, the Monetary and Banking Council's decisions can only be legally valid if they respect the principle of legality. Consequently, the legislator has subjected this authority to judicial oversight, allowing for the annulment of its decisions by the Administrative Court of Appeal in Algiers, in order to achieve the principle of legality.

In this research paper, we will address this issue by answering the following question: How has the legislator addressed administrative judicial oversight over disputes involving the Monetary and Banking Council?

This study aims to highlight the legal texts related to the jurisdiction of the Administrative Court of Appeal in Algeria regarding the annulment of decisions issued by the Monetary and Banking Council under Law No. 23-09 concerning monetary and banking law.

Adopting an analytical approach, we focus on legal texts concerning appeals against the Council's decisions, as stipulated in the Civil and Administrative Procedure Code and Law No. 23-09 relating to the Monetary and Banking Council.

To answer this question, we have divided the paper into the following sections:

Firstly: The jurisdiction of the administrative judge in disputes involving the Monetary and Banking Council.

Secondly: Variations in judicial procedures.

Firstly: Jurisdiction of the Administrative Court of Appeal in Algiers in Disputes Involving the Monetary and Banking Council

With the issuance of the constitutional amendment of 2020 (the constitutional amendment of 2020, issued by Presidential Decree No. 20-442, dated 15 Jumada al-Awwal 1442 AH, corresponding to December 30, 2020, and approved in the referendum of November 1, 2020), the constitutional maker established the Administrative Courts of Appeal. Consequently, the Civil and Administrative Procedure Law and related laws were amended, granting the Algerian legislator the jurisdiction to consider annulment claims as a first instance for regulations issued by the Bank of Algeria. Given that the Monetary and Banking Council is a national public body, and applying the organic criterion for determining judicial jurisdiction, the administrative judge holds the original jurisdiction to consider disputes involving it, as stipulated in Article 900 bis of Law No. 22-13, dated July 12, 2022. Therefore, we will discuss the judicial jurisdiction of the Monetary and Banking Council under Organic Law No. 22-13 concerning the Civil and Administrative Procedure Law and the basic law of the Monetary and Banking Council.

1. Organic Law No. 22-13 concerning the Civil and Administrative Procedure Law.

By implementing the principle of judicial oversight of administrative actions and given that the Monetary and Banking Council is an independent administrative authority, it possesses administrative powers that were previously subject to oversight by the Council of State under Law No. 09-08. However, the establishment of the Administrative Court of Appeal under Article 179 of the 2020 constitutional amendment and Organic Law No. 22-13 has changed this. Under the title 'Procedures followed before administrative courts of appeal', Article 900 bis, second paragraph of Organic Law No. 22-13, the jurisdiction of the Administrative Court of Appeal in Algiers is established as a first instance to adjudicate the annulment, interpretation and assessment of the legality of administrative decisions issued by central administrative authorities, national public bodies and national professional organisations (Article 900 of Law No. 22-13 dated 13 Dhul-Hijjah 1443 AH corresponding to 12 July 2022).

As set out in the aforementioned article, claims for annulment of decisions issued by central administrations, national organisations and public bodies cannot be brought before administrative courts. Furthermore, they cannot be brought before the other Administrative Courts of Appeal specified in Article 8 of Organic Law No. 22-07 on judicial division, which includes those in Constantine, Oran, Béchar, Ouargla and Tamanrasset (Law No. 22-07, dated 4 Shawwal 1443 AH corresponding to 5 May 2022, concerning judicial division).

Through Article 31 of Organic Law No. 22-10 (dated 9 June 2022, concerning judicial organisation), the legislator granted general jurisdiction to consider administrative disputes as a general rule. However, an exception was made for the Administrative Court of Appeal in Algiers, which was granted the authority to consider certain cases as a first instance in annulment and interpretation claims regarding the legality of decisions made by central administrative authorities. This authority was previously granted to the Council of State. The legislator also granted the Administrative Court of Appeal in Algiers the authority to consider annulment claims in accordance with the last paragraph of Article 900 bis of the Civil and Administrative Procedure Law, which primarily holds jurisdiction over appeals issued from administrative courts.

Granting such jurisdiction to the Administrative Court of Appeal in Algiers is a merit of the legislator, as it reinforces the principle of two-tier litigation for disputes involving national public bodies and provides litigants with the opportunity to contest these bodies. This contrasts with the previous situation, where the Council of State had exclusive jurisdiction over disputes involving national public bodies at both primary and final levels. This violated the principle of two-tier litigation in administrative disputes.

2. The Basic Law of the Monetary and Banking Council

Referring to Law No. 23-09 concerning the Monetary and Banking Council (Law No. 23-09, dated 3 Dhul-Hijjah 1444 AH, corresponding to 21 June 2023, relating to monetary and banking law), which repealed Law No. 03-11 relating to currency and exchange, it can be seen that it is in line with the amendment to the Civil and Administrative Procedure Law, as it provides for the annulment of decisions issued by the Monetary and Banking Council to be heard by the Administrative Court of Appeal in Algiers. Article 67 of Law No. 23-09 states that regulatory decisions issued by the Monetary and Banking Council may be subject to annulment claims by the Minister of Finance before the Administrative Court of Appeal in Algiers.

Regulatory decisions issued by independent administrative authorities include various regulations and rules, which are subject to oversight for legality by the Administrative Courts of Appeal under Article 900 bis, as mentioned above. The Monetary and Banking Council issues regulatory decisions that can be challenged for annulment before the Administrative Court of Appeal. However, despite the fact that these decisions may adversely affect individuals associated with the Monetary and Banking Council, such as financial institutions and banks, the right to appeal is exclusively granted to the Minister of Finance. Nevertheless, any claimant may raise a subsidiary claim regarding the illegality of the regulatory decision if it is directly related to the original claim (Saoudi & Ghaeri, 2021).

In this context, an example is the case between Union (the claimant) and the Governor of the Bank of Algeria (the defendant), in which the latter raised an exception concerning the illegality of Regulation No. 93-07, which amends and supplements Regulation No. 92-04 relating to exchange control. This issue arose because Article 15 of Regulation No. 07-95, dated 23 December 1995, stated that the Bank of Algeria could not withdraw its status as an intermediary for exchange operations. This neglected the provisions of the law, particularly Article 165, which assigns this jurisdiction solely to the banking committee (Mansour, 2006).

With regard to banking activities, the legislator has subjected the regulations issued by this committee to the oversight of the administrative judge, as set out in Article 67 of Law No. 23-09 on monetary and banking law. Unlike the Monetary and Banking Council, the right to appeal for annulment is not limited to the Minister of Finance; rather, all natural and legal persons can request the annulment of decisions made under Article 64 of the same law before the Administrative Court of Appeal in Algiers.

From this, we can conclude that, under the Civil and Administrative Procedure Law, the Algerian legislator has used different terminology and made a distinction in the authority to which the appeal is made. According to the provisions of Article 62, second paragraph, of the currency and credit law, the term 'appeal for annulment' was used, allowing the Minister of Finance to contest the regulation and request its annulment. The appeal was directed to the Council of State.

However, under the new Civil and Administrative Procedure Law, the term 'annulment claim' has been employed, with the Administrative Court of Appeal in Algiers being the competent authority to adjudicate these claims. This represents a new development introduced by the legislator to reinforce the principle of two-tier litigation, since the Administrative Courts of Appeal serve as the second tier for administrative litigation.

This principle is indeed established in Article 67, first paragraph, of Law No. 23-09 concerning monetary and banking law.

3. Organic Law No. 22-11 concerning the Council of State and its organisation and functioning.

Article 10 of Organic Law No. 22-11 stipulates that the Council of State has jurisdiction to adjudicate appeals raised against decisions issued by the Administrative Court of Appeal in Algiers concerning claims relating to annulment, interpretation and review of legality. This means that the Algerian legislator has granted the Administrative Court of Appeal jurisdiction to consider annulment claims, while the Council of State is authorised to review appeals issued by Administrative Courts of Appeal relating to annulment claims.

Following the amendment to the Civil and Administrative Procedure Law, the Council of State retains its status as the highest body in the administrative judiciary, with the Administrative Courts coming first, followed by the Administrative Courts of Appeal and then the Council of State. However, with regard to annulment claims, which were previously adjudicated at both primary and final levels, the Council of State now reviews these claims through appeals issued by Administrative Courts of Appeal concerning annulment claims. This is as stipulated in Article 10 of Organic Law No. 22-11 concerning the organisation, functioning and jurisdiction of the Council of State (amending and supplementing Organic Law No. 98-01 concerning the organisation, functioning and jurisdiction of the Council of State, dated 30 May 1998).

Secondly: Variations in Judicial Procedures

Disputes involving independent administrative authorities are characterised by varied procedures, as the legislator has recognised that it is possible to appeal the decisions of these bodies. This means that the same procedures cannot be followed in administrative matters. The existence of specific laws for regulatory authorities has resulted in certain exceptions being made to litigation procedures. Disputes involving regulatory authorities have particular procedural characteristics, as the legislator has not subjected them to the same procedures applicable to regulatory authorities. This includes those established in the Civil and Administrative Procedure Law concerning prior administrative complaints, deadlines, and suspension of execution (Boujamlin, 2015).

1. Regarding prior administrative complaints

Administrative complaints are requests or grievances made by complainants to competent administrative authorities to resolve disputes arising from administrative legal acts. The purpose of the complaint is generally to enable the administrative authority that issued the decision, or its supervisory body, to reconsider it (Bouhamada, 2020).

According to Article 830 of the Civil and Administrative Procedure Law, a person affected by an administrative decision can submit a complaint to the administrative authority that issued the decision, as this is the principle of administrative appeal or prior complaint. If the administration remains silent for two months, this is considered a rejection. In such cases, the complainant is granted an additional two months to file a judicial appeal, beginning from the expiration of the aforementioned two-month period. If the administrative authority responds within the given timeframe, the two-month period for filing an appeal begins from the date of notification of the rejection. The complaint must be submitted to the administrative authority in writing and accompanied by the petition.

Contrary to what was stated in Article 87 of Ordinance No. 03-11, the prior administrative complaint has been abolished for the Monetary and Banking Council under Law No. 23-09. According to the latter, appeals to the Council of State regarding decisions made by the Monetary and Credit Council under Articles 82, 84, and 85 can now be made without the requirement of two rejections and a waiting period of more than ten months between requests.

According to Article 95 of Law No. 23-09, the legislator has withdrawn the prior administrative complaint relating to the establishment of a bank, financial institution, independent intermediary, exchange office or payment service provider, as well as the licensing of foreign bank representative offices in Algeria. This

means that only annulment appeals are now permitted before the Administrative Court of Appeal in Algiers.

2. Regarding deadlines

Unlike the procedural rule concerning administrative deadlines, Article 900 bis states that the provisions of Articles 829 to 832 of this Law relating to deadlines for filing a lawsuit before the Administrative Courts of Appeal require an appeal to be filed with the Administrative Court of Appeal within four months of personal notification of the individual decision, or within four months of notification of the collective or regulatory decision.

According to Article 67 of the Law on the Monetary and Banking Council, legal action must be initiated within sixty (60) days of publication or notification. This indicates that the legislator has changed the way the appeal period is calculated, shifting it from the timeframe specified in the Civil and Administrative Procedure Law to a deadline measured in days under Law No. 23-09 concerning the Monetary and Banking Council.

According to Article 66 of Law No. 23-09, the appeal period for the Monetary and Banking Council's regulations begins with their publication in the Official Gazette of the People's Democratic Republic of Algeria, and they can be invoked against others as soon as they come into effect. The second paragraph of the same article states that, in urgent cases, the regulations are published in two newspapers in both national and foreign languages, as well as on the website of the Bank of Algeria. This makes them enforceable against third parties once the publication procedure is complete.

If the sixty-day period for appealing against the Monetary and Banking Council's regulations expires, the Minister of Finance loses the right to request the annulment of the Council's regulatory decisions. This renders the decisions immune from annulment claims. Similarly, individuals or legal entities affected by decisions concerning banking activities also lose their right to appeal.

Therefore, the appeal period for regulatory decisions issued by the Monetary and Banking Council is an exceptional case for requests to annul this type of decision. However, the deadline is a matter of public policy that the judge raises *ex officio*, without the need for it to be raised by the defendant. The Council of State has consistently upheld this in rejecting appeals filed outside the specified legal deadlines (Mahmoudi, 2018).

3. Regarding suspension of execution:

The suspension of the execution of administrative decisions is an exceptional measure, presuming their prior legality and immediate enforceability. Article 833 of the Civil and Administrative Procedure Law states that the filing of a case before the Administrative Court does not suspend the execution of the contested decision unless otherwise stipulated by law. However, upon the request of the concerned party, the Administrative Court can order the suspension of the execution of an administrative decision.

The Monetary and Banking Council is an independent administrative authority that undertakes certain banking activities under the provisions of Article 64 of Law No. 23-09. According to this law, appeals against its decisions, as stipulated in Article 67, do not have a suspensive effect. This means that the legislator has excluded the principle of suspending the execution of administrative decisions for the Monetary and Banking Council with regard to the issuance of regulatory decisions, since the Minister of Finance holds exclusive jurisdiction over requests for annulment.

However, when appealing against the judgments of the Court of Appeal, execution is suspended because the appeal has a suspensive effect on the dispute and halts execution, as stated in Article 900 bis 3.

Article 837 of Law No. 22-13 stipulates that the order suspending the execution of the contested administrative decision must be communicated to the relevant parties and the relevant administrative

authority within twenty-four hours of its issuance. The effects of the contested administrative decision are suspended from the date and time of official notification of the suspension order to the issuing authority.

Furthermore, the suspension order can be appealed to the relevant Administrative Court of Appeal or Council of State within fifteen days of notification (Article 837 of Law No. 22-13).

It is noteworthy that, considering the nature of its decisions, which may affect legal positions, the legislator referred the appeal procedures for the decisions of the banking committee to the Civil and Administrative Procedure Law, thus allowing for the possibility of suspending the execution of the decision.

Conclusion:

In order to reinforce the principle of legality with regard to economic regulatory authorities, the law makes them subject to the oversight of the administrative judge, just like other authorities. This is because they are classified as administrative authorities according to the legal texts that establish them. This provides an important safeguard for the rights of economic actors.

The Monetary and Banking Council is considered a monetary authority that issues regulations and decisions relating to currency and exchange. It is also an independent administrative authority responsible for regulating monetary and banking activities.

The Algerian legislator has enshrined the principle of two-tier litigation in administrative matters by establishing Administrative Courts of Appeal and granting them jurisdiction over annulment claims concerning banking regulations, which were previously under the jurisdiction of the Council of State.

The specificity of appeal procedures concerning the Council's decisions, whether relating to judicial jurisdiction, deadlines or suspending the execution of Monetary and Banking Council decisions, highlights its uniqueness compared to other economic regulatory authorities.

By limiting the authority to appeal the Council's regulations solely to the Minister of Finance, the legislator has contradicted the general rule that allows any interested party to file a lawsuit to assert their rights, particularly with regard to economic operators.

Recommendations:

The right to appeal the annulment of decisions made by the Monetary and Banking Council should not be restricted to the Minister of Finance only, particularly since there may be affected parties among economic operators. This restriction is unfair and conflicts with the principle that allows any interested party to file a lawsuit to claim their rights.

The legislator should also incorporate procedures for suspending the execution of regulatory decisions issued by the Monetary and Banking Council.

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- Organic Law No. 22-11, dated 6 September 2022, amends and supplements Organic Law No. 98-01, dated 30 May 1998, relating to the organisation, functioning and jurisdiction of the Council of State.

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