



Disputes over the establishment of political parties in Algeria"An analytical study of Organic Law No. 12/04"

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ABSTRACT:

The right to establish political parties in Algeria is a political right acquired since the 1989 constitutional amendment. This right has also been enshrined in all constitutional amendments up to the 2020 constitutional amendment. This right has been embodied through the enactment of laws related to political parties, the most recent of which was Organic Law No. 12/04, which outlined the conditions and procedures for establishing political parties and provided for the protection of this right through a number of mechanisms, most notably judicial oversight, specifically the oversight of the administrative judge, whom the legislature has designated to oversee administrative decisions issued by the Minister of the Interior. This grants political parties the right to appeal decisions of the Minister of the Interior refusing to hold the founding conference or refusing to grant accreditation.

Keywords: Political parties, administrative judiciary, establishment, accreditation, administrative disputes.

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Introduction:

Articles 39 and subsequent articles of the 1989 Constitutional Amendment of the People's Democratic Republic of Algeria established the right of Algerian citizens to assemble with other individuals, along with the right to establish associations for

various purposes, including associations of a political nature (political parties). Thus, Law No. 11/89 of May 5, 1989, on associations of a political nature, was issued as the first law regulating the right to establish political parties in Algeria. The 1996 Constitutional Amendment was later issued, including amendments that enshrined the principle of multipartyism and preserved the right to establish political parties. In implementation of this amendment, Order No. 97/09 of March 6, 1997, containing the Organic Law on Political Parties, was issued, followed by Organic Law No. 12/04 of January 12, 2012, on Political Parties, which regulated this right and outlined how to exercise it.

Thus, the establishment and existence of political parties in Algeria became a reality. Since the establishment of the latter, as well as the exercise of its activities, can only take place within the framework of the provisions established by the legislature, violating these provisions leads to disputes that are adjudicated by the competent judicial authorities. Political party disputes, like any other dispute, fall within the jurisdiction of the judiciary. Judicial jurisdiction over these disputes is distributed—depending on the nature of the dispute—among the various judicial authorities. However, the administrative judge has the lion's share of jurisdiction over party disputes, given that many of these are brought against the Minister of the Interior due to the refusal to grant a license to hold the founding conference or the refusal to grant a decision on accreditation, without which a political party would not exist. Based on this, the problem we can raise in this regard is formulated in the following question: **To what extent has the Algerian legislature, through Organic Law No. 12/04, succeeded in regulating the role of the administrative judge in disputes related to the establishment of political parties?** This is a problem that we can address by addressing the following topics:

First: Partisan disputes related to the appeal against the decision to deny a license to hold the founding conference.

Second: Partisan disputes related to the appeal against the decision to deny accreditation to a political party.

These topics will be detailed below:

First: Party disputes related to appealing the decision to refuse to grant a license to hold the founding conference:

Holding the founding conference is considered the first step and condition for establishing any political party in Algeria. In fact, holding the founding conference involves a series of procedures that begin with the filing of the declaration of the establishment of the political party by the founding members with the Minister of the Interior, in exchange for a receipt¹. The relevant minister then delivers to the founding members an administrative decision to hold the founding conference if the declaration submitted by them complies with the legal requirements, as stipulated in Article 16 of Organic Law No. 12/04. These requirements may relate to the founding members of the political party, or to the declaration of its establishment². The Minister in charge of the Interior has a period of sixty (60) days to ensure that the declaration to establish a political party is in compliance with the legal requirements of the founding members of the political party and the declaration to establish the latter. The Minister, in the process of ensuring that the declaration file to establish a political party is in compliance with the law, has the right to request the replacement or withdrawal of any member who does not meet those requirements, in order to issue a permit for the political party to hold its founding conference. The founding members will then announce this decision and hold the founding conference of the party within a period of one year from the date of issuance of the decision to authorize its holding, as stipulated in Articles 21-22 of Party Law No. 12/04. Here, we note that the Minister of the Interior may refuse to authorize the holding of the founding conference, pursuant to a legally justified decision. This decision may be appealed before the Council of State within a maximum period of thirty (30) days from the date of notification to the founding members, prior to the expiry of the sixty (60) days granted to it to study the application for authorization to establish a political party. It should be noted that the administration's silence after the expiry of the sixty (60) days constitutes authorization to hold the party's founding conference.³

Accordingly, our study of party disputes related to the appeal of the decision to refuse to grant authorization to hold the founding conference requires us to address both the judicial authority competent to adjudicate the appeal of this decision, as well as the procedures and deadlines for filing the appeal related to the refusal decision, in accordance with what we will discuss below:

01 - The judicial authority competent to adjudicate party disputes related to the appeal of the decision to refuse to grant authorization to hold the founding conference:

The process of obtaining authorization to hold the founding conference, although seemingly simple, requires; However, it actually contains difficulties that some attribute to administrative interference⁴. This has prompted the Algerian legislature to grant a political party the right to sue the administration if it abuses its decision to authorize its founding conference. Unlike Article 17 of Decree No. 97/09, which grants founders of a political party the right to appeal a decision rejecting a founding permit before the competent administrative judicial authority, the decision issued by the court is subject to appeal before the Council of State. Article 21 of Organic Law No. 12/04 stipulates, in its fourth paragraph, that a decision rejecting a permit to hold a founding conference may be appealed before the Council of State. It is noteworthy in this regard that the Algerian legislator, whether in Order No. 97/07 or Organic Law No. 12/04, has assigned the administrative judiciary the authority to adjudicate on the decision of the Minister of the Interior refusing to grant permission to hold the founding conference. This is a natural matter that is consistent with the principles of administrative law, given that the Minister's decision refusing to grant permission to hold the founding conference is an administrative decision. Therefore, the appeal filed by the founders of the political party against the Minister to annul this decision is an administrative judicial appeal within the jurisdiction of the administrative judiciary.

- We also note that Organic Law No. 12/04 clearly identifies the administrative judicial authority competent to adjudicate disputes regarding the refusal to grant permission to hold the Constituent Conference, namely the Council of State. This is in contrast to Order No. 97/09, which referred to the phrase "the competent judicial authority" without specifically identifying this authority, which adjudicates appeals against a preliminary decision subject to appeal before the Council of State. Although this was clear until the issuance of the 2020 Constitutional Amendment of the People's Democratic Republic of Algeria, it is no longer so after the issuance of the latter. The reason for this is that the 2020 Constitutional Amendment stipulated the establishment of administrative courts of appeal, thus singling out the Council of State for the unification of judicial interpretation and considering it a court of law rather than a court of substance.⁵

In implementation of the constitutional provisions contained in this constitutional amendment, a set of laws were issued, including Law No. 22/13 amending the Code of Civil and Administrative Procedure, which designated the Administrative Court of Appeal in Algiers as the court of first instance in lawsuits to annul, interpret, and assess the legality of administrative decisions issued by central administrative authorities, national public bodies, and national professional organizations.⁶ This indicates a contradiction between the Political Parties Law and the Code of Civil and Administrative Procedure in determining the administrative judicial body competent to adjudicate disputes related to appeals against decisions to refuse to grant permission to hold founding conferences for political parties, a matter that requires redress by the Algerian legislator.

02 - Procedures and deadlines for party disputes related to appealing a decision to refuse a permit to hold a founding conference:

The legislator has precisely defined the conditions and procedures necessary for submitting a declaration to establish a political party, and has granted the Minister of the Interior the authority to monitor the extent to which the founding members comply with these conditions and procedures. In return, the legislator has granted the founding members the right to appeal the Minister's decision refusing to grant a permit to hold a founding conference. Here, **we can note the following points:**

- The legislator has obliged the Minister, when issuing a decision to refuse a permit to hold a founding conference, to provide a legal justification for the decision⁷. It should be noted that Article 21 of Organic Law No. 12/04 stipulates that: "The refusal decision shall be legally justified...", while Article 22 of the same law stipulates that: "The decision to refuse a declaration to establish a party shall be communicated with reasons before the expiration of the deadline..." Therefore, we note the disappearance of the phrase "legal justification for the decision to refuse a declaration to hold a founding conference" in Article 22, which stipulates that Justified only, it appears that the text of Article 21, which requires the minister to provide legal justification, is more in line with ensuring partisan freedom.

The wisdom of requiring justification is evident in enabling the founders of the political party whose permission to hold the founding conference was denied by the minister to

present their legal appeal. It also allows the judge to exercise oversight over this decision by examining the reasons for the refusal to ensure they meet the conditions, procedures, and deadlines stipulated in the Political Parties Law, which is consistent with the principles of legality.

- The legislature granted the founding members of the political party the right to appeal the decision to deny permission to hold the founding conference⁸. Therefore, no one else has the right to submit this appeal to the competent judicial authority, the Council of State. If this occurs, the appeal will be rejected as a matter of procedure.

- The legislature stipulated that the reasoned decision to refuse permission to hold the founding conference must be communicated before the expiration of the sixty-day period granted to the minister to ensure compliance with the legally required conditions.⁹ The administration's silence after this period is considered to be tantamount to authorizing the founding members to hold the party's founding conference.¹⁰

Here, we note that The legislator did not clarify the methods of notifying the decision to refuse to grant a license to hold the founding conference, nor the parties responsible for notifying it. However, it is understood from the content of Article 23 that the party responsible for notifying the decision to refuse is the administrative body competent to issue this decision, which is the Minister of the Interior, because if the administration does not notify the decision to refuse within the period granted to it, its action will be considered a decision to authorize the holding of the founding conference. However, considering its action as a decision to authorize does not directly grant the founding members the right to hold their founding conference, as long as the decision to authorize the holding of the latter requires publicity, and silence, even if it is considered a decision to grant a license, cannot be publicized. Therefore, the problem remains regarding the possibility of challenging the action of the Minister of the Interior to compel him to grant a decision to authorize the holding of the founding conference after the expiry of the period of sixty (60) days, as long as the party needs a decision to hold its conference and not just silence. Here, the State Council's discretion remains regarding the methods of deciding on this matter, as long as the legislator was silent regarding it, and as long as it – the legislator – stipulated that Appealing the notified refusal decision only.

- The legislator obligated the founding members to file a judicial appeal against the decision refusing to grant permission to hold the founding conference within thirty (30) days from the date of notification of the refusal¹¹. Therefore, if the appeal is filed after the expiry of the thirty (30) day period, it will be formally rejected for being filed outside the legal deadline.

- The Algerian legislator did not stipulate in Organic Law No. 12/04 the possibility of appealing the final decision in the appeal against the minister's decision refusing to grant permission to hold the founding conference. This is logical, as this appeal is filed before the Council of State, which decides on it with a final preliminary decision. This is in contrast to the situation that prevailed under Order No. 97/09, which adopted the principle of two-level litigation¹² by stipulating the possibility of appealing the decision of the competent administrative judicial authority before the Council of State, which decides on it as an appellate body.

However, with the constitutionalization of the right to two-level litigation in the 2020 constitutional amendment¹³, it became necessary for the legislator to amend the current text not to clarify The administrative judicial body is not only competent to adjudicate disputes over the refusal to grant a license to hold the founding conference, but also to specify the dates and procedures for appealing administrative judicial decisions that resolve these disputes.

Second : Partisan disputes related to challenging a decision to refuse accreditation to a political party :

After a political party has obtained a decision authorizing the holding of a founding conference and the founding members publish this decision in two national dailies, the founding members of the political party shall hold their founding conference¹⁴ within one (01) year from the date of publication of the license. The founding conference shall be held within the national territory and attended by a number of members consistent with the legal quorum specified in Article 24 of Organic Law No. 12/04. The holding of this conference shall be documented by minutes prepared by a judicial bailiff, as stipulated in Article 25 of the same law.

Here, we note that the legislature has suspended any activity by the founding members of a political party that fails to hold its founding conference within the aforementioned

period, under penalty of criminal penalties. An exception to this rule is the case of extending the deadline for holding the founding conference, which is held once and for a period of six (06) months only, and based on a request from the founding members in the event of force majeure, which is submitted to the Minister in charge of the Interior, who can issue a decision rejecting it, which can be appealed before the Council of State, which decides on urgent cases, as stipulated in Article 26 of Organic Law No. 12/04, which is an article that violates the constitutional principle of two-level litigation, and violates the Code of Civil and Administrative Procedure, which has assigned the Administrative Court of Appeal in the capital to adjudicate on administrative decisions issued by the central administrative authorities, in accordance with what we indicated above. After holding the founding conference, the members authorized by the founding conference must submit the application file for accreditation of their political party to the Minister in charge of the Interior within thirty (30) days following the convening of the conference.¹⁵ The Minister in charge of the Interior has sixty (60) days to ensure that the accreditation application complies with the provisions of the organic law relating to political parties. In this regard, he has the right to request the completion of missing documents and/or to replace any member of the leadership bodies who does not meet the legally required conditions. The Minister has the right to grant or reject accreditation to the political party, after examining the file submitted to him. In the event of rejection, his decision must be legally justified, and the latter may be appealed before the Council of State in accordance with the provisions of Articles 29 and 30 of Organic Law No. 12/04, which are in violation of the constitutional provisions and the provisions of the Code of Civil and Administrative Procedure regarding disputes over decisions of the central administrative authorities, as indicated above. The study of partisan disputes related to the appeal of a decision to deny accreditation to a political party requires us to address both the judicial authority competent to adjudicate the appeal of this decision, as well as the procedures and deadlines for filing the related appeal, in accordance with what we will discuss below:

01 - The judicial authority competent to adjudicate partisan disputes related to the appeal of a decision to deny accreditation to a political party:

Contrary to Order No. 97/09, Article 18 of which stipulates the necessity of holding the founding conference of the political party within the legally stipulated deadlines; Under

penalty of automatic cancellation of the decision to hold this conference, and with the necessity of any party activity undertaken by founding members after these deadlines being subject to criminal penalties, without providing any exceptions to this rule, Organic Law No. 12/04 included the same provision in Article 26. However, it also created an exception in the second and third paragraphs of the same article. Thus, the State Council's jurisdiction in this area is distributed as follows:

- The State Council, which adjudicates urgent cases, has jurisdiction over appeals filed against the decision to refuse to extend the deadline for holding the founding conference¹⁶. This is natural, given the short deadlines associated with requesting an extension of the deadline for holding this conference and its connection to force majeure. Therefore, the dispute appears to be urgent, and therefore must fall under the jurisdiction of the State Council, which adjudicates urgent cases. This was the situation that prevailed before the 2020 constitutional amendment. However, after the latter, the legislator had to amend Organic Law No. 12/04 to align it with the content of the constitutional provisions and the provisions of the Code of Civil and Administrative Procedures, by granting jurisdiction. These disputes are referred to the Administrative Court of Appeal in the capital, and its decisions may be appealed before the Council of State, a court of law.

- The Council of State is competent to adjudicate appeals against decisions denying accreditation to a political party, in accordance with Articles 30 and 33 of Organic Law No. 12/04. Here, we note that the judicial body competent to adjudicate this same decision, pursuant to Article 22 of Decree No. 97/09, is the administrative judicial body of the city of Algiers, whose decision may be appealed before the Council of State. Therefore, it appears that Organic Law No. 12/07 has designated a single judicial body to adjudicate disputes related to decisions denying accreditation to a political party: the Council of State. Accordingly, it appears that the Algerian legislator, following the 2020 constitutional amendment, must amend the provisions governing disputes over appeals against decisions denying accreditation to a political party by establishing the judicial authorities competent to adjudicate these disputes, in line with the provisions of this amendment. This will ensure that the principle of two-stage litigation is respected, on the one hand, and the constitutional powers of the Council of State are respected, on the other.

02 - Procedures and deadlines for appealing partisan disputes related to challenging a decision to deny accreditation to a political party:

The legislator has precisely defined the procedures and deadlines necessary for holding the founding conference, whether the deadline for holding this conference is extended or held within the normal deadlines without an extension. The legislator has granted the Minister of the Interior the authority to monitor the compliance of the political party accreditation application file with the legally stipulated conditions. He has also granted him the right to issue a decision on a request to extend the deadline for holding the founding conference in the event of force majeure, and has made his decisions subject to appeal before the competent judicial authority. In this regard, we can note the following points:

- The legislator has obligated the Minister of the Interior to provide legal justification for the decision to deny accreditation to the political party, in accordance with Article 30 of Organic Law No. 12/04. However, he has not been required to provide justification for his decision to refuse to extend the deadline for holding the founding conference, as stipulated in Article 26 of the same law. In fact, the Minister's justification for his decisions—as noted above—enables appellants to justify their appeals, which are based on... This reasoning also gives the judge a better opportunity to review the minister's decisions, focusing on the rationale underlying the refusal. Unlike Order No. 97/09, which does not specify who has the right to appeal the decision of the Minister of the Interior to deny accreditation to a political party, are they the founding members? Are they the members authorized by the founding conference to submit the accreditation application file? Or are they the leading members elected by the founding conference? Given the ambiguity of this text, the competent administrative judicial authority had no choice but to resort to its own efforts to find a solution to this legal vacuum. However, the legislator addressed this in Organic Law No. 12/04 by making the reasoned decision to reject accreditation issued by the Minister of the Interior subject to appeal before the Council of State by the "founding members."¹⁷ However, it did not specify the persons who have the right to appeal the decision to reject an extension of the deadline for holding the founding conference¹⁸. However, by analyzing the text of Article 26 of Organic Law No. 12/04, we note that the legislator stipulated that the founders of the political party must submit a request to extend the deadline for holding this conference.

Therefore, as the applicants, they have the right to appeal the decision that rejected it. In fact, granting the founding members this right, which was not granted to the leading members emerging from the founding conference nor to the members authorized by the latter to submit the accreditation application file, is considered the most appropriate, given that the political party is still in the founding phase. Therefore, the founding members are the ones who have the right to appeal decisions that are not in the interest of this founding party.

- Organic Law No. 12/04 stipulates the possibility of appealing the decision to reject accreditation within two (02) months from the date of notification, as stipulated in Article 33, which means the necessity of notifying this decision. Although the article does not specify the persons to be notified, it appears from the context of reading the texts regulating this appeal that notification is to be given to the founding members as long as they are the ones who have the right to appeal the decision. However, Article 26 of the same law did not stipulate the necessity of notifying the decision to reject extending the deadlines for holding the founding conference, and perhaps the lack of stipulation on the necessity of notification in this case is due to the urgency that includes appealing this decision.

- Organic Law No. 12/04 stipulates that the founding members must file an appeal against the decision to refuse to grant accreditation to the political party within two (02) months from the date of notification, in accordance with Article 30. This means that any appeal filed outside of these deadlines will be rejected by the competent judicial authority for violating the legal deadlines. Article 26 of the same law also sets a period of fifteen (15) days to appeal the decision to refuse to extend the deadlines for holding the founding conference before the Council of State. These deadlines appear to be somewhat short, but they are appropriate deadlines due to their connection to the state of urgency and their inclusion within the original legal period (one year) specified for holding the founding conference of the political party. - Organic Law No. 12/04 did not specify the deadlines within which the competent judicial authority shall adjudicate appeals filed against decisions to deny accreditation to a political party, nor decisions to refuse to extend the deadline for holding the founding conference. This constitutes a regression from what was stipulated in Article 22 of Decree No. 97/07, which set a two-month

deadline for the Council of State to adjudicate appeals against decisions to deny accreditation.

- The Council of State, as the sole body authorized to adjudicate disputes related to appeals against decisions to deny accreditation to political parties, as well as decisions to refuse to extend the deadline for holding the founding conference, shall issue a final preliminary decision. This constitutes a regression from the situation under Decree No. 97/09, under which the Council of State was the appellate body, on the one hand, and constitutes a violation of the constitutional provisions that stipulate two-level litigation following the 2020 constitutional amendment.

Conclusion:

In concluding our analysis of the role of the administrative judiciary in disputes over the establishment of political parties in Algeria, based on our analysis of Organic Law No. 12/04, we were able to conclude that partisan freedom, specifically the freedom to establish political parties in Algeria, has been guaranteed since the constitutional amendment of 1989. This freedom was regulated in the law on political parties issued pursuant to Organic Law No. 12/04. The most important aspect of protecting this freedom is what the legislature stipulated through imposing administrative judicial oversight over decisions refusing to hold the founding conference of a political party, as well as decisions refusing to approve the latter, as these decisions negatively impact the exercise of partisan freedom in the event of administrative arbitrariness. Accordingly, we conclude our study with a number of findings, **the most important of which can be summarized as follows:**

- Regarding the Minister of the Interior's reasoning for decisions refusing to establish political parties: The legislature stipulated the necessity of providing reasons for decisions refusing to authorize the holding of a founding conference, as well as decisions refusing to grant accreditation to a political party. However, it did not stipulate the necessity of providing reasons for decisions refusing to extend the deadline for holding the founding conference. In this regard, and given the importance of providing reasons for decisions related to the establishment of political parties in partisan disputes, we propose stipulating that the Minister must provide reasons for his decision to refuse to extend the deadline for holding the founding conference. This is because providing

reasons for this decision prevents arbitrariness in his refusal. It also provides the founding members with an opportunity to justify their legal claims, and it gives the competent judicial authority a better opportunity to monitor this decision.

- Regarding the identification of those entitled to appeal decisions of the Minister of the Interior regarding the establishment of political parties: The legislature granted founding members the right to appeal decisions denying permission to hold the founding conference, decisions refusing to extend the deadline for holding this conference, and decisions denying accreditation. This means that the right to initiate partisan disputes related to the establishment of a political party is granted to the members who initiated the establishment of the latter, thus preserving the rights of these founders.

- Regarding notification of decisions of the Minister of the Interior regarding the establishment of political parties: The legislature stipulated the necessity of notification of decisions refusing to grant permission to hold the founding conference and decisions refusing to grant accreditation to the political party, but it did not stipulate the necessity of notification of decisions refusing to extend the deadline for holding the founding conference. In this regard: Although this latest decision is related to the urgency of the situation and falls within the one-year period during which a political party under formation must hold its founding conference, we suggest that this decision be communicated in the same way as other decisions related to the establishment of political parties, given that deadlines are an important matter in administrative disputes, including disputes related to the urgency of the situation.

-Regarding the judicial authority competent to adjudicate administrative disputes and the nature of the judicial decision issued by it: The legislator granted the Council of State jurisdiction to adjudicate all judicial disputes related to the establishment of political parties. Based on this, the latter's decisions were issued as preliminary, final, and not subject to appeal. This means that the Algerian legislator, contrary to the situation in Order No. 97/09, has made the decisions final in disputes related to the establishment of political parties immune. Accordingly, **we propose making the Council of State competent to appeal judicial decisions related to adjudicating disputes related to the establishment of political parties, thus becoming an appeal body. This is so that we do not deprive founders of political parties of the enjoyment of the**

principle of two-level litigation stipulated in the Constitution, on the one hand, and do not deprive the Council of State of exercising the jurisdiction granted to it by the Constitution, which is to evaluate the actions of administrative judicial bodies, which can only be achieved by considering it an appeal body, on the other hand. We respect the legal provisions regulating civil and administrative procedures that granted the Administrative Court of Appeal in Algiers jurisdiction to adjudicate decisions of central authorities, of which the decisions of the Minister of the Interior, which are final in the establishment of political parties, are considered, on the third hand.

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5. Law No. 22/13 of July 12, 2022, amending the Code of Civil and Administrative Procedure.
6. Presidential Decree No. 20/442 of December 30, 2020, amending the Constitution of 2020.

Footnotes:

¹The failure of the relevant minister to deliver a receipt to the founders of the political party does not constitute a refusal to establish the party or a refusal to grant a license to hold the founding conference.

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²Articles 17, 18, and 19 of Organic Law No. 12/04 of January 12, 2012, relating to political parties.

³Article 22, same reference.

⁴Laurari Rachid, Legal Procedures for Establishing Political Parties in Algeria, Master's Thesis in Law, Administration and Finance, University of Ben Aknoun, Algeria, 2007, 2008, p. 12.

⁵Article 149 of Presidential Decree No. 20/442 dated December 30, 2020, including the 2020 constitutional amendment.

⁶Article 7 of Law No. 22/13 dated July 12, 2022, amending the Code of Civil and Administrative Procedure.

⁷Articles 21-22 of Law No. 12/04.

⁸Article 22, same reference.

⁹Article 22, same reference.

¹⁰Article 23, same reference.

¹¹Article 21, same reference.

¹²Laurari Rachid, op. cit., p. 41.

¹³Article 179 of Presidential Decree No. 20/442.

¹⁴Si Moussa Abdelkader, The Role of Elections and Political Parties in the Democratization of the Algerian Political System, Master's Thesis in Law, Department of State and Public Institutions, University of Algiers, Ben Youssef Ben Khedda, Faculty of Law, Algiers, 2008-2009, p. 101.

¹⁵Article 27 of Law No. 12/04.

¹⁶Article 22, same reference.

¹⁷Article 33, same reference.

¹⁸Article 26, same reference.