

## A Critical Study of Law No. 22-13 on the Role of the Administrative Judge in the Protection of Human Rights and Public Liberties

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### ABSTRACT:

The administrative judge ensures a balance between citizens and the administration by addressing its abuses. In Algeria, the 1996 constitutional amendment enhanced human rights protection and led to key reforms, including a dual judicial system and distinct civil and administrative procedures (Law 09-08). Law No. 22-13 further empowered the administrative judge to protect citizens from unjust decisions. The main challenge is balancing fundamental rights protection with sanctioning administrative abuses. This is particularly relevant within the context of recent judicial reforms

**Keywords:** Administrative Judge, Administration, Legality, Judicial Oversight, Case Law

### Introduction:

The primary role of the administrative judge is to restore balance between the parties by sanctioning violations of citizens' rights committed by the administration.

As a representative of the executive branch at the local level, the administration holds a dominant position over the citizen. In exercising its functions, it enjoys certain privileges that, in some cases, may lead to infringements on human rights and fundamental freedoms.

The 1996 constitutional amendment marked a major turning point in Algeria by strengthening the protection of human rights and fundamental freedoms and introducing several legal and judicial reforms.

From a judicial perspective, the transition from a unitary judicial system to a dual judicial system was established.<sup>i</sup> Regarding procedural matters, Law 08-09 on civil and administrative procedures<sup>ii</sup> introduced a distinction between measures specific to administrative disputes and those applicable to ordinary litigation.

Law No. 22-13<sup>iii</sup> has strengthened the powers of the administrative judge to better protect citizens against unjust administrative decisions that may threaten their fundamental rights and freedoms.

The administrative judge plays a crucial role in ensuring that administrative actions comply with human rights standards. At the same time, they must also safeguard citizens' rights by sanctioning administrative abuses. The challenge, therefore, lies in the judge's ability to reconcile the powers of the administration with the protection of human rights, particularly in light of recent reforms to the administrative justice system.

It is essential to examine the role of the administrative judge as a guarantor of individual rights and freedoms, as outlined in the first chapter. Subsequently, the second chapter will analyze the limitations of the judge's jurisdiction in this regard.

Finally, we will propose recommendations and safeguards to strengthen the powers of the administrative judge in Algeria, enabling them to effectively balance public interests, represented by the administration, with the private interests of individuals.

## **I. Safeguarding Human Rights and Individual Freedoms by the Administrative Judge**

In the current Algerian Constitution, the chapter on "Fundamental Freedoms and Human Rights" underscores their significance by ensuring their protection. Article 34 asserts that every citizen has a duty to uphold these rights in their entirety and inviolability.

Since administrative decisions represent significant expressions of public authority, the legislator mandates that the administration comply with the laws and regulations in force. Consequently, the administrative judge is entrusted with the strict oversight of administrative decisions to guarantee this compliance (Section One). However, their authority becomes restricted in exceptional circumstances (Section Two).

### **1. The Action for Abuse of Power Before the Administrative Judge**

The Algerian legislator has granted individuals the right to challenge unlawful administrative decisions by filing an action for annulment, thereby imposing limits on the administration's exercise of its powers.

There are two categories of actions for abuse of power: external legality and internal legality.<sup>iv</sup>

a. External Legality: Administrative decisions are subject to formal and procedural requirements to ensure their legality. It is essential that a decision be issued by a legally competent authority.

For instance, if the Secretary-General of the Ministry of Education issues a decision when only the Minister is authorized to do so, that decision is deemed invalid due to a lack of competence<sup>v</sup>. At any time, the parties or the judge may raise incompetence as a matter of public order.

Errors in form and procedure arise when an administrative act fails to comply with the formalities and procedures prescribed by law or jurisprudence. For an administrative decision to be valid, it must adhere to legal procedures and be issued in accordance with the formal requirements established by law.

Before rendering an administrative decision, the administration must conduct a prior consultation. Furthermore, the right to defense—a fundamental principle in public administration—requires that an employee be subjected to a disciplinary council before a sanction is imposed, ensuring they have the opportunity to defend their interests. Therefore, it is crucial that an administrative decision includes the necessary references to guarantee transparency in the process and protect the rights of the individuals concerned.<sup>vi</sup>

The decision must also include essential elements to ensure administrative transparency and protect the rights of the individuals concerned. It is crucial to comply with the rules regarding signature, certification, and date, allowing the recipient to identify the signatory,

verify their authority, and ascertain the date of the decision. Furthermore, an administrative decision must be substantiated, meaning it must be based on clear and justified reasons.<sup>vii</sup>

b. Internal Legality: Compliance with the rules governing the signature, certification, and date of issuance of a decision is essential. These elements enable the recipient to verify the status and authority of the signatory, as well as the exact date on which the decision was made. Moreover, an administrative decision must be substantiated, meaning it must be founded on clear and well-reasoned justifications.

Adhering to these rules is crucial to safeguarding individual rights, as failure to do so may affect the validity and substance of the administrative decision.

With regard to internal legality, errors in this domain include:

- Errors of fact, where the factual basis of the decision is materially incorrect.
- Legal violations, where an act is carried out in breach of the law or results from a misinterpretation of legal provisions.
- Errors in the application of the law, such as applying a non-existent or inapplicable legal norm.
- Abuse of power, where an administrative authority exercises its powers for purposes other than those legally intended.
- Misuse of procedure, where a legal procedure is intentionally substituted with another to circumvent legal obligations.

The administration must provide legal justifications for its decisions. If such reasoning is absent, the decision may be annulled for lack of justification, rendering it invalid.<sup>viii</sup>

## **2. The Administrative Judge in Cases of Extended Administrative Powers**

The administration is granted broad powers in exceptional circumstances<sup>ix</sup>, which may pose a threat to the rights and freedoms of individuals as enshrined in the Constitution. In such situations, certain rights and freedoms may be curtailed in the interest of maintaining public order (Subsection One). However, the concern over potential administrative arbitrariness at the expense of individual freedoms under the pretext of these conditions prompts the administrative judge to regulate administrative actions to ensure a minimum level of protected freedoms.<sup>x</sup> (Subsection Two)

a. The Concept of Exceptional Circumstances: It is imperative for the administration to take swift and decisive measures to restore normalcy and ensure state security in times of crisis or threat. In such situations, certain liberties provide the administrative judge with the authority to oversee and monitor the administration's actions.

In Algeria, the Constitution recognizes citizens' right to peacefully assemble and ensures the safety of demonstrators during marches or protests. This right remains subject to public order considerations and the state of emergency, which remains in effect until it is lifted within the prescribed timeframe.

b. The Limited Role of the Administrative Judge in Exceptional Circumstances: To safeguard and uphold human rights, it is crucial that the administrative judge has the authority to restrict the powers of the administration in exceptional circumstances. In Algeria, the legislator has established mechanisms to ensure the protection of these rights through administrative justice, which is responsible for overseeing administrative procedures and actions, particularly when the administration has expanded its powers in response to extraordinary situations.

This oversight seeks to determine whether the invocation of exceptional circumstances is genuinely justified and whether the measures taken are proportionate to the situation. The extension of administrative powers during exceptional periods must not, however, justify violations of legality or public order.

Exceptional circumstances, aimed at preserving public order, result in an expansion of administrative oversight powers. These extended powers are accompanied by stricter procedures, which may impose limitations on individual rights and public freedoms. In such contexts, the primary concern is the protection of state interests and national stability.<sup>xi</sup>

Extraordinary situations also lead to an expanded interpretation of public order and a heightened requirement to ensure the proper functioning of public services. Consequently, it falls to the administrative judge to assess disciplinary measures based on their purpose and necessity. If such measures are deemed essential for maintaining order, actions and procedures that would ordinarily be unlawful may be justified under exceptional circumstances.<sup>xii</sup>

Although the administration's powers are reinforced in times of exceptional circumstances, this does not mean they are unlimited. The administration must still adhere to the applicable legal controls; otherwise, its administrative acts may be annulled, and it may be held liable for compensation. This requirement serves to ensure that fundamental rights and freedoms remain protected, even during times of crisis.

## **II. The Administrative Judge's Limited Authority in Protecting Rights and Freedoms**

Although administrative oversight is largely exercised by the administrative judge, it remains subject to numerous limitations that restrict its effectiveness and do not always ensure full compliance with the law. A review of legal texts reveals several obstacles that hinder the administrative judge's ability to effectively monitor administrative actions. These obstacles include a narrow scope of annulment jurisprudence, often constrained by administrative decisions, and even a complete lack of judicial oversight over certain administrative acts (Section One).

Furthermore, the hierarchical superiority of the executive authority over the judiciary means that the administrative judge does not always have the means to enforce legal compliance or ensure the protection of public rights and freedoms. In such circumstances, the administration may engage in abuse of power and arbitrariness (Section Two).

### **1. The Administrative Judge's Limited Role in Defending Rights and Freedoms**

Faced with the constraints of administrative legitimacy, the principle of legality should not result in the rigid mechanization of administrative functions. The administration must retain a margin of discretion in the execution of its tasks to justify its administrative actions. This includes the freedom to determine the appropriate timing and location for carrying out its functions (Subsection One).

Moreover, the judiciary may, at times, grant the administration certain privileges in selecting the means and timing of actions concerning the supreme interests of the State. These actions, known as acts of sovereignty, constitute a clear exception to the principle of administrative legality (Subsection Two).

a. The Limited Scope of the Administrative Judge's Oversight of Discretionary Power: Judicial review of administrative actions is often constrained due to the discretionary power vested in

the administration.<sup>xiii</sup> The administration's role is not merely to apply laws in a rigid manner; rather, it must maintain a level of flexibility to encourage innovation and adaptability. Discretionary power allows the administration to freely determine how best to carry out its functions and achieve objectives that serve the public interest.

This flexibility inherently limits the extent to which the administrative judge can scrutinize decisions made under the administration's discretionary authority.<sup>xiv</sup>

Discretionary power grants the administration a certain degree of freedom of action, allowing it to decide whether to act or refrain from acting based on the circumstances. As a result, the administrative judge limits their review of legality due to the existence of this discretionary authority.

In disciplinary matters, judicial oversight of discretionary power means that the administration retains significant authority in assessing and determining appropriate sanctions. While the administrative judge acknowledges the administration's discretionary power in disciplinary matters, this power is subject to the condition that no manifest abuse occurs in the assessment of sanctions.

b. Absence of Judicial Review Over Acts of Sovereignty: Certain acts are exempt from judicial review, particularly acts of sovereignty performed by the executive branch.<sup>xv</sup> These acts enable the executive authority to fulfill its functions while enjoying complete immunity. In other words, certain executive actions are shielded from annulment, compensation claims, or legality review, regardless of their degree of illegality or the consequences they may entail.

This immunity poses a serious challenge to human rights, as it allows the administration to take measures beyond the scope of legal scrutiny, leaving individuals without recourse as long as the judiciary lacks jurisdiction to review such actions.

## **2. Challenges Faced by the Administrative Judge in Protecting Human Rights**

For rights and freedoms to be effectively protected by the judiciary, the judicial system must be equipped with sufficient safeguards to ensure such protection and shield it from any form of pressure or potential threats. However, an analysis of various constitutional and legal texts reveals that the administrative judge encounters numerous obstacles in this regard.

These challenges primarily include the relative lack of independence of the administrative judge, as well as a lack of specialization, which results in the absence of ordinary judicial oversight over administrative litigation.

a. The Relative Independence of the Judge from the Executive Power: The principle of judicial independence dictates that judges must not be subject to any external authority in the exercise of their duties. Their decisions should be guided solely by the law and their own conscience.

However, in Algeria, the excessive dependence of judges on the executive power is evident in their appointment process. Judges, including administrative judges, are appointed by presidential decree, directly linking them to the President of the Republic.<sup>xvi</sup>

The Fundamental Law of the Judiciary reveals that the High Council of the Judiciary, which is supposed to ensure judicial independence, is in reality under the control of the executive branch. This is because Algerian law fails to uphold one of the primary guarantees of judicial independence: the irrevocability and non-transferability of judges without their consent.

Although the Fundamental Law of the Judiciary stipulates that judges cannot be transferred or reassigned to another position without their agreement, this guarantee is largely insufficient and often remains theoretical.<sup>xvii</sup>

With regard to judicial discipline, disciplinary decisions issued by the High Council of the Judiciary cannot be annulled by the Council of State or the Administrative Court of Appeal, unlike decisions issued by a central administrative authority.

However, disciplinary decisions rendered by the High Council of the Judiciary may be subject to appeal in cassation before the Council of State.<sup>xviii</sup> This creates a problematic situation where a sanctioned judge may be brought before the same body to be judged again on the same facts, in violation of the principle prohibiting retrial by the same judicial panel.

In conclusion, the legal guarantees of judicial independence in Algeria are merely superficial and fail to provide magistrates with the necessary judicial protection.

b. The Lack of Specialization of Judges in Administrative Cases: Judicial specialization aims to confine a judge's review to disputes within a specific branch of law, governed by its own legislation and jurisprudence. Specialization enables judges to develop a deeper understanding of the specificities and challenges associated with that branch, allowing them to acquire expert knowledge of administrative rules and legal issues relevant to their domain.

The primary objective is to enhance the qualifications of judges in administrative law, clarify the legislator's intent, and ensure a thorough mastery of the complexities of legal texts.

C. The Lack of Specialization of Judges in Administrative Cases: Judicial specialization aims to confine a judge's review to disputes within a specific branch of the judiciary, governed by its own legislation and jurisprudence. This specialization enables judges to develop a deeper understanding of the specificities and challenges inherent to that legal domain, allowing them to acquire an in-depth knowledge of the rules and administrative issues relevant to their field.

The objective is to enhance the qualifications of judges in administrative law, clarify the legislator's intent, and ensure a thorough mastery of the intricacies of legal texts.<sup>xix</sup>

Furthermore, specialization helps judges stay abreast of developments in administrative jurisprudence, which can be complex and constantly evolving.

In Algeria, judicial training follows a unified system, with judges undergoing the same university studies and receiving similar training at the Higher School of the Judiciary. However, this uniform approach does not specifically prepare administrative judges to handle disputes involving the administration.

Algerian administrative law is scattered across various special laws and is not codified into a single legal framework. This fragmentation makes administrative law challenging to master and apply, often leaving administrative judges to develop legal solutions within a disjointed legal framework.

Administrative case law plays a crucial role for administrative judges, who frequently operate in a complex legal environment. Unlike ordinary judges, whose primary role is to apply codified legal provisions, administrative judges must strike a balance between public and private interests. Their training and specialization are therefore essential to ensuring their ability to effectively adjudicate administrative disputes.<sup>xx</sup>

## Conclusion

Although specialized administrative jurisdiction in Algeria is vested with numerous competencies, the administrative judge remains a pivotal figure in the protection of human rights. However, their dependence on the executive authority and lack of specialization constrain their effectiveness. Moreover, administrative litigation procedures are often regarded as complex and ambiguous.

It is crucial to recognize that the protection of rights and freedoms in a state is not confined to the principles and rules enshrined in law but rather depends on the effectiveness of the protection mechanisms established by the state. This protection must include a strong and independent judiciary to uphold the principle of legality.

To enhance this protection, several reform measures are necessary:

- Independence of the Administrative Judge: Beyond hierarchical dependence, it is essential to analyze the mechanisms for the appointment, promotion, and discipline of administrative judges. Greater transparency and depoliticization of these processes are fundamental to ensuring judicial independence.
- Specialization: The specialization of administrative judges should not be limited to technical expertise. Ongoing training and specialized education in human rights are indispensable to enable judges to better comprehend the specific legal challenges associated with this field.
- Access to Justice: The complexity of administrative litigation procedures represents a major obstacle for litigants. It is necessary to simplify procedures, expand legal aid, and promote mediation to facilitate access to justice.

Human Rights Culture: Strengthening the role of the administrative judge also requires fostering a human rights culture within the administration. Increasing awareness among public officials of fundamental rights can contribute to reducing litigation and improving the quality of administrative decisions.

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