

The Circumstances Surrounding the Jurisdiction of the Council of State under Special Legislative Provisions (Between Ambiguity in the Legal Text and the Problem of Application)

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Abstract

The Council of State occupies a pivotal position within the administrative judicial system, entrusted with ensuring the proper application of the law and the uniformity of judicial precedent in administrative matters. However, conferring first-instance jurisdiction upon the Council of State pursuant to special legislative provisions may divert it from its primary judicial function by transforming it from a supreme judicial body into a court adjudicating matters on their merits. This issue is further compounded by the constitutional requirement that the jurisdiction of the Council of State be determined by an organic law, as well as by the overlap between its jurisdiction and that of the other administrative courts, which may undermine the principle of adjudication at two levels of jurisdiction. Accordingly, there is a need to redefine and delimit these jurisdictions in a manner that preserves the Council of State's status and its proper role within the administrative judicial system.

Introduction:

The Council of State is a constitutional judicial body established pursuant to Article 152 of the 1996 Constitution¹, to occupy the position of the supreme judicial institution at the apex of the administrative judiciary, in a manner analogous to the position occupied by the Supreme Court within the ordinary judicial system. It also performs an advisory function for the executive authority. Under its Organic Law No. 98-01² and the Civil and Administrative Procedures Code No. 08-09³, prior to amendment, its principal function was to adjudicate appeals brought against judgments and decisions of administrative courts, in addition to hearing, at first and final

¹ The 1996 Constitutional Amendment, issued pursuant to Presidential Decree No. 96-438 of 7 December 1996, concerning the promulgation of the text of the Constitutional Amendment, approved by referendum on 28 November 1996, Official Gazette of the People's Democratic Republic of Algeria, No. 76, dated 8 December 1996.

² Organic Law No. 98-01 of 30 May 1998, concerning the Jurisdiction, Organization, and Functioning of the Council of State, Official Gazette of the People's Democratic Republic of Algeria, No. 37, dated 1 June 1998 (amended and supplemented).

³ Law No. 08-09 of 25 February 2008, containing the Code of Civil and Administrative Procedures, Official Gazette of the People's Democratic Republic of Algeria, No. 21, dated 23 April 2008 (amended and supplemented).

instance, certain types of actions legally specified therein and in certain special legislative provisions.

The jurisdiction of the Council of State has given rise to extensive doctrinal debate, in view of the structural deficiencies it has revealed, which have contributed to the emergence of an actual crisis within the administrative judiciary in Algeria. This is attributable to the accumulation of cases and the lengthy periods required for adjudication, in addition to its refusal to hear appeals in cassation against decisions rendered by it on appeal, which weakened its role in ensuring the uniformity of administrative judicial precedent.

In light of the foregoing, the enshrinement of the principle of adjudication at two levels in administrative matters became an inevitable choice, in line with modern trends in comparative legal systems. The Algerian legislator adopted this principle, which was embodied in the 2020 Constitutional Amendment¹ pursuant to Article 179 thereof, the most prominent foundation of which was the establishment of administrative appellate courts. In its efforts to rebuild and modernize the administrative justice system, and with the aim of effectively enshrining the principle of adjudication at two levels, the legislator re-engineered the framework governing litigation in administrative matters by reforming its structural framework, ultimately defining the distribution of administrative judicial jurisdiction among its various bodies.

Thus, updating the legislative framework governing administrative disputes became an indispensable requirement. The legislator therefore amended and repealed its provisions in line with the completion of the newly established administrative judicial structure, which is based on a hierarchical structure headed by the Council of State, with appellate courts occupying the middle level, while administrative courts form its base. Through these reforms, the judicial jurisdiction exercised by the Council of State pursuant to its Organic Law, or even pursuant to special legislative provisions, was reviewed, which is the crux of the matter in this regard.

The jurisdiction of the Council of State conferred upon it by such special legislative provisions came as an application of the provisions of Article 11 of Organic Law No. 22-11², which governs the organization, jurisdiction, and functioning of the Council of State.

However, the aforementioned Article is characterized by a degree of ambiguity concerning the manner in which the Council of State adjudicates cases assigned to it pursuant to special legislative provisions. Does it hear and adjudicate them in its capacity as a court of cassation, or does it do so at first and final instance?

The second possibility, namely “adjudication at first and final instance,” is generally more likely, because the matters adjudicated by the Council of State in its capacity as a court of cassation, which have been conferred upon it pursuant to special legislative provisions, have already been determined under the provisions of Article 09 of the same aforementioned Organic Law No. 22-11.

However, the Constitutional Council had previously interpreted the special provisions conferring jurisdiction upon the Council of State as necessarily belonging to the category of

¹ The 2020 Constitutional Amendment, issued pursuant to Presidential Decree No. 20-442 of 30 December 2020, concerning the promulgation of the Constitutional Amendment, Official Gazette of the People’s Democratic Republic of Algeria, No. 22, dated 30 December 2020.

² Organic Law No. 22-11 of 9 June 1998, concerning the Organization, Functioning, and Jurisdiction of the Council of State, Official Gazette of the People’s Democratic Republic of Algeria, No. 41, dated 16 June 2022.

organic laws and no other category¹. Accordingly, no jurisdiction may be conferred upon the Council of State except by the Constitution, pursuant to its organic law, or through another organic law, whatever its nature.

From this standpoint, what has been stated above raises a central issue that may be formulated as follows: Has the Algerian legislator, through the jurisdictions conferred upon the Council of State pursuant to special provisions, achieved the required balance between a legislative approach consistent with its judicial function and the requirements of constitutional legality?

This issue stems from the shortcomings and deficiencies characterizing this matter. In order to determine the jurisdiction of the Council of State pursuant to special provisions, it is necessary to take into consideration the constitutional consideration (Section One), and then address the conferral of jurisdiction upon the Council of State pursuant to organic laws (Section Two).

Section One: Taking the Constitutional Consideration into Account in Determining the Judicial Jurisdiction of the Council of State Pursuant to Special Provisions:

The constitutional founder granted constitutional status to the provisions governing the jurisdictions of the Council of State, the Supreme Court, as well as the Court of Conflicts, pursuant to Article 153 of the aforementioned 1996 Constitutional Amendment, thereby consolidating the status of these bodies within the judicial structure of the State.

The provisions of the aforementioned Article affirmed the organic nature enjoyed by these provisions, which requires that their preparation and adoption be subject to special procedures commensurate with their specific nature, in addition to the obligation to subject them to constitutional review in order to verify their conformity with the provisions of the Constitution. This review was previously carried out by the Constitutional Council, which has now been replaced by the Constitutional Court pursuant to the current 2020 Constitutional Amendment. Based on the foregoing, and in order for this constitutional consideration to serve as a basis for the jurisdiction of the Council of State, it is necessary to clarify its legal value and evidentiary force in defining the limits of its judicial jurisdiction (First), which undoubtedly entails a number of legal effects (Second).

First: The Legal Value of the Constitutional Consideration in Determining the Jurisdiction of the Council of State Pursuant to Special Laws:

When Organic Law No. 11-13², amending and supplementing Organic Law No. 98-01, was subjected to review by the Constitutional Council formerly, the latter noted in its opinion the necessity of not merely taking into consideration the constitutional requirement with regard to the specific organic law relating to the Council of State, but rather that every legislative provision conferring jurisdiction upon the Council of State must fall within the scope of organic laws.

¹ [1] Constitutional Council, Opinion No. 02/R.M.D/11 of 6 July 2011, concerning the review of the conformity with the Constitution of the Organic Law amending and supplementing Organic Law No. 98-01 of 30 May 1998 concerning the Jurisdiction, Organization, and Functioning of the Council of State, Official Gazette of the People's Democratic Republic of Algeria, No. 43, dated 3 August 2011.

² Organic Law No. 11-13 of 26 July 2011, amending and supplementing Organic Law No. 98-01 of 30 May 1998 concerning the Jurisdiction, Organization, and Functioning of the Council of State, Official Gazette of the People's Democratic Republic of Algeria, No. 43, dated 3 August 2011.

It should be noted that Organic Law No. 11-13 was consistent with the provisions of the Civil and Administrative Procedures Code prior to its amendment, particularly Articles 8, 9, and 10 thereof, whose content was consistent with the provisions of Articles 901, 902, and 903 of the same procedural law in its previous version. On the other hand, it sought to establish a more important matter, namely, limiting the criticisms that had previously been directed at it concerning “special provisions.” Accordingly, the organic law relating to the Council of State should determine most of the jurisdictions conferred upon it, thereby ensuring conformity with the relevant constitutional requirements.

For this purpose, the Constitutional Council formerly addressed the issue of the organic legislator referring to special provisions when conferring new jurisdictions upon the Council of State in the aforementioned opinion, which stated as follows:

“... Whereas, consequently..... in conferring other jurisdictions upon the Council of State by referring to ‘special provisions’..... without clarifying their nature and content..... thereby, the organic legislator has failed to observe the scope of its jurisdiction ... And if..... ‘special provisions’ are intended to mean provisions that acquire the same character as the law under review then the final paragraphs of Articles 9, 10, and 11 mentioned above..... shall be deemed to conform to the Constitution, subject to this reservation.”¹

Despite the establishment of the Constitutional Court in place of the Constitutional Council pursuant to the aforementioned 2020 Constitutional Amendment, this does not preclude the continued legal binding force of the decisions issued by the latter, with the binding value upon which they are based and the legal effects they produce, because this body exercised review of a constitutional nature that was not subject to any form of appeal or review.

The Constitutional Council formerly affirmed in one of its decisions as follows: “... All decisions and opinions of the Constitutional Council are final in nature..... and have immediate effect..... and are binding upon all public authorities,..... and they produce their effects permanently unless the Constitution is amended..... and so long as the grounds upon which their operative part is based remain in force.”²

The Constitutional Council formerly maintained a consistent position in adhering to this view, affirming, on various occasions when reviewing the constitutionality of provisions referred to it, these reservations, reflecting a consistent approach in its constitutional jurisprudence. In this context, it affirmed in one of its opinions issued in 2016 the constitutionality of the provisions referred to it, while requiring that their application remain subject to the same reservations, as follows: “Whereas the wording adopted by the legislator..... in Article 38 of the organic law under review..... failed to take into account the constitutional reservation contained in the opinion of the Constitutional Council And whereas the Constitutional Council..... recalls that its opinions and decisions have the force of *res judicata*..... are final and binding upon all authorities”³

¹ Constitutional Council Opinion No. 02/R.M.D/11 of 6 July 2011, referred to above.

² Constitutional Council, Decision No. 01/CC/R.M.D/95 of 6 August 1995, concerning the constitutionality of Paragraph Six of Article 108 of the Electoral Law, Official Gazette of the People’s Democratic Republic of Algeria, No. 43, dated 8 August 1995.

³ Constitutional Council, Opinion No. 04/R.Q.A./M.D/16 of 11 August 2016, concerning the review of the conformity with the Constitution of the Organic Law determining the Organization of the People’s National

To further confirm the foregoing, the Constitutional Council formerly went beyond this position to a much greater extent. It did not merely express its reservations, but rather established a more decisive approach concerning them, whereby it required the legislator to take them into consideration when determining the provisions of any legal text in respect of which such reservations might be raised, and these reservations thereby acquired, in its view, a legal value comparable to that resulting from the opinion or decision.¹

In summary of all the foregoing, it appears that the Constitutional Council formerly remained committed to its reservation concerning the conferral of new jurisdictions upon the Council of State pursuant to “special provisions,” limiting such conferral to organic provisions, on the basis that going beyond this framework is contrary to the constitutional provisions.

Second: The Effect of the Constitutional Consideration on Determining the Jurisdiction of the Council of State Pursuant to Special Provisions:

As previously noted, conferring jurisdiction upon the Council of State, whether in its capacity as a court of cassation or as an appellate court (A), is not an issue that arises, since its organic law², prior to its amendment, settled this matter pursuant to Articles 10 and 11 thereof. As for characterizing the Council of State as a court of first instance (B), this matter requires further consideration.

A – When the Council of State is Characterized as an Appellate Court or a Court of Cassation: Prior to the introduction of the recent legislative reforms, the Council of State adjudicated appeals brought before it against judgments rendered by administrative courts. Before the establishment of the system of administrative appellate courts, the legislative framework did not contain any provision conferring appellate jurisdiction upon the Council of State, except for the organic law relating to political parties³.

As regards its cassation jurisdiction, Article 11 of the aforementioned organic law governing the Council of State, prior to its amendment, established the jurisdiction of the latter in this regard over final judgments rendered by administrative courts as courts of last instance, as well as over decisions issued by the Court of Auditors. It follows that the provisions of the aforementioned Article are not limited to administrative courts alone, but extend to include the various administrative judicial bodies, including specialized judicial bodies.

B – When the Council of State is Characterized as a Court of Annulment:

The jurisdiction of the Council of State to adjudicate actions for annulment brought against decisions issued by central authorities, national public bodies, and national professional organizations falls within the original jurisdictions of the Council of State in the past, in accordance with Article 09 of the aforementioned Organic Law No. 98-01, prior to its

Assembly and the Council of the Nation, Official Gazette of the People’s Democratic Republic of Algeria, No. 50, dated 28 August 2016.

¹ Constitutional Council, Opinion No. 02/R.N.D./M.D/17 of 25 July 2017, concerning the review of the conformity of the Internal Regulations of the Council of the Nation with the Constitution, Official Gazette of the People’s Democratic Republic of Algeria, No. 49, dated 22 August 2017.

² Organic Law No. 98-01, referred to above.

³ Ordinance No. 97-09 of 6 March 1997, containing the Organic Law concerning Political Parties, Official Gazette of the People’s Democratic Republic of Algeria, No. 12, dated 6 March 1997 (repealed).

amendment. This Article is, in itself, sufficient to establish jurisdiction over annulment matters in favor of the Council of State.

In light of the foregoing, the jurisdiction of the Council of State in this field, even if conferred pursuant to ordinary legislation, may be regarded as an established matter and does not raise any conflict with the substance previously contained in the aforementioned Article 09 before it was amended.

In this context, a number of legislative applications emerge whereby the Council of State was vested with jurisdiction to adjudicate actions for the annulment of decisions issued by a number of national bodies, on the basis of ordinary legislative provisions, without the source of such jurisdiction being a provision of an organic nature. These include actions for annulment against decisions issued by the Electricity and Gas Regulatory Commission pursuant to Article 111 of Law No. 02-01¹, as well as against decisions of the Commission for the Organization and Supervision of Stock Exchange Operations pursuant to Article 06 of Law No. 03-04², and against decisions issued by the Competition Council refusing concentrations, as provided for in Article 19 of Ordinance No. 03-03³, as well as against the decision to suspend the activities of mutual societies pursuant to Article 40 of Law No. 15-02⁴.

In addition, there are actions for annulment against decisions of the National Hydrocarbons Valuation Agency pursuant to the provisions of Article 229 of Law No. 19-13⁵. Moreover, most laws relating to regulatory authorities have affirmed the possibility of bringing an action for annulment against the decisions of the latter before the Council of State, such as Law No. 18-04⁶, in Article 22 thereof.

Section Two: Special Organic Laws Conferring Jurisdiction upon the Council of State and the Effect of the New Amendments Thereon:

The Algerian legislator has established a set of judicial jurisdictions for the Council of State pursuant to organic legislative provisions, empowering it to adjudicate certain disputes in its capacity as a court of first and last instance. These provisions may be said to be consistent with the constitutional consideration governing the process of conferring jurisdiction upon the Council of State, as well as with the reservations expressed in this regard, given that they are organic in nature and correspond to the nature of its own law, and are subject to the same procedures when prepared, adopted, and promulgated.

¹ Law No. 02-01 of 5 February 2002, concerning Electricity and the Distribution of Gas through Pipelines, Official Gazette of the People's Democratic Republic of Algeria, No. 08, dated 6 February 2002.

² Law No. 03-04 of 17 February 2003, amending and supplementing Legislative Decree No. 93-10 of 23 May 1993, concerning the Stock Exchange, Official Gazette of the People's Democratic Republic of Algeria, No. 11, dated 19 February 2003.

³ Ordinance No. 03-03 of 19 July 2003, concerning Competition, Official Gazette of the People's Democratic Republic of Algeria, No. 43, dated 20 July 2003 (amended and supplemented).

⁴ Law No. 15-02 of 4 January 2015, concerning Social Mutual Societies, Official Gazette of the People's Democratic Republic of Algeria, No. 01, dated 7 January 2015.

⁵ Law No. 19-13 of 11 December 2019, regulating Hydrocarbon Activities, Official Gazette of the People's Democratic Republic of Algeria, No. 79, dated 22 December 2019.

⁶ Law No. 18-04 of 10 May 2018, establishing the general rules relating to Postal Services and Electronic Communications, Official Gazette of the People's Democratic Republic of Algeria, No. 27, dated 13 May 2018.

Accordingly, the following will shed light on some of the organic laws that have conferred judicial jurisdiction upon the Council of State (First), followed by an examination of the extent to which the newly introduced amendments have affected and impacted them (Second).

First: Organic Laws Conferring Jurisdiction upon the Council of State:

The previous legislative stages witnessed the enactment of a number of special organic laws that had a direct connection with the Council of State, as they vested the latter with the power to adjudicate, at first instance, certain decisions issued by various bodies.

A – Organic Laws Relating to Political Parties:

The legal system witnessed the enactment of a considerable number of legal provisions regulating political parties. This was linked to the political transformations in the country, particularly following the transition from the one-party system and the move towards establishing political pluralism. Each law was characterized by its own particularities in terms of its provisions and circumstances. Apart from Law No. 89-11¹ concerning associations of a political nature, which was enacted before the establishment of the Council of State in Algeria, the two organic laws of 1997 and 2012 expressly provided for the conferral of first-instance jurisdiction upon the Council of State.

- Organic Law enacted pursuant to the aforementioned Ordinance No. 97-09:

Some provisions of this law conferred judicial jurisdiction upon the administrative judicial bodies, with the Council of State exercising appellate jurisdiction over them. This included adjudicating actions for annulment of decisions of the Ministry of the Interior concerning the refusal to grant authorization for the establishment of a political party. In this regard, the second paragraph of Article 17 thereof, by way of example, conferred jurisdiction to hear such an action upon the competent administrative court, while its third paragraph made the judgments rendered by the latter subject to appeal before the Council of State.

In addition, Articles 22, 36, and 37 of the same aforementioned law included jurisdictions conferred upon the Council of State. Thus, at first glance, it is clear that these jurisdictions were conferred upon the Council of State on appeal. Accordingly, they do not appear to give rise to any observations or reservations, since they were expressly provided for by an organic law, and they did not confer first-instance jurisdiction upon the latter. Therefore, there is no issue in this regard as long as they are consistent with the constitutional requirement. Nevertheless, this matter was ultimately repealed and replaced by the following organic law.

- Organic Law No. 12-04²:

This law constituted the cornerstone relied upon by the legislator in conferring jurisdictions upon the Council of State, particularly adjudicating the following disputes:

- An action for annulment brought against the decision issued by the Minister of the Interior concerning the refusal to authorize the holding of the constituent congress, pursuant to Article 21 thereof.

¹ Law No. 89-11 of 5 July 1989, concerning Associations of a Political Nature, Official Gazette of the People's Democratic Republic of Algeria, No. 27, dated 5 July 1989 (repealed).

² Organic Law No. 12-04 of 12 January 2012, concerning Political Parties, Official Gazette of the People's Democratic Republic of Algeria, No. 02, dated 15 January 2012.

- An action for annulment concerning the decision issued by the Minister of the Interior refusing to grant authorization for the establishment of a political party, pursuant to Article 22 of the same law.
- Urgent appeals brought against the decision of the Minister of the Interior refusing to extend the deadline for holding the constituent congress of the political party, pursuant to Article 26 of the same law.
- An action for abuse of power brought against the decision of the Minister of the Interior prohibiting the exercise of any political party activity or seeking to close its premises prior to the party's approval, as provided for in Article 64 of the same law.
- An action brought by the Minister of the Interior seeking the suspension or dissolution of an approved political party, or the closure of its premises, pursuant to the provisions of Article 64 of the same law.

These actions and others were assigned by Organic Law No. 12-04, referred to above, to the Council of State for adjudication at first and final instance, whether in its capacity as an urgent matters judge, as the case may be, or in its capacity as a judge of the merits. Here, a relevant observation may be made, namely that these jurisdictions were fully consistent with the provisions of Article 09 of Organic Law No. 98-01 concerning the Council of State, prior to its amendment, and no constitutional issue was raised in this regard at that time.

B – Organic Law No. 12-05 concerning Information, previously mentioned:

The enactment of this law took some time before it came into force, particularly since the subject of information had been given constitutional recognition pursuant to the aforementioned 1996 Constitutional Amendment, which included it among the fields to be regulated by organic laws, pursuant to Article 121 thereof. Upon the enactment of the aforementioned Organic Law No. 12-05, several jurisdictions were conferred upon the Council of State, the most prominent of which is that provided for in Article 14 thereof, concerning an action for annulment brought against the decision of the Regulatory Authority for Written Press relating to the refusal to grant approval for a periodical publication. Since this regulatory authority is considered a national body, the conferral of this jurisdiction upon the Council of State is consistent with the provisions of Article 09 of its organic law prior to its amendment.

In addition to the foregoing, and given that the decisions issued pursuant to the provisions of the second paragraph of Article 27 and the third paragraph of Article 30 of the same law concerning the suspension of the publication of a periodical become subject to an action for annulment before the competent administrative judicial body, and in implementation of what was established by the aforementioned Article 09, as well as Article 903 of the Civil and Administrative Procedures Code prior to its amendment, jurisdiction to hear the action for annulment in this case is vested only in the Council of State.

It is important to note in this regard that another jurisdiction was conferred upon the Council of State pursuant to Law No. 14-04¹, which regulates the field of audiovisual communication. Article 88 thereof concerns appeals against decisions issued by the Audiovisual Regulatory Authority, which are brought before the Council of State pursuant to Article 09 of the organic

¹ Law No. 14-04 of 24 February 2014, concerning Audiovisual Activity, Official Gazette of the People's Democratic Republic of Algeria, No. 16, dated 23 March 2014 (repealed).

law relating to the latter prior to its amendment. The same applies to the appeal directed against the decision aimed at immediately suspending a radio and television license.

In addition, an appeal may be brought against the decision to withdraw the license provided for in Article 104 of the same law, issued by the Prime Minister in his capacity as representative of the central authority.

It follows from the totality of the above provisions that there is a possibility that jurisdiction may be vested in the Council of State to adjudicate such actions through an action for annulment. Nevertheless, Organic Law No. 12-05 concerning Information, referred to above, did not remain in force, as it was replaced by another organic law whose provisions will be addressed later.

C – Law No. 12-06 ¹concerning Associations:

At the outset, it should be noted that this law belongs to the category of ordinary laws and is not an organic law. However, the reason for addressing this law is that the aforementioned current 2020 Constitutional Amendment included the matter of associations within the scope of organic laws pursuant to paragraph three of Article 53 thereof. Until this is achieved, it should be noted that the Council of State used to hear, at first instance, actions for annulment brought before it against decisions of the Minister of the Interior aimed at refusing to register the declaration receipt for the purpose of establishing a national association, based on the organic criterion according to which actions or disputes in which one of the parties is a person belonging to the central authority are heard before the Council of State at first instance, as previously indicated. This was before the emergence of the newly introduced amendments. In this regard, the question remains as to whether the new organic law relating to associations will likewise confer first-instance jurisdiction upon the Council of State or not. The answer remains pending until its enactment.

Second: The Impact of the Newly Introduced Amendments on the Situation after 2020:

Following the issuance of the aforementioned current 2020 Constitutional Amendment, a radical transformation occurred in some legal systems, as many of the special organic laws that had conferred first-instance jurisdiction upon the Council of State were amended, and the Constitutional Court replaced the Constitutional Council in order to establish a degree of consistency between most of these laws and the Constitution.

A – Organic Law No. 22-11 Referred to Above:

The Algerian legislator undertook to amend the aforementioned Organic Law No. 98-01 concerning the organization, jurisdiction, and functioning of the Council of State through Organic Law No. 22-11 referred to above. The latter constituted an important turning point in redefining the position of the Council of State within the hierarchy of the administrative judiciary, as it restored prominence to its original jurisdiction, namely the appeal in cassation, and placed it at the top of the list of jurisdictions vested in it.

However, this law did not definitively eliminate the reference to “special provisions” with regard to regulating cassation proceedings before the Council of State; rather, it left this matter subject to what is provided for by such provisions. It also vested the jurisdiction to adjudicate

¹ Law No. 12-06 of 12 January 2012, concerning Associations, Official Gazette of the People’s Democratic Republic of Algeria, No. 02, dated 15 January 2012.

at first instance in the Administrative Appellate Court of Algiers instead of the Council of State where the disputes involve central authorities, national public bodies, or national professional organizations as parties, with the Council of State subsequently having appellate jurisdiction over such disputes. In addition, several other amendments were introduced, particularly concerning Articles 9, 10, and 11 thereof.

Article 09 thereof provides for vesting the Council of State with jurisdiction to adjudicate appeals in cassation brought before it against decisions and judgments of the administrative judicial bodies, as well as those assigned to it under special laws.

The appellate jurisdiction exercised by the Council in the aforementioned actions was also expressly provided for under Article 10 thereof. As for Article 11 of the same law, which is the central issue here, it sets forth the jurisdictions vested in the Council of State pursuant to “special provisions.”

From this standpoint, the jurisdictions vested in the Council at first instance, as a court of annulment and legality, by virtue of the special provisions previously discussed, are no longer compatible or consistent with the new amendments, particularly with regard to actions for annulment directed against decisions of central authorities, professional organizations, and national public bodies, which have now fallen within the jurisdiction of the Administrative Appellate Court of Algiers.

Moreover, the amendments introduced to the Organic Law relating to the Council of State by virtue of the aforementioned Law No. 22-11 were limited, in Article 11 thereof, to referring to special provisions for the purpose of conferring jurisdictions upon the Council of State, without any indication whatsoever as to their nature, whether ordinary or organic. Consequently, the constitutional basis for these actions has been removed, while they remain within the jurisdiction of the Council of State.

This once again gives rise to a clash with the term “special provisions” and the narrowness of its interpretation, an issue that the former Constitutional Council had repeatedly raised, as previously noted.

It is noteworthy in this regard that, to date, the Constitutional Court has expressed no reservations concerning the phrase “special provisions.” In its decision on the review of the aforementioned Organic Law¹ with regard to its conformity with the Constitution, the Court confined itself to the formal aspect. As for the substantive aspect, the Court found nothing in the provisions of the law referred to it for review that was contrary to the Constitution, and was keen to uphold them. This raises the question as to the Constitutional Court’s silence or omission regarding the organic nature of the “special provisions” that confer jurisdiction upon the Council of State, in comparison with the former Constitutional Council, which relied on a very sound and well-founded rationale when formulating its aforementioned opinion.

¹ Constitutional Court, Decision No. 02/CC/R.M.D/22 of 10 May 2022, concerning the review of the conformity with the Constitution of the Organic Law amending and supplementing Organic Law No. 98-01 of 30 May 1998 concerning the Jurisdiction, Organization, and Functioning of the Council of State, Official Gazette of the People’s Democratic Republic of Algeria, No. 41, dated 16 June 2022.

B – Law No. 22-13¹:

It is established that the aforementioned Law No. 08-09 on Civil and Administrative Procedures was amended by Law No. 22-13 referred to above, which sought to reformulate the provisions of Articles 901 to 903 of the same law so as to bring them into conformity with the provisions contained in Articles 9, 10, and 11 of the aforementioned Organic Law No. 22-11.

This amendment contributed to consolidating the principle of litigation at two levels of jurisdiction, as it has a constitutional basis, and also resulted in achieving a greater degree of consistency and coherence among the various relevant legislative provisions. Nevertheless, the issue remains with regard to the laws preceding it and enacted before it, particularly those that confer certain jurisdictions upon the Council of State in a manner that may not be compatible with the new organization of administrative judicial jurisdiction.

For example, the question arises as to the fate of appeals brought before the Council of State, particularly those directed against decisions refusing to declare the establishment of a political party² or refusing to grant authorization to hold its constituent congress

³Which are jurisdictions established by Organic Law No. 12-04 concerning Political Parties, referred to previously.

Given that jurisdiction to adjudicate at first and final instance is no longer vested in the Council of State in light of the recent amendments introduced, this raises another issue concerning the judicial body competent to adjudicate these disputes, which may lead to a conflict of jurisdiction between the Administrative Appellate Court of Algiers and the Council of State.

Upon examining and analyzing the nature of these disputes, it becomes clear that the appeals brought in this regard concern administrative decisions issued by the Minister responsible for the Interior, who is considered a representative of a central administrative authority. Jurisdiction to adjudicate appeals seeking annulment, interpretation, or review of the legality of decisions issued by this authority falls within the jurisdiction of the Administrative Appellate Court of Algiers pursuant to Article 901 of the amended and supplemented procedural law, as well as Article 09 of Organic Law No. 22-11 concerning the Council of State.

Conversely, by applying the established general legal principle that “the specific provision restricts the general provision,” it may be argued that jurisdiction to adjudicate these disputes remains vested in the Council of State, on the basis of the provisions of Article 11 of Organic Law No. 12-04 referred to above, on the grounds that this jurisdiction was assigned to it pursuant to “special provisions,” which requires applying their effect in preference to the general rules contained in subsequent provisions.

There is no doubt that resolving and settling this issue remains contingent upon intervention by the Council of State, sitting in plenary session, to rule on the existing conflict of jurisdiction. In our view, it is likely that its decision will ultimately assign jurisdiction to adjudicate these disputes to the Administrative Appellate Court in Algiers, in accordance with the constitutionally enshrined principle of litigation at two levels of jurisdiction, which guarantees

¹ Law No. 22-13 of 12 July 2022, amending and supplementing Law No. 08-09 of 25 February 2008 containing the Code of Civil and Administrative Procedures, Official Gazette of the People’s Democratic Republic of Algeria, No. 48, dated 17 July 2022.

² Article 22 of Organic Law No. 12-04, referred to above.

³ Article 21 of the same Organic Law.

the parties to the dispute their right to resort to a second level of jurisdiction. As for the Council of State, pursuant to the general rules, its jurisdiction to adjudicate such matters remains either appellate or in cassation.

As for Organic Law No. 12-05 concerning Information, mentioned above, the effects of the recent legislative amendments clearly extended to it, as it was effectively repealed and replaced by Organic Law No. 23-14¹. Before addressing any matter, it should be noted that the former Organic Law on Information No.:

Organic Law No. 12-05 referred to above referred all matters relating to the establishment of audiovisual channels, as well as the powers vested in the Audiovisual Regulatory Authority, to ordinary legislation², although the nature of these matters, in principle, requires that they be regulated by an organic legislative provision.

It appears that the aforementioned Organic Law No. 23-14 on Information has sought to broaden the scope of such referrals and has gone even further, as it entrusted the law governing written press and electronic press³ with various matters relating to the establishment, regulation, functioning, and supervision of publications. This law also referred, on the other hand, matters relating to the establishment and regulation of audiovisual communication services to the legislation specific to the audiovisual sector⁴.

This point raises a certain degree of perplexity, given that including the field of information among the areas reserved for organic law, pursuant to Article 141 of the current 2020 Constitutional Amendment, raises the question of the basis upon which the legislator relied in referring certain matters related thereto to ordinary legislation. This approach appears to be inconsistent with the constitutional determination. What is even more surprising is the position of the Constitutional Court when exercising its review of the conformity of the Organic Law on Information with the provisions of the Constitution⁵. It did not express any explicit reservation concerning these referrals, nor did it consider them to constitute a constitutional violation, limiting its observations to certain restricted aspects of the text.

In conclusion, the foregoing indicates that disputes that may arise under the new Organic Law concerning Information, as well as the two legislative provisions related thereto, will not fall within the first-instance jurisdiction of the Council of State. Rather, jurisdiction over them will be vested in it pursuant to the general rules, as the case may be, either as an appellate court or as a court of cassation.

It should be noted that a considerable number of legislative provisions enacted following the recent amendments, particularly those affecting the Organic Law relating to the Council of State

¹ Organic Law No. 23-14 of 27 August 2023, concerning Information, Official Gazette of the People's Democratic Republic of Algeria, No. 56, dated 29 August 2023.

² Article 66 of Organic Law No. 12-05, referred to above.

³ Law No. 23-19 of 2 December 2023, concerning Written Press and Electronic Press, Official Gazette of the People's Democratic Republic of Algeria, No. 77, dated 2 December 2023.

⁴ Law No. 23-20 of 2 December 2023, concerning Audiovisual Activity, Official Gazette of the People's Democratic Republic of Algeria, No. 77, dated 2 December 2023.

⁵ Constitutional Court, Decision No. 04/CC/R.M.D/23, concerning the review of the conformity of the Organic Law concerning Information with the Constitution, Official Gazette of the People's Democratic Republic of Algeria, No. 56, dated 29 August 2023.

as well as the Code of Civil and Administrative Procedures, have redistributed judicial jurisdiction. Thus, jurisdiction to adjudicate actions for annulment, which had previously been vested in the Council of State, was transferred to the Administrative Appellate Court of Algiers. The same approach applies to appeals directed against decisions of the Banking Commission established pursuant to Article 116 of Law No.:

No. 23-09¹ concerning Currency and Banking, which reflects a legislative approach based on readjusting the distribution of jurisdiction within the administrative judiciary in a manner that is more consistent and coherent among the various legislative provisions, while at the same time embodying the approach adopted by the legislator aimed at limiting the jurisdiction of the Council of State to its original jurisdictions and alleviating the burdens that had previously weighed upon it.

Conclusion:

In conclusion of the foregoing discussion and analysis, it becomes apparent that the regulation of the judicial jurisdiction of the Council of State is based on a complex structure reflecting an approach toward reorganizing the roles within the administrative judicial system in a manner that meets the requirements of judicial hierarchy and promotes the proper administration of justice, particularly following the establishment of an appellate body in administrative matters. The activation of the original jurisdiction of the Council of State as a court of cassation constitutes one of the most significant developments introduced by the recent legislative amendments. However, despite the positive objectives pursued by this organization, it has not been free from areas of ambiguity, nor has it avoided issues of multiple dimensions and effects on practical application. It has resulted in a legal situation that raises questions concerning the clarity of the boundaries separating the Council's first-instance jurisdiction from its appellate jurisdiction, if it may be so described, and the extent to which this is compatible with the requirements of legal certainty and the guarantee of uniformity and stability in judicial precedent.

The Council of State, by virtue of the position it occupies at the head of the administrative judicial hierarchy and its status as the supreme judicial body entrusted with adjudicating appeals in cassation, raises a number of issues that go beyond merely determining the scope of its judicial jurisdiction. On the one hand, its appellate jurisdiction over judgments rendered by the Administrative Appellate Court of Algiers, where the latter has adjudicated at first instance in the cases determined by law, raises questions concerning the true role performed by the Council of State in this regard and the extent to which this is consistent with its original jurisdiction as a court of cassation, which seeks to unify judicial precedent and ensure the proper application of the law. On the other hand, vesting first-instance jurisdiction in the Council of State pursuant to "special laws" gives rise to an additional issue concerning the legality of departing from the general rules in this respect, and the consequences this may entail for the principle of litigation at two levels of jurisdiction, in addition to its impact on the functional balance among all bodies of the administrative judiciary.

¹ Law No. 23-09 of 21 June 2003, containing the Monetary and Banking Law, Official Gazette of the People's Democratic Republic of Algeria, No. 43, dated 27 June 2003.

This requires, from an academic perspective, reconsidering this system in a manner that ensures greater clarity and consistency among the first-instance, appellate, and cassation jurisdictions of the Council of State, while at the same time preserving the particularity of administrative justice and maintaining its role in establishing legality. Therefore, we hope that the recommendations set out below will have an effective impact, given that they are not limited merely to theoretically diagnosing the issues, but also extend to proposing practical solutions capable of implementation, with a view to contributing to the development and advancement of the judicial system through reconsidering some of the existing legislative choices, as follows:

- In order to consolidate the principle of litigation at two levels of jurisdiction, it is necessary to move toward repealing both Article 11 of Organic Law No. 22-11 concerning the Council of State and Article 903 of the amended and supplemented Code of Civil and Administrative Procedures. This would result in ending the first-instance and final jurisdiction of the Council of State over disputes assigned to it pursuant to special provisions, and redistributing this jurisdiction in a manner consistent with the requirements of this principle. This should be done by expressly providing, in the aforementioned two laws, as well as in all other legislation that had previously assigned this jurisdiction to the Council of State, for the competent administrative judicial body to adjudicate such actions at first instance, while allowing appeals against its judgments before the judicial body of higher degree in accordance with the rules established by law.
- Accordingly, it is necessary to reconsider the appellate jurisdiction of the Council of State over decisions rendered at first instance by the Administrative Appellate Court of Algiers in the cases specified by law, since this jurisdiction precludes one of the avenues of appeal, namely the appeal in cassation. This should be done by vesting the Administrative Court of Algiers with first-instance jurisdiction over actions concerning central authorities, national public bodies, and national professional organizations, by virtue of a judgment subject to appeal before the Administrative Appellate Court in the same city, given that most of the aforementioned national bodies are headquartered there.
- It is necessary to apply the position previously adopted by the former Constitutional Council concerning the necessity of determining the jurisdictions of the Council of State exclusively by means of organic laws, while taking the constitutional consideration into account in this regard, provided that such jurisdiction is limited to appeals brought before it in cassation. This would give effect to its original role as a court of law and divest it of jurisdiction to adjudicate the merits, thereby strengthening its position as the supreme administrative judicial body in a manner corresponding to the position of the Supreme Court at the head of the ordinary judiciary, in addition to restoring the proper status of both the administrative courts and the administrative appellate courts, on the basis that they are courts of merits.

List of Sources:

First: Constitutions:

1. The 1996 Constitutional Amendment, issued pursuant to Presidential Decree No. 96-438 of 7 December 1996, concerning the promulgation of the text of the Constitutional Amendment,

approved by referendum on 28 November 1996, Official Gazette of the People's Democratic Republic of Algeria, No. 76, dated 8 December 1996.

2. The 2020 Constitutional Amendment, issued pursuant to Presidential Decree No. 20-442 of 30 December 2020, concerning the promulgation of the Constitutional Amendment, Official Gazette of the People's Democratic Republic of Algeria, No. 22, dated 30 December 2020.

Second: Laws and Ordinances:

Organic Laws:

1. Organic Law No. 98-01 of 30 May 1998, concerning the Jurisdiction, Organization, and Functioning of the Council of State, Official Gazette of the People's Democratic Republic of Algeria, No. 37, dated 1 June 1998 (amended and supplemented).

2. Organic Law No. 11-13 of 26 July 2011, amending and supplementing Organic Law No. 98-01 of 30 May 1998 concerning the Jurisdiction, Organization, and Functioning of the Council of State, Official Gazette of the People's Democratic Republic of Algeria, No. 43, dated 3 August 2011.

3. Organic Law No. 12-04 of 12 January 2012, concerning Political Parties, Official Gazette of the People's Democratic Republic of Algeria, No. 02, dated 15 January 2012 (repealed).

4. Organic Law No. 12-05 of 12 January 2012, concerning Information, Official Gazette of the People's Democratic Republic of Algeria, No. 02, dated 15 January 2012 (repealed).

5. Organic Law No. 22-11 of 9 June 1998, concerning the Organization, Functioning, and Jurisdiction of the Council of State, Official Gazette of the People's Democratic Republic of Algeria, No. 41, dated 16 June 2022.

6. Organic Law No. 23-14 of 27 August 2023, concerning Information, Official Gazette of the People's Democratic Republic of Algeria, No. 56, dated 29 August 2023.

Ordinary Laws:

1. Law No. 89-11 of 5 July 1989, concerning Associations of a Political Nature, Official Gazette of the People's Democratic Republic of Algeria, No. 27, dated 5 July 1989 (repealed).

2. Law No. 02-01 of 5 February 2002, concerning Electricity and the Distribution of Gas through Pipelines, Official Gazette of the People's Democratic Republic of Algeria, No. 08, dated 6 February 2002.

3. Law No. 03-04 of 17 February 2003, amending and supplementing Legislative Decree No. 93-10 of 23 May 1993 concerning the Stock Exchange, Official Gazette of the People's Democratic Republic of Algeria, No. 11, dated 19 February 2003.

4. Law No. 08-09 of 25 February 2008, containing the Code of Civil and Administrative Procedures, Official Gazette of the People's Democratic Republic of Algeria, No. 21, dated 23 April 2008 (amended and supplemented).

5. Law No. 12-06 of 12 January 2012, concerning Associations, Official Gazette of the People's Democratic Republic of Algeria, No. 02, dated 15 January 2012.

6. Law No. 14-04 of 24 February 2014, concerning Audiovisual Activity, Official Gazette of the People's Democratic Republic of Algeria, No. 16, dated 23 March 2014 (repealed).

7. Law No. 15-02 of 4 January 2015, concerning Social Mutual Societies, Official Gazette of the People's Democratic Republic of Algeria, No. 01, dated 7 January 2015.

8. Law No. 18-04 of 10 May 2018, establishing the general rules relating to Postal Services and Electronic Communications, Official Gazette of the People's Democratic Republic of Algeria, No. 27, dated 13 May 2018.
9. Law No. 19-13 of 11 December 2019, regulating Hydrocarbon Activities, Official Gazette of the People's Democratic Republic of Algeria, No. 79, dated 22 December 2019.
10. Law No. 22-13 of 12 July 2022, amending and supplementing Law No. 08-09 of 25 February 2008 containing the Code of Civil and Administrative Procedures, Official Gazette of the People's Democratic Republic of Algeria, No. 48, dated 17 July 2022.
11. Law No. 23-09 of 21 June 2003, containing the Monetary and Banking Law, Official Gazette of the People's Democratic Republic of Algeria, No. 43, dated 27 June 2003.
12. Law No. 23-19 of 2 December 2023, concerning Written Press and Electronic Press, Official Gazette of the People's Democratic Republic of Algeria, No. 77, dated 2 December 2023.
13. Law No. 23-20 of 2 December 2023, concerning Audiovisual Activity, Official Gazette of the People's Democratic Republic of Algeria, No. 77, dated 2 December 2023.

Ordinances:

1. Ordinance No. 97-09 of 6 March 1997, containing the Organic Law concerning Political Parties, Official Gazette of the People's Democratic Republic of Algeria, No. 12, dated 6 March 1997 (repealed).
2. Ordinance No. 03-03 of 19 July 2003, concerning Competition, Official Gazette of the People's Democratic Republic of Algeria, No. 43, dated 20 July 2003 (amended and supplemented).

Third: Judicial Opinions and Decisions:

Judicial Opinions:

1. Constitutional Council, Opinion No. 02/R.M.D/11 of 6 July 2011, concerning the review of the conformity with the Constitution of the Organic Law amending and supplementing Organic Law No. 98-01 of 30 May 1998 concerning the Jurisdiction, Organization, and Functioning of the Council of State, Official Gazette of the People's Democratic Republic of Algeria, No. 43, dated 3 August 2011.
2. Constitutional Council, Opinion No. 04/R.Q.A./M.D/16 of 11 August 2016, concerning the review of the conformity with the Constitution of the Organic Law determining the Organization of the People's National Assembly and the Council of the Nation, Official Gazette of the People's Democratic Republic of Algeria, No. 50, dated 28 August 2016.
3. Constitutional Council, Opinion No. 02/R.N.D./M.D/17 of 25 July 2017, concerning the review of the conformity of the Internal Regulations of the Council of the Nation with the Constitution, Official Gazette of the People's Democratic Republic of Algeria, No. 49, dated 22 August 2017.

Judicial Decisions:

1. Constitutional Council, Decision No. 01/CC/R.M.D/95 of 6 August 1995, concerning the constitutionality of Paragraph Six of Article 108 of the Electoral Law, Official Gazette of the People's Democratic Republic of Algeria, No. 43, dated 8 August 1995.
2. Constitutional Court, Decision No. 02/CC/R.M.D/22 of 10 May 2022, concerning the review of the conformity with the Constitution of the Organic Law amending and supplementing

Organic Law No. 98-01 of 30 May 1998 concerning the Jurisdiction, Organization, and Functioning of the Council of State, Official Gazette of the People's Democratic Republic of Algeria, No. 41, dated 16 June 2022.

3. Constitutional Court, Decision No. 04/CC/R.M.D/23, concerning the review of the conformity of the Organic Law concerning Information with the Constitution, Official Gazette of the People's Democratic Republic of Algeria, No. 56, dated 29 August 2023.