

Remedies Before the Algerian Administrative Judiciary

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Abstract:

To guarantee the highest standard of a fair trial and to harmonize the objective and procedural safeguarding of rights, the legislator has permitted the litigant aggrieved by the judicial decision made against him to approach the judiciary once more through the appeal rights granted to him, in accordance with a defined set of procedural conditions outlined by law.

The rights mentioned above include ordinary appeal methods, such as appeal and opposition, as well as extraordinary methods, which encompass appeal by cassation, requests for reconsideration, and third-party interventions outside of the dispute. This is because the aggrieved party's exhaustion of both ordinary and extraordinary appeal methods leads him to a definitive judgment that has reached the status of *res judicata*. Consequently, the litigant maintains trust and assurance in the judicial authority that resolved his case.

Key words: Appeal, opposition, cassation, petition for reconsideration, objection by a third party outside the dispute.

Introduction:

A just fair trial within the administrative judicial system permits the party involved to challenge the decision made against them, aiming to achieve a conclusive ruling that upholds the rights of the administration on one side and those interacting with it on the other. The process of contesting decisions is the primary means of oversight that higher judicial authorities exercise over lower judicial entities. The avenues for appeal signify the methods through which individuals can assert their rights in front of the judiciary, allowing them to request a reassessment of decisions rendered by lower courts before higher courts, or for those courts to review decisions that were previously made against them. Hence, the following inquiry can be posed:

Has the Algerian legislator effectively managed the outcomes of appeals before the administrative judiciary?

We will endeavor to answer this using both a descriptive approach and an analytical method suited for examining this subject through the ensuing two sections:

The first section: Standard means of appeal represented in appeal and opposition;

The second section: Exceptional means of appeal represented in appeal by cassation, request for reconsideration, and the participation of a third party not involved in the dispute..

Chapter one: The administrative judiciary competence to consider ordinary appeals

An ordinary appeal is a means of reviewing a decision, the litigant or opponent is not obliged to explain in legal terms the specific reasons why his appeal was accepted and he will bring the dispute back before a competent court with jurisdiction to consider the case and decide on the matter, under the same conditions as were granted to the court that made the controversial decision.

The regular appellate procedure usually consists of an appeal and an opposition. Therefore, in this section, we will discuss the appeal, which is the most important part of the ordinary appellate procedure, in order to uphold the principle of the double-hearing principle. This principle is considered an important guarantee of a fair trial, as it leads to the correction of judicial errors and also to the recovery of the defense and evidence that the opposing party missed up to the first and subsequent appeals.

1. The jurisdiction of the administrative judiciary to appeal:

Once an original judgment has been issued by one of the administrative courts which adjudicate at first instance, the question usually arises as to whether the convicted person is not satisfied and therefore whether he or she can appeal.

The first question which arises for the person aggrieved by the original ruling is to what extent the appeal can be made and which authority is responsible for considering this appeal.

An appeal is a practical implementation of the principle of the double-hearing principle since it aims to submit the dispute to a court of second instance for retrial.

However, the first problem faced by a convicted person is to determine the appropriate authority to entertain the appeal since legislator has established the precise rules for entertaining such appeals.

Thus, the first section of this requirement deals with the concept of appeal and the second section deals with the procedural rules of appeal.

1.1. The concept of appeal before administrative judicial authorities:

To understand the concept of an appeal to an administrative tribunal, we will explain the definition of an appeal and the tribunals empowered to consider appeals.

A- Definition of appeal:

Appeal protects the right to justice at two levels, in order to maintain the principle of legality and correct any errors that may have been made by the judge of first instance.

Appeal is a method of making a general appeal against the decision of the court of first instance by bringing the case back to a higher judicial authority for review.

This is the application of a general principle of comparative law, namely the double-hearing.⁽¹⁾

An appeal is the ordinary way of appealing against a judgment of a court of first instance, by sending the case back to a higher court for the purpose of overturning or amending the judgment. Following a ruling in the appellate body, the judgment becomes final.

Article 949 of the Algerian Civil and Administrative Procedure Code provides: "Any party who has appeared or been summoned to the court may file an appeal against the judgment or order issued by the administrative court or the decision issued in the first instance by the Administrative Court of Appeal of Algiers."

B- Judicial authority competent to appeal:

- Administrative Courts of Appeal:

Article 900bis of the Algerian Civil and Administrative Procedure code provides that the Administrative Appeals Court has the power to hear appeals against judgments and orders of administrative courts and is also responsible for hearing and competent to adjudicate cases delegated to by special texts..

Thus, the original jurisdiction of the Administrative Appeals Court is to hear appeals against judgments and orders of administrative courts, although special provisions may give it jurisdiction and competence to hear appeals.

The Algerian legislator has retained, contrary to the provisions of comparable laws, some of the powers granted to the Council of State in the field of appeals,⁽²⁾ pursuant to Article 10 of the Organic Law⁽³⁾ and Article 902 of Law N°.22-13 of the Civil and Administrative Procedure, as amended on July, 12th, 2022.⁽⁴⁾

1.2. Procedural rules for appeal:

A- Appeal deadlines:

According to the wording of Article 950 of the Civil and Administrative Procedure Code mentioned above, the time limit for appeal against an administrative decision is one month, and the time limit for appeal against a decision of the Administrative Appeals Court is two months.

If the decision is made on an urgent matter and is in the form of an emergency order, according to the wording of the same article, the time limit for appeal is reduced to 15 days.

Pursuant to Article 404 of the Civil and Administrative Procedure Code, the time limit for appeal for persons residing abroad may also be extended to two months.

It should be noted that, except for invalid judgments, the setting of missed deadlines is a matter of public order, so once the time limit set for appealing a judicial or administrative decision has elapsed, the application to the court cannot be considered. This is case law that jurisdictions agree on and follow.⁽⁵⁾

B- Appeal effects:

- Stay of execution:

According to the Civil and Administrative proceeding Code, prior to the 2022 amendment, the decision of the court of first instance was provisional and final and enforceable upon receipt of the enforceable form, unless a stay of execution order was issued pursuant to Article 913 of the same Law.⁽⁶⁾

With the adoption of Law N°22-13 amending the Civil and Administrative Procedure Code, Article 900bis provides that appeals against the execution of judgments have a suspended effect, also Article 908 of the same Law provides that an appeal before the State Council has a suspensive effect on the execution of the ruling.

- Transferring and converting the case file:

After the administrative court's verdict, the dispute is in principle withdrawn from its jurisdiction and the documents are handed over to the Court of Appeal, which is the main court with both factual and legal jurisdiction⁽⁷⁾ and is obliged to decide the case by confirmation and to amend or set aside the contested decision.

The Court of Appeal cannot remand the case back to the Court of First Instance, and the Court of Appeal cannot consider for the first time new motions that has been filed. To do otherwise would affect the principle of the double-hearing principle and the basis of appeal: one of the disputing parties has missed the first stage in respect of the application on which a decision was made. Also, it cannot consider a request that was not the subject of an original or subsidiary appeal, otherwise it would have been decided in a manner not requested by the parties..

An appellate dispute is therefore a continuation of a first-level dispute and in this respect the appellate judge has all the powers of a first-level judge. The role of the appeal is not limited to monitoring the correctness of the challenged decision but rather leads to a rehearing of the case.

- **Right to countering:**

The right to counter means that the appellate body, when it nullifies or annuls the contested ruling, is granted the right to address the substance of the dispute and decide on it definitively. The right to challenge has become mandatory, and therefore it has become the duty of the appellate body to decide on the substance of the case, provided that the lawsuit is ready for decision,⁽⁸⁾ as Article 339 of the Algerian Code of Civil and Administrative Procedures states: “The appellate body shall decide anew in terms of the facts and the law.”

Although the right to challenge affects the principle of the double -hearing principle, from a perspective it helps the judge to administer justice and avoid delays caused by the case being re-referred to the judge of first instance for a new decision, since the judge of second instance is given the opportunity to decide from a practical point of view on the subject of the dispute that the judge of first instance did not consider. Thus, in accordance with articles 339 and 346 of the Algerian Civil and Administrative Code, the judge of appeal may take over a case if the following conditions are met:

- **Cancellation of decree nisi:**

This condition is logical, because the power to appeal cannot be exercised until the appealed judgment is cancelled.

- Possibility of conducting an investigation if necessary:

Article 346 of the Algerian Code of Civil and Administrative Procedures allows the appellant to address the subject of the case after ordering an investigation if necessary.

- Optional nature of the appeal:

According to the Code of Civil and Administrative Procedure, the Council of State has the power to exercise this power in an optional manner, as the phrase “It is permissible to address the unresolved issue...” appears.

2. Appeal through opposition:

In addition to the usual appeal options available to appellants who are dissatisfied with the first instance judgment, which may be considered the most important, the Algerian Legislator has granted another option to the absent party: to appeal against the judgment and have the judgment and the court's decision reviewed by the same authority that issued it. Therefore, in this section, we will explain the concept of appeal by opposition, and then its requirements at second instance.

2.1. The concept of appeal by opposition:

A- Definition:

It is a remedial appeal that allows the defendant to resort to the same judicial body that issued the judgment if it was in absentia.⁽⁹⁾ It is also known as the request submitted by the person convicted in absentia in a dispute to the same court that issued the judgment in order to hear his defense and cancel or amend the said judgment, as it is not fair for a person's defense not to be heard in a dispute brought against him, since he may have an excuse for being late to appear.⁽¹⁰⁾ It is also known as a method of administrative appeal and a means that allows the absent party in the dispute to confront the requests submitted by the plaintiff.⁽¹¹⁾

The opposition is therefore an ordinary appeal path decided by the legislator to demand a review of the ruling issued in the absence of the opponent who uses it before the judicial authority that ruled the first time or the decision in absentia.⁽¹²⁾

It is worth noting in this regard that the right to appeal through opposition is for the absent opponent only, and the present opponent is not allowed to appeal the opposition due to the absence of his opponent, and this is obvious, because the goal of appealing by opposition is to protect the absent party due to circumstances beyond his control.⁽¹³⁾

B- The body whom the opposition is submitted:

The Algerian legislator has set the rules of absence and opposition in the Code of Civil and Administrative Procedure in Articles 327 to 331 with regard to the rulings of ordinary primary courts and the decisions of judicial councils in ordinary cases. As for administrative cases, the provisions of absence have been determined in Articles 953 to 955.

In all cases, the opposition can only be made against judgments in absentia, as Article 953 of the Code of Civil and Administrative Procedures states: “Judgments and decisions issued in absentia by administrative courts, administrative courts of appeal, and the Council of State as an appellate body are subject to opposition.”

The opposition is filed before the same judicial body that issued the judgment, because the judgment in absentia lacked the arguments of the absent party, which may affect the judge’s judgment.

Since the party with the right to appeal a preliminary ruling issued by the administrative court in absentia has the right to first file an opposition and then appeal, it is important to note that Article 953 of the Code of Civil and Administrative Procedure allows appeals by opposition against decisions in absentia, whether they are preliminary or final. This gives individuals greater protection for their rights.⁽¹⁴⁾

2.2. Procedural rules for appeal through opposition:

A- Reasons for challenge:

Whether they are before the administrative court or the Council of State, appeals can only be accepted when the appellant is not present. A procedure of appeal has been developed by the legislator to guarantee that the proceedings are fair, that the right of defense and the concept of adversarial system are respected, and that litigants do not decrease the level of litigation.⁽¹⁵⁾

B- Effects of appeal through opposition:

The Algerian legislator has devoted the principle of the suspensive effect of judgments when appealed by opposition unless otherwise agreed.⁽¹⁶⁾ The Algerian legislator has set a period of one month from the date of official notification of the judgment or decision in absentia⁽¹⁷⁾.

According to the text of Article 405 of the Code of Civil and Administrative Procedure, the appeal periods are generally calculated in full, as the day of notification or official notification and the day of expiry of the period are not counted.

Holidays are considered within the appeal periods, and as an exception to this, the judgment in absentia may be executed in the event of the issuance of an urgent order in absentia, based on the decision of the administrative urgent judge, according to the text of Article 935 of the Code of Civil and Administrative Procedure.

Chapter two: The administrative judiciary competence to consider extraordinary appeals

Through the Civil and Administrative Procedures Code, the Algerian lawmaker established extraordinary appeal procedures. In compliance with the legal process requirements, the legislator has permitted the individual who has been affected by a court decision to utilize the extraordinary appeal powers that have been provided to him.

An unusual appeal is not allowed unless the appellant bases it on one of the legal justifications, and the court hearing the appeal has restricted jurisdiction to address just some of the issues the appellant brought up in his appeal.

The appeal by cassation submitted to the Supreme Judicial Authority is considered one of the most important extraordinary appeal methods, especially since it aims to examine the soundness of the decision or judicial ruling from a legal perspective, in order to demonstrate the extent of the proper application of legal texts and rules by lower-level judicial bodies, in addition to the appeal by way of a request for reconsideration, and the opposition from a third party outside the dispute.

1. The State Council Competence as a cassation judge:

The legislator has granted the litigant several ways to achieve justice and fairness, including the way of appeal before the highest judicial body in the judicial hierarchy, which ensures the unification of judicial interpretations.

Accordingly, the first section of this section addresses the concept of cassation before the administrative judicial authorities, while the second section addresses its conditions.

1.1. The concept of cassation before the administrative judicial authorities:

A- Definition:

The appeal by cassation is defined as: "An extraordinary way resorted to to correct any violation of the law or invalidity of the ruling, whether in the ruling itself being appealed or in the procedures on which it was based".⁽¹⁸⁾

In other words, the appeal by cassation is an extraordinary way of appeal whereby one of the parties requests, based on legally specified reasons, the cancellation of the appealed ruling.

The purpose of the appeal is for the Court of Cassation to monitor the subject matter judgment in its application of the law, so it monitors the soundness of the legal classification of the facts, the correct application of the provisions of the law, and the trial procedures without re-examining the facts and being satisfied with what the subject matter judge reaches as long as his conclusion is sound and extracted from the documents and papers of the file.

Given that the Court of Cassation is a court of law and not a court of facts, the appeal by cassation is different from other appeal procedures in that its goal is to overturn the challenged decision without rendering a decision on the topic.

Thus, the purpose of the appeal by cassation is to allow the Court of Cassation to keep track of how closely the issued decision complies with the law. That is, to correct any misunderstandings of the law, mistakes in its application, infractions of the jurisdictional norms, or inconsistencies or omissions in reasoning.⁽¹⁹⁾

B- Judicial authority competent to cassation appeal:

According to Article 9 of Organic Law N°.22-11, "the Council of State is competent to adjudicate appeals in cassation against final judgments and decisions issued by administrative judicial bodies" and "adjudicate appeals in cassation granted to it by special texts". The same regulation is stipulated in the Code of Civil and Administrative Procedures, as revised Article 901.

1.2. Procedural rules for cassation:

A cassation appeal to the State Council needs a series of prerequisites to be satisfied, also the legislator has provided unique grounds for granting the cassation appeal:

A- Conditions for accepting a cassation:

According to the text of Article 9 of Organic Law 22-11, the conditions for accepting an appeal in cassation are:

- An appeal in cassation be based on a court judgment..
- The administrative judiciary must issue its verdict in a decisive way.

B- Reasons for cassation appeal:

The Algerian legislator did not specify special cases for administrative matters cassation appeal, but rather referred them to the general rules for appeal in cassation, as seen in Article 959 of the Code of Civil and Administrative Procedures, which refers to Article 358 of the same law regarding the grounds for appeal that were only specified. The cassation appeals can be summarized as follows:

- Lack of jurisdiction and misuse of power
- law-breaking
- Violation of a key procedural norm
- Lack of a legal basis or rationale (causation)
- Distortion of clear and exact content
- Contradictions in final decisions
- Deciding on what was not requested or more than what was sought.

C- Effects of cassation:

Article 909 of the Code of Civil and Administrative Procedure stipulates that an appeal for cassation does not stall execution of judgment appealed against before the Council of State.

2. Writ of certiorari (Reconsideration Petition):

The petition for reconsideration is regarded an extraordinary way of appeal since the condemned person has the right to request reconsideration of the judicial judgment made by the trial court if one of the legal grounds is met.

The rationale for this is to offer the plaintiff a chance if the judge or the bench makes a mistake when issuing the decision. As a result, this requirement handles the petition for reconsideration by first addressing the petition's idea, followed by the cases of appeal by petition for reconsideration.

2.1. The concept of petition for reconsideration:

A- Definition:

The appeal for reconsideration is regarded an extraordinary mode of appeal, with the goal of reviewing a res judicata judgment and settling the matter again, whether in terms of facts or law.

Articles 390 to 397 and 966 to 969 of the Algerian Code of Civil and Administrative Procedures provide for an appeal for review of any judgments rendered by ordinary or administrative courts. The appeal is filed with the same authority that

delivered the disputed judgment since it is based on arguments that, if considered, would have resulted in a different one.

B- The legal Framework for Requesting Reconsideration:

According to Article 390 of the Algerian Code of Civil and Administrative Procedure, "The request for reconsideration aims to review the urgent order, judgment, or decision that has final status on the subject and has acquired the force of *res judicata*, in order to rule on it anew in terms of facts and law".

The appeal by petition is against all final rulings and decisions, whether ordinary or administrative, and it is exercised only against decisions issued by the Supreme Judicial Authority, as stated in Article 966 of the Civil and Administrative Procedures Code, which states: "It is not permissible to appeal by petition for reconsideration except against decisions issued by the Council of State".

As a result, the article excludes any decisions issued by other judicial bodies. Perhaps the reason for limiting the appeal to a request for reconsideration to the State Council's jurisdiction is that administrative courts only issue initial decisions, so they accept appeals before the State Council and thus the possibility of correcting any errors.⁽²⁰⁾

In general, rulings or decisions entitled to petition for reconsideration are those that cannot be challenged through ordinary channels. Thus, the Civil and Administrative Procedures Code has filled a legal void left by the former Civil Procedures Code, which lacked a specific provision governing the appeal against administrative chambers rulings.⁽²¹⁾

This is a retroactive appeal filed before the same judicial authority that delivered the verdict. It is directed at final verdicts based on factual errors rather than legal errors. As a result, its usage will have an impact on the power of *res judicata* that the judgment under appeal has gained, if it is demonstrated that there is a severe error that taints it and impairs its fairness.⁽²²⁾

2.2. Procedural rules for request for reconsideration:

Article 967 of the Code of Civil and Administrative Procedure states that a petition cannot be filed unless two prerequisites are satisfied:

- If it is determined that the judgment was made using forged documents submitted for the first time to the Council of State.
- If a party is condemned for failing to present a conclusive document, which the party withheld.

This binds the parties and the judge while examining the petition to look into the availability of these cases and does not extend to an expansive interpretation of the dispute.

B- The deadlines for request for reconsideration:

The Algerian lawmakers have set a two-month deadline for filing an appeal for reconsideration. The following periods apply:

- Beginning with the formal notification of the disputed judgment.

- From the date of spotting the forgery.
- From the date of retrieval of the document wrongfully withheld by the opponent.⁽²³⁾

C. Effects of request for reconsideration appeal:

Article 348 of the Code of Civil and Administrative Procedures stipulates that "Extraordinary appeal methods and deadlines have no suspensive effect, unless the law provides otherwise."

According to Article 969 of the Algerian Code of Civil and Administrative Procedures, regarding the authenticity of the final decision in the petition for reconsideration, it is not permissible to submit a fresh petition for reconsideration of the final decision in the petition.

It is worth noting that the legislator has imposed a somewhat difficult condition by imposing a financial penalty in the event of the rejection of the appeal to request reconsideration against the party who loses the request for reconsideration, which may confuse the appellant and cause him to hesitate to file such an appeal.⁽²⁴⁾

3. Tierce opposition:

A third party's opposition(outside the dispute) is regarded an extraordinary manner to appeal rulings, decisions, and orders that impact the rights and interests of a non-party to the dispute. The cancelation judgment may occasionally have an impact on the rights of a person that is not involved in the dispute, such as the plaintiff or the defendant.

As a result, the Algerian legislator and most comparative laws stipulated that at the end of the administrative lawsuit, the party outside the dispute and harmed by it be given the opportunity to intervene to protect his acquired rights and re-submit the dispute before the competent judicial body within the limits of what affects his contested rights.

Accordingly, we will address, in this section, the concept of the tierce opposition in the Algerian and Moroccan legislation, in addition to the procedural rules for filing an appeal through the objection of a third party outside the litigation.

3.1. The concept of "tierce opposition":

A- Definition:

The tierce opposition (the objection of the third party) is an exceptional ordinary judicial appeal that allows any interested party who was not a party to the dispute to challenge the judgment or decision rendered if it is likely to do him harm.⁽²⁵⁾

According to the language of Article 381 of the Code of Civil and Administrative Procedures, the objection of a third party outside the dispute is only for the party who was not a party to the judgment or judicial decision, whether natural or legal.⁽²⁶⁾

As a result, according to the language of Article 960 of the Code of Civil and Administrative Procedures, this appeal seeks to examine or annul the judgment or decision that resolved the initial disagreement.

The facts and legality of the case are determined again. As a result, judgments and decisions made prior to part in cannot be challenged by a third party outside the

dispute through an opposition, because these types of judgments and decisions did not damage any of the third-party rights.⁽²⁷⁾

B- The legal framework of Tierce opposition:

Articles 380 to 389, as well as Articles 960 to 962, of the Civil and Administrative Procedures Law outline the process for a third party to object outside of the dispute, often known as the third-party opposition “tierce opposition”.

According to the language of Article 381 of the same legislation, any third party with an interest in the issue is entitled to object to the verdict. According to the first paragraph of Article 385's wording, the objection request is made to the court body that issued the judgment.

The opposition must be on all rulings and decisions, save for those issued prior part in including orders, especially urgent orders, may be objected to, pursuant to the Civil and Administrative Procedures Code.⁽²⁸⁾

3.2. The procedural rules to tierce opposition:

A- Reasons for tierce opposition:

According to the text of Article 383 of the Code of Civil and Administrative Procedure, creditors of one of the opponents or their successors, even if represented in the lawsuit, may file an opposition to the judgment, decision, or order if the contested judgment, decision, or order has affected their rights due to fraud. Perhaps the rationale behind this is to protect the rights of those who were not involved in the litigation and were not included in the judgment or verdict.⁽²⁹⁾

It is not essential that the judgment affecting the rights of third-party be submitted to another person first; thus, any person can use this right if his rights are impacted.

An appeal submitted by a third-party outside the dispute is accepted if:

- The third party was not summoned or represented in the dispute that resulted in the judicial judgment
- The appellant's interests were harmed.

B- The deadlines for tierce opposition:

According to the text of Article 384 of the Code of Civil and Administrative Procedure, we find that the Algerian legislator has set a period of 15 full years from the date of issuance of the judgment or order, which is subject to opposition by a third-party outside the litigation, unless law provides otherwise.

According to the same text, this period is set at two months, when the judgment, decision or order is officially notified to a third-party, and it begins to run from the date of the official (formal) notification in which reference must be made to that period and to the right to exercise the opposition of a third-party outside the litigation.

C- Effects of tierce opposition:

The most essential impact of a third-party opposition is that it has no suspensive effect. This is based on the assumption that all extraordinary appeals have no suspensive impacts. The tierce opposition has distinct repercussions in the event that the appeal is granted or rejected:

- In case of acceptance of tierce opposition:

The most significant effect of accepting a tierce opposition is the court's reversal of the contested judgment within the limits of what relates to the third party's rights only, and the contested judgment, decision, or order retains its effects with respect to the original opponents and their right to the force of *res judicata* is enjoyed, even with respect to its invalidating provisions.

According to the text of Article 387 of the Code of Civil and Administrative Procedures: "If the judge accepts the opposition of a third-party outside the dispute to the judgment, decision or order, his judgment shall be limited to canceling or amending the provisions of the judgment, decision or order that the third party objected to and that are harmful to it, and the contested judgment, decision or order retains its effects with respect to the original opponents with respect to its invalidating provisions..."

However, if the subject matter is not divisible, the opposition of a third party (outside the dispute) will be invalid until all parties to the issue are summoned, according to the language of Article 383 of the Code of Civil and Administrative Procedure.

- In case of refusal of tierce opposition:

If the complaint of a third party outside the dispute is rejected, the judge may impose a civil punishment ranging from ten thousand dinars (10,000 DZD) to twenty thousand dinars (20,000 DZD), without prejudice to the financial compensation that the opponents may seek.⁽³⁰⁾

Conclusion:

Finally, after studying remedies in administrative matters, we believe that the Algerian legislature has done everything necessary to assure a fair trial by controlling appeal options before administrative judicial authorities.

The Algerian legislator has made significant progress in regulating the provisions of ordinary and extraordinary appeal, particularly after completing the administrative judiciary pyramid by establishing administrative appeal courts and considering appeal methods as part of public order, so their deadlines and formalities must be respected.

This does not invalidate the presence of several loopholes and flaws, which we highlight in the following **results**:

- The referral system relies on numerous conventional judicial regulations. This raises concerns regarding its fitness for the administrative lawsuit's unique structure and procedural requirements.
- Obstructing the path of appeal in cassation in many cases referred to the State Council as a path of appeal, despite the existence of administrative appeal courts, as the Administrative Court of Appeal has been designated to consider some cases as first instance, and the appeal in these appeals is before the State Council, because the State Council refuses to consider the same case twice.
- The State Council's position as a cassation body is unclear, especially for decisions approved by specific texts.

- The condition of a financial penalty in the case of rejection of the appeal by reconsideration request and the tierce opposition appeal may burden the litigant and force him to withdraw these appeals.

Accordingly, we conclude this research paper with the following **recommendations**:

- Arranging appeal mechanisms against administrative judicial verdicts using unique legal standards from the Civil and Administrative Procedures Code.
- We suggest giving the State Council the authority to hear appeals via cassation and making all judicial decisions and rulings appealable to administrative tribunals of appeal.
- The State Council's competence as a cassation body is entirely governed by the Civil and Administrative Procedures Code.
- We recommend lowering the financial fee in the case that an extraordinary appeal is denied.

End notes:

(1)- Ammar Boudiaf, A Reference in Administrative Disputes, Part One, The Theoretical Framework of Administrative Disputes, First Edition, Joussour for Publishing and Distribution, Algeria, 2013, p.356.

- See also Samia Karouan & Asma Karouan, Effects of Appealing against Administrative Court Rulings before the State Council under the Code of Civil and Administrative Procedures, *Al-Baheth Journal for Academic Studies*, Issue 9, University of Hadj Lakhdar, Batna 1, Algeria, June 2011, p.525.

(2)- Rais Amina, the jurisdiction of Administration Courts of Appeal under Law N°22-13 amending and supplementing the Law N° 08-09 containing the code of Civil and Administrative procedures, *Herodotus Journal of the Human and Social Sciences*, Volume 7, N°.4, 2023, p.530.

(3)- Organic Law N°.22-11 of 06-09-2022 amending and supplementing Organic Law N°.98-01 relating to the powers, organization and work of the Council of State.

(4)- Law N°.22-13 of July 12th, 2022, Official Gazette, No.48, amending and supplementing Law N°.08-09 of February 25th, 2008, pertaining the Code of Civil and Administrative Procedure.

(5)- Decision of the Council of State, Index 92 dated 31-01-2000, the case of the Director of Health and Social Protection in Saida against Baghdadi Boumediene, unpublished decision.

- See EL-houcine Ben Chikh Ath Malouia, Selections from the Judiciary of the Council of State, Part One, Fourth Edition, Dar Houma, Algeria, 2006, p.306.

(6)- Article 913 states: "The Council of State may order stay of execution of the ruling issued by the Administrative Court, if its implementation would expose the appellant

to a certain financial loss that cannot be remedied, and when the aspects raised in the appeal appear to justify the cancellation of the appealed decision.”

(7)- Article 900 bis 2 of the amendment to the Code of Civil and Administrative Procedure.

(8)- Mimoune Kherrat, *Appeal Against Administrative Rulings*, First Edition, Dar Al-Ma'rifah Publishing House, Rabat, Morocco, p.63.

(9)- Mohamed Séghir Baali, *The Action for Annulment*, First Edition, Dar Al-Ulum for Publishing and Distribution, 2007, p. 229.

(10)- Abdelhamid Fouad, *Opposition in Civil, Criminal and Sharia Matters*, Dar Al Fikr Al Arabi, Cairo, 1992, p.201.

(11)- Rachid Khelloufi, *Administrative Disputes Law, Part Two*, Office of University Publications, Algeria, 2011, p.214.

(12)- Amel Djebbar, *Methods of Appeal*, *Journal of Legal and Social Sciences*, Issue 8, Ziane Achour University, Djelfa, Algeria, 2017, p.128.

(13)- Article 327 of the Code of Civil and Administrative Procedure states: “The objection filed by the absent party aims to review the judgment or decision in absentia...”.

(14)- Nadia Bounaas, *The Specificity of Administrative Judicial Procedures in Algeria, Tunisia, Egypt*, PhD thesis, University of Hadj Lakhdar, Batna, Algeria, 2014-2015, p.283.

(15)- Ammar Boudiaf, *Op.Cit.*, p.366.

(16)- Article 955 of the Code of Civil and Administrative Procedure states: “The opposition has the effect of suspending execution, unless otherwise ordered.”

(17)- Article 954 of the Code of Civil and Administrative Procedure.

(18)- Brahim El-Moundji, *Administrative Cassation Appeal*, First Edition, Maaref Establishment, Alexandria, Egypt, 2005, p.18.

(19)- Ammar Boudiaf, *Op.Cit.*, p.369.

(20)- *Ibid.*

(21)- Youcef Dalanda, *Ordinary and Extraordinary Appeal Methods against Orders, Rulings and Decisions Issued before the Ordinary and Administrative Judiciary*, Dar Houma, Algeria, 2012, p.135.

(22)- Haouam Chikha, *Appeal in Administrative Matters*, *Maghreb Study*, *Op.Cit.*, p.331.

(23)- Article 968 of the Code of Civil and Administrative Procedure.

(24)- Article 397 of the Code of Civil Procedure states: “The judge may order the petitioner who lost the case to pay a civil fine of ten thousand dinars (10,000 DZD) to twenty thousand dinars (20,000 DZD), without prejudice to the compensation that may be claimed...”

(25)- Mohamed Séghir Baali, *Op.Cit.*, p.249.

- (26)- According to Article 381 of the Algerian Civil and Administrative Procedure Code, " Any person who has an interest and who was neither a party nor represented in the judgment, ruling or order under appeal may file a third-party opposition appeal (tierce opposition)".
- (27)- Youcef Dalanda, Op.Vit , p.138.
- (28)- This is what the Supreme Court concluded in its decision of September 2nd, 1999, in case N°.19835, Judicial Magazine, 1999, Issue N°. 1, pp.145-146.
- (29)- Ammar Boudiaf, Op.Cit., p.380.
- (30)- Article 3888 of the Code of Civil and Administrative Procedure.