LIABILITY RESULTING FROM ARBITRATION DECISIONS ISSUED BY INDEPENDENT ADMINISTRATIVE AUTHORITIES "A COMPARATIVE STUDY"

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Abstract:
Some independent administrative authorities in the French system and also in the Algerian system have the power to arbitrate between the conflicting parties, and arbitration decisions are issued regarding this authority. However, these decisions may be illegal or cause harm, so the independent administrative authority must be held accountable for these decisions, especially through reporting its responsibility for them.
The liability of the administrative authorities for arbitration decisions could be based on error, and that is if the elements of responsibility of the error, the damage, and the causal relationship between them are available. The responsibility of the independent administrative authorities could also be assumed without error, if the element of damage and its relationship to the legitimate behaviour issued by the independent administrative authority, represented in the arbitration decision, is present.
Keywords: *Error, damage, independent administrative authorities, arbitration jurisdiction, administrative liability.*

INTRODUCTION

The function of resolving disputes, or what is called arbitration, raises the responsibility of the independent administrative authorities that undertake the task of regulation who are called "regulatory authority."[1] Since it is an independent authority in the market, it undertakes oversight to ensure competition in the market, transparency and respect for obligations, examples of which in France include "A.R.C.E.P. C.R.E., l'A.M.F., C.E.C.E.I. C.S.A."
Among the commentators of administrative law are those who consider the disagreement between a single independent administrative authority and the authority of regulation and the authority of control. The concept of independent administrative authority is evident from the group of organic elements and the concept of regulatory authority by which it means function. Thus, it arbitrates by finding a balance between the conflicting objectives of regulating the market and the protection of public freedom through the (ad hoc) institution, as it has special powers such as the authority to organize.[2]
French law has recognised the existence of independent administrative authorities since 1978 on the creation of the National Commission for Automatic Information and Freedoms.[3] "Le rapport Galard

[1] S. Nijinski, Public business law, Montchrestien, Coll. Domat Public Law, 2009, p. 53 ff., nº 125 ff. In this category, he distinguishes "true" independent market authorities from the others, the former having sanctioning power. Jean-Yves Chérot explains that "the existence of a market authority [is] considered as a constituent element of the concept of regulation".

[2] Thesis Thomas Pérroud, "The contentious function of regulatory authorities in France and the United Kingdom" Doctoral thesis from Panthéon-Sorbonne University – Paris I Discipline: Public law, presented and publicly defended on December 6, 2011, p.13 : "It is no longer a question of governing an entire area of social life, but of arbitrating, of finding a fair balance between contradictory objectives, that is to say of regulating, of ensuring the protection of an essential public freedom through the establishment of an ad hoc institution, endowed with its own powers" The doctrinal notion of independent market authority coexists with that of regulatory authority.

[3] Article 8 of Law No. 78-17 of January 6, 1978 relating to data processing, files and freedoms (known as Foyer, J.O.R.F., January 7, 1978, p. 227). We can find more distant traces of this notion, in 1968, in the conclusions of the government

en a recensé près de quarante"[1], a report that counted approximately 40 independent administrative authorities. This is confirmed by the Vaneste[2] report and according to Marie-Anne Frison- Roche.[3] Law or jurisprudence is what recognises the establishment and characterisation of independent administrative authorities, and arbitration is one of the means to resolve a dispute, as it is an exceptional method based on the will of the parties to which the litigants resort to resolve the dispute without resorting to the court. The latter can be considered an ancient means that was before the judiciary. This function was confirmed in the field of international trade. While arbitration in the language means delegating the judgement to a person, i.e. releasing the hand in the thing or delegating the matter to others. For the delegate to consider the dispute, he is called an arbitrator, and the terminological definition of arbitration is defined by jurisprudence in the New York Convention as "Arbitration judgements are not only those issued by arbitrators appointed to adjudicate specific cases, but also those issued by permanent arbitration bodies to which the parties have recourse. This definition cannot be considered complete, as it is noted that the Convention has expanded the scope of arbitration judgements and awards." An arbitral award means the final decision deciding all issues referred to the arbitral tribunal and any other decision of the tribunal that finally resolves a substantive matter or a matter within its jurisdiction and everything related to the proceedings, provided that in the latter case the arbitral tribunal describes the decision it reaches as a judgement."

Arbitration is defined as an agreement to submit a dispute to a specific person or persons to decide it without the competent court. Arbitration is the consideration of a dispute by a person or a body to which the disputants resort with their obligation to implement the decision issued in the dispute. It is a system for settling disputes through ordinary individuals chosen by the litigants either directly or through another means that they accept, and it is a system of private justice that allows some disputes to be taken out of the jurisdiction of the ordinary judiciary but resolved by specific individual(s) chosen by the litigants and entrusted with the task of judging these disputes, and it is an alternative system to the state judiciary in resolving disputes.[4] This system consists of two elements: the arbitration agreement and the arbitrator's judgement, which end the arbitration dispute.[5]

commissioner J. Rigaud rendered regarding the case "Minister of the Armed Forces against Ruffin" (Council of State, Dec. 6, 1968, no. ° 74.284, Minister of the Armed Forces v. Ruffin, Recueil Lebon p. 626) cited in Lamy Droit public desaffaires, 2009, no. 603. M.-A. Frison-Roche affirms that the CNIL would not be the first A.A.I. and that the Stock Market Operations Commission established in 1967 would therefore be the first manifestation of this, but nothing indicates in the ordinance which created it that this commission is indeed independent (V. M.-A. Frison-Roche, "Administrative authorities misunderstood (AAI)", La Semaine Juridique General Edition n° 48, November 29th , 2010, 1166 and Order n° 67-833 of September 28, 1967 establishing a stock market operations commission and relating to the information of holders of securities and the publicity of certain stock market transactions (J.O.R.F., September 29th , 1967, p. 9589)).

[1] P.Galard, Report on Independent Administrative Authorities, Parliamentary Office for the Evaluation of Legislation, 2 volumes, n° 3166 AN, nº 404, Sirey, 2006 volume 1, p. 33. The study of domestic law was carried out by M.-A. Friesian-Rock.

[2] Information report made on behalf of the committee for the evaluation and control of public policies on independent administrative authorities, by MM. R. Dossière and C. Vanneste, volume 1, pp. 27 following.

[3] Council of State, Public report, pp. 300 to 305, the Council of State lists thirteen independent administrative authorities by legislative or jurisprudential determination, seventeen which can be attached to this category based on the criteria used and four organizations which the Council attaches to this category, although with hesitation. See also the list in Lamy Droit public desaffaires, 2009, no. 600.

[4] Article 1/2 of the New York Convention of 1958 regarding the recognition and enforcement of foreign arbitrators' awards, and Ahmed Al-Sayyid Sawy, Arbitration, D.S.I., The Technical Foundation for Printing and Publishing, Egypt, 2002, p. 10.

[5] Issa Amrou, New Arbitration in Arab Countries, Modern University Office, Alexandria, 2003, p. 205.

Professor Jean Robert defines arbitration as "a system of private justice in which a particular dispute is removed from the jurisdiction of the ordinary judiciary and entrusted to persons chosen to adjudicate it".[1]

As for arbitration[2] within the framework of the regulatory authorities, it does not take place by agreement of the parties, as the regulatory authority can carry out it alone. Arbitration in Algeria is carried out by only three authorities, unlike in France, and they are each of the Committee for Regulating and Monitoring Stock Exchange Operations, the Electricity and Gas Authority, and the Telecommunications Authority Wired and Wireless. Since arbitration is an administrative decision aimed at regulating the market, the independent administrative authorities bear responsibility for the arbitration decisions issued by them, but the rules of responsibility differ between the French system and the Algerian system.

Through the previously mentioned, the aim of researching the subject is to define arbitration represented by regulation on the basis that it is a new vocabulary in Algerian administrative law, and to be able to raise the responsibility of the independent administrative authorities, which is a new issue in the Algerian administrative judiciary. To what extent is the administrative responsibility of the independent administrative authorities recognized in Algeria compared to what is the situation in the French judicial system?

We decided to address this issue according to the comparative standard, by conducting a comparison between the rules of administrative responsibility of the administrative authorities independent of arbitration awards in the French model and the Algerian model. In addition, deducing points of similarity and points of difference between the two models in terms of the rules of administrative responsibility applied to the arbitration decisions of the independent administrative authorities in the two countries.

To answer the problem at hand, we decided to divide the study into two sections. In the first section, we address the responsibility of independent administrative authorities based on error, while in the second section we address the responsibility of independent administrative authorities without error.

Chapter One

Responsibility of independent administrative authorities based on error

The resolution of disputes by independent administrative authorities affects the rights and freedoms recognized for individuals and protected constitutionally and legally. Therefore, the responsibility of the independent administrative authority is determined when it commits errors because of its resolution of the dispute between economic operators of the sector subject to the control authority's supervision, but the matter is different in the French system (the first requirement), than it is in the Algerian system (the second requirement).

First Requirement

Liability of independent administrative authorities based on error in France

The resolution of disputes by independent administrative authorities may affect rights and freedoms. Therefore, the responsibility of independent administrative authorities arises when they commit serious errors, i.e. the so-called control of administrative activity[3]. On the other hand, the French Constitutional Council[4] intervenes in case of violation of legislative or regulatory procedures,

[1] The institution of a justice has the right to a laquelle of the litigies that are soustraits aux jurisdictions from across the common land, for their individual purpose for the circumstance of the judiciary's mission."

Professor Philip FOUCHARD defines arbitration as an agreement between the parties to present their disputes to a special body that they choose to decide on them.

Jean Robert, l'arbitrage du droit inter private, Paris 5 editions 1993 nol1.p3.

[2] René David: "Arbitration is a technique aimed at having the solution of a question, concerning the relationships between two or more, given by one or more other people - The arbitrator or arbitrators who derive their power from a private agreement and ruling on the basis of this convention without being invested with this mission by the State".

[3] Tomas PERROUD, op. Cit., p. 927.

[4] Two conditions are necessary for the Administration to be held responsible for the illegality of an administrative act: this act must be illegal and it must constitute a real decision, Ch. Guettier, Irresponsibility of the Power

including the imposition of administrative responsibility of the facility, which is a reminder of the law in force, as the responsibility of the state and public persons is a rule of a constitutional nature[1]. Roland Drago says, "...in fact, we have no hesitation in saying that the liability of the State and other public bodies is a constitutional rule".

Even if it is difficult to apply administrative liability to the independent administrative authorities[2], because this liability cannot be established according to the constitutional rules in France that recognise the responsibility of the administration, the Council of State has established a system of administrative liability. The latter is on the basis of serious fault for the illegality of the work of the independent administrative authorities and the Constitutional Council has endorsed the same principle on the basis of the protection of rights and freedoms.[3]

The legislative rules relating to liability are based on serious fault, as minor errors are not considered[4], for example in the postal and communications sector, the judge exempted liability in the case of loss of mail or its distribution, as well as in the field of stock exchange[5] to achieve what is called good managemet. In this case, the court ruled that "the decisions of the Commission des Opérations de Bourse referred to in the aforementioned Article 12 of the Order of 28 September 1967 also transferred to the courts claims for compensation based on the alleged illegality of such decisions".

On May 29th, 1991, the Court of Cassation of Paris was requested by a member of the Compagnie Diamantaire liquidation syndicate to annul a decision issued on July 20th, 1984 by the Committee of Stock Exchange Dealers against Compagnie Diamantaire d'Anvers.

Compagnie Diamantaire d'Anvers is entitled to receive compensation for the damages resulting from the Commission's decision in order for the competent authority to decide on
these claims in accordance with Article 34 of the Decree of 24 October 1949.[6]

public (legislative, regulatory and jurisprudential regimes), Directory of the responsibility of public power, May 2009, no. 28.

[1] R. Drago, Responsibility (General Principles of the), Directory of the Responsibility of Public Power, May 2004, No. 43.

[2] D.de Béchillon, B. Ricou, Irresponsibility of public power, Directory of the responsibility of public power, 2011, no. 29; M. Deguergue, "The constitutional sources of the law of administrative responsibility", in X. Bioy (ss. the dir. of), Constitution and Responsibility, 2009, Montchrestien Lextenso, coll. Major conferences, p. 145.

[3] Chapus, General administrative law, prev. Volume 1, p. 1324, no. 1475. 4068; Council of State, October 17th, 1986, Minister of PTT v. Erhardt, Recueil Lebon p. 240; AJ 1986.694, chr. Azibert and de Boisdeffre; RA 1986.569, notes Terneyre; The major judgments of administrative jurisprudence, above, no. 96-8, p. 692.

[4] Mr. Guyomar, notes La Gazette du Palais, May 26th, 2011 no. 146, pp. 19-21.

[5] Conflicts Tribunal, June 22, 1992, Mizon, n° 02671, Recueil Lebon p. 486: Dalloz Collection 1993 p. 439, note N. Decoopman; RFDA 1991 p. 293, note F. Llorens. Conflicts Tribunal, October 24, 1994, Private Institute of Financial Management and Royer v. Securities Exchange Council, No. 02865: "Considering that, by the aforementioned provisions, the legislator intended to give jurisdiction to the administrative courts to hear not only appeals directed against decisions taken by the Securities Exchange Council in the exercise of its powers in regulatory and disciplinary matters but also actions for compensation for damage caused by faults committed by the Stock Exchange Council in the exercise of these powers and giving jurisdiction to the judicial courts to rule on other acts of this Council and rule on actions for compensation for their harmful consequences."

[6] Conflicts Tribunal, n° 02671 of July 5th, 1991, Published in the Lebon collection, Paris, "recorded at its secretariat on June 5th, 1991, the dispatch of the judgment of May 29, 1991 by which the Paris Court of Appeal, seized requests from Mr. Y... acting as trustee in the liquidation of the assets of the company "Compagnie Diamantaire d'Anvers" and from Mr. Yves X... tending, on the one hand, to the cancellation of a decision taken on July 20th, 1984 by the stock market operations commission against the company "Compagnie Diamantaire d'Anvers" and, on the other hand, the condemnation of the State to pay them compensation in compensation for the prejudice resulting for them from this decision, referred to the court, by application of article 34 of the decree of October 26, 1849 as amended, the task of deciding on the question of jurisdiction.
"concerning the claims for compensation brought by the company "Compagnie Diamantaire d'Anvers" and Mr. X.."

According to a decision issued on the 06th of July 1990, the Council of State ruled that the administrative courts do not have jurisdiction over claims against the state.
Having regard to the decision of July 6th , 1990 by which the State Council, sitting in contentious proceedings, declared that the administrative courts had no jurisdiction to hear the claims for compensation brought against the State by the company "Compagnie Diamantaire d'Anvers" and Mr X... ;
In accordance with Article 12 of the Decree of September 28th, 1967 and Article 9 of the Law of August 2nd, 1989, the review of appeals against the operations committee of the stock exchange issuing movable values is subject to the jurisdiction of the civil judge. In accordance with Article 12 of the Decree of September 28th, 1967, i.e. appeals against the Exchange Operations Committee are of a regulatory nature and are referred to the ordinary judge in accordance with the following articles.[1]
It follows from this that it is for the courts to hear claims for compensation brought against the State by a company to obtain reparation for the harm allegedly caused to it by the decision of the Stock Exchange Commission to terminate the validity of the 'registration number' allocated to it and to prohibit it from entering into new contracts with savers".[2]
Accordingly, the judge monitors the legality of the decision to resolve disputes of the Electronic Communications and Postal Regulatory Committee, the Energy Committee, the Railway Services Regulatory Authority, and the Supreme Authority for Internet Rights.[3]

The judge is also competent with regard to lawsuits against the Banking Committee[4] or the Insurance Supervision Committee, given that the judge's oversight is a case of intervention by independent administrative authorities that harms the economic operator and carries notification to customers and contractors.[5]
"As Gabriel Eckert sums up, "in concrete terms, gross negligence arises when the regulatory authority's intervention proves to have been insufficiently restrictive or insufficiently diligent in the light of the economic operator's situation and the risks it posed to its customers and co-contractors". In the Kechichian affair, the Council of State makes two criticisms against the Banking Commission, constituting serious misconduct."[6]
In general, administrative liability has witnessed a remarkable development in the French judiciary to protect the rights of the injured. In the medical facility, the liability has moved from being based on gross error in medical work to liability based on simple error, which the judge intervenes to prove, and finally to liability based on the damage caused by the activities of the medical facility. An

[1] Article 12 of Ordinance No. 67-833 of September 28, 1967 in its wording resulting from Article 9 of Law No. 89-531 of August 2nd, 1989, concerning the Stock Market Operations Commission - litigation of the commission's decisions stock market operations - jurisdiction of the courts to hear appeals against decisions of the stock market operations commission other than regulatory ones or relating to the approval of undertakings for collective investment in transferable securities or portfolio managers.competence - distribution competences between the two orders of jurisdiction - competence determined by special texts - legal attributions of competence for the benefit of the judicial courts - other cases of legal attributions of competence for the benefit of the judicial courts - order of September 28th, 1967 modified (article 12) - decisions of the Stock Exchange Commission other than regulatory ones or relating to the approval of undertakings for collective investment in transferable securities or portfolio managers - scope - requests for compensation based on the illegality of the commission's decisions.
[2] Section, 1990-07-06, diamond company of Antwerp and Delcourt, p. 206.
[3] Tomas PERROUD, op. Quote, p. 930.
[4] Council of State, Ass., November 30th, 2001, Minister of the Economy and Finance c. Kechichian, n° 219562 Recueil Lebon p. 537.
[5] G. Eckert, "The administrative responsibility of regulatory authorities", Review of Banking and Financial Law n° 2, March 2009, study 13, n° 16-20.
[6] Council of State, February 18th, 2002, Norbert Dentressangle Group, n° 214179, Recueil Lebon, table, p. 918.

example of this is subjecting patients to new experiments or vaccinations, i.e. establishing liability based on the risk that led to the damage.[1]

This fault is based on special characteristics, as it causes harm and is unlawful, and the judge has to prove it, because it is difficult for the parties to prove serious fault, and the fault may be based on negligence.

The Council of State, with regard to the degree of seriousness of the error when abusing the right, was satisfied with a simple error, and when it comes to penalties, the appeal was based on serious error[2]. In Algeria, however, the measurement of the degree of error remains an unresolved issue for the jurisprudence of the judiciary.[3]

Second Requirement

Liability of independent administrative authorities based on error in Algeria

There is no constitutional jurisprudence issued by the Algerian Constitutional Council, nor is there any jurisprudence issued by the Algerian Council of State. Considering that judicial practices do not recognise the ability of the administrative judge to assess the damage, as it does not use the powers of intervention and order the administration to give evidence that proves the administrative error, it makes it difficult to establish evidence of the occurrence of the error. Thus the determination of administrative liability on its basis.

Chapter Two

No-fault liability of autonomous administrative authorities

As it is known in general rules, no-fault liability is based on risk or damage and its application is different in France than in Algeria (first requirement), so it is necessary to evaluate the application of liability in the French and Algerian systems (second requirement).

First Requirement

No-fault liability of autonomous administrative authorities in France and Algeria

The application of no-fault liability to the task of organising, on the basis of risk or on the basis of a breach of the principle of equality before public burdens, thus the entitlement to compensation.[4]

This type of liability has not evolved, and if liability based on it is established in exceptional and special circumstances and causes, the establishment of no-fault liability is subordinate to liability based on fault.[5]

Although the law is silent on the consequences of its application, the damage it may cause must be raised for the purpose of compensation.

Second Requirement

Assessing the application of no-fault liability in France and Algeria

Liability is raised only in the case of an illegal contract to maintain the stability of legitimate business, but the jurisprudence in France has contributed to the preparation of a special law that finds solutions for those affected even if the contract is legitimate, but in Algerian law, the liability of independent administrative authorities is not raised.

In the decision of November 30th, 2001, the appellants sought to establish the responsibility of the State in the exercise of its oversight function by the Banking Commission in the loan services.[6]

On the 16th October 1987, following the directors' call to raise the bank's capital to 50 million francs within a reasonable time frame, the administrative body considered the contract concluded to be

[1] Murad Badran, The Investigative Character of Evidence in Administrative Matters, Journal of the State Council, No. 9, 2009, pp. 09 et seq.

[2] CALANDRI (L.), Research on the notion of regulation…, op.cit., p.652.

[3] ZEROUAL (A.), "Hospital responsibility", Revue EL Mouhamat, n° 02, 2004, p.5.

[4] DEBOUY (C.), "French law on administrative responsibility: metamorphosis or permanence?", CJEG, 1997, p.333.

[5] ZEROUAL (A.), "Hospital liability "op.cit, p.282.

[6] Judgment of November 30, 2001, Minister of the Economy, Finance and Industry c/Kechichian.

unlawful, as the banking committee could have ordered the directors to implement it quickly instead of using its regulatory authority.

The Banking Commission should have taken into account the position of the bank in the obligations it imposed. According to Professor Rachid Zouaimia, there are two types of appeals. The first is related to the annulment or reconsideration of the decision by the civil judge and the second is filed before the administrative judge related to liability, and this may result in different jurisprudence for the same case. Therefore, the jurisdiction can be transferred from the administrative judge to the civil judge since it is related to the same procedures for appealing disputes.[1]

Article 161 of the Constitution[2] stipulates that the judiciary is competent to consider appeals of administrative authorities. This includes the decisions of independent administrative authorities, and consequently considers errors committed by independent administrative authorities, where the appeal is filed before the administrative court according to Article 801 of the Code of Civil and Administrative Procedure. The latter grants administrative courts the authority to consider full judicial claims, including claims for compensation or administrative liability.

As for compensation, it requires several possibilities. If the damage is caused by the illegality of the decision issued by the independent administrative authority, the competent authority to consider the illegality or to consider compensation is before the State Council. While, if the damage results from administrative behaviour, the competent authority is the place where the damage occurred, and if the cause of the damage does not fall within the two possibilities, the competent court is chosen by the injured party. With regard to compensation for damage, the legislator did not indicate the competent authority, but by extrapolating the Code of Civil and Administrative Procedure, the Administrative Chamber of the Supreme Court is competent to consider compensation[3]. With regard to the issue of disputes for the control authorities, the control of legality is entrusted to the Council of State as the second instance, which monitors the application of the law from the administrative court as the first instance[4].

The damage has several characteristics. It must be certain and real and may be in the present or future as a result of the loss of an opportunity, for example, i.e. it affects a protected legal principle as a result of an unlawful practice[5]. It also affects the existence of a causal relationship between the damage and the cause leading to the damage from the independent administrative authorities to consumers or economic operators.[6]

The intervention of the administrative judge to control the function of the independent administrative authority is reserved, whether for cancellation or compensation in the field of appeal following the abuse of power following the exercise of regulation. The judge does not intervene unless it is related to the rejection of the regulation, or the refusal to publish the contract ..., and the degree of control leaves the freedom to the regulatory authority to exercise its function.

[1] RACHID ZOUAÏMIA, “The contentious regime of independent administrative authorities in Algerian law”, op.cit., p. 45.

[2] Law No. 16-01 of March 6, 2016, including the constitutional amendment, Official Gazette No. 14 of March 7th, 2016.

[3] Code of civil procedure replaced by code of civil and administrative procedure in 2008, see law no. 08-09 of February 25th, 2008, establishing the code of civil and administrative procedure, op.cit.

[4] Art. 276 para. 2 of the Code of Civil Procedure provides that: “Subject to the provisions of the preceding paragraph, the administrative chamber of the Supreme Court may hear, notwithstanding any provisions to the contrary, related conclusions in the same request or in a request related to the previous one, relating to compensation for the damage attributable to the contested decision.” and art. 903 of the code of civil and administrative procedure, op.cit. On this point see ABIAD (N.), The Council of State, judge of cassation in administrative liability litigation, Doctoral thesis in administrative law, Panthéon Assas University (Paris II), 2005.

[5] DE-GUERGUE (M.), "The loss of opportunity in French administrative law", in Equality of opportunity, the discovery, Recherches, Paris, 2000, p. 197.

[6] FRISON-ROCHE (M.-A.), “Responsibility, independence and accountability in regulatory systems”, op.cit., p. 60.

As for compensation, the administrative judge's control over the liability of the regulating authority is based on the judge's judgement[1] if the regulating function is not exempted from liability and the judge does not specify its legal framework. As for the appeals regarding the hydrocarbon authority and the mining authority, in France they are referred to international arbitration on the grounds of good management of the administration, but in Algeria there is no explanation for this because there is no arbitration in these authorities.[2]

Additionally, in Algerian law, the administrative judge has not endeavoured to establish a system of control as in France, which hinders the regulatory authorities in determining the scope of their regulation due to the lack of clarity in the laws on this matter.

The Algerian legislature has not given the necessary attention to the liability of independent administrative authorities, as evidenced by the lack of jurisprudence in this regard.

As for the French experience, liability is based on fault, while no-fault liability is not compatible with the work of independent administrative authorities because it is difficult to prove.

CONCLUSION

If the administrative judiciary has made a qualitative leap in terms of procedures, laws and the administrative judge's jurisprudence, the administrative judge is still required to jurisprudence in the field of administrative responsibility and how to hold independent administrative authorities accountable for the damages they may cause. This is especially in the field of arbitration to settle disputes between customers or between them and the independent administrative authority. It is entrusted to it while exercising its inherent power to regulate because it is a sensitive area related to competition in the market and removing monopolies by opening it to new customers in competition with the traditional customer or the state, the judge is obliged to monitor their actions by setting a unified legal framework to apply.

Research results: Through this study, we have reached several findings, the most important of which are:

1. The French Council of State established the system of administrative liability for independent administrative authorities on the basis of serious error resulting from gross illegality affecting arbitration decisions issued by independent administrative authorities thus excluding minor errors in the establishment of administrative liability for this category of authorities.
2. The French administrative judiciary is not competent to consider all disputes that arise regarding the actions of independent administrative authorities. Contrary to the case of Algeria, the rules of jurisdiction in France are assigned to the ordinary judiciary regarding many disputes involving administrative authorities, such as the decisions of the Stock Exchange Commission. In Algeria, the latter is the jurisdiction of the Council of State according to Article 57 of Legislative Decree 93-10, amended and supplemented, in accordance with the text of Article 57.
3. The absence of any judicial or constitutional jurisprudence recognising the liability of the independent administrative authorities in Algeria on the basis of error, whether serious or minor due to the weakness of the administrative judicial system in Algeria, where the administrative judge tends to apply texts like the ordinary judge, contrary to his main function of jurisprudence.
4. If the French administrative judiciary has created a system of no-fault administrative liability, which is based on the element of damage attributed to the administration's legitimate activity, the administrative judiciary in Algeria is still looking for solutions to the liability of the administration in the texts of the Civil Code.

Suggestions: In the absence of a system of administrative responsibility for the independent administrative authorities for their legitimate and illegitimate actions, we see the need for the following:

[1] Djohra BARKAT, op.cit. p.236.
[2] Ipid.p.338.

1- The Algerian legislator should grant more authority to independent administrative authorities to arbitrate and settle disputes between economic operators, detailing the procedures and conditions to which the arbitral jurisdiction is subject.

2- The Algerian legislator should explicitly stipulate the responsibility of administrative authorities for their actions before the administrative judiciary and arbitration decisions in particular.

3- The administrative judiciary must establish clear and specific rules on the type of error that triggers the liability of independent administrative authorities and must recognise their liability without fault based on the theory of economic risk.

REFERENCES I

[1] A-Constitution

1- Law No. 16-01 dated 6th March 2016, containing the constitutional amendment, Official Gazette No. 14 dated 7th March 2016.

[2] B- Conventions

1- The 1958 New York Convention on the Recognition and Enforcement of the Judgments of Foreign Arbitrators

[3] References II

A- Books

[4] Ahmed El-Sayed Sawy, Arbitration, D.S.T., Technical Foundation for Printing and Publishing, Egypt, 2002.

[5] Essa Amro, New Arbitration in the Arab Countries, Modern University Office, Alexandria, 2003.

A- Articles in journals

[6] Mourad Badran, The investigative nature of evidence in administrative matters, Journal of the State Council, issued by the Algerian State Council, No. 09, 2009, pp. (09-22).

[7] Books

[8] 1 .P.Galard, Report on Independent administrative authorities, Parliamentary Office for the Evaluation of Legislation, 2 volumes, n° 3166 AN, nº 404, Sirey, 2006 volume 1.

[9] 2. Jean Robert, arbitration of inter-private law, Paris 5 editions 1993 nol1.

[10]3. R. Drago, Responsibility (General Principles of the), Directory of the Responsibility of Public Power, May 2004, No. 43.

[11]4. D.de Béchillon, B. Ricou, Irresponsibility of public power, Directory of the responsibility of public power, 2011, no. 29.

[12]5. Mr. Guyomar, note La Gazette du Palais, May 26th, 2011 No. 146.

[13] 6. DE-GUERGUE (M.), "The loss of opportunity in French administrative law", in Equality of opportunity, the discovery, Recherches, Paris, 2000.

[14] Thesis

[15] Thesis Thomas Pérroud, "The litigation function of regulatory authorities in France and the United Kingdom", Panthéon-Sorbonne University – Paris I Discipline: Public law, December 6th, 2011.

[16] Journals

1- Information report made on behalf of the committee for the evaluation and control of public policies on independent administrative authorities, by MM. R. Dossière and C. Vanneste, volume 1.

[17] 2-G. Eckert, "The administrative responsibility of regulatory authorities", Review of Banking and Financial Law n° 2, March 2009, study 13, n° 16-20.

[18] 3-.ZEROUAL (A.), "Hospital responsibility", Revue EL Mouhamat, n° 02, 2004, p.5.

[19] 4-..DEBOUY (C.), "French law on administrative responsibility: metamorphosis or permanence?", CJEG, 1997, p.333.

[20] Interventions

[21] M. Deguergue, "The constitutional sources of the law of administrative responsibility", in X. Bioy (ss. the dir. of), Constitution and Responsibility, 2009, Montchrestien Lextenso, coll. Major conferences.

[22] Legal Sources

1. Council of State, Public report, pp. 300 to 305, the Council of State lists thirteen independent administrative authorities by legislative or jurisprudential determination, seventeen which can be attached to this category based on the criteria used and four organizations which the Council attaches to this category, although with hesitation.
2. Council of State, Ass., November 30th , 2001, Minister of the Economy and Finance c. Kechichian, n° 219562 Recueil Lebon p. 537.
3. Council of State, February 18th, 2002, Groupe Norbert Dentressangle, n° 214179, Recueil Lebon, table, p. 918.
4. Article 8 of Law No. 78-17 of January 6th, 1978 relating to data processing, files and freedoms (known as Foyer, J.O.R.F., January 7th , 1978.