

CONTESTING ADMINISTRATIVE URGENCY ORDERS UNDER THE ALGERIAN CIVIL AND ADMINISTRATIVE PROCEDURES LAW

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Received: 03/01/2024

Accepted: 25/07/2024

Published: 26/08/2024

Abstract

This study meticulously examines the contestation of administrative urgency orders in the context of Law No. 22-13, dated July 12, 2022, which significantly amends and supplements Law No. 08-09 from February 25, 2008. This revised law falls within the broader Civil and Administrative Procedures Law framework. The primary focus of this investigation is on the nuanced concept of urgency within administrative proceedings, scrutinizing both standard and exceptional administrative urgency orders.

Furthermore, this analysis extends to the practical applications concerning administrative urgency orders under Law 22-13, particularly following the establishment of appellate administrative courts. This development marks a significant legislative effort to enhance judicial oversight over administrative actions, expanding the opportunities to challenge decisions issued by administrative courts. The conclusions of this study are supported by comprehensive research findings, alongside a series of recommendations and proposed amendments aimed at refining the Algerian administrative urgency law.

INTRODUCTION

The doctrine of administrative emergency jurisdiction has been firmly established within Algerian legal statutes through the Civil and Administrative Procedures Law, with its origins tracing back to Order 66/154 dated June 8, 1966. This foundational law underwent subsequent amendments, notably by Order 69/77 on September 18, 1969, and more comprehensively by Law No. 08/09 on February 25, 2008.

The most recent enhancements, encapsulated in Law No. 22-13 dated July 12, 2022, have substantially fortified the framework of the urgent administrative judiciary. This was particularly consequential following the operationalization of the litigation hierarchy with the advent of appellate administrative courts, which now serve as a specialized secondary tier for the appeal of preliminary administrative decisions.

The legislative introduction of appellate administrative courts necessitated a reevaluation of legal texts concerning the appeal of urgent administrative orders. These orders are now considered both a form of opposition and a means of appeal against the judgments rendered in such urgent judicial contexts. This adaptation is regulated by specific legal conditions and standards designed to safeguard interests that might be compromised by delays inherent in resolving standard administrative lawsuits.

The urgent administrative judiciary is pivotal in manifesting the justice envisioned by the rule of law. The amendment of the new Civil and Administrative Procedures Law has fundamentally transformed the administrative judiciary landscape by introducing precise legal provisions under Law 08/09 dated February 25, 2008.

These provisions delineate the methods for appealing urgent orders, whether before the newly constituted administrative courts or the State Council, as detailed in Articles 833 to 837 and Article 910 of the Civil Procedures Law respectively. This legislative innovation was strategically implemented to rectify the shortcomings of prior statutes, which did not accommodate for appellate administrative courts.

At the structural level within the Algerian legal framework, the foundational legal premise for administrative courts is enshrined in Article 152 of the 1996 Constitution. This article establishes the State Council as the principal body responsible for overseeing and correcting the actions of administrative judicial entities.

At the judicial organization level, this role is manifested through the formal recognition of the State Council as the corrective apparatus for administrative judicial rulings, explicitly marking the establishment of administrative courts as the initial tier of litigation, distinct from the conventional judiciary hierarchy and specialized in handling administrative disputes. This structure epitomizes the dual judiciary system that Algeria strives to maintain.

What are the available means of appeal in urgent administrative matters according to the Civil and Administrative Procedures Law?

To address this inquiry, the analysis employs a meticulous legal method to dissect the legislative provisions set forth by the Algerian legislator concerning the appeal processes for urgent orders within administrative matters, as stipulated by the Civil and Administrative Procedures Law.

1. Urgency in Administrative Matters

Exploring the mechanisms for challenging administrative urgency orders introduces the pivotal role of the administrative urgency judiciary, designed to provide expedient and temporary judicial protection for rights and legal interests that are at imminent risk of harm. This form of judiciary aims to prevent outcomes that are difficult to reverse.¹

The primary legislative reference for this judiciary is the French Administrative Justice Law No. 2000-597, dated June 30, 2000, which governs the procedures for freedom of expression under Article 521-2. In circumstances of extreme necessity, the judge handling urgent matters is empowered to implement all necessary measures to safeguard fundamental freedoms within a 48-hour window following the submission of a request.²

This form of protection is executed through general urgency orders, involving prompt temporary actions that do not impinge upon the core rights or the subjects of those rights and legal positions. This is achieved after a preliminary review of the case file to ascertain the justifications for urgency, thereby affirming the jurisdiction of the administrative urgency judiciary to operate within abbreviated and exceptional procedures. These procedures deviate from the conventional scope of the ordinary administrative judiciary, which is characterized by regular litigation processes and prolonged decision-making timelines.³

The administrative urgency judge is charged with maintaining a true balance that reflects through the judiciary's independence from administrative influence by exercising discretionary powers. Simultaneously, this role involves safeguarding citizens' rights and freedoms under the canopy of constitutional and legal legitimacy, providing quick and effective interventions before any potential damage materializes and rectifying it pending a final judgment on the matter by subject-matter judges.⁴

¹ Karima Targuini & Zahra Souli, "The Urgency Lawsuit in Administrative Matters of Public Freedoms" (Doctoral dissertation), p. 45.

² Article 521-2 of the French Administrative Justice Law, enacted on June 30, 2000, which governs freedom of expression procedures.

³ Dahlenji, Rachida, "The Urgency Lawsuit in Administrative Matters According to the Civil and Administrative Procedures Law" (Doctoral dissertation, Université d'Alger 1-Benyoucef Benkhedda), p. 33.

⁴ Fadil Kousa, "The Administrative Decision in the Light of the Council of State Jurisprudence", Dar Houma for Printing, Publishing, and Distribution, Algeria, p. 309.

2. ORDINARY APPEAL METHODS:

The right to judicial appeal against decisions made by administrative authorities is enshrined in Article 143 of the Constitution⁵. The practical and effective establishment of administrative courts in Algeria was realized with Law No. 98-02, dated May 30, 1998, which was the first statute concerning administrative courts post-independence.⁶

However, the independent structuring of administrative courts was a subsequent development. The appellate administrative courts were recognized as an appellate entity under Law No. 22-13, dated July 12, 2022. This law amends and supplements Law No. 08-09, dated February 25, 2008, which is part of the Civil and Administrative Procedures Law, thereby making decisions appealable before the second-tier appellate administrative courts.

The Algerian legislator has placed special emphasis on the appeal methods within the urgent administrative judiciary to safeguard urgent rights. Upholding the principle of the rule of law, the administration is positioned on an equal footing with individuals before the judiciary, occasionally matching the legal standing of those it interacts with.

Consequently, it has become a right for citizens not only to lodge complaints about administrative actions but also to actively engage in litigation against them by following specific procedural and substantive protocols that are characterized by expedience and the conservation of effort and expenses.⁷

The significance of the urgent administrative judiciary has notably increased, reflecting the expanding diversity of administrative interactions in citizens' lives. Consequently, it is imperative for citizens to safeguard their rights through procedures that are marked by their expediency.⁸

This is made feasible by legally established urgent procedures that, albeit temporarily, protect their legal status and rights in relation to the administration. Such urgent measures often necessitate citizens to petition the urgent administrative judge to halt activities such as construction, expropriation processes, or other administrative interferences, or to gather evidence for a state or any action deemed necessary until a definitive decision is rendered by the subject-matter judge.⁹

The topic of administrative urgency necessitates detailed research and clarification, particularly in light of the developments following the enactment of the 1996 Constitution, which established an administrative judiciary that operates independently from the ordinary judiciary. This delineation clearly embodies the distinct separation between the ordinary and administrative judiciary systems.

1.1 Opposition:

Opposition serves as a primary method of appeal in administrative urgency orders, particularly when there is a conflict of interest or complexities in enforcement.¹⁰ An urgency order, expedited

⁵ Article 143 of the Algerian Constitution of 1996 states, "The judiciary reviews appeals against decisions of the administrative authority."

⁶ Law No. 02/98 dated May 30, 1998, establishing administrative courts.

⁷ One of the notable aspects of Algerian legislation in optimizing expenditures and human resources is the introduction of electronic litigation.

⁸ Cherifi, Zainab Al-Asmaa, Dada, Kheira, Adou, & Abdelkader (supervisor), "Cassation in Administrative Judicial Decisions" (Doctoral dissertation, University of Ahmed Draia-Adrar), 2023.

⁹ Hassan Farija, "Urgency in the Rulings of the Algerian Administrative Judiciary", *Administration Magazine*, published on 12/01/2003, p. 22.

¹⁰ Fouad Ben Tarah & Miloud Khalaf Allah, "Problems in the Execution of Administrative Judicial Decisions" (Doctoral dissertation).

in nature and designed not to alter the essence of the underlying right, generally precludes opposition or objection concerning its expedited enforcement. Under Law No. 08/09 dated February 25, 2008, which is part of the Civil and Administrative Procedures Law, urgency orders issued in absentia are not open to opposition at the primary courts or the Council of State. However, with the new provisions introduced by Law No. 22-13 dated July 12, 2022, which amends and supplements Law No. 08-09 dated February 25, 2008, these orders are now appealable at the second tier in the appellate administrative courts.

Moreover, decisions concerning urgent matters at the appellate stage, if issued in absentia, are subject to opposition within 15 days from the official notification before the same issuing body.

1-2 Appeal:

Orders issued by first-degree judges are appealable to the State Council under Law No. 08/09 dated February 25, 2008, which encompasses the Civil and Administrative Procedures Law. This law was amended to establish appellate administrative courts subsequent to their regional implementation.¹¹

According to Article 937 of Law No. 22-13 dated July 12, 2022, amending and supplementing Law No. 08-09 dated February 25, 2008, orders issued by the administrative court in urgent matters are appealable before the appellate administrative court. This particular article sets a deadline for appeals at 15 days from the date of official notification and establishes a decision period by the Appellate Administrative Court at 10 days.

The legislator has also specified certain cases where urgent orders issued initially by the Appellate Administrative Court of Algiers are appealable before the State Council within 15 days from the notification date, as outlined in Article 943 of Law No. 22-13 dated July 12, 2022. This law, which amends and supplements Law No. 08-09 dated February 25, 2008, also touches on Civil and Administrative Procedures.

Furthermore, the Algerian legislator has introduced regulations concerning the transferring effect of disputes and the stance on executing judgments if an appeal is lodged before the Appellate Administrative Court. This procedural effect is similarly applicable when the appeal is made before the State Council as an appellate body.¹²

The procedural dynamics before appellate entities in administrative matters have undergone significant revisions under the recent amendments. Specifically, Article 917 of Law No. 22-13 dated July 12, 2022, outlines that the procedure for urgent matters at the administrative court level is now presided over by its president.

At the Appellate Administrative Court, these matters are handled by a collective formation led by the court's president, and similarly, at the State Council level, a collective formation reflects the legislative evolution following each amendment to the Civil and Administrative Procedures Law.

In terms of resolution timelines for urgent matters, the legislator has specified that the State Council, acting as the appellate body, must render a decision within one month, as stipulated by Article 294 of the Civil and Administrative Procedures Law. This expedited timeframe underscores the importance of swift judicial action in urgent administrative matters.

The establishment of appellate administrative courts necessitates a reevaluation of the jurisdiction dispute system. Previously, if a jurisdictional conflict arose between two administrative courts, it was resolved by the State Council. Under the new framework provided by Article 808 of the Civil and Administrative Procedures Law, the resolution of disputes between two administrative courts within the same appellate jurisdiction now falls to the president of that appellate court.

Conversely, if the jurisdictional dispute involves administrative courts under different appellate jurisdictions or between an administrative court and an appellate administrative court, the matter

¹¹ Organic Law No. 22/10 dated June 9, 2022, related to judicial organization.

¹² Yasmina Chabri & Chawki Yaich Tamam, "Cassation in Administrative Matters in Algerian Legislation" (Doctoral dissertation), p. 55.

is escalated to the president of the State Council. Furthermore, in situations where the dispute involves two appellate administrative courts or an appellate administrative court and the State Council, the resolution is carried out by the State Council in a full session.

Additionally, Article 113 introduces a new protocol: if one of the administrative courts receives requests that it deems within the jurisdiction of the Appellate Administrative Court, the president of the court is required to transfer the file to the Appellate Administrative Court promptly.

The administrative court holds the responsibility for determining jurisdiction and will adjudicate on the matter if it concludes that the dispute falls within its purview. If necessary, it may refer the case to the relevant administrative court to decide on all or part of the requests if it determines otherwise.

Article 814 further specifies that when the Appellate Administrative Court rules on jurisdiction, it refers the case to the competent administrative court, which may not declare itself incompetent.

3. NON-ORDINARY APPEAL METHODS AGAINST URGENT ADMINISTRATIVE ORDERS

3-1 Appeal by Cassation:

An appeal by cassation represents a higher level of oversight by the State Council over judicial acts,¹³ focusing exclusively on legal interpretations rather than factual discrepancies¹⁴. This form of appeal scrutinizes the impact of the urgent judge's decisions on the essence of the right and evaluates the justification behind the implementation of urgent measures. The appeal by cassation thus plays a crucial role in maintaining legal integrity and ensuring that urgent measures are grounded in substantial legal reasoning.¹⁵

The State Council serves a pivotal role within the judiciary, primarily tasked with correcting the actions of administrative entities. It is integral to ensuring the uniformity of administrative judicial precedents across the country. As the apex body within the dual judiciary system, it specializes in hearing appeals from decisions made by the Appellate Administrative Court of Algiers.¹⁶

Additionally, it adjudicates cassation appeals against final judgments and decisions from administrative judicial bodies. Cassation appeals are also legally entertained under special provisions that grant this jurisdiction explicitly to the State Council.

Filing a cassation appeal with the Council of State does not suspend the execution of the contested decision. This is because the decision issued by the appellate administrative court is deemed final and executable until otherwise ruled upon by the State Council. The primary objective of a cassation appeal is to scrutinize the legality and correctness of the judgment or decision in question, ensuring its alignment with strict legal standards while deliberately abstaining from re-assessing the factual basis of the case.¹⁷

¹³ Organic Law No. 13/11 dated July 26, 2011, amending and supplementing Organic Law No. 01/98 on the competencies of the Council of State and its organization and functioning.

¹⁴ Frioui, Sofiane, "Unusual Appeal Methods in Administrative Matters" (Doctoral dissertation), 2013.

¹⁵ Ghazi, Abdelkarim, "Competencies of the Council of State", 2015.

¹⁶ Malika Batinah, "Judicial Appeal Methods before the Algerian Council of State" (Doctoral dissertation, Université Mohamed Khider Biskra), 2017.

¹⁷ Harath, Ibrahim, Gharbi, & Toufik, "Appealing Urgency Orders Before the Administrative Judge" (Doctoral dissertation), 2023.

2-2 Petition for Reconsideration:

The reconsideration of decisions in administrative urgency matters has long been a subject of debate among legal scholars due to the frequent issuance of legal texts regulating petitions for reconsideration and their temporary nature.¹⁸

A petition for reconsideration may only be filed by someone who was a party to the judgment, decision, or order, or who was legally summoned.¹⁹

The legislator has specified situations for reconsideration petitions under Article 392 of the Civil and Administrative Procedures Law, which states: A petition for reconsideration can be filed for two reasons: if the judgment or decision or order was based on witness testimony, or on documents that were later judicially proven to be forged or recognized as such after the issuance of that ruling and it acquiring the force of *res judicata*, which necessitates that the rulings be final.²⁰

If, after the issuance of the judgment or decision or order that has acquired the force of *res judicata*, decisive papers in the case are discovered that had been deliberately withheld by one of the parties.

2-3 Third-Party Intervention:

Third-party intervention offers a unique non-ordinary method of appeal, enabling individuals not originally party to the litigation to challenge a judgment that impacts them. Defined under Article 380 of the Civil and Administrative Procedures Law,²¹ third-party intervention aims to re-examine or annul an urgent judgment or decision that resolved the core of the dispute. This legal mechanism allows for the reconsideration of the case both factually and legally.

This form of appeal is particularly notable because it enables any interested party, who was neither involved nor represented in the original judgment, decision, or order, to initiate a third-party intervention.²²

The permissible period for filing such an intervention extends up to fifteen (15) years from the issuance of the judgment, decision, or order, unless a different duration is specified by law. However, this period is reduced to two (2) months when the judgment, decision, or order is officially notified to the third party. This notification must clearly indicate both the duration available for filing the intervention and the associated rights, as stipulated in Article 384 of the Civil and Administrative Procedures Law.

In addressing third-party interventions, it is crucial that such actions comply with the established procedural norms for initiating lawsuits. These interventions must be presented before the judicial body that issued the contested judgment, decision, or order, and may be adjudicated by the same panel of judges. A third-party intervention is contingent upon the submission of a receipt confirming the deposit of a sum at the court registry, which should equate to the maximum fine outlined in Article 388 of the Civil and Administrative Procedures Law. This financial requirement underscores the seriousness and formal commitment of the intervenor to the judicial process.

¹⁸ Sama Haddag, "Petition for Reconsideration in Urgency Court Decisions", *Researcher Magazine for Academic Studies*, published on 01/30/2019, p. 622.

¹⁹ Faiza Khalil, "The Impact of Judicial Dualism on the Evolution of Administrative Judiciary in Algeria" (Doctoral dissertation).

²⁰ Siham Bachir, "The Petition for Reconsideration in Civil Matters" (Doctoral dissertation), 2015.

²¹ Rafika, Mimch, Mastrar, Hayat, Belhairch, & Hussein (supervisor), "Third Party Intervention Outside the Litigation Before the Administrative Judiciary in the Civil and Administrative Procedures Law" (Doctoral dissertation, Université de Jijel), 2016.

²² Article 801 from the Civil and Administrative Procedures Law.

Moreover, Article 386 empowers the urgency judge to halt the execution of a contested judgment, decision, or order through a third-party intervention, following the established urgent procedures. This right significantly enhances the procedural integrity and the enforceability of legal remedies available to third parties affected by judicial decisions.

The Algerian legislative framework has made substantial strides in advancing the urgency system, particularly with the integration of the electronic litigation system. This system represents a significant innovation within Algerian judiciary practices, introduced under Law 15/03 concerning the modernization of justice. The shift towards electronic litigation, supported by the new government's directives, is designed to accelerate litigation processes and enhance the speed and efficiency of dispute resolution.

CONCLUSION

The findings of this research emphasize several key outcomes resulting from the establishment of appellate administrative courts and the enhancement of urgency systems:

- The establishment of appellate administrative courts to review urgency orders strengthens the two-tier litigation principle, which is one of the fundamental principles of the judiciary. This setup ensures the delivery of a fair trial, proper administration of justice, and the right to defense by providing opportunities for judicial oversight.
- The possibility to appeal urgency orders enhances judicial security for litigants and instills confidence in them by allowing the aggrieved party to present their case before the judicial entities involved to verify the accuracy of the decisions issued by the administrative courts.
- Instituting legal protections and oversight by both individual judges and collective formations on the actions of public authorities legitimizes their practices.
- Integrating a system to appeal administrative urgency orders strengthens rights and freedoms, particularly the transformative effect of dispute and stance in executing a judgment when an appeal is filed, thus activating judicial oversight further.
- The establishment of appellate administrative courts takes into consideration the geographic spread of the national territory and the volume of cases presented to the administrative judiciary, which positively reflects on the litigants.
- Rationalizing public expenditure and reducing the efforts and human resources in judicial structures, especially through the role that electronic judiciary will play in bridging distances and expediting case handling.

RECOMMENDATIONS

- The creation of new judicial structures such as appellate administrative courts necessitates the provision of human resources, including judges specialized in administrative law, to fulfill the legislator's intent of achieving a constitutional system of two-tier litigation.
- The activation of electronic litigation requires the availability of necessary internet bandwidth to ensure that the interests of those who engage in electronic judiciary through appeals against urgency orders, particularly those related to short-term urgent deadlines, are not compromised. This requires the stipulation of a continuous and uninterrupted internet supply, as practiced in official examinations in Algeria.

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