

THE LEGAL FRAMEWORK OF THE OMBUDSMAN INSTITUTION IN THE 2020 CONSTITUTIONAL AMENDMENT

AMEL BOUSSADIA

Faculty of Law, Department of Law, University of Algiers 1, Algeria

Email: Boussadia.amel.11@gmail.com

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Abstract:

Various international legislations, such as those in France, Sweden, Spain, Tunisia, and Egypt, recognize the Ombudsman Institution as an entity aimed at preserving citizens' rights, safeguarding freedoms, curbing administrative abuses, and combating corruption. To shed light on the role of the Ombudsman in protecting public freedoms, this research is dedicated to exploring the various aspects of this topic. We have divided the study into two main sections. The first section addresses the nature of the Ombudsman Institution and the limits of its intervention, while the second section is devoted to the functional framework of the Ombudsman Institution.

Keywords: Ombudsman, administration, human rights, legal framework.

INTRODUCTION:

The issue of human rights represents a significant concern for both the international community and individual states, gaining immense importance in its codification and internationalization. This concern has been evident since ancient civilizations.

In Algeria, the institution of the "Mediator of the Republic" (Médiateur de la République) was first established under Presidential Decree No. 96-113 dated 2 March 1996.⁽¹⁾ However, this institution was abolished after a three-year trial period under Presidential Decree No. 99-170 dated 2 August 1999, on the grounds that it was not constitutionally enshrined.⁽²⁾ It was subsequently replaced by another body called the Subcommittee for Mediation.⁽³⁾

Following a shift in Algeria's political climate, this institution was reestablished under a new Presidential Decree No. 20-45 dated 15 February 2020.⁽⁴⁾ The "Mediator of the Republic" now plays a pivotal role in combating corruption resulting from poor governance within public administrations and institutions. This corruption significantly affects various areas, most notably the economic sector, where it is visibly detrimental to both local and foreign investments. It also impacts public revenues and expenditures. Furthermore, corruption extends to the political sphere, undermining the performance of the government. The consequences of this corruption, including injustice and mismanagement, ultimately delegitimize the political authority of the state and erode trust between citizens and state institutions.

This raises the following central question: Does the legal framework of the Mediator of the Republic align with its designated role?

To explore this question, two sub-questions emerge:

What is the legal nature of the Mediator of the Republic?

What is the legal framework governing the Mediator of the Republic?

To address these questions, I have chosen to adopt a descriptive-analytical methodology to study the legal provisions governing the functions of the Mediator of the Republic.

Section One: The Nature of the Mediator of the Republic and the Scope of Its Intervention

To address the nature of the Mediator of the Republic and the limits of its scope of intervention, this section is divided into two subsections. The first subsection focuses on studying the legal nature of the Mediator of the Republic, while the second explores the boundaries of its intervention.

Subsection One: The Legal Nature of the Mediator of the Republic



To clarify and highlight the legal nature of the Mediator of the Republic, it is essential to define its concept by examining its origin and historical roots. This can be done by comparing it with prior experiences in other countries, particularly France and Sweden, to contextualize the Algerian experience.

In Algeria, the Mediator of the Republic was established under Presidential Decree No. 96-113, dated 23 March 1996. This indicates that it was created by the executive authority, not the parliament, as is the case in Sweden. Article 02 of the same decree states:

"The Mediator of the Republic is a non-judicial appeals body that contributes to the protection of citizens' rights and freedoms and to the legality of the management of public institutions and administrations."

Accordingly, based on this article, the Mediator of the Republic is considered a non-judicial appeals body aimed at protecting citizens' rights and ensuring the proper functioning of public services. In a broader sense, this includes services under both central and decentralized authorities.

The Mediator of the Republic is affiliated with the executive authority, whether it be the government or the presidency. Despite being deemed an independent body by Algerian legislators, it was not included in the 1996 constitutional amendment, even though this amendment introduced new ideas and institutions, such as the establishment of the Council of State (Article 152) and the creation of the Council of the Nation as the second parliamentary chamber, thereby instituting a bicameral legislative system.

These significant transformations within the legislative and judicial branches left the Mediator of the Republic at the legislative level, classified merely as a non-judicial appeals body, indicating that it does not compete with judicial institutions.

Additionally, the President of the Republic is exclusively authorized to appoint the Mediator, as stipulated in Article 12 of Presidential Decree No. 96-113 dated 23 March 1996, which states:

"The President of the Republic appoints the Mediator of the Republic by presidential decree and may terminate their duties under the same conditions."

The President exercised this power based on Articles 67, 74, and 116 of the 1989 Constitution, which grant the President the authority to appoint individuals to civil and military positions. As such, the Mediator of the Republic is classified as a senior or high-ranking position within the administrative hierarchy,⁽⁵⁾ functioning as a central authority that derives its power directly from the President of the Republic.

Furthermore, the founding decree did not establish stringent criteria for carrying out such a task. In Algeria's brief experience with the Mediator of the Republic, which lasted for three years, only one individual, Mr. Habachi, was chosen for this role. This selection was influenced by political and ideological considerations, with the sole applied criterion being political loyalty to the Algerian revolution, rather than legal qualifications, although it was presumed that objectivity and political neutrality would be upheld.

Additionally, the decree did not specify the duration of the Mediator's term, provisions for its renewal, or mechanisms for addressing contingencies such as incapacity. Ultimately, the Mediator of the Republic was dissolved after three years of its establishment by a presidential decree issued by a different authority than the one that had initially created it. This occurred because the original authority did not continue its electoral mandate.

Article 12 of the founding decree explicitly granted the President of the Republic the sole authority to terminate the Mediator's duties through a presidential decree. This authority was exercised with the issuance of the decree on 2 August 1999, effectively dissolving the institution.



CONCLUSION ON TERMINATION METHODS:

The termination of the Mediator's duties in this experience followed two approaches:

1. Ordinary Termination: Linked to the completion of the assumed term, which coincided with the presidential term.

2. Extraordinary Termination: Involved dismissal from the position or resignation under specific legal conditions, such as severe illness or incapacitation.

2. The Nature of the Mediator of the Republic To accurately define the nature of the Mediator of the Republic, it is necessary to examine its administrative and advisory characteristics to arrive at a proper legal classification.

1. An Administrative Body

The Swedish Ombudsman, or Parliamentary Commissioner, enjoys independence from the executive branch. It is an entity elected through indirect universal suffrage, making it a parliamentary body that exercises popular oversight. Swedish legal texts establish the principle of supervision over administrative and judicial activities, with the Ombudsman entrusted to carry out this task. This includes monitoring both the judiciary and the administrative apparatus to ensure the proper application of laws by judicial and administrative authorities. The Ombudsman examines legal texts, monitors their implementation, and ensures their practical application in accordance with established legal principles.

Notably, the structure of the Swedish Ombudsman influenced the text of the Algerian Presidential Decree, as specific provisions were directly borrowed from the previous decree regulating the Mediator of the Republic, even retaining identical wording and numbering.

From this perspective, it can be inferred that the Mediator of the Republic in Algeria is organically and functionally linked to the executive branch. As a result, it is classified as an administrative body that operates under the framework of the executive authority.

2. An Advisory Body

Consultation is a vital mechanism in modern administrations, aimed at enhancing their performance and involving various groups in the decision-making process. This mechanism is essential for advancing administrative functions, a role that the Mediator of the Republic diligently fulfills.

Article 6 of Presidential Decree No. 20-45, dated 15 February 2020, states:

"The Mediator of the Republic, in the reports submitted to the President of the Republic, proposes the measures and decisions to be taken against the concerned administration or its negligent staff."⁽⁶⁾

Similarly, Article 7 specifies:

"The Mediator of the Republic prepares a summary of its activities and submits a report to the President of the Republic, accompanied by an evaluation of the quality of services provided by public institutions, along with suggestions and recommendations for their improvement."⁽⁷⁾

Furthermore, Article 8 of the same decree stipulates:

"In addition to the annual report, the Mediator of the Republic sends to the concerned administration any recommendation or proposal that could enhance the functioning or organization of the relevant institution."⁽⁸⁾

Based on the above articles, it is evident that the legal texts do not mandate the binding implementation of the Mediator's recommendations or proposals. These provisions highlight the advisory nature of the institution rather than a decision-making or enforcing authority.



Conclusion on Its Legal Nature

From the analysis above, it can be concluded that the Mediator of the Republic in Algeria functions as a centralized institution that operates under the framework of the central administration. It is a body that is both organically and functionally subordinate to the President of the Republic, given its structural placement and its advisory role in proposing solutions and improvements for public administration.⁽⁹⁾

The Second Section: Limits of the Scope of Intervention of the Ombudsman of the Republic

The Algerian state aimed, through the adoption of this institution, to reduce administrative abuses against citizens and to protect their rights and freedoms. To address this, we will examine the scope of intervention of the Ombudsman of the Republic through this section.

The Algerian legislator defined the boundaries of the Ombudsman's scope of intervention based on Articles 4 and 5. According to these provisions, the Ombudsman of the Republic cannot adjudicate appeals between public services and their agents, nor can they interfere in any judicial procedure or revisit any judicial decision. This means that the Ombudsman does not intervene in disputes brought before the courts or administration, nor does he render final decisions in such matters, thereby reinforcing the principle of separation of powers.⁽¹⁰⁾

Additionally, the Algerian Ombudsman is not authorized to exercise investigative powers in matters related to state security, national defense, or foreign policy. This limitation is explicitly stated in Articles 4 and 5 of Presidential Decree No. 20-45, dated February 15, 2020. The Algerian legislator has also established boundaries to the Ombudsman's intervention in order to regulate his activities. These limitations can be classified into two types of restrictions.

First: Formal Boundaries

The formal boundaries consist of exhausting all means of appeal and defining the complainant's status. The Algerian legislator established the formal boundaries of the Ombudsman of the Republic through the second paragraph of Article 03 of Decree 20-45, setting two formal conditions for the Ombudsman to intervene and consider administrative actions. These conditions are as follows:

1. Notification of the Ombudsman of the Republic

According to Decree No. 96-113, which established the Ombudsman of the Republic, as well as the new Decree No. 20-45 and the last paragraph of Article 03, the notification process remains the same. It must be initiated by the natural person harmed by the grievances of the public administration. This restriction limits the scope of intervention of the Algerian Ombudsman.

2. Exhaustion of All Means of Appeal

The legislator requires the complainant harmed by the mismanagement of a public service to exhaust all available means of appeal, including administrative remedies of all kinds, whether presidential or provincial, or before specialized committees. Additionally, the complainant must utilize both ordinary and extraordinary judicial appeals. This requirement delineates the Ombudsman's scope and authority.⁽¹¹⁾

It is worth noting that judicial procedures are often lengthy and costly, particularly for individuals with limited income. This is especially significant because the majority of disputes are brought before administrative courts, which require legal representation by a lawyer for cases to be admitted, whether before the administrative court or the Council of State.

Judicial Disputes and the Limitations of the Ombudsman's Jurisdiction



Judicial disputes fall outside the jurisdiction and competencies of the Algerian Ombudsman. This is because the judiciary, as the authority responsible for enforcing laws in Algeria, ensures the legality of administrative actions through lawsuits initiated by individuals against public administrations. The judiciary is recognized as the third branch of government in Algeria's constitutional system and enjoys full independence, as stipulated in Article 129 of the 1996 Constitution: "The judiciary is independent." Consequently, the executive branch cannot interfere in the judiciary's domain, and the Ombudsman cannot intervene in judicial disputes that are still pending resolution unless all avenues of appeal available to litigants have been exhausted.

Article 03 of the founding decree states: "The Ombudsman of the Republic is granted powers of follow-up and general oversight, enabling him to evaluate the quality of relations between the administration and citizens."⁽¹²⁾ In this context, any individual who has exhausted all means of appeal and believes they have been wronged due to the mismanagement of a public service can notify the Ombudsman.

The term "all means of appeal" includes all internal administrative remedies, such as presidential and provincial complaints, as well as external remedies available to citizens before judicial bodies to restore their rights. Additionally, it encompasses exhausting all judicial remedies, including ordinary appeals such as review and cassation, and extraordinary remedies such as opposition and petitions for reconsideration. In other words, the judgment must acquire the authority of *res judicata* for the complaint to be submitted to the Ombudsman and be formally admissible. Without fulfilling these requirements, the complaint cannot be reviewed.

However, in practice, this condition has not always been respected. Citizens often submit various complaints to the Ombudsman, despite the restrictions outlined in the decree. As a result, many of these complaints are classified as "closed files" due to the lack of legal knowledge or awareness of the Ombudsman's specific roles and competencies. Moreover, the lack of targeted communication and public education regarding the functions of this institution contributes to the rejection of some complaints on the grounds of incompetence. This constitutes the first formal and technical condition for the legal admissibility of complaints before the Ombudsman of the Republic.

Additionally: The Complainant's Status

The legislator has stipulated another condition, which pertains to the status of the complainant. This requires the complainant to be a natural person, as stated in Article 03 of the decree establishing this institution. This provision specifies that the Ombudsman's intervention can only be initiated by a natural person, thus confirming the individual nature of complaints. The complainant must meet the conditions of personal interest and direct relevance, as outlined in general legal principles and civil procedure laws.

It is notable that the legislator further limited the scope of the Ombudsman's jurisdiction by confining it to this criterion, emphasizing the principle of legality. This means that the Ombudsman's oversight is restricted to unilateral legal and material actions. In other words, the institution focuses on violations of individual administrative decisions subject to scrutiny, excluding regulatory administrative decisions and collective material administrative actions that harm citizens.⁽¹³⁾

Second: Substantive Boundaries of the Ombudsman's Jurisdiction

The Algerian legislator has imposed substantive limitations on the Ombudsman's jurisdiction. These include disputes involving public services and their agents, judicial procedures and decisions, as well as fields related to the strategic interests of the state.



1. Disputes Involving Public Services and Their Employees

The term "public servant" refers to individuals engaged in public functions, with the concept being interpreted in both a formal and substantive sense.

Formal Perspective:

Public servants are individuals who provide services to public institutions, and their legal status is governed by the regulations applicable to all employees within the public sector, without consideration of their individual positions or roles.

Substantive Perspective:

The focus is on the activities and tasks performed by the administration through its employees, without delving into the specific legal status or positions of the employees themselves. Consequently, public servants are subject to a legal framework defined by the institution they work for, as well as laws governing the mechanisms for managing such roles.

If a dispute arises between an employee and the public institution they work for, it is governed by internal regulations and specific procedures outlined in Ordinance No. 66/133, dated June 02, 1996, which establishes the general statute of public service. This has been amended by Law No. 78-12, dated August 05, 1978, and subsequently by Decree No. 85-59, dated March 23, 1996, which sets forth the general model statute for employees of public institutions and administrations .⁽¹⁴⁾

Exclusion of Public Service Disputes from Ombudsman Jurisdiction

The legislator explicitly excluded disputes between the administration and its employees, classifying them as internal matters where the Ombudsman cannot intervene. This exclusion is grounded in the principle of the separation of powers and respects the autonomy of the administrative authority in managing its affairs.

According to the first paragraph of Article 04 of the decree establishing the Ombudsman of the Republic, the Ombudsman is prohibited from handling disputes involving public services, whether administrative or economic, and their employees. This is because each public service is governed by specific regulatory texts that outline the procedures for resolving such disputes while ensuring the right to defense.

Public sector employees are subject to the General Statute of Public Service and all its executive regulations. Similarly, employees of economic institutions are governed by labor laws and internal agreements specific to each entity .⁽¹⁵⁾

2. Judicial Procedures and Decisions

The Algerian legislator explicitly prohibits the Ombudsman of the Republic from intervening in judicial matters. This is clearly stated in the final paragraph of Article 04 of the decree, reinforcing the principle of separation of powers as enshrined in the preamble and Article 15 of the 1996 Algerian Constitution, as amended in 2016. This principle ensures that the judiciary operates independently, free from interference by the executive branch or any external entity.

3. Fields Related to the State's Strategic Domain

Article 05, paragraphs 2 and 3 of the founding decree, states:

"He may access any document or file related to the aforementioned tasks, except for those concerning state security, including:



National defense

Foreign policy."⁶

This provision establishes that, in addition to the other limitations on the Ombudsman's jurisdiction, the decree excludes strategic domains such as national defense and foreign affairs from the Ombudsman's authority.

Despite being equipped with all the material resources needed to carry out his primary mission, the Ombudsman cannot intervene in these strategic sectors due to their sensitive nature and their connection to state security. Any involvement in these areas could jeopardize state secrets.

However, from a functional perspective, the Ombudsman can provide material assistance to ensure justice and fairness, provided that such assistance does not pose any threat to state security or stability. This conditional support aligns with the Ombudsman's broader objective of safeguarding citizens' rights while respecting the confidentiality and strategic importance of these sectors.

The Second Requirement: The Functional Framework of the Ombudsman of the Republic

The Ombudsman of the Republic is an institution adopted by the Algerian state to mitigate the arbitrariness and abuse of power by both administrations and employees. Its purpose is to uphold the rule of law and protect the rights and freedoms of individuals. To examine the functional framework of this institution, we will address its powers of oversight and general monitoring (Section 1) and its role in protecting public rights and freedoms (Section 2).

Section 1: Powers of Oversight and General Monitoring

To ensure that public administration operates in a way that protects citizens' rights from administrative abuses, it is essential to strengthen oversight mechanisms, including internal control, judicial oversight, external administrative oversight, and, notably, the Ombudsman's oversight.⁽¹⁶⁾ The Algerian legislator has affirmed the Ombudsman's role in overseeing administrative actions, as stated in Article 03 of Decree No. 96-113 dated March 23, 1996, which established the Ombudsman:

"The Ombudsman of the Republic is granted powers of oversight and general monitoring, enabling him to evaluate the relationship between the administration and citizens. In this context, any natural person who has exhausted all avenues of appeal and believes they have been wronged due to the mismanagement of a public service may notify the Ombudsman."

This article complements Article 02, which outlines the general scope of the Ombudsman's duties, granting him the right to oversee the legality of the operations of public institutions and administrations:

"The Ombudsman of the Republic is a non-judicial appellate body that contributes to the protection of citizens' rights and freedoms and to the lawful functioning of public institutions and administrations."

The Ombudsman's oversight role cannot function independently of other institutions and authorities. While oversight bodies maintain their independence, this does not imply isolation from state institutions and authorities. Cooperation and coordination with relevant entities are crucial while maintaining a balanced distance. This principle is enshrined in Article 05 of the same presidential decree:

"The Ombudsman of the Republic is granted investigative powers, allowing him to collaborate with concerned administrations and institutions, undertake the necessary actions to perform his duties,



and, for this purpose, request assistance from any administration or institution that can provide useful support." ⁽¹⁷⁾

This collaboration underscores the Ombudsman's role in ensuring accountability while safeguarding citizens' rights and promoting lawful governance in public administration.

The Ombudsman's Role in Combating Bureaucracy and Enhancing Administrative Oversight

The Ombudsman of the Republic was established to combat the entrenched bureaucracy in Algerian administration, a problem that has persisted for decades. This initiative was rooted in the political vision of former President Liamine Zeroual, who aimed to protect citizens through legislative and practical measures by creating this institution.

The decree regulating the relationship between administration and citizens underscores this objective. Article 02 of the decree states:

"Public institutions, administrations, and bodies, along with their agents, are obligated to protect citizens and their rights as recognized by the Constitution and applicable legislation."

Additionally, Article 03 emphasizes:

"The administration must respect human dignity and maintain courteous and considerate relations with citizens in all circumstances."

The Ombudsman's Oversight Role in Public Administration

To transform the administration into a citizen-centric entity, internal and external judicial oversight mechanisms were strengthened, with the Ombudsman serving as a key external oversight tool. The Ombudsman is entrusted with evaluating the quality of the relationship between the administration and citizens, which grants him discretionary authority in monitoring the functioning and legality of public institutions.

The Ombudsman acts as an inspector or monitor, ensuring that the administration fulfills its obligations in accordance with applicable laws and regulations. This role is reaffirmed in Article 06 of Decree 88, which governs the relationship between administration and citizens:

"The administration must continually adapt its tasks and structures to meet citizens' needs, providing quality service."

Furthermore, the Ombudsman is authorized to seek assistance from any institution or body that can provide useful information, as stipulated in Article 05 of the 1996 founding decree. He also has the right to access all files and documents related to cases brought before him, except for areas beyond his jurisdiction.

Scope of Oversight

The Ombudsman's jurisdiction is specifically limited to addressing administrative mismanagement and ensuring the lawful functioning of public institutions and administrations. His oversight includes:

Monitoring compliance with the principle of legality in administrative actions.

Overseeing public institutions and administrations with an administrative character under their jurisdiction.



Supervising entities linked to the National People's Assembly and the Court of Auditors.

In essence, the Ombudsman ensures that public institutions adhere to the rule of law, providing a crucial mechanism for protecting citizens' rights and promoting accountability within Algerian administration.⁽¹⁸⁾

Limitations on the Ombudsman's Oversight and Reporting Mechanism

The Ombudsman's oversight is constrained by the requirement for direct notification. This means the Ombudsman cannot act on its own initiative but must be prompted by a complaint or notification from a natural person. The Algerian legislator explicitly excluded legal entities from initiating complaints to this oversight body.

Additionally, the complainant must have exhausted all administrative and judicial remedies before approaching the Ombudsman. This condition is stipulated in Article 04 of the 1996 decree, which states that the Ombudsman does not intervene in disputes pending before the courts or in matters where the administration has yet to issue a decision.⁽¹⁹⁾ This constitutes a technical limitation on the Ombudsman's scope of intervention.

Condition of the Complainant: Natural Person as a Victim of Administrative Mismanagement

The complainant must meet the condition of being a natural person who has suffered "prejudice" due to the mismanagement of a public service, as stated in Article 03 of the same decree. The term "prejudice" is borrowed from private law concepts, specifically Article 90 of the Civil Code.

However, the Algerian legislator prefers the term "mismanagement of a public service" rather than "prejudice." This distinction is important because the concept of prejudice generally applies between two equal parties under contract law, whereas the relationship between the administration and citizens is inherently unequal, with the administration enjoying public authority privileges.

Mismanagement of Public Services

Mismanagement occurs when a public service fails to deliver the required service or does not deliver it within the specified timeframe. The liability of the public service arises from:

1. Failure to adhere to legal formalities.
2. Failure to ensure continuity in service delivery.
3. Failure to achieve the public interest.

These forms of mismanagement highlight the administration's failure to meet its obligations under the principle of legality. Such failures can result in the administration being held accountable for harming citizens due to negligence or inefficiency in public service management.

From the above, it can be concluded that the role of the Republic Mediator embodies that of an alert and guide, as he does not possess legal means to compel the administration to investigate a case file. Instead, he merely issues reminders. This is due to the absence of a standard for determining the legal time frame required to obligate the administration to respond, leaving files vulnerable to administrative procrastination. Article 06 of the establishment decree states: "In the reports submitted to the President of the Republic, the Mediator proposes the measures and decisions to be taken against the concerned administration or its negligent employees." This indicates that the Mediator's intervention takes the form of proposals or recommendations.



Furthermore, the second paragraph of Article 07 provides: "A report is submitted to the President of the Republic, accompanied by assessments regarding the quality of services provided by public facilities and his proposals and recommendations for improving their functioning." Similarly, Article 08 of the same presidential decree stipulates: "In addition to the annual report, the Mediator sends to the concerned administration a notice of the difficulties brought to his attention, along with any recommendation or proposal likely to improve the functioning or organization of the concerned facility."

Section Two: Protection of Public Rights and Freedoms

The issue of protecting public rights and freedoms is an internal matter where the state employs all means and mechanisms to ensure this protection. The state is responsible for enforcing both international and domestic texts related to the protection of freedoms. It also supports these efforts through various internal measures, one of which is the establishment of the Republic Mediator. This body ensures and protects citizens' rights and freedoms. The constitution outlines these rights broadly, as defined by the constitutional legislator in Chapter Four: (Rights and Freedoms), which includes 41 articles, spanning from Article 32⁽²⁰⁾ to Article 73 of the Algerian Constitution of 1996, as amended and supplemented, particularly by Law 16-01.⁽²¹⁾

From a philosophical perspective, the term "public freedoms" refers to "a state where an individual can do everything they wish without being subject to the will of others." In a terminological sense, it denotes the absence of social deterrence for the individual. The term "freedoms" is often coupled with "public" or "fundamental," highlighting its significant attention in international treaties, United Nations charters, and national constitutions.

It is important to note that these rights and freedoms are protected under the Algerian Constitution of 1989, as amended and supplemented by the Constitution of November 28, 1996, in Articles 29 to 58. Any violation of these freedoms and rights falls under the purview of the Republic Mediator's intervention, as stated in Article 02 of the establishment decree. This article stipulates that the Republic Mediator contributes to the protection of citizens' rights and freedoms and monitors the legality of the functioning of public institutions and administrations. The Mediator acts more as a diplomat, guide, and advisor to citizens than as a direct defender of their rights.

The Algerian legislator explicitly defined the Mediator's role in Articles 02 and 03 of the decree issued on March 03, 1996, which highlights the protection of individuals' rights and freedoms. It establishes that any violation or infringement of citizens' rights and freedoms necessitates the intervention of the Algerian Republic Mediator. This is reiterated in Article 02 of Presidential Decree No. 20-45, dated February 15, 2020, which states:

"The Republic Mediator is a non-judicial appeal authority that contributes to the protection of citizens' rights and freedoms and ensures the legality of the functioning of public institutions and administrations."

Additionally, Article 03 of the same decree provides:

"In this context, any natural person who has exhausted all means and believes they have been wronged due to a malfunction in the management of a public facility may refer the matter to the Republic Mediator."

Accordingly, based on the above, it can be concluded that any natural person who has exhausted all means of appeal and believes they have been a victim of "injustice" due to a malfunction in the management of a public facility may refer the matter to the Republic Mediator.



The Republic Mediator receives complaints and grievances from natural persons who meet the conditions outlined in the last paragraph of Article 03 and the first paragraph of Article 04 of the establishment decree. These conditions include exhausting all means of appeal, being a victim of injustice due to a malfunction in the management of a public facility, and not having the status of an employee in the said facility.

The referral may be written, oral, or made through electronic means and social media, particularly with the advancement of communication technologies. After verifying the complainant's legal standing, interest, and that the complaint is based on legal grounds, the Republic Mediator qualifies it within their scope of competence. This involves conducting investigations and inquiries to verify the accuracy of the information contained in the complaint, assess the harm suffered by the complainant, and legally classify it. Additionally, the Mediator investigates the concerned facility, requesting clarifications, documents, and necessary information to uncover the truth.

The legislator has granted the Republic Mediator the necessary powers to meet the complainant's request within the framework of full respect for the rule of law by the implicated facility. To resolve the issue raised between the complainant and the concerned facility, the Algerian legislator has obligated the public facility in question to respond to all inquiries posed by the Republic Mediator within a reasonable time frame.⁽²²⁾ However, no specific period has been defined, which allows the facility to delay and fail to respond promptly.

If the Republic Mediator receives an unsatisfactory response to the proposals and recommendations regarding the issues presented to the concerned administration, they may inform the President of the Republic through reports. These reports outline the measures and decisions that should be taken against the administration or its employees.

Reasonable Time Frame⁽²³⁾ However, no specific period has been clearly defined, which allows the concerned facility to procrastinate and fail to respond promptly. In cases where the Republic Mediator receives an unsatisfactory response to the proposals and recommendations regarding issues presented to the concerned administration, they may inform the President of the Republic through reports outlining the measures and decisions that should be taken against the administration or negligent employees.⁽²⁴⁾ Additionally, the Republic Mediator submits an annual report to the President of the Republic, summarizing their activities, evaluating the quality of public services, and proposing necessary recommendations to improve their functioning and achieve governance excellence.

CONCLUSION:

It is noticeable that Presidential Decree No. 20-45 dated February 15, 2020, establishing the Republic Mediator, is derived from Presidential Decree No. 96-113 dated March 23, 1996, which also established the Republic Mediator. Hence, we propose the following:

1. Enhancing the effectiveness of the Republic Mediator by providing mechanisms and tools to protect individuals when dealing with the administration.
2. Ensuring financial and functional independence for the Republic Mediator.
3. Implementing legal texts effectively, as the reliance on this body and seeking its counsel or guidance is minimal, which needs to be addressed.
4. Presenting the Republic Mediator's annual report to Parliament, as is customary in systems from which this institution is inspired, such as France.

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7-Loi organique n° 2011-333 du 29 mars 2011 relative au défenseur des droits, Journal Officiel de la République Française (J.O.R.F), n° 0075 du 30 mars 2011.

Footnotes

¹- **Loi organique n° 2011-333 du 29 mars 2011 relative au défenseur des droits**, *Journal Officiel de la République Française (J.O.R.F)*, n° 0075 du 30 mars 2011.

²- Décret présidentiel n° 96-113 du 23 mars 1996, portant création du Médiateur de la République, *Journal Officiel Algérien*, n° 20, 31 mars 1996, abrogé.

³- Décret présidentiel n° 99-170 du 2 août 1999, portant suppression de l'institution du Médiateur de la République, *Journal Officiel Algérien*, n° 52, 4 août 1999.

⁴- Derrifi Nadia, Haj Jaballah Amal, *Les mécanismes juridiques en Algérie*, article publié dans *Revue de l'Ijtihad Judiciaire*, Faculté de droit et sciences politiques, Université Mohamed Khider, Biskra, Algérie, vol. 50, n° 25, mars 2020, p. 9.

- ⁵- Omar Flaq, *La relation entre l'administration et le citoyen en Algérie (étude juridique du décret 88/131 : la place du citoyen dans l'expérience de l'ancien Médiateur de la République et du Comité national consultatif pour la promotion et la protection des droits de l'homme)*, *Revue des Études Juridiques*, Université Yahia Fares, Médéa, n° 2, 2015, p. 160.
- ⁶- Voir : article 06 du décret présidentiel n° 99-170 du 2 août 1999.
- ⁷- Voir : article 07 du décret présidentiel n° 99-170, même référence.
- ⁸- Voir : article 08, même référence.
- ⁹- Charefi Safia, *L'expérience du Médiateur de la République en Algérie : de la création à l'abrogation, comparaison avec le modèle suédois et français*, mémoire de master, Faculté de droit, Ben Aknoun, Université d'Alger, Algérie, 2004, p. 44.
- ¹⁰- Omar Flaq, *La relation entre l'administration et le citoyen*, même référence, p. 160.
- ¹¹- Derrifi Nadia, Haj Jaballah Amal, *Les mécanismes juridiques et institutionnels pour améliorer la relation entre l'administration et le citoyen en Algérie*, article publié dans *Journal Officiel Algérien*, n° 09, 19 février 2020.
- ¹²- Article de Rachid Khaloufi, *Le Médiateur de la République*, *Revue de l'Administration*, n° 2, 1998, p. 50.
- ¹³- Article de Rachid Khaloufi, *Le Médiateur de la République*, publié dans *Revue Algérienne de l'Administration* (en français), vol. 8, n° 1, 1998, p. 30.
- ¹⁴- Abdelaziz El-Sayed El-Gohary, *La Fonction publique : Étude comparative avec un focus sur la législation algérienne*, Office des publications universitaires, Ben Aknoun, 1ère édition, 1985, p. 5.
- ¹⁵- Ammar Aouabdi, *La nature juridique du Médiateur de la République*, *Revue de l'Administration*, n° 02, 1998.
- ¹⁶- Ammar Aouabdi, *La nature juridique du Médiateur de la République*, *Revue de l'Administration*, n° 02, 1998.
- ¹⁷- C'est la même disposition que l'article 5 du décret présidentiel n° 99-170, précédemment référencé.
- ¹⁸- Voir : article 02 du décret n° 85-59 du 23 mars 1985, relatif au statut-type des travailleurs des institutions et administrations publiques.
- ¹⁹- Khaloufi Rachid, *Le Médiateur de la République algérien*, *Revue de l'Administration*, n° 2, p. 14.
- ²⁰- Ben Salem Ahmed Abdelrahman, Hashi Mohamed El-Amin, *Le Guide succinct de la théorie générale des constitutions (À la lumière du nouvel amendement constitutionnel accompagné de la Constitution algérienne)*, Dar Al-Majd pour l'édition et la distribution, 1ère édition, Sétif, Algérie, 2018, p. 40.
- ²¹- Constitution du 28 février 1996, n° 76 du 8 décembre 1996, modifiée par la loi n° 02-03 du 14 avril 2002, et également modifiée par la loi n° 08-19 du 15 novembre 2008 (*Journal Officiel*, n° 63 du 16 novembre 2008), modifiée également par la loi n° 16-01 du 7 mars 2016 (*Journal Officiel*, n° 14, publié le 7 mars 2016) et enfin par le décret présidentiel n° 20-251 du 27 Muharram 1442 (15 septembre 2020), portant amendement constitutionnel (*Journal Officiel*, n° 54).
- ²²- Voir : article 09 du décret n° 20-45, précédemment référencé.
- ²³- Voir : article 06 du décret n° 20-45, même référence.
- ²⁴- Voir : article 06 du décret n° 20-45, même référence.