



## THE WRITTEN PRESS AND ELECTRONIC PRESS REGULATORY AUTHORITY BETWEEN INDEPENDENCE AND DEPENDENCE IN LIGHT OF LAW NO. 23-19

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### Abstract

*The Algerian legislator explicitly acknowledged the independence of the authority to control the written press and electronic journalism as an independent administrative authority, as this characteristic symbolizes the escape of this authority from any form of administrative control, which means that the independence of the authority to control the written press and electronic journalism find its guarantees in one of them is organic and the other is functional. But when reflecting on the legal texts organized by it as a body that was entrusted with controlling the activities of the written press and electronic journalism, it concludes that this independence is relative that raises several questions and interpretations about the extent to which the legislator recognizes it, whether it relates to the organic or functional side, which made this characteristic relative and restricted by the executive, which makes it dependent on it.*

**Keywords:** Control; Independence; Independent Administrative Authorities; Written Press and Electronic Journalism.

### INTRODUCTION

Algeria has seen a number of changes, beginning with the implementation of a socialist system that failed to meet its objectives. However, specifically with the 1989 Constitution, Algeria's efforts turned towards reassessing the state's involvement in the economy. This necessitated the creation of mechanisms and tools, prompting the legislator, from an institutional perspective, to establish a new organizational form following the state's withdrawal, known as the independent administrative authorities.

The first media industry regulator, the High Council of Information, was founded in 1990. But three years later, Presidential Decree 93-252 abolished it. It was subsequently published in 2012 as the Organic Law on Information,<sup>1</sup> which established the written press's regulating body with the goal of bringing media plurality to Algeria. This body was recognized as autonomous from the government and political authority since it was entrusted with regulating media activities rather than the typical governmental bodies. Among these bodies are the regulatory authorities for both written and online press,<sup>2</sup> as reflected in the legal texts that emphasize media openness and the actual realization of media freedom in Algeria.

In order to carry out its tasks as an independent administrative authority, it has been granted broad powers and authorities, which were conferred by the legislator under Article 42 of Law No. 23-19 concerning written and electronic press.<sup>3</sup>

Nevertheless, if this body lacks the independence required to shield it from the influence and meddling of political and administrative power, these powers will not be able to intervene with the intended efficacy.

The autonomy rules serve as the cornerstone of the legislative framework for autonomous administrative authorities and serve as a defining characteristic that sets them apart from more established entities within the state's administrative machinery.



Going back to the concerns brought up by this topic, we want to clarify this authority's status as a separate administrative body and pose the question that: Has the Algerian legislator succeeded in establishing actual autonomy for the Media Regulatory Authority for written and electronic press?

To study this subject and address the raised issue, we will rely on a combination of scientific methods in this research, such as the analytical method through the analysis of the legal provisions governing the power and defining the origins of its independence, according to the descriptive approach.

The topic will be covered by looking at the Media Regulatory Authority's independence for the written and electronic press from two angles. In this study, we have chosen to separate our findings into two primary components: in the first section, we will discuss the autonomy of the Media Regulatory Authority for written and electronic press from an organic perspective, while the second section will address its functional autonomy.

## **SECTION 1: FOUNDATIONS OF ORGANIC INDEPENDENCE**

The characteristic of independence is one of the fundamental pillars that distinguishes independent administrative authorities from other traditional bodies, serving as the criterion that gives them their uniqueness and distinctiveness within the state.<sup>4</sup> Different autonomous administrative authorities have different levels of independence. It is evident from studying Organic Law No. 23-19 that the legislator wants to strengthen a number of the authority's organic independence grounds and indicators (A). However, this independence is constrained in connection to the executive power (B) by a number of restrictions and actions taken by the executive authority.

### **A) Indicators of Organic Independence:**

It is clear that the Media and Electronic Media Regulatory Authority is an autonomous administrative organization based on organic independence indicators. This independence requires compliance with a set of guarantees that affirm this characteristic, particularly in relation to the structural system (First), and the legal framework for the members of this authority (Second).

#### **1- Composition of the Authority Members:**

The authority has nine members, including a chairperson chosen by the president of the republic, as stated in Article 43 of Organic Law No. 23-19. This authority's organizational independence may be inferred from the makeup of its members. This leads us to discuss a few points in more detail, namely the authority's collective character (A) and the variety of its members (B).

##### **1.1- Collective Nature:**

The collective criterion is one of the fundamental guarantees of independence, as it ensures two main factors: achieving balance among the various bodies that appoint the members of the authority, and ensuring collective deliberation on sensitive topics and complex issues. This serves as a guarantee for objectivity and seriousness within independent administrative bodies.<sup>5</sup>

A collective composition for all autonomous administrative bodies has been established by the Algerian parliament,<sup>1</sup> except for the Mediator of the Republic.<sup>6</sup> The collective and diverse character of independent administrative bodies facilitates the activation of communication and consultation procedures among its members to investigate and resolve issues and provide practical solutions.<sup>7</sup> Furthermore, one of the new administrative methods for handling administrative matters is collective nature, which has failed to fulfill the standards of efficiency, specialization, and transparency set by classical administration. The benefits of communal administration are further highlighted by its adaptability and proficiency. This leads to the conclusion that autonomous administrative organizations, which reflect the governance of wisdom following the rule of judges, constitute a new way to exercise power.<sup>8</sup>

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<sup>1</sup>- An example of collective independent administrative authorities includes: the Postal and Electronic Communications Regulatory Authority, the Insurance Supervision Committee, the Stock Exchange Operations Regulation and Monitoring Committee, the Competition Council, the Monetary and Banking Council, etc.



After looking at the Regulatory Authority for the Written and Online Press's membership, which is the subject of this study, it becomes clear that the Algerian legislator sought to establish this structure in line with the approach of its French counterpart, which emphasizes a collective nature in most independent administrative bodies.<sup>9</sup>

A review of Article 43 of Law No. 23-19, previously mentioned, shows that the legislator established a collective composition. The president is one of nine members of the Regulatory Authority for the Written and Online Press. Furthermore, the President of the Republic has exclusive discretion over the nomination of members to the body.<sup>10</sup> Article 50 of Law No. 12-05 specifies that this is a change from the legislator's approach to the proposal and nomination procedure for the composition of the Regulatory Authority for the Written Press: "The Regulatory Authority for the Press consists of fourteen members, appointed by presidential decree as follows:

- The President of the Regulatory Authority is one of the three (3) members chosen by the President of the Republic.
- The National Council President nominated two (2) non-parliamentary members.
- The Senate President nominated two (2) non-parliamentary members.
- Seven (7) members elected by an absolute majority from professional journalists with at least fifteen (15) years of experience in the field.<sup>11"</sup>

### **1.2- The Mixed Nature:**

One of the most important factors in maintaining the Media Regulatory Authority's independence and promoting acceptance of its rulings is the diverse makeup of the body that oversees the printed and electronic press.<sup>12</sup> The diversity of the legal statuses and qualifications of the members helps facilitate the performance of the authority's functions, as well as the completion of its tasks assigned to it in the best possible way, ensuring its independence and neutrality. The collective structure alone is insufficient and does not serve as a guarantee for the independence of these bodies without a pluralistic composition that includes a diversity of proposed parties to reach consensual solutions to various issues raised.<sup>13</sup>

Examining the fundamental makeup of this authority reveals that its nine members are chosen from among those with expertise in media, legal, technological, and journalism-related sectors.

In order to create a differentiated working environment free from outside pressures, the legislature has also mandated that the regulating authority's membership be diversified, specialized, and composed of experienced personnel. As a result, the authority's members are more balanced, and since these entities are collective, prejudice is avoided.<sup>14</sup>

### **B) Regulatory Rules for the Members of the Authority:**

Understanding the regulatory foundations related to the members of the Media and Electronic Media Regulatory Authority requires focusing on a set of aspects that enhance the independence and neutrality of the members. This is accomplished by applying the conflict of interest guidelines (Second) and the tenure system (First).

#### **1- Consolidation of the Tenure System:**

"Tenure" is the legal time allotted to the authority members to carry out their responsibilities. As a result, they cannot be expelled, suspended, or excluded unless there has been grave wrongdoing. To further guarantee their independence, the appointing authority may not exert any influence or pressure. One of the main principles that symbolizes the autonomy of independent administrative agencies is the determination of the tenure period for its members.<sup>15</sup> This guarantees their independence and prevents members from seeking favoritism or yielding to the authority that appointed them in hopes of renewing their term, thereby ensuring the proper performance of their duties.<sup>16</sup>



It is evident from examining the legislation creating the Media and Electronic Media Regulatory Authority that the lawmaker chose to create a five-year membership term that is renewable once.<sup>17</sup> According to Article 48 of the same law: "In the event of a violation by any member of the authority of the provisions of Article 46 of this law, they shall be replaced for the remainder of the term, according to the procedures outlined...".

## **2- Establishment of the Conflict of Interest System:**

One of the justifications for the establishment of independent administrative bodies is to ensure their neutrality in dealings with economic operators, as well as in their interactions with elected and public officials, particularly concerning the guarantee of transparency and integrity in the management of political life and public affairs.

The goal of putting the conflict of interest system into place is to protect independent administrative authorities from presidential power and administrative control, and maintaining their objectivity while carrying out their responsibilities to the institutions they are responsible for. This is accomplished by using and adhering to the conflict of interest system.<sup>18</sup> Apart from temporary higher education jobs and oversight of scientific research, members of the Press and Electronic Media Regulatory Authority are barred from holding any other public or private sector positions or executive duties within political parties or trade unions under the conflict of interest system.<sup>19</sup>

Additionally, having any advantages or interests in a functioning media organization clashes with participation in the Press and Electronic Media Regulatory Authority.<sup>20</sup> The member's conflict of interest period lasts for two years after the conclusion of their authority term. The purpose of this limitation is to enable members to focus entirely on their responsibilities and prevent any interruptions that might impair their performance.

Considering this principle's contribution to strengthening the autonomy of autonomous administrative agencies,<sup>21</sup> By adopting Order No. 07-01, which addresses incompatibility concerns and the particular responsibilities for certain posts and tasks, the legislature consolidated these obligations across all autonomous administrative bodies.<sup>22</sup>

## **SECTION TWO: LIMITS OF ORGANIZATIONAL INDEPENDENCE:**

Although the legislator, through Organic Law 23-19, established a range of guarantees for the independence of the Regulatory Authority for the Written and Online Press, this independence is limited and has not been fully realized due to several factors influenced by the executive branch that hinder its independence in this regard.

Among the constraints limiting the organizational independence of the Regulatory Authority for the Written and Online Press are the exclusive authority of the executive branch in appointing members (first), the potential for members' mandates to be renewed or terminated (second), and the lack of a clause allowing for abstention (third).

### **A) The Exclusive Appointment Authority of the Executive Branch:**

Referring to Article 43 of Law 23-19, as mentioned earlier, which concerns the composition of the Regulatory Authority for the Written and Online Press, it is clear that the President of the Republic has the exclusive authority to appoint its members,<sup>23</sup> including its president. This illustrates what is referred to as the President's concentration of appointment authority,<sup>24</sup> which acts as an obstacle to independence. The appointed member is always aware that the appointing authority holds favor over them and has sole discretion to reappoint them. This can negatively affect the actions, opinions, criticisms, and guidance issued by the member, in addition to the potential risks of politicizing these positions.

However, upon examining the Organic Law on Media No. 12-05, and according to Article 50, where the composition of the authority is distributed among several actors to propose members, it is divided between the National People's Assembly, the Council of the Nation, and the election of some other members.



Law No. 23-19 has not really accomplished this, but, because the executive branch, represented by the President of the Republic, has the power to designate. Therefore, it is obvious that the President of the Republic has the only authority to designate every Media Regulatory Authority member for the written and electronic press, which is within the executive branch. This hinders the constitutional right to freedom of the press and undermines the credibility and independence of the media and electronic press sectors.<sup>25</sup>

According to Professor Rashid Zwaimieh, this centralization of appointments without the involvement of other stakeholders, particularly the parliament and the Council of the Nation, does not serve the autonomy of the authority. The issue of the President of the Republic appointing the members is not a new matter, as it stems from the appointment of public office holders in the state. Therefore, it should not be considered as a limitation to autonomy. Rather, it should ensure pluralism and neutrality in the appointment process, which is essential for the functioning of independent administrative authorities.<sup>26</sup>

Therefore, a method wherein the head of the authority is chosen by its members after their appointment has to be put in place, to ensure the actual realization of the Media Regulatory Authority for written and electronic press's independence from the executive branch, with real, not merely nominal, autonomy.

#### **B) Renewability and Termination of Tenure:**

It is important to note that the Media and Electronic Media Regulatory Authority's membership's independence is threatened by the question of tenure renewability. As a result, the authority's ability to operate is adversely affected since its members become reliant on and obedient to the appointing body, worrying about the length of their tenure and how to extend it.

The prospect of extending the terms of the Media and Electronic Media Regulatory Authority members has been made available by the Algerian lawmaker.<sup>27</sup> Because it gives outside parties—especially the executive authority—more power to cajole and compel members into consenting to extend their terms, this undermines the members' independence. Furthermore, a lack of renewal may give rise to difficulties and questions about the independence of the authority.<sup>28</sup>

#### **C) The Abstention Procedure:**

In contrast to the conflict of interest system, the abstention procedure prevents a member from participating in deliberations regarding matters in which they have an interest or a familial connection with one of the parties involved.<sup>29</sup>

Similar to other autonomous administrative agencies, it seems that the legislator has exempted members of the Media and Electronic Media Regulatory Authority from the abstention process with reference to Law 23-19, as was previously reported. However, Article 29 of Ordinance 03-03 pertaining to competition, as modified, states that the abstention method is only officially defined in the Competition Council's Regulatory Authority. This article states: "No member of the Competition Council may participate in deliberations related to a case in which they have an interest, or if they have a familial connection up to the fourth degree with one of the parties involved, or if they have represented or are representing one of the parties involved...".<sup>30</sup>

The absence of enacting this procedure in some authorities affects the credibility of the independent administrative authority and the lack of transparency within it, which constitutes a violation of the principles of independence and the neutrality of members in carrying out their duties. Therefore, it is essential for the legislator, in order to ensure transparency and integrity in the work of independent administrative bodies, to regulate this procedure through legislation that governs its implementation for these authorities, as is the case with the conflict of interest system.

#### **D) Foundations of Functional Independence:**



Independence is thus very essential in reaching the intended result of properly and impartially controlling the operations of the written and electronic press, the legislator has also provided the authority with functional independence, in addition to its organizational independence. To assess this functional independence, it is necessary to first examine the indicators of the establishment of functional independence (First Section), and then address the limitations of this independence (Second Section).

### **1-: Indicators of Functional Independence:**

A number of factors demonstrate the Press and Electronic Media Regulatory Authority's functional independence, chief among them being its administrative and financial independence (First) and legal independence (Second).

#### **1.1- Financial and Administrative Independence:**

In addition to its administrative independence (B), the Press and Electronic Media Regulatory Authority enjoys financial autonomy (A) as a result of the legislator's establishment of financial independence for the authority in budget management, according to an analysis of the legal texts pertaining to the authority.

##### **1.1.1- Financial Independence:**

Financial independence is one of the most essential criteria in establishing the independence of independent administrative authorities from the executive branch as it separates the economic regulatory authority from the executive in terms of money.<sup>31</sup> Financing through its own resources strengthens its independence. Financial independence is reflected in these authorities' control over the sources of funding for their budgets, independent of state grants or donations, as well as their autonomy in establishing and implementing financial policies, in addition to their independence in management.<sup>32</sup> Three fundamental pillars have been recognized by certain legal experts as being necessary to assess the financial independence of regulatory bodies:

- Independence in financial planning.
- Independence in the implementation of the budget.
- Self-reliance in management.<sup>33</sup>

Referring to the provisions of Law 23-14,<sup>34</sup> Article 13, which reads, "By this organic law, the Regulatory Authority for the Written and Online Press is established as an independent authority, enjoying legal personality and financial and administrative independence..." makes it evident that the Regulatory Authority for the Written and Online Press has financial independence.

In this regard, the legislator, under Article 61 of Law No. 23-19, has enshrined the autonomy of the authority in managing its resources, considering that the head of the authority is the one with the power of disbursement. This strengthens its independence and ensures it is not subordinated to other administrative bodies.<sup>35</sup>

##### **1.1.2- Administrative Independence:**

A number of factors demonstrate the Media Regulatory Authority's independence with regard to the written and electronic press, most notably the head's power to draft and approve internal rules and fundamental legislation for the authority's staff.

In this regard, Article 57 of Organic Law No. 23-19 states, "The head of the authority determines the organization of the administrative and technical services of the authority..."

Apart from running the administrative and technical departments and using disciplinary power over the staff under the authority's supervision, ensures that these bodies are free from the intervention of the executive branch in managing their affairs, making the decisions they reach more independent and neutral.





This makes it evident that the Algerian lawmaker has given the Media Regulatory Authority for the written and electronic press a separate administrative structure, with respect to the head of the authority's management and organization powers.

## **1.2- Legal Independence:**

Upon reviewing Law No. 23-19 concerning the written and electronic press, it becomes clear that the legislator has granted the authority the ability to establish its internal system (A), as well as the ability to enjoy legal personality (B).

### **1.2.1- Independence in Establishing the Internal Regulations:**

The flexibility of independent administrative authorities to choose the set of rules that govern their structure and operations is an example of functional independence in this context, without any involvement from other parties, especially the executive authority. This also includes the requirement for the internal regulations to be approved by the executive authority and its publication.<sup>36</sup>

In this regard, the Media and Electronic Media Regulatory Authority enjoys independence in The Media and Electronic Media Regulatory Authority is independent in drafting and approving its internal rules in this respect, as shown by Article 57 of Law 23-19, which reads: "... The President of the Authority prepares the basic law for the Authority's staff and the internal regulations, which are then approved by the Authority's Council."

The Media and Electronic Media Regulatory Authority is also committed to posting its internal regulations in the authority's official bulletin to execute and ensure its accessibility. This strongly indicates the operational autonomy of the regulating body.

### **1.2.2- Enjoying Legal Personality:**

The granting of legal personality to independent administrative authorities by the Algerian legislator acknowledges the importance of this recognition, as it is necessary for these authorities to perform their functions. It also constitutes an extension of their independence. The Media and Electronic Media Regulatory Authority enjoys legal personality, as established by Article 13 of Organic Law 23-14 concerning media, which states: "Under this organic law, the Media and Electronic Media Regulatory Authority is established as an independent authority that enjoys legal personality, administrative, and financial autonomy...".

This is considered a grant of legal personality to the Press and Electronic Media Regulatory Authority in particular, and to independent administrative bodies in general. This approach mirrors the practice of the French legislator with regard to certain authorities, as an exception aimed at providing greater flexibility in administrative and financial management. Among these authorities is the High Audiovisual Council. The Algerian legislator has followed the French legislator's approach by granting legal personality to independent administrative authorities, including this authority,<sup>37</sup> as a sign of recognition of its legal and financial independence, given the consequences of this, such as the right to litigate, financial autonomy, and the capacity to contract.<sup>38</sup>

Professor Rachid Zwaimia contends that giving legal personality and allowing autonomous administrative organizations to benefit from it are not deciding factors for assessing and defining their independence.<sup>39</sup> However, it remains an indicator that helps independent administrative bodies to solidify their functional independence, with significant legal consequences, including the capacity to litigate, contract, and assume responsibility.

## **E) Limitations of Functional Independence:**

The Press and Electronic Media Regulatory Authority's functional independence under the new law 23-19 is reflected in a number of characteristics that the Algerian legislator has embodied; however, this does not imply complete independence and does not negate the existence of certain shortcomings that limit its independence, making it relative in terms of both legal and administrative independence as well as financial



independence. The executive authority's policies, such as the relative financial independence (First) and the submission of the authority's yearly report to the legislative and executive branches (Second), restrict functional independence and are the reason this problem has not been addressed.

### **1- Relative Financial Independence:**

Because to the executive branch's interference, the Regulatory Authority for the Written and Online Press's financial independence is still relative even if the legislature expressly acknowledged it as an independent administrative entity under Article 13 of Law 23-14.

The power to set its own financial policy has not been specifically given to the authority. The budget allotted to it is part of the state budget and is governed by the general management regulations. Article 61 of Law 23-19, which deals with the written and internet press, makes this clear. It says: "The necessary credits for the authority to carry out its tasks are included in the state's general budget. The authority's accounting is governed by public accounting rules. The authority's expenditures are subject to public accounting procedures."

This calls into question the inconsistency between the inclusion of the authority's credits in the state budget with the requirements of Article 14 of Law 23-14, which provides the authority financial and administrative independence.

Thus, it must be stated that the financial independence of the Media Regulatory Authority for written and electronic press is relative, as most of the funding it receives comes from state contributions to carry out its duties. This is because the financial requirements of the authority are included in the state's general budget, which results in automatic dependence on the executive branch.<sup>40</sup> This connection at the budgetary level (le rattachement budgétaire) of independent administrative authorities has led some to assert that this is indicative of the subordination of these bodies and that it is unrealistic to talk about the characteristic of independence as long as the so-called "umbilical cord" still ties these independent administrative bodies to the executive branch.<sup>41</sup>

### **2- Preparation of the Annual Report:**

This function reveals how the influence of the government, especially via the yearly report filing, compromises the independence of administrative authorities in performing their responsibilities.

As an independent administrative entity, Law No. 23-14, as modified and supplemented, clearly declares the independence of the Media Regulatory entity for printed and electronic press. Reviewing the clauses of Law No. 23-19, which governs the operations of this authority, however, reveals that the independence of this body begs numerous concerns given governmental control over its acts as an independent administrative authority.

Upon reviewing the content of Article 60 of Law No. 23-19, concerning written and electronic press, it states, "The authority shall submit annually to the President of the Republic and to the minister responsible for communication a report on its activities, which shall be made public within thirty (30) days of its submission."

As a result, the legislature requires the authority to submit a comprehensive report that includes a variety of information pertaining to the authority's yearly operations, including decisions, opinions, research, and consultations.

This implies a restriction on the authority's autonomy to conduct its operations, due to the indirect oversight, so to speak, exercised by both the Minister of Communication and the President of the Republic.

If this is any indication, it is that the executive power has stepped in, making the Media and Electronic Media Regulatory power a body that reports to it, as we have already indicated. This hinders and limits its autonomy in carrying out its responsibilities.





### CONCLUSION:

From our reading and analysis of Law 23-19 concerning the Media and Electronic Media Regulatory Authority, it becomes clear from the outset that the Algerian legislator has established positive foundations for the independence of this authority, which cannot be denied. This is achieved by equipping the authority with a set of guarantees that ensure it a certain level of freedom in regulating the sector entrusted to it.

However, despite the establishment of several features that support the independence of the Media and Electronic Media Regulatory Authority, both in its organic and functional aspects as an independent administrative authority tasked with overseeing this sector, an examination of the legal texts governing this authority reveals that the legislator has not succeeded in establishing true independence for the authority.

The fact is that the executive power, represented by the President of the Republic, controls the media industry in general and the regulatory authority in particular, therefore the situation stays static. The Algerian legislator's imposition of a series of limitations combined with shortcomings and holes in the legislative texts governing the independence of the authority as an independent administrative entity, particularly in relation to its organizational and functional independence, explains this. Among the problems are:

- The omission of judicial members from the composition of the authority results in a lack of judicial component in the representation of the regulatory body.
- The executive branch's unique power, represented by the President of the Republic, to name members turns the regulatory authority into an instrument under its control.
- One of the main signs of independence is the regulatory authority's financial independence, which is not often acknowledged.
- The need for the regulatory authority to draft an annual report and distribute it to the appropriate supervisory bodies.

In order to establish genuine independence for the Press and Electronic Media Regulatory Authority, enabling it to perform its duties in regulating the media sector impartially, we propose the following suggestions that could contribute to its independence:

- Modifying Article 43 of Law 23-19 to exactly specify competences and guarantee that the authority's leadership is provided to someone with significant media industry knowledge.
- Creating systems to assure balance between the many organizations representing the public in suggesting and selecting members of the authority and its chairman, so offering the best assurance for building a really independent council, both administratively and financially.
- Exempting the authority from the obligation to prepare and submit an annual report to the appointing body.
- Except in unusual situations, let the authority finance its operations independently of state treasury dependence.


Therefore, the legal framework governing the regulatory authority as an independent administrative body should be reconsidered, addressing the deficiencies and issues that hinder its independence.

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