

PUBLIC INDEPENDENT AUTHORITIES IN ALGERIAN LAW



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Abstract: After experiencing the insertion of independent administrative authorities in the institutional landscape, Algerian law is enriched by a new category of bodies established as part of the reforms undertaken following the revision of the Constitution in 2020: it is the category of public independent authorities which includes the Independent National Authority for Elections and the High Authority for transparency, prevention and fight against corruption, whose creation by constitutional means gives them all their specificity. It remains however that it is permissible to doubt their efficiency because of the fiction of the independence which they are endowed with and their insertion into a political system impervious to the political reforms which dictate the requirements of the governance and the Rule of Law.

Key Words: Public authority; Independence; Governance; Rule of Law; Decorative function.

السلطات العمومية المستقلة في القانون الجزائري

ملخص: بعد تجربة اعتماد فكرة السلطات الإدارية المستقلة في المشهد المؤسسي، يسجل إثراء المنظومة القانونية الجزائرية من خلال فئة جديدة من الهيئات التي تم إنشاؤها في إطار الإصلاحات التي أملاها التعديل الدستوري لسنة 2020: وتتمثل في فئة السلطات العمومية المستقلة التي تكمن خصوصيتها في إنشائها بموجب أحكام الدستور والتي تضم كل من السلطة الوطنية المستقلة للانتخابات والسلطة العليا للشفافية والوقاية من الفساد ومكافحته. غير أنه يمكن التشكيك في فعالية السلطتين بسبب الطابع الخيالي للاستقلالية التي تتمتعان بها وإدراجهما ضمن نظام سياسي منيع للإصلاحات السياسية التي تملئها مقتضيات الحوكمة وسيادة القانون.

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الكلمات المفتاحية: السلطة العمومية، الاستقلالية، الحوكمة، دولة القانون، الوظيفة التجميعية.

Les autorités publiques indépendantes en droit algérien

Résumé :

Après avoir connu l'insertion des Autorités administratives indépendantes dans le paysage institutionnel, le droit algérien s'enrichit d'une nouvelle catégorie d'organes institués dans le cadre des réformes entreprises à la suite de la révision de la Constitution en 2020 : il s'agit de la catégorie des Autorités publiques indépendantes qui englobe l'Autorité nationale indépendante des élections et la Haute Autorité de transparence, de prévention et de lutte contre la corruption dont la création par voie constitutionnelle leur donne toute leur spécificité. Il reste toutefois qu'il est permis de douter de leur efficience du fait de la fiction de l'indépendance dont elles sont dotées et de leur insertion dans un système politique imperméable aux réformes politiques que dictent les exigences de la gouvernance et de l'État de droit.

Mots Clés : Autorité publique ; Indépendance ; Gouvernance ; Etat de droit ; Fonction décorative.



Introduction:

The Algerian legal system has undergone significant changes since the issuance of the 1989 constitution, mainly adopting legal techniques from liberal states. This was a result of economic liberalization and the demands of globalization. As the state retreated from its initial intervention in economic activities, in line with building a market economy, the legislature turned to legal instruments used in Western countries, particularly by emulating the French legal system.

Consequently, public authorities established new structures known as independent administrative authorities. These authorities were tasked with various functions closely related to regulating the economy during its transitional phase, both in the economic and financial fields¹.

However, the legislator did not limit the concept of independent administrative authorities to economic and financial regulation. This concept extended beyond these fields to encompass political reforms prompted by governance principles and the establishment of the Rule of Law. Thus, alongside independent regulatory authorities, new independent administrative authorities have been established since 2006 outside the economic and financial field. These can be categorized in two groups :

- Authorities established in sensitive sectors, including the National Authority for the Prevention of Corruption, responsible for ethics in public affairs and enhancing the integrity of public employees², and the Financial Inquiry Cell, which focuses on combating money laundering and terrorism financing³.

¹- In addition to the independent administrative authorities, the legislator introduced a new type of regulatory authorities that encompass independent commercial authorities responsible for regulation in the sectors of hydrocarbons and mines.

²-Law No. 06-01 dated February 20, 2006, concerning the prevention and combating of corruption, *Official Journal* No. 14 of March 8, 2006, completed by Ordinance No. 10-05 dated August 26, 2010, *Official Journal* No. 50 of September 1, 2010, further amended by Law No. 11-15 dated August 2, 2011, *Official Journal* No. 44 of August 10, 2011, amended by Law No. 22-08 dated May 5, 2022, organizes the High Authority for Transparency, Prevention and fight against Corruption, defines its structures, powers, *Official Journal* No. 32 of May 14, 2022.

³- Law No. 05-01 dated February 6, 2005, concerning the prevention of money laundering, terrorism financing and their combat, *Official Journal* No. 11 of February 9, 2005, completed by Ordinance No. 12-02 dated February 13, 2012, *Official Journal* No. 8 of February 15, 2012, further amended by Law No. 15-06 dated February 15, 2015, *Official Journal* No. 8 of February 15, 2015, further amended by Law No. 23-01 of February 7, 2023, *Official Journal* No. 8 of February 8, 2023.



- Authorities responsible for protecting individual freedoms and rights, including the National Authority for Electronic Certification¹, the National Authority for Preventing and Combating Crimes related to Information and Communication Technologies², the National Authority for the Protection of Personal Data³, and the National Authority for Nuclear Safety and Security⁴.

However, after the consolidation of the concept of independent administrative authorities, there is a noticeable shift from this model to a new one, namely the category of public independent authorities. This category includes the National Independent Electoral Authority and the High Authority for Transparency and the Prevention of Corruption. Given this qualitative transition and the unfamiliar nature of this model, it is essential to examine **the extent to which public independent authorities adhere to the principles of governance and the requirements of the Rule of Law ?**

To address this topic, which requires the application of a standardized methodology, it is possible to highlight the distinctive legal status of public independent authorities (**firstly**) before revealing the effects resulting from their legal status within the institutional framework (**secondly**).

FIRST TOPIC: The Distinct Legal Status of Independent Public Authorities in Algerian Law

The study of the distinct legal status of independent public authorities in Algerian law necessitates an examination, first and foremost, of their enhanced legal nature (I). Subsequently, it highlights the extent to which they are endowed with sufficient powers to achieve the requirements of governance and the Rule of Law (II).

First requirement: The Enhanced Legal Nature of Independent Public Authorities

¹-Law No. 15-04 of February 1, 2015, establishes the general rules related to electronic signatures and certification, *Official Journal* No. 6 of February 10, 2015.

²- Law No. 09-04 dated August 5, 2009, includes specific rules for the prevention and combating of crimes related to information and communication technologies, *Official Journal* No. 47 of August 16, 2000 ; Presidential Decree No. 21-439 dated November 7, 2021, reorganizes the National Authority for Preventing and Combating Crimes related to Information and Communication Technologies, *Official Journal* No. 86 of November 11, 2021.

³-Law No. 18-07 dated June 10, 2018, concerns the protection of natural persons in the processing of personal data, *Official Journal* No. 34 dated June 10, 2018.

⁴-Law No. 19-05 dated July 17, 2019, relates to nuclear activities, *Official Journal* No. 47 of July 25, 2019; Executive Decree No. 21-148 dated April 20, 2021, organizes the National Authority for Nuclear Safety and Security, *Official Journal* No. 31 of April 27, 2021.



Article 200 of the Constitution stipulates that **"The National Independent Authority for Elections is an independent institution,"**¹ and Article 204 declares that **"The High Authority for Transparency and the Prevention of Corruption and the Fight Against It is an independent institution".**² Similar provisions are found in the framework laws of these authorities, as evidenced by Article 8 of Law No. 21-01, which provides : **"The National Independent Authority for Elections has legal personality and administrative and financial independence and is referred to in the text as an 'independent authority'"**³. Similarly, Article 2 of Law No. 22-08 specifies that **"the High Authority is an independent institution with legal personality, financial and administrative independence".**⁴ From these provisions, it can be deduced that the National Independent Authority for Elections and the High Authority for Transparency and the Prevention of Corruption possess an enhanced legal nature due to their privileged status under the Constitution. However, considering them as independent public authorities⁵ necessitates a comparison of their meaning with the concept of independent administrative authorities.

First section: A Comparison between Independent Public Authority and Independent Administrative Authority

Classifying the National Independent Authority for Elections and the High Authority for Transparency and the Prevention of Corruption as independent public authorities requires exploring the distinctiveness of this new concept compared to the

¹- Article 200 of the Constitution of the People's Democratic Republic of Algeria for the year 1996, published pursuant to Presidential Decree No. 96-438, dated December 7, 1996, *Official Journal* No. 76, issued on December 8, 1996, amended and supplemented by Law No. 02-03, dated April 10, 2002, containing the constitutional amendment, *Official Journal* No. 25, issued on April 14, 2002, amended and supplemented by Law No. 08-19, dated November 15, 2008, containing the constitutional amendment, *Official Journal* No. 63, issued on November 16, 2008, amended by Law No. 16-01, dated March 6, 2016, containing the constitutional amendment, *Official Journal* No. 14, issued on March 7, 2016, amended by the constitutional amendment approved in the referendum of November 1, 2020, in the *Official Journal* of the People's Democratic Republic of Algeria, published pursuant to Presidential Decree No. 20-442, dated December 30, 2020, *Official Journal* No. 82, issued on December 30, 2020.

²- Article 204 of the Constitution of the People's Democratic Republic of Algeria for the year 1996, amended and supplemented, previous reference.

³ Article 8 of Ordinance No. 21-01 of March 10, 2021, containing the organic law related to the electoral system, *Official Journal* No. 17 of March 10, 2021, amended and supplemented by Ordinance No. 21-05 of April 22, 2021, *Official Journal* No. 30 of April 22, 2021, amended and supplemented by Ordinance No. 21-10 of August 25, 2021, *Official Journal* No. 65 of August 26, 2021.

⁴ Article 2 of Law No. 06-01, dated February 20, 2006, concerning the prevention and fight against corruption, amended and supplemented, previous reference.

⁵-ZOUAÏMIA Rachid, "The Legal status of the High Authority for Transparency, Prevention and Fight against Corruption," *Academic Journal of Legal Research*, Volume 14, Issue 1, 2023, p. 13.



idea of independent administrative authorities¹. Notably, these public authorities have veered away from adapting the National Authority for Preventing and Combating Corruption as an independent administrative authority under the latest amendment to Law No. 06-01².

The concept of independent administrative authorities encompasses three aspects: first, the authority's exercise of power derived from its decision-making competence, which falls within the purview of the executive authority. Second, the administrative aspect, emphasized when the legislator relies on the authority's activity, related to law enforcement and its subjection to administrative judicial oversight. Lastly, the lack of subordination of the authority to the executive authority either structurally or functionally³.

Returning to Law No. 21-01 and Law No. 22-08, it becomes evident that these independent public authorities also conform to these criteria. They possess authoritative decision-making capacity, carry administrative attributes due to their role in ensuring legislative and regulatory compliance within their respective sectors, and are subject to administrative judicial oversight. Concerning their independence, evaluation occurs on two levels:

From an organic perspective, despite their adherence to their provisions in terms of their collective composition, which consists of a legislative body - the Authority Council - and an executive body - the Authority President -⁴ and the High Authority for Transparency and Corruption Prevention and Combating in terms of the multiplicity of entities entrusted with proposing their members as outlined in Article 23 of Law 22-08 : **"The Council, called the Supreme Council, is presided over by the head of the High Authority and consists of the following members:**

1- Three (3) members chosen by the President of the Republic from among independent national figures.

2- Three (3) judges, one from the Supreme Court, one from the Council of State, and one from the Court of Auditors. They are chosen successively by the High Judicial Council, the Council of Judges of the Court of Auditors.

3- Three (3) independent individuals chosen based on their competence in financial and/or legal matters, integrity, and excellence in the field of corruption

¹ Same reference, pages 12-14.

²-See Article 18 of Law No. 06-01, dated February 20, 2006, concerning the prevention and fight against corruption, amended and supplemented, previous reference

³-ZOUAÏMIA Rachid, "Independent Administrative Authorities and Economic Regulation," *Idara*, No. 28, 2004, pp. 25-44.

⁴ See Article 16 of Law No. 06-01, dated February 20, 2006, concerning the prevention and fight against corruption, amended and supplemented, previous reference; Article 19 of Ordinance No. 21-01, dated March 10, 2021, containing the organic law related to the electoral system, previous reference.



prevention and combating. They are chosen successively by the President of the National Assembly, the President of the People's National Council, and the Prime Minister or the Head of Government, depending on the case.

4- Three (3) individuals from civil society, chosen from among individuals known for their interest in issues related to corruption prevention and combating, by the President of the National Civil Society Observatory."¹

However, the lack of involvement of any entity in proposing members of the National Authority for Elections and the exclusive appointment of the President of the Republic to appoint the President and members may render the bodies subordinate to the executive authority, especially since the legislator has not explicitly forbidden the termination of the term, which is estimated at five (5) years for members of the High Authority for Transparency and Corruption Prevention and Combating², and six (6) years for members of the Independent National Authority for Elections³.

From a functional perspective, the autonomy of the bodies is demonstrated by their authority to establish their internal regulations⁴ and provide the Independent National Authority for Elections with a special budget⁵, indicating functional independence. However, subjecting the latter authority to the rules of public accountability⁶, on one hand, and regulating the structures of the High Authority for Transparency and Corruption Prevention and Combating⁷ through an organizational framework and financing it through state subsidies recorded in the general budget, on the other hand, diminishes the independence of the bodies and weakens their position in relation to the executive authority.

Therefore, it can be concluded that public independent authorities encompass the same concept as independent administrative authorities, with their pros and cons,

¹-Article 23 of Law No. 06-01, dated February 20, 2006, concerning the prevention and fight against corruption, amended and supplemented, previous reference.

²- See Articles 21 and 24 of Law No. 06-01, dated February 20, 2006, concerning the prevention and fight against corruption, amended and supplemented, previous reference.

³ See Articles 21 and 27 of Ordinance No. 21-01, dated March 10, 2021, containing the organic law related to the electoral system, previous reference.

⁴- See Article 22 of Ordinance No. 21-01, dated March 10, 2021, containing the organic law related to the electoral system, previous reference; Articles 22, Clause 3, and Article 29, Clause 5, of Law No. 06-01, dated February 20, 2006, concerning the prevention and fight against corruption, amended and supplemented, previous reference.

⁵- See Article 17 of Ordinance No. 21-01, dated March 10, 2021, containing the organic law related to the electoral system, previous reference.

⁶- Article 17, Clause 2, of the same reference.

⁷- Presidential Decree 23-234, dated June 27, 2023, defining the structures of the High Authority for Transparency, Prevention, and Fight against Corruption, *Official Journal* No. 45, issued on July 6, 2023.



which led some to categorize them within this group despite their constitutional distinctiveness.

Second section: Privilege of Independence of Public Authorities

Upon revisiting the legal texts governing independent administrative authorities in Algerian law, it becomes evident that they are established through legislative provisions, as is the case for independent administrative authorities overseeing the financial¹ and economic fields². An exception to this is the creation based on

¹ - Legislative Decree No. 93-10, dated May 23, 1993, concerning the Stock Exchange of Transferable Securities, *Official Journal* No. 34, issued on May 23, 1993, amended and supplemented by Ordinance No. 96-10, dated January 10, 1996, *Official Journal* No. 3, issued on January 14, 1996, further amended and supplemented by Law No. 03-04, dated February 17, 2003, *Official Journal* No. 11, issued on February 19, 2003, (Correction in *Official Journal* No. 32, dated May 7, 2003), further amended and supplemented by Law No. 17-11, dated December 27, 2017, encompassing the Finance Law for 2018, *Official Journal* No. 76, issued on December 28, 2017; Ordinance No. 95-07, dated January 25, 1995, related to insurance, *Official Journal* No. 13, issued on March 8, 1995, amended and supplemented by Law No. 06-04, dated February 20, 2006, *Official Journal* No. 15, issued on March 12, 2006, further amended and supplemented by Law No. 06-24, dated December 26, 2006, encompassing the Finance Law for 2007, *Official Journal* No. 85, issued on December 26, 2006, further amended and supplemented by Ordinance No. 08-02, dated July 24, 2008, encompassing the Complementary Finance Law for 2008, *Official Journal* No. 42, issued on July 27, 2008, further amended and supplemented by Ordinance No. 10-01, dated August 26, 2010, encompassing the Complementary Finance Law for 2010, *Official Journal* No. 49, issued on August 29, 2010, further amended and supplemented by Law No. 11-11, dated July 18, 2011, encompassing the Complementary Finance Law for 2011, *Official Journal* No. 40, issued on July 20, 2011, further amended and supplemented by Law No. 13-08, dated December 30, 2013, encompassing the Finance Law for 2014, *Official Journal* No. 68, issued on December 31, 2013, further amended and supplemented by Law No. 19-14, dated December 11, 2019, encompassing the Finance Law for 2020, *Official Journal* No. 81, issued on December 30, 2019 ; Ordinance No. 03-11, dated August 26, 2003, concerning cash and loans, *Official Journal* No. 52, issued on August 27, 2003, amended and supplemented by Ordinance No. 09-01, dated July 22, 2009, encompassing the Complementary Finance Law for 2009, *Official Journal* No. 44, issued on July 26, 2009, further amended and supplemented by Ordinance No. 10-04, dated August 26, 2010, *Official Journal* No. 50, issued on September 1, 2010, further amended and supplemented by Law No. 13-08, dated December 30, 2013, encompassing the Finance Law for 2014, *Official Journal* No. 68, issued on December 31, 2013, further amended and supplemented by Law No. 16-14, dated December 28, 2016, encompassing the Complementary Finance Law for the year 2017, *Official Journal* No. 77, issued on December 29, 2016, further amended and supplemented by Law No. 17-10, dated October 11, 2017, *Official Journal* No. 57, issued on October 12, 2017, further amended and supplemented by Law No. 21-16, dated December 30, 2021, encompassing the Finance Law for the year 2022, *Official Journal* No. 100, issued on December 30, 2021, (Repealed), Law No. 23-09 of June 21, 2023, on monetary and banking law, *Official Journal* No. 43 of June 27, 2023.

² Law No. 02-01, dated February 5, 2002, concerning electricity and gas distribution through channels, *Official Journal* No. 8, issued on February 6, 2002, amended and supplemented by Law No. 14-10, dated December 30, 2014, encompassing the Finance Law for the year 2015, *Official Journal* No. 78, issued on December 31, 2014; Ordinance No. 03-03, dated July 19, 2003, concerning competition, *Official Journal* No. 43, issued on July 20, 2003, amended and supplemented by Law No. 08-12, dated June 25, 2008, *Official Journal* No. 36, issued on July 2,



regulatory provisions, such as the case for the authority regulating public procurement and the delegations of the public entity¹. However, in the case of independent public authorities, it is notable that the constitutional legislator has granted them a distinctive position through their statutes².

The privilege of independence of public authorities in Algerian law is a characteristic that sets this new legal category apart compared to its counterpart in French law. In contrast to independent administrative authorities in France, which are only distinguished by their legal personality, as indicated by numerous scholars, those in Algerian law enjoy a more significant position through their statutes³.

Second requirement: Powers of Independent Public Authorities: Between Plurality and Restriction

Despite endowing independent public authorities with a set of powers in response to the principles of governance and the requirements of the Rule of Law, an examination of their founding texts has demonstrated an excessive plurality of powers granted to the High Authority for transparency, prevention and fight against corruption (1), along with a clear limitation of the powers of the National Independent Authority for Elections with a supervisory nature (2).

First section: Excessive multiplicity of Powers of the High Authority for Transparency, prevention and fight against corruption

The High Authority for transparency, corruption prevention, and combat is endowed with a set of powers within the framework of implementing governance policies aimed at achieving the highest levels of integrity and transparency in public affairs management. Some of these powers are characterized by their preventive nature, as they play a role in providing advisory opinions on legal texts related to combating corruption⁴ and strive to instill a culture of transparency and integrity to

2008, further amended and supplemented by Law No. 10-05, dated August 15, 2010, *Official Journal* No. 46, issued on August 18, 2010; Law No. 18-04, dated May 10, 2018, specifying the general rules related to postal and electronic communications, *Official Journal* No. 27, issued on May 13, 2018.

¹-Presidential Decree No. 15-247, dated September 16, 2015, regulating public procurement and delegations of the general facility, *Official Journal* No. 50, issued on September 20, 2015, (Repealed).

²-ZOUAIMIA Rachid, "The Legal status of the High Authority for Transparency, prevention and fight against corruption," previous reference, p.14.

³-DELAUNAY Benoit, "Independent Constitutional Authorities, Administrative Authorities", *AJDA*, No. 15, 2011, p. 817.

⁴-Article 205/paragraph 7 of the Constitution of the People's Democratic Republic of Algeria for the year 1996, published by virtue of Presidential Decree No. 96-438 dated December 7, 1996, amended and completed, reference mentioned earlier.



address the phenomenon of corruption institutionally¹ and within civil society. This is achieved by involving and unifying efforts in the field of anti-corruption activities². Others adopt a supervisory role primarily focused on verifying whether institutions and relevant bodies are adhering to their legal obligations regarding transparency and integrity³. This also includes the authority to issue recommendations and orders to non-compliant entities, compelling them to align their actions with legal provisions. In cases of non-compliance, this authority can notify the appropriate bodies to take necessary measures⁴.

Delving into these competencies reveals a clear contradiction. On one hand, they are characterized by excessive and imaginative multiplicity, making it practically impossible for the High Authority for transparency, corruption prevention, and combat to fully and effectively exercise its functions⁵, especially given the potential overlap of these powers with the Central Office for the Suppression of Corruption, which might lead to a paralysis of both institutions⁶. On the other hand, these competencies are restricted due to the removal of their objective aspect, namely the reception, study, and utilization of information from declarations of property held by senior officials such as government members, deputies, members of the National Assembly, governors, and military leaders⁷. Additionally, the failure to publish the annual report on the authority's activities in the *Official Journal* hinders citizens' access to it⁸.

Second section: Limitation of Powers of the Independent National Authority for Supervisory Elections

The legislator has granted the National Independent Authority for Elections absolute authority to oversee presidential elections in all their stages, as advocated by various democracy-oriented organizations worldwide⁹. The authority is responsible

¹- ZOUAIMIA Rachid, "The Legal status of the High Authority for Transparency, Prevention and Fight against Corruption", reference mentioned earlier, p. 23.

²-Same reference, p. 23.

³- See Article 7 of Law No. 06-01 dated February 20, 2006, concerning the prevention and combating of corruption, amended and completed, reference mentioned earlier.

⁴- Articles 11 and 12 of the same reference.

⁵- ZOUAIMIA Rachid, "The Legal status of the High Authority for Transparency, Prevention and Fight against Corruption", reference mentioned earlier, p. 23.

⁶- Same reference, p. 27.

⁷- ZOUAIMIA Rachid, "Observations on the Legal status of the National Authority for Prevention and Combating of Corruption", *The Critical Journal of Law and Political Sciences*, Volume 3, Issue 1, 2008, pp. 7-18.

⁸- ZOUAIMIA Rachid, "The Legal status of the High Authority for Transparency, Prevention and Fight against Corruption", reference mentioned earlier, p. 30.

⁹- RAHMANI Rabie and BARKAT Mohamed, "The Role of the Independent National Authority for Elections in Presidential Elections in Algeria", *The journal of Teacher Researcher of Legal and Political Studies*, Volume 6, No. 2, 2021, p. 23.



for preparing electoral lists, reviewing them, issuing voter cards¹, supervising both the nomination process and the electoral campaign². In the voting and results announcement stage, she supervises the opening and closing of the polling, which should take place in a single day, with the possibility of extending this period with authorization from the authority as stipulated³. Additionally, she ensures the adherence to all legal procedures during the voting period and when announcing the results of the presidential elections⁴. It is noted in this regard that the legislator empowered the authority to deploy public force or notify the relevant regional prosecutor in case of any violations during the electoral process⁵.

It is true that the Algerian legislator's stripping of the executive authority from all its traditional powers in the electoral process is considered a positive step towards cementing democracy, which is one of the pillars of governance and the Rule of Law. However, this step remains incomplete and insufficient due to the limitation of the tasks of the independent national authority to the presidential elections process, excluding legislative and local elections.

SECOND TOPIC: The Effects of the Distinguished Legal Status of Independent Public Authorities in Algerian Law

Granting independent public authorities a distinct legal status results in granting them relative immunity compared to administrative authorities established by legislative texts (I). Additionally, their disputes are subject to specific and distinct provisions compared to the latter (II).

First requirement: Granting Relative Legal Immunity to Independent Public Authorities

The legal immunity enjoyed by independent public authorities due to their distinguished legal status makes it impossible to dissolve them (1) or convert them (2) except through constitutional amendment.

First section: Impossibility of Dissolving Independent Public Authorities Except by Constitutional Amendment

The constitutional status of independent public authorities renders their dissolution impossible except through constitutional amendment, unlike independent administrative authorities that can be dissolved through legislative or even regulatory provisions⁶. An example in this context is the Water Public Services Regulatory

¹- See Article 10/paragraph 1 of Ordinance No. 21-01 dated March 10, 2021, containing the organic law related to the electoral system, reference mentioned earlier.

²- See Articles 26, 82, and 249 of the same reference.

³- Article 132 of the same reference reads as follows:

⁴- See Articles 152 and 155 of the same reference.

⁵-See Articles 47 and 49 of the same reference.

⁶-ZOUAÏMIA, Rachid, "The Legal Status of the High Authority for Transparency, prevention and fight against corruption", Previous Reference, p. 14.



Authority, which was established by Article 65 of Law No. 05-12¹ to perform tasks specified in Executive Decree No. 08-303², Primarily consisting of: **“Ensuring the respect of privilege holders as well as those authorized by them to fulfill their entrusted obligations,**

Conducting oversight and evaluation operations for the quality of services provided by entities responsible for the exploitation of public water services for the benefit of users,

Contributing to the preparation of standard bidding documents for delegating public infrastructure,

Conducting analyses of burdens within the framework of monitoring the costs and prices of public water services”³

Independent authorities in this sector changed their approach from administrative authority to issuing Executive Decree No. 18-163⁴, transferring all the powers of the Water Public Services Regulatory Authority to the Minister in charge of financial resources without specifying this transfer in the decree⁵ itself or Law No. 05-12⁶.

Second section: Inability to Convert Independent Public Authorities Except by Constitutional Amendment

In addition to not being dissolved, independent public authorities cannot be converted into ordinary public institutions except through constitutional amendment⁷. Examples in this context are the health and aviation sectors, where the legislator shifted from the system of independent administrative authorities that relied on

¹-Refer to Article 65 of Law No. 05-12, dated August 4, 2005, concerning water resources, *Official Journal* No. 60, issued on September 4, 2005, amended and supplemented by Law No. 08-03 of January 23, 2008, *Official Journal* No. 4 of January 27, 2008, amended and supplemented by Law No. 09-02 of July 22, 2009, *Official Journal* No. 44 of July 26, 2009, amended and supplemented by Law No. 20-16 of December 31, 2020, *Official Journal* No. 83 of December 31, 2020.

² Executive Decree No. 08-303, dated September 27, 2008, which defines the powers and regulations governing the Public Water Services Regulation Authority and its operations, *Official Journal* No. 56 of September 28, 2008, (Repealed).

³-Article 4 of the same reference.

⁴-Executive Decree No. 18-163, dated June 14, 2018, which includes the repeal of Executive Decree No. 08-303, dated September 27, 2008, which defines the powers and regulations governing the Public Water Services Regulation Authority and its operations, *Official Journal* No. 36, issued on June 17, 2018.

⁵-ZOUAÏMIA, Rachid, "Crisis of Independent Regulatory Authorities in Algerian Law", *Academic Journal of Legal Research*, No. 03, 2021, p. 36.

⁶-Law No. 05-12, dated August 4, 2005, concerning water resources, previous reference.

⁷- ZOUAÏMIA, Rachid, "The Legal Status of the High Authority for Transparency, prevention and fight against corruption", Previous Reference, p. 14.



economic control exercised by bodies composed of experts to the traditional public institution system where regulatory functions were assigned to employees¹.

Regarding the amendments that have been introduced in the healthcare sector, they can be summarized as follows: In 2008, the legislator granted the authority to regulate the sector to an independent administrative body as stipulated in Article 173, paragraph 1: **"A National Agency for Pharmaceuticals used in human medicine shall be established, referred to hereinafter as the Agency. The Agency is an independent administrative authority with legal personality and financial independence."**² However, this arrangement was replaced with the introduction of the new healthcare law in 2018, where the same role was transferred to a public institution with special management, as indicated in Article 224 of the aforementioned law: **"The Agency is a public institution with special management, endowed with legal personality and financial independence, and is placed under the supervision of the Minister responsible for health."**³

As for the field of aviation transport, the legislator followed a similar approach by replacing the regulatory authority in the aviation sector with a public institution of a special nature responsible for regulating the aviation sector. This is outlined in Article 16 repeated 10 of Law 19-04 : **"A National Civil Aviation Agency shall be established to regulate, monitor, and supervise civil aviation activities. It shall be placed under the supervision of the Minister responsible for aviation"**.⁴

Similarly, Article 16 repeated 11 provides that **"The National Civil Aviation Agency is a public institution with special characteristics, endowed with legal personality and financial independence"**.⁵

Second requirement: The Jurisdiction of Disputes Involving Independent Public Authorities to Special Provisions

¹-The same reference, p. 13.

²- Article 173/Part 1 of Law No. 85-05, dated February 16, 1985, concerning health protection and promotion, *Official Journal* No. 8, issued on February 17, 1985, amended and supplemented by Law No. 88-15, dated May 3, 1988, *Official Journal* No. 18, issued on May 4, 1988, amended and supplemented by Law No. 90-17, dated May 31, 1990, *Official Journal* No. 35, issued on August 15, 1990, amended and supplemented by Ordinance No. 06-07, dated July 15, 2006, *Official Journal* No. 47, issued on July 19, 2006, amended and supplemented by Law No. 08-13, dated July 20, 2008, *Official Journal* No. 44, issued on August 3, 2008, (Repealed).

³- Article 224 of Law No. 18-11, dated July 2, 2018, concerning health, *Official Journal* No. 46, issued on July 29, 2018, amended and supplemented by Ordinance No. 20-02 of August 30, 2020, *Official Journal* No. 50 of August 30, 2020.

⁴- Article 16 Repeated 10 of Law No. 19-04, dated July 17, 2019, amending and supplementing Law No. 98-06, dated June 27, 1998, which defines the general rules related to civil aviation, *Official Journal* No. 46 of July 21, 2019.

⁵-Article 16 Repeated 11, of the same reference.



Decisions issued by independent public authorities, as national public bodies, are subject to the oversight of the administrative judge represented by the Administrative Court of Appeal in Algiers as a first instance (1). These judicial decisions can be appealed before the Council of State (2).

First section: Jurisdiction of the Administrative Court of Appeal in Algiers as a First Instance

Although the foundational laws of independent public authorities do not explicitly address the judicial body responsible for overseeing their administrative decisions, considering them as national public bodies due to their legal personality¹ renders them subject to the oversight of the Administrative Court of Appeal in Algiers, in accordance with the provisions of Article 900 repeated/paragraph 3, which provides : **"The Administrative Court of Appeal in Algiers has jurisdiction as a first instance to adjudicate on lawsuits for annulment, interpretation and assessment of the legality of administrative decisions issued by central administrative authorities, national public bodies, and national professional organizations"**.²

On this basis, the Administrative Court of Appeal in Algiers exercises its oversight as a first instance in lawsuits for annulment, interpretation, and assessment of the legality of decisions issued by independent public authorities.

Second section: Jurisdiction of the Council of State as an Appellate Authority

Article 10 of Organic Law No. 98-01 specifies : **"The Council of State is competent to adjudicate on appeals against decisions issued by the Administrative Court of Appeal in Algiers in lawsuits for annulment, interpretation, and assessment of the legality of administrative decisions issued by central administrative authorities, national public bodies, and national professional organizations"**.³

It can be inferred from the provisions of this article that the Council of State no longer has the primary jurisdiction to adjudicate on lawsuits for annulment,

¹- ZOUAÏMIA, Rachid, "The litigation system of Independent Administrative Authorities in Algerian Law", *Idara*, No. 29, 2005, p. 16 ; also ZOUAÏMIA, Rachid, "Decorative functions of the principle of legal certainty in the economic field", *Algerian Journal of Legal and Political Sciences*, University of Algiers 1, volume 60, No. 01, 2023, pp. 40-43.

²- Law No. 08-09 of February 25, 2008, containing the Civil and Administrative Procedure Law, *Official Journal* No. 21 of April 23, 2008, amended and supplemented by Law No. 22-13 of July 12, 2022, *Official Journal* No. 48 of July 17, 2022.

³- Article 10 of Organic Law No. 98-01 of May 30, 1998, concerning the jurisdiction, organization, and operation of the Council of State, *Official Journal* No. 37, issued on June 1, 1998, amended and supplemented by Organic Law No. 11-13 of July 26, 2011, *Official Journal* No. 43 of August 3, 2011, amended and supplemented by Organic Law No. 18-02 of March 4, 2018, *Official Journal* No. 15 of March 7, 2018, amended and supplemented by Organic Law No. 22-11 of June 9, 2022, *Official Journal* No. 41 of June 16, 2022.



interpretation, and assessment of the legality of decisions issued by independent public authorities. Instead, it has jurisdiction as an appellate authority. This aligns with the content of Article 902 of the Civil and Administrative Procedure Law¹.

Conclusion:

If the independent public authorities enjoy the privilege of constitutional immunity, it grants them an enhanced legal nature that renders them immune to dissolution or conversion except through constitutional amendment, unlike independent administrative authorities that have faced an actual crisis in this regard, affecting their fundamental components deeply. However, a detailed analysis of their foundational texts has revealed several shortcomings that hinder the responsiveness of this new category to the principles of governance and the Rule of Law.

Institutionally, independent public authorities are subject to executive authority through their members' susceptibility to removal. Functionally, this is due to subjecting the national independent authority's elections to public accounting rules. Additionally, the establishment of the High Authority for transparency and corruption prevention is regulated, along with its financial resources being collected through state grants, recorded in the general budget.

Regarding the substantive aspect, alongside limiting the tasks of the national independent authority to presidential elections, excluding legislative and local elections, the jurisdiction of the High Authority for transparency, corruption prevention, and combatting it is characterized by a clear contradiction. This is due to its excessive and imaginative multiplicity on one hand and its restriction on the other hand, stemming from the authority's lack of the capability to receive, study, and utilize information provided in property declarations by a group of high-ranking officials such as government members, deputies, members of the Council of the Nation, governors, and military leaders.

Therefore, it can be concluded that granting independent public authorities a distinct and differentiated legal status from independent administrative authorities does not make them responsive to the requirements of governance and the Rule of Law. This is contingent upon their first liberation from the grasp of executive authority institutionally and objectively, followed by granting them effective and practical jurisdiction to achieve electoral transparency and combat corruption.

¹- Refer to Article 902 of Law No. 08-09, dated February 25, 2008, containing the Civil and Administrative Procedure Law, amended and supplemented, previous reference.



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