

The specificity of sanctions issued by independent regulatory authorities in Algerian legislation



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Abstract: The Algerian Legislator charged the independent regulation authorities with the task of regulating and organizing the economic sectors. In this line, He charged them with tasks that were of the executive branch due to the state's shift from an interventionist state into a regulating one. Thus, the policy of decriminalization adopted by the Algerian Legislator contributed to the recognition of the independent regulation authorities as they are granted prerogatives that are, originally, of the judicial body. Currently, the regulation has the prerogative of issuing sanctions in the economic sector to punish the violations. In this context, the role of the decriminalization in the penal law appears through independent administrative bodies that regulate the economic activities. This gives birth to specific sanctions as they are issued by independent authorities. This reduces the judge's intervention in the economic sector. Nevertheless, it raises hot debate about the efficiency of such sanctions issued by non-judicial parts. Despite the wide prerogatives and being the alternative of the judge in the economic disputes, their rulings are not enforced. Therefore, they need a deterrent force that allows enforcing the sanctions.

Key Words: independent regulation authorities; sanctions; deterrent competency; decriminalization.

خصوصية العقوبات الموقعة من قبل سلطات الضبط المستقلة في التشريع الجزائري

ملخص: لقد منح المشرع الجزائري لسلطات الضبط المستقلة مهمة ضبط وتنظيم القطاعات الاقتصادية ، حيث أسند لها مهام كانت من اختصاص السلطة التنفيذية ، نتيجة انتقال دور الدولة من دولة متدخلة إلى دولة ضابطة وفي هذا الصدد ساهمت سياسة إزالة التجريم التي تبناها المشرع الجزائري على غرار أغلب تشريعات الدول في مزيد من الاعتراف بسلطات الضبط المستقلة بشكل عام، بصلاحيات تؤول في الأساس لاختصاص القضاء. حيث يتميز الضبط في الوقت الحاضر بميزة جديدة ألا وهي سلطة العقاب التي تمارسها سلطات الضبط في المجال الاقتصادي، لأنها تتصدى مباشرة لكل خرق للقواعد المراد ضبطها بواسطة توقيع العقوبات وبالتالي يظهر دور إزالة التجريم في القانون الجنائي بواسطة هيئات إدارية مستقلة في ضبط قطاعات النشاطات الاقتصادية ، ومن هنا تظهر خصوصية فرض العقوبات لهذه السلطات، حيث تكفل الرقابة الفعالة للقطاعات الاقتصادية، كما تتولى وظيفة العقاب مما يفسر



الرغبة في الإنقاص من دور القاضي في المجال الاقتصادي كما أثارت هذه السلطة العقابية جدلا واسعا تمحور حول مدى فعالية هذه العقوبات التي تصدر عن هيئة غير قضائية كونها تتميز بطابع ردعي، وعلى الرغم من الصلاحيات الواسعة التي تتمتع بها هذه السلطات وكونها بديل للقاضي في الفصل في المنازعات كان لا بُدَّ من تفعيل قراراتها وهذا لا يتم إلا من خلال قوة ردعية تتجسد في سلطة العقاب القمعية.

الكلمات المفتاحية: سلطات الضبط المستقلة ، العقوبات ، الاختصاص القمعي ، إزالة التجريم .

La spécificité des sanctions prononcées par les autorités de régulation indépendantes dans la législation algérienne.

Résumé : Le législateur algérien a donné les autorités de régulation indépendantes la mission de réglementer et d'organiser les secteurs économiques. Il leur a confié des tâches qui étaient part de la compétence du pouvoir exécutif en raison du passage d'un état interventionniste à un état régulateur. Ainsi, la politique de dépenalisation adoptée par le législateur algérien, comme toutes les lois des autres pays, a contribué à la reconnaissance de l'indépendance des autorités de régulation car elles sont accordées des prérogatives qui sont, à l'origine, de la compétence de la justice. Actuellement, le règlement a une nouvelle caractéristique qui est d'imposer des sanctions dans le secteur économique pour punir les violations des règles. Dans ce contexte, le rôle de la dépenalisation dans le droit pénal apparaît à travers des organes administratifs indépendants qui régulent les activités économiques. Cela donne lieu à des sanctions spécifiques car elles sont imposées par des autorités indépendantes pour garantir le control efficace des secteurs économiques et l'imposition des sanctions, ce qui explique la volonté de réduire le rôle du juge dans le secteur économique. Néanmoins, il soulève un vif débat sur l'efficacité de ces sanctions imposées par des parties non judiciaires. Malgré les larges prérogatives et le fait d'être l'alternative du juge dans les litiges économiques, leurs décisions ne sont pas appliquées. Par conséquent, elles ont besoin d'une force de dissuasion qui leur permet d'appliquer les sanctions.

Mots clés : autorités indépendantes de régulation; sanctions; compétence dissuasive; décriminalisation .



Introduction:

Amid the economic crises that emerged in the end of the 1980s, Algeria shifted towards the liberation of the economic activity through the state's gradual withdrawal from the economic arena, the establishment of independent regulation authorities as an alternative to the traditional administrative bodies, and the transformation of the administrative decisions to the economic regulation instruments. The latter enjoy a set of prerogatives according to the regulated sector. These prerogatives include issuing sanctions. In this regard, the Algerian Legislator granted them the authority of sanctioning any violations of the economic sector rules after the penal sanctions failed in adapting the sanctions to the violations. Thus, the authority of the administration in the economic sector increased on the detriment of the judge. In this context, the deterrent nature of the regulation authorities expresses the refusal of the judicial intervention in the economic sectors. Because of the nature of these sectors and the delay of the penal justice, the judicial authority of the judge proved its limitations. Therefore, some competencies were delegated to the independent regulation authorities to cope with the fast fluctuating economic phenomena without commitment to the rules and criteria of the general penal code.

The will of the Legislator to apply the economic law pushed him to substitute the penal sanctions issued by the justice with administrative sanctions issued by the regulation authorities that have deterrent prerogatives as the Legislator granted them the penal authority and the judicial competency to issue administrative sanctions against the violation of the laws. However, these administrative sanctions should not go against the competency of the justice. In this line, the Legislator imposes objective and procedural judicial guarantees for the prosecuted people on these authorities in respect to their rights, the principle of inter partes and secrecy, and the principle of proportionality. Based on what was said, we raise the following problematic, "what are the aspects of specificity for the sanctions issued by the independent regulation authorities in the Algerian law?" To answer this question, we shall shed light on the legal frame of the sanctions issued by the independent regulatory authorities (**the first topic**) and the Types of sanctions issued by independent regulatory authorities (**the second topic**).



THE FIRST TOPIC: THE LEGAL FRAME OF THE SANCTIONS ISSUED BY THE INDEPENDENT REGULATORY AUTHORITIES

The importance of the regulation lies within finding uncommon solutions for the traditional law through relying on the sanction authority and, then, transforming it from the penal code to independent administrative authorities that are closer and more competent in the technical sectors. This shows the neutrality of the state in the economic field and contributes to limiting its intervention as required by the aims of the economic regulation¹. In this line, most of the authorities of regulating the economic activity enjoy deterrent authorities that exceed the traditional principle that provides for the exclusive competency of the traditional justice in the deterrence. This change was imposed by the specificity of the economic sector and the conditions that must be considered when exercising the penal authority. Therefore, we shall tackle The basis for the establishment of punitive jurisdiction of Independent regulatory authorities (**requirement one**) and The conditions of exercising the punitive jurisdiction by the Independent regulatory authorities (**requirement two**).

First requirement: The basis for establishing the punitive jurisdiction of independent regulatory authorities

The Legislator's resort to the penal intimidation is no more efficient for the good functioning of the organizational texts in some economic and financial sectors. In this line, the penal judge faces difficulties in these complicated technical fields because the penal texts do no work in such cases and the traditional methods do not fit in such sectors. Therefore, the penal authority of the penal judge was transferred to other authorities that are closer to these sectors. In this line, delegating the authority of issuing sanctions to the independent regulation authorities allows for a fast and efficient intervention. However, this shall not be achieved unless the decriminalization is promoted and the penal sanctions are substituted with administrative ones². Thus, in this requirement, we shall cover : the decriminalization phenomenon (**section one**), The service of punitive jurisdiction to the regulation's notion (**section two**), and the deterrent and preventive nature of the administrative sanctions (**section three**).

¹ Takkar Mokhtar (2020), the decrease of the judicial role in the field of the economic regulation in the light of the Algerian code, PhD thesis in the general law, Faculty of Laws and Political Sciences, University of Ghardaia, p. 79.

² Mansour Daoud (2016), the legal mechanisms for regulating the economic activity in Algeria, PhD thesis in business law, Faculty of Laws and Political sciences, University of Mohamed Khider of Biskra, pp. 365-366.



First section: decriminalization phenomenon

Decriminalization means removing the deterrent authority from the penal judge, granting it to the independent regulation authorities, and substituting the penal sanctions with administrative ones. This phenomenon allows the regulation authority to issue some sanctions that were part of the judge's competency. In this regard, it is based on two principles. The 1st is the principle of proportionality that requires considering the severity of the violation while the 2nd is the principle of reasoning that needs considering the efficiency of the sanction against the violator because the penal sanctions must be enforced if the violation is severe, or substituted with the administrative measure if the penal does not fit the case¹. In addition, decriminalization is enforced either through the penal adaptation that removes the criminal act and the criminalizing text, or through the reduction of the penal adaptation through amending the material or moral items that give rise to the criminalized act, such as alleviating the sanction and maintaining the criminal description².

The sanction exercised by the regulation authority is simple, fast, and efficient such as the case of the economic regulation that faces any violation of the market rules and protects the consumers at the same time through, for instance, withdrawing the license or suspending the economic activity of the violator. Thus, transferring the sanction authority to the independent regulation authorities is indirect because the decriminalization is a new phenomenon that serves the economic regulation³. The economic direction adopted by Algeria when shifting from the interventionist state into the regulating state pushed the Legislator to substitute the penal sanction with the administrative.

In this regard, we can say that the administrative sanction is an alternative to the lawsuit in general because the independent regulation authorities, in the comparative law, exercise prerogatives that are originally of the justice as they allow issuing civil and penal sanctions. Besides, these authorities make, in some states, independent techniques that allow the regulation authorities to compete the justice in issuing sanctions without considering this competition a violation of the separation of power. In fact, the administrative sanctions law expresses two basic complementary notions that the comparative judicial systems attempt to embody, namely the gradual rejection of the necessity of resorting to the justice to settle the disputes, and the limitation of the judge's monopoly of the penal sanction⁴.

¹ Haddadi Naima (2021), the specificity of the penal authority of the independent administrative authorities, the academic journal for the legal research, Vol. 12, No° 02, pp. 246-247.

² Takkar Mokhtar, op. cit., p. 81.

³ Mahmoudi Samah (2022), the legal aspects of the role of the independent regulation authorities in protecting the consumers, journal of the rights and freedoms, Vol. 10, No° 01, p. 1495.

⁴ Mansour Daoud, op. cit., p. 368.



Second section: the service of punitive jurisdiction to the regulation's notion :

Delegating penal prerogatives to the regulation authority does not mean the full exclusion of the penal code in the sectors. Nevertheless, the compulsory fast intervention to settle the issues according to the nature of the activity cannot go with the necessary long and complicated procedures of the court. Therefore, these penal sanctions were granted to the regulation authority to maintain the good functioning of the market and the balance of its operators. Thus, the specificity of the penal tasks delegated to the regulation authorities in the economic sector emerged. It includes promoting the control on all the regulated economic sectors and facilitates facing the violations. Furthermore, granting the penal prerogative to such authorities shall reduce the role of the judge and incarnate the notion of the economic justice¹.

In addition, the role of the administrative sanction in the economic sector is more efficient when compared to the penal that is marked with recession and stagnation. The economic and financial tasks delegated to the regulation authorities require the existence of sanctions that suit the activity and differ than the measures of the classical administration that proved inefficient and unsuitable for the financial and economic developments. In this regard, the importance of the sanction is undeniable as it is necessary for the regulation authorities to efficiently exercise their various tasks.

The administrative sanctions differ than the penal ones that are based on the socialist concepts that require the state's intervention in everything through criminalizing many acts in the economic and financial sector. Naturally, this does not suit the modern economic concepts that call for the openness on the market. Therefore, the administrative sanctions take into consideration the specificities of the market that require the state's withdrawal and non-intervention, mainly with the deterrent sanctions².

Third section: The deterrent and preventive nature of the administrative sanctions:

The administrative sanction is based on the material and moral points together, just like the penal. The deterrent nature of the administrative sanction means the necessity of subjecting the sanction to the same objective and procedural legal principles of the penal³. In this line, the penal prerogatives granted to the regulation authority aim at the prevention that embodies the recognition of the Legislator of the necessity of regulation through non-deterrent methods. For example, the Ministry of Post and Electronic Communications has the authority of granting licenses. This aims

¹ Al Harchi Sarir Khadija (2018), the role of the regulation authority of the post and wire and wireless communications as a mechanism of enshrining the regulating state in Algeria, PhD thesis in the private law, Faculty of Laws at the University of Algiers, pp. 248-249.

² Mansour Daoud, op. cit., pp. 368-369.

³ Haddadi Naima, op.cit., p. 248.



at regulating the conduct of these sectors and enshrines the preventive role of the penal prerogatives of the regulation authority. Nevertheless, the occurrence of the violations leads to imposing sanctions. This shows the importance of the deterrent authority granted to the regulation authority that implies that the legal rules must be respected¹.

In addition, the deterrent intervention of these authorities aims to achieve the target objectives. In this line, the independent administrative authorities use the preventive methods and, then, the deterrent ones against any violations to maintain discipline and push the economic agents and operators to abide by the laws². Based on what was said, the specificity of the deterrent tasks of the independent regulation authorities emerges. In this regard, they guarantee an efficient control on the sectors and facilitate deterring any violation because they substitute the justice in the economic field, embody the notion of the economic justice, and express the efficiency of the new methods³.

Second requirement: the conditions of exercising the punitive jurisdiction by the independent regulatory authorities

The penal prerogative of the independent regulation authorities against any violations has many aims. However, before exercising this prerogative, the authorities must respect two main conditions so that the economic interventionists respect the intervention⁴. In this line, the sanction should not restrict freedom (**section one**) and the sanction authority must respect the same constitutional principles (**section two**).

First section: the sanction should not restrict freedom:

Some jurisprudence defined the sanctions that restrict freedom as those that deprive the sentenced person of enjoying his freedom indefinitely or for a given period determined by the verdict⁵. Due to the danger of the penal sanction, it must be uttered by the judicial bodies. Therefore, the Legislator set clear limits between the judge's authority and that of the administration in the sanctions. The judge has the exclusive right of issuing custodial sanctions while the administration cannot⁶. In this regard, the deterrence of the administrative sanction is very efficient and establishes deterrence amid the economic agents while the deterrent penal sanction is issued

¹ Al Harchi Sarir Khadija, op. cit., p. 249.

² Hedri Samir (2006), the independent administrative authorities that settle the economic and financial conflicts, Magister thesis in business law, Faculty of Laws and Commercial Sciences at the University of Boumerdes, p. 126.

³ Mimoune al-Tahar (2022), the economic regulation authorities in Algeria, journal of growth studies and researches, Vol. 09, No° 01, p. 518.

⁴ Chaaoua Lamia (2020), the deterrent function of the economic regulation authorities, PhD thesis in the economic regulation law, Faculty of Laws, University of Constantine 01, p. 42.

⁵ Maache Sara (2011), the custodial sanctions in the Algerian law, Magister thesis in criminology and penal sciences, Faculty of Laws and Political Sciences, University of Batna, p. 14.

⁶ Mansour Daoud, op. cit., p. 372.



against the ordinary violator, not the economic agent. Besides, the administrative affects the economic activity¹.

The French constitutional judicial council sees that the sanction prerogative granted to the regulation authority does not affect the principle of the separation of power as long as it cannot impose any custodial sanctions such as prison, which are exclusive to judge. Rather, it can issue administrative sanctions that do not include prison. Articles 35-38, amended by the Finance Law of 2015, provided for the warning and a monetary fine only, without any text providing for prison as it is an exclusive right to the penal judge². In addition, the prerogatives of the independent regulation authorities on the economic violations arise after a conflict between the operators. Thus, the independent regulation authorities settle the economic conflict³.

Second section : subordination of the sanction authority to the same constitutional principles

The sanctions ruled by any organization, not necessarily judicial, are subject to the same principles of the penal sanctions, as provided by the Human Rights Declaration. This includes respecting the principles of the legality of crimes and sanctions, non-retroactivity of the penal code, the right to defense, the personality, and the proportionality. Besides, the sanctions must be exercised in the light of the guarantees of the constitutional freedoms and rights because the deterrent sanctions are cruel and have a severe effect on the person as they deprive him of his rights. Thus, they must be surrounded by a set of guarantees to avoid deviation to other goals than those of the regulation. Based on what was said, the avoidance of using the deterrent force by the independent regulation authorities depends on respecting the rights and freedoms of the economic agents and the penal principles in front of the penal judge⁴.

For example, the committee of supervising the insurances has the right to choose the suitable sanction, including the warning, fine, reprimand, and arrest that is seen by some as a violation of the legality of criminalization and a sanction applied by the penal judge. These sanctions are applied on the insurance and reinsurance companies, the branches of the foreign insurance companies, and their managers. We notice, here, the focus on the principle of the personality of the sanction that is applied in the penal field by the penal judge. In this line, it is applied on the legal persons and some other times on the natural persons (i.e. the managers). However, the issue that arises

¹ Mejdoub Nawal (2022), the deterrent authority of the bodies regulating the economic activity in Algeria, journal of laws and environmental sciences, Vol. 01, No° 01, p. 12.

² Al Harchi Sarir Khadija, op. cit., p. 255.

³ Chaaoua Lamia, op. cit., pp. 47-48.

⁴ Htatach Omar (2017), the independent regulation authorities as a new phenomenon to regulate the market- their deterrent and non-deterrent prerogatives as a model for the administrative sanctions, journal of the researcher teacher for the legal and political studies, Vol. 02, No° 08, p. 701.



is about on whom the warning and reprimand should be applied. This may go against the personality of the applicable sanction in the penal code¹.

Besides, the competency of the independent regulation authorities in issuing sanctions is not absolute. Rather, it is limited and organized by legislative and organizational texts. Furthermore, it is subject to the control of the justice to protect the principle of the legality because the economic intervention is an exception of practicing the economic freedoms. Therefore, the judge must consider with reservation the important authorities of the administration in this field and make sure they respect the legal guarantees to protect the freedoms and liberties of the individuals when exercising the deterrent authority and issuing sanctions². Back to the Algerian constitution, it enshrines these principles as follows:

- The principle of the legality and personality of the sanctions in Article 160 of the Constitution of 1996.
- The principle of the judge's control in Article 161 of the Constitution of 1996.
- The principle of open hearings and justifying the judicial provisions in Article 162 of the Constitution of 1996.
- The principle of the right to defense in Article 169 of the Constitution of 1996.

Moreover, the legislator enshrined these principles in the legal texts that give rise to the independent regulation authorities, such as the Law of Mines 14-05 that includes the measures of issuing sanctions by the National Agency of the Mine Activities. It provides for a penal protective system related to the independence and neutrality of the mine agency. In this line, the Legislator established a set of mechanisms that guarantee the neutrality and independence for the concerned parts in granting the mine license, the control on the mine activities, making investigations, or issuing administrative sanctions. In addition, it provided for a procedural protective system for the human rights. It is a classical system related to any measure that aims at penally, civilly, or disciplinarily punishing any individual. However, this right is constitutionally enshrined as the Legislator established a protective mechanism in the light of the penal measure adopted in front of the mine agency. It manifests in obliging the agency notify the investor about the violations he committed and granting deadlines to make representation, and in subjecting the suspension ruling or the withdrawal of the mine license to the judicial control. Therefore, the regulation

¹ Izril al Kahna (2011), the role of the committee of supervising the insurances in regulating the insurance market, the Algerian journal for the legal, economic, and political sciences, Vol. 48, No° 01, pp. 304-305.

² Amoura Aissa (2021), the intervention of the public authorities in the economic field between the legitimacy and efficiency, PhD thesis in law, Faculty of Laws and Political Sciences, University of Tizi Ouzou, p. 116.



must consider the constitutional requirements and the general principles of the law, mainly that its function is legal, and respect the principle of legality¹.

THE SECOND TOPIC : SANCTIONS' TYPES ISSUED BY INDEPENDENT REGULATORY AUTHORITIES

In the economic regulation, the administrative sanctions are divided into: (1) disciplinary sanctions enforced by the independent regulation authorities on the people who have a previous relation with them when they violate the legal commitments, and (2) administrative sanctions like those defined by the penal code regarding the unnecessary of a previous relation between the subjects and the administration. In this line, a deep study of their contents shows a formal difference and the same content². Generally, we can divide these sanctions into custodial ones (**requirement one**) issued against natural or legal persons, and financial sanctions (**requirement two**) issued against the violators of the market legal rules.

First requirement: Restrictive sanctions for rights "custodial sanctions ".

The custodial sanctions temporarily ban the whole, or part of, the activity. They are enforced against the legal and natural persons who practice the activity. They take different forms such as the final partial or full suspension of the activity³ against the natural persons who manage the bodies of collective recruitment of the movable values. Besides, they can be against the mediators in the stock-market or the qualified agents who negotiate on their behalf⁴. These sanctions are related to the activity of the violator or to one of his rights, as the case of the banking committee that exercised its deterrent prerogatives against the activity of some banks, and the committee of organizing and controlling the stock-market actions. As for restricting the rights of the violators, we can state the examples of the committee of supervising the insurances and the banking committee, which have the right to temporarily arrest one or more managers⁵. Besides, the sanctions related to the rights differ from one sector to another. Therefore, we shall shed light on the various sectors that impose restricting sanctions on the violators, starting from the financial and banking sector (**first section**), the net sectors (**second section**), and the mine activity (**third section**).

¹ Khalij Abdul Kader (217), the legal system of the national agency of the mine activities, Magister thesis in the State and the Public Institutions, Faculty of Laws at the University of Algiers 01, pp. 110-111.

² Aiden Razika (2023), the administrative sanctions in the law of the economic regulation, PhD thesis in Laws, Faculty of Laws and Political Sciences, University of Tizi Ouzou, p. 111.

³ Hmayel Nouara (2021), in the constitutionality of the deterrent power of the committee of organizing and controlling the stock market actions, journal of the constitutional council, Vol. 09, No° 03, p. 61.

⁴ Khettal Ilyes (2013), the legal frame of the financial regulation in Algeria, Magister thesis in the State and the Public Institutions, Faculty of Laws at the University of Algiers 01, p.139.

⁵ Aiden Razika, op. cit., p. 116.



First section: The sanctions in the financial and banking sector:

These sanctions are divided into two classes, according to the natural persons (**first**) and legal persons (**second**).

First: The Natural persons:

The custodial sanctions in the banking sector are applied on the managers of the banks and mediators in the stock market. They are related to the full or partial permanent or temporary suspension of the activity through the arbitration disciplinary chamber of the committee of organizing and controlling the stock-market actions. Besides, they are related to prohibiting one or more managers of the company of exercising their prerogatives for a period, or ending the activities of one or more managers by the banning committee. In this line, they are restricting sanctions in the field of the activity issued by the banking sector against the banks or financial companies that violate organizational or legal rules of their activity.

Second: The Legal persons:

They are related to withdrawing the licenses based on the case in the banking sector. This is the highest sanction against any bank or financial institution ¹. In addition, the banking committee can withdraw the license according to Article 126 of the banking monetary law No° 23-09 that provides in paragraph 06 for withdrawing the license in case any subject violates the legislative or organizational provisions of the activity and does not respect the warning. In addition, the sanctions may include the reprimand, suspension of exercising some actions, and the temporary arrest of the manager (s).

In addition, the council may decide to withdraw the license without effect on the sanctions imposed by the banking committee in the light of its prerogatives if the conditions of the license are violated, the license has not been exploited for 12 months, or when the activity has stopped since 06 months, according to Article 104 of Law 23-09. Thus, the activity loses license and the foreign financial institutions and banks become in liquidation. Then, a head of committee is appointed by a decision after the proceedings of the banking sector. Consequently, the administration, representation, and management authorities are transferred to him, as provide for by Article 128 of Law 23-09 ².

Second section: the sanctions in the net sectors:

This section shall tackle the sanctions in the net sectors starting from the sanctions in the sector of the post and the electronic communications (**first**) and the sanctions related to exercising the activity in the audiovisual sector (**second**).

¹ Boujemline Walid (2007), the economic regulation authorities in the Algerian law, Magister thesis in the State and the Public Institutions, Faculty of Laws at the University of Algiers 01, pp. 179-180.

² Law 23-9 of 21 July 2023 on the banking monetary law, official gazette 43 of 27 July 2023.



First: the sanctions in the sector of the post and the electronic communications

The regulation of this sector is made by an independent regulation authority that enjoys the legal personality and the financial independence according to Article 11 of Law 18-04 on the general rules of the post and electronic communications¹. In this regard, this authority regulates the post and electronic communications market on behalf of the state, makes sure of the legitimate competition in the market, and settles the disputes between the operators and the subscribers, as provided for by Article 13 of Law 18-04. The custodial sanctions are applied when the licensee does not respect the legislative or organizational texts or decisions taken by the regulation authority, which notifies him to respect them in a deadline of 30 days. Thus, if he does not abide by the laws, the license is suspended for (01) to (03) months, or its period is reduced to one year if the operator keeps disrespecting the conditions of the notion. In this regard, if the operator does not respond, the license can be permanently withdrawn as provided for by Article 36 of Law 18-04 on the general rules of the post and electronic communications.

On this basis, the Legislator allowed the Regulation Authority of the Post and Electronic Communications the prerogative of deterring many violations discovered during the control on the communications market. Besides, it has the right to check if the economic operators abide by the market regulations and laws such as respecting the establishment license, the exploitation of the public electronic communications nets, and the continuous respect of the main commitments provided for in Law 18-04, the competence of the licensee to efficiently exploit the license, and the non-violation of the defense and security requirements².

Second: The sanctions related to exercising the activity in the audiovisual sector:

The Audiovisual Regulation Authority exercises a set of commitments through focusing on the audiovisual sector, the integrity of its agents, and the promotion of the objectivity, transparency, and the human rights and decency. On the other hand, it has prerogatives of regulation, control, and conflict resolution³. It has many tasks provided for in Article 54 of Law 14-04 of 24 February 2014, such as:

- Making sure of the freedom of exercising the audiovisual activity.
- Making sure of the non-bias of the legal persons who exploit the audiovisual communication services of the public sector.
- Making sure of the respect of transparency and objectivity.

¹ Law 18-04 of 10 May 2018 on the general rules of the post and electronic communications, official gazette 24 of 1 May 2018.

² Tekkar Mokhtar, op. cit., p. 147.

³ Barkat Imad Eddine & Akli Naima(2016), the legal frame of the Audio Visual Regulation Authority in Algeria, journal of image and communication, Vol. 05, No° 17, p. 02.



As for the custodial sanctions imposed by the Audiovisual Regulation Authority, Article 98 of Law 14-04 provided that in case the legal person exploiting private or public audiovisual communication service disrespects the conditions of the legislative and organizational texts, the Authority notifies him to respect them in a defined deadline. In case he does not commit to the notification, the Authority may fully or partially suspend the broadcast show, or suspend the license due to violations in the show. In both cases, the suspension should not exceed (01) month as provided for in Article 101 of Law 14-04. Furthermore, after notifying the body that grants the license, the Authority can immediately withdraw the license without prior notification when violating the requirements of the national security and defense, and the public policy and ethics as provided for Article 103 of Law 14-04 of 24 February 2014 on the audiovisual activity ¹.

Third section: The sanctions in the mine activity

In Law 14-05, the mine legislator tried to show the importance of the mine activities and their position in the sector that is strategic and sovereign. Thus, he subjected the mine activities to the mine license system and gave rise to a new pattern of managing and exercising the mine activities². In this regard, the mine sector witnessed a clear development thanks to the establishment of the National Agency for the Mine Activities (first) and the Agency of the Geologic Interest for Algeria (second) that substituted the National Agency for Geology and Mine Control.

First: The National Agency for the Mine Activities:

This authority issues administrative sanctions in the necessity limits of its tasks. Its deterrent authority manifests in issuing disciplinary sanctions. Regarding the custodial sanctions in the mine sector, if the sanction provides for the suspension of the mine license, the mine licensee who violated the mine laws and organizations must not exercise his activities temporarily. This sanction is a pressure tool and a coercion that push the licensee to meet his commitments. As for the freedom restricting sanctions, they are related to the withdrawal of the mine license permanently, or to ending the relation with licensee ³.

The study of these sanctions shows that the National Agency for the Mine Activities has big potential and discretion in issuing the sanctions and measures starting from a warning and, then, sanctions when the investor does not respond. The sanctions are administrative and include suspending the mine license for a period of

¹ Law 14-04 of 24 February 2014 on the audiovisual activity, official gazette 16 of 23 March 2014.

² Mahdaoui Rabeh (2022), the development of the legal system of the economic activity regulation in the mine sector, international policy journal, Vol. 06, No° 01, p. 375.

³ Mahdaoui Rabeh, op. cit., pp. 380-381.



time, and the withdrawal of the mine license if the licensee does not respond, leading to the end of the mine activity. This shows the gradation in sanctions and meets the notion of the economic regulation because the notification and the order aim at redressing the behaviors of the investors and avoiding the sanctions ¹.

Second: The Agency of the Geologic Interest of Algeria:

It has the authority of issuing licenses related to the mine sector on behalf of the state. In this line, its decisions are part of its public authority prerogatives. Therefore, they are administrative. It is in charge of issuing the licenses of exporting the samples of the mineral substances that have no commercial value ². In addition, the Algerian Legislator subjected the jurisdiction of the agencies to the duality of the jurisdiction that resembles the duality of the jurisdiction of the public institutions of the commercial industrial nature because they make trade with the others ³.

Second requirement: Financial sanctions

The regulation authorities have a deterrent task through the financial sanctions against the violations. In addition to the sanctions related to the rights, the sectorial regulation authorities issue other sanctions with a financial nature whose value differs from one sector to another according to the types and severity of the violation ⁴. In this context, the financial sanction is an administrative sanction that affects the financial account of the economic agent and, thus, has a monetary nature. The financial sanctions must suit the violations. Therefore, they are cut from the account of the violator. As for the value of the sanctions, it differs than the financial sanctions in the penal field, which defines in advance the maximum sanction unlike the regulation law that is based on other criteria in determining the amount of the fines ⁵.

The financial sanctions have big importance in deterring the violators because they are meant for restoring the gains made from the violation by the economic agent and depriving him of taking advantage of them⁶. In this regard, the financial sanctions can be defined as 1st degree sanctions on the economic agents, as they affect their financial accounts without partial or full temporary or permanent effect on the

¹ Khelidj Abdul Kader, , op. cit., p. 11.

² Lakehal Salah (2021), the legal position of the regulation authorities in the mine sector : the Agency of the Geologic Interest of Algeria and the National Agency of the Mine Activities, al Maarif journal, Vol. 16, No° 01, p. 135.

³ Boulkhadra Noura (2017), the commercial nature of the Fuels Agency and the Mines Agency: a new mechanism for the economic regulation, al Manar journal for legal and political studies and researches, Vol. 01, No° 02, p. 195.

⁴ Shaawa lamia, op. cit., p. 102.

⁵ Al Harchi Khadija Sarir, op. cit., p. 288.

⁶ Amoura Aissa, op. cit., p. 109.



activity unlike the arrest or the withdrawal of the license. In addition, the Algerian Legislator empowered most of the independent administrative authorities with administrative sanctions through imposing a monetary fine on the violators of the legal and organizational texts that govern the activities¹. Therefore, we shall tackle the financial sanctions of the independent regulation authorities in various sectors through covering the financial sanctions in the financial and banking sectors (first section), the financial sanctions in the net sectors (second section), and the financial sanctions in the mine activity (third section).

First section: The financial sanctions in the banking sector (financial sectors')

The Algerian Legislator empowered the independent regulation authorities in charge of the financial regulation of using their discretion in determining the value of the financial sanctions that he cannot issue. The value is estimated based on those taken by the committee of organizing and controlling the stock market actions “with an amount that equals the probable gain from the violation”. The value for the banking committee “equals at most the minimum capital that the bank or the financial institution requires providing”. As for empowering the committee of supervising the insurances by the Legislator to use its discretion in determining the financial sanctions, it is based on the criterion of the turnover in case the insurance and reinsurance companies violate the compulsory insurance tariff. In the same context, the committee may sanction any violation of the commitments by the insurance and reinsurance companies with a monetary fine of 30.000 to 100.000 DA, and 100.000 to 300.000 DA in case of return. We can limit these cases in the Legislators determination of the financial sanctions in the stock market with an amount of 10.000.000 DA².

Moreover, the committee of supervising the insurances has the right to impose financial sanctions on the insurance and reinsurance companies in the following cases:

- When they do not send the budget, the reports of the activity, the chart of accounts, the statistics, and all the necessary documents on 3 July of each year.
- When they do not publish their budgets in Arabic in a deadline of 60 days after the ratification by the managerial board.

The financial sanction may be:

¹ Nail Mohamed Nabil (2021), the independent administrative authorities in the economic and financial sector in Algeria between the necessity and imitation, PhD thesis in Laws, Faculty of Laws and Political Sciences at the University of Tizi Ouzou, p. 129.

² Aiden Razika, op. cit., pp. 119-120.



- 10.000 DA on each day of delay in case of violating the compulsory sending of the budget and the reports.
- 100.000 DA in case of not publishing the budgets.

In addition, the insurance broker who does not submit the table of affairs and the necessary documents to the supervision committee is sanctioned with a monetary fine of 10.000 DA on each day of delay¹. Moreover, any violation of the commitments to join the professional association of the insured, the commitments of notifying the committee about the projects of the optional insurance tariffs, and the commitment to pay the general insurance contract is sanctioned with a monetary fine of 1.000.000 DA. Furthermore, any violation of the insurance in case of the death of a U-13 minor, an adult under tutorship, or a person in the mental troubles clinic is sanctioned with a fine of 5.000.000 DA².

Second section: The financial sanctions in the net sectors

Article 127 of the law of the post and the electronic communications allows issuing financial sanctions on any operator who does not respect the notifications, taking the principle of proportionality into consideration³. Besides, the financial sanction must suit the risk of the violation and the gains from the violation. Besides, it can be equal to the gain made from the violation as long as it does not exceed 2% of the free-duty turnover of the last financial year. In this regard, the rate may reach 5% at maximum in case of a new violation of the commitment. In case there is no previous activity, the amount of the financial sanction should not exceed 500.000 DA, and 1.000.000 at maximum in case of a new violation. Besides, a financial sanction of 1000.000 at maximum may be issued against the operators who voluntarily or mistakenly provide inexact information to any demand addressed to them, as provided by the provisions of this law and its applicable texts. Moreover, the sanction can be issued in case of late provision of information, or payment of taxes and contributions in return for the services provided. In all cases, the regulation authority may impose a threatening tax between 5.000 DA and 10.000 DA on each day of deal as provided by Article 38 of Law 18-04 on the post and electronic communications⁴.

As for the audiovisual field, if the legal person who got a license to exploit the audiovisual service does not respect the notification within the deadlines, the law

¹ Medjdoub Nawal, op. cit., p.14.

² Aiden Razika, op. cit., pp. 120-121.

³ Takkar Mokhtar, op. cit., p. 152.

⁴ Article 38 of Law 18-04 of 10 May 2018 on the general rules of the post and electronic communications, op. cit.



allows the regulation authority to issue a financial sanction of 2% to 5% of the free-duty turnover of the last closed activity in 12 months. In case there is no previous activity, the financial sanction may be determined by the discretion of the Audiovisual Regulation Authority, provided that it does not exceed 200.000 ¹. Furthermore, Article 107 of Law 14-04 of 24 February 2014 on the audiovisual activity provided for a monetary fine between 200.000 DA and 10.000.000 DA on each legal or natural person who exploits the audiovisual service without getting the license provided for in Article 20 of the same law ². In addition, a monetary fine between 1.000.000 DA and 5.000.000 DA shall be issued against any legal or natural person who exploits the services of the audiovisual communication and waives the license without prior approval of the granting authority, as provided for by Article 108 of Law 14-04 ³. Moreover, Article 110 of the same law provides for a monetary fine between 2.000.000 and 10.000.000 DA against any unlicensed broadcaster of the audiovisual service regardless the broadcasting outlets ⁴.

Third section: The financial sanctions in the mine activity:

Despite enshrining the commercialization's principle to the exploration and exploitation of mineral resources through Article 11 of Law 14-05 dated February 24, 2014, The article 10 of it introduces a fundamental exception by reaffirming the traditional distinction known in Algerian economic law between strategic and non-strategic activities. This differentiation is determined by regulations under a specific legal framework.⁵

The financial sanctions are a form of administrative sanctions. Besides, they are temporary sanctions that include a financial disciplinary system through the fines imposed by the National Agency of the Mine Activities based on the authority of investigation that allows examining the documents and proving the violations of disrespecting the provisions and applicable texts of the mine law⁶. In this line, the engineers of the national mine police control and examine the declaration about the taxes by the licensee. Each false declaration subjects the person to corrections and a monetary fine that amounts up to half the tax. These fines are paid to the state budget according to Article 136 of Law 14-05 of 24 February 2014 on the mines law ⁷.

¹ Htatech Omar, op. cit., p. 702.

² Article 107 of Law 14-04 of 24 February 2014 on the audiovisual activity, op. cit.

³ Ibid Article 108.

⁴ Ibid Article 110.

⁵ Boujmelin Walid, The law of economic control in Algeria, Belkis publishing house, Casablanca-Algeria, year 2015, pp. 323 P. 333

⁶ Mahdaoui Rabeh, op. cit., p. 380.

⁷ Law 14-05 of 24 February 2014 on the mines law, official gazette 18 of 3 March 2014.



Besides, the law granted the National Agency for the Mine Activities various authorities and prerogatives unlike the traditional administration. This conforms the economic regulation that requires providing the regulator with all the possible authorities to exercise his tasks as needed. These authorities are important for the state in the management of the economic system. They can issue deterrent penal measures when violating the commitments provided for in the mine licenses ¹.

¹ Khelidj Abdul Kader, op. cit., p. 118.



CONCLUSION:

The policy of the market economy in Algeria required establishing independent regulation authorities that confirm the state's shift from an interventionist into a regulating state. These authorities are in charge of regulating some sectors, and controlling and issuing sanctions against the violators; unlike the past where the state was the only part to issue sanctions. Issuing sanctions is the most important prerogative granted to these authorities by legal texts that determine the violation and the sanction. In this line, the sanctions differ according to the type of the violation and the sector of the activity. Upon our study to the specificity of the sanctions of the independent regulation authorities, we found out that the penal task of these authorities is enshrined by the constitution and laws. This is one of the decriminalization aspects because the intervention forms changed from the criminalization to banning and fining to promote the economic activity. Besides, the penal jurisdiction of these authorities is among the mechanisms of the notion of the economic regulation without the need to resort to the judicial authorities. Moreover, the penal authority of these authorities is restricted with a set of conditions, mainly that they should not be custodial and that they should respect the same constitutional penal principles.

Furthermore, the Algerian Legislator recognized the right of the independent regulation authorities to issue sanctions under the control of justice. In this context, their decisions are administrative and appealable in front of the justice. Besides, their sanctions are divided into administrative sanctions with financial specificities and non-financial disciplinary sanctions. The administrative sanctions include the warning, order, reprimand, withdrawal, and arrest of the banks managers. On the other hand, the financial sanctions include the fines that are paid by the violators for the public treasure. Based on these findings, we recommend:

1. Not publishing the administrative penal decisions unless the remedies are exhausted to support the presumption of innocence.
2. Making sure that the basic rights are respected, such as the right to defense and the principle of proportionality in the sanctions.
3. Informing the parts about the events referred to the regulation authorities before issuing the sanctions.
4. Committing to the logic in issuing the sanctions to respect the proportionality principle.
5. Delegating the prerogatives of imposing threatening fines to the independent regulation authorities in case of disrespecting the administrative sanctions.



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