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THE EVOLUTION OF ADMINISTRATIVE JUDICIAL STRUCTURES IN ALGERIA DURING THE PERIOD 1962-2022: A CRITICAL ANALYTICAL STUDY

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Benaichouche O. The evolution of administrative judicial structures in Algeria during the period 1962-2022: a critical analytical study.

This research paper examines the evolution of administrative judiciary structures in Algeria from 1962 to 2022 (over 60 years); since its independence, Algeria has adopted a system of dual jurisdiction, with the structures of the administrative judiciary gradually evolving thereafter; Algeria maintained the three major administrative courts established by the French administration initially; furthermore, following the issuance of the judicial organization law of 1965, administrative chambers were established at the level of judicial councils, and an administrative chamber at the level of the Supreme Council, currently the Supreme Court.

In this regard, the 1996 constitution represents a crucial turning point in the development of the Algerian administrative judiciary, establishing the Council of State, administrative courts, and the Court of Conflicts in its Article 152, subsequently, the promulgation of the Code of Civil and Administrative Procedures in 2008 affirmed the independence of administrative lawsuit procedures from ordinary lawsuit procedures; moreover, six administrative appellate courts were recently established (2022) to strengthen the principle of litigation at two levels in administrative matters.

The study reached several conclusions, most notably that the establishment of the six (06) administrative appellate courts in Algiers, Oran, Constantine, Ouargla, Tamanrasset, and Bechar embodies the principle of litigation at two levels in administrative matters, furthermore, the new reforms suggest that the Algerian legislator is moving towards electronic litigation by approving the possibility of electronic processing of lawsuit filing procedures, as stipulated in the new Article 815 of Law No. 22-13, amending and supplementing the Code of Civil and Administrative Procedures: «A lawsuit is filed before the administrative court by a paper or electronic request»; in 2022, the Algerian administrative judiciary achieved a qualitative accomplishment by establishing administrative appellate courts, thus completing all its judicial structures at all levels (administrative courts, administrative appellate courts, Council of State), in addition to amending the Code of Civil and Administrative Procedures, and amending Law No. 98-02 related to the Council of State.

Key words: Development; Structures; Administrative Jurisdiction; Judicial System; Algeria.

Бенайшуш О. Еволюція адміністративних судових структур в Алжирі протягом періоду 1962-2022 років: критичне аналітичне дослідження.

Ця наукова робота досліджує еволюцію структур адміністративної юстиції в Алжирі з 1962 по 2022 роки (понад 60 років); з моменту здобуття незалежності Алжир прийняв систему подвійної юрисдикції, після чого структури адміністративної юстиції поступово розвивалися; Спочатку

Алжир зберіг три основні адміністративні суди, засновані французькою адміністрацією. Згодом, після прийняття Закону про судоустрій 1965 року, на рівні судових рад були створені адміністративні палати, а також адміністративна палата при Верховній раді, яка нині є Верховним судом.

Конституція 1996 року стала вирішальним поворотним моментом у розвитку алжирської адміністративної юстиції, закріпивши в статті 152 Державну раду, адміністративні суди та Суд з конфліктів. Пізніше, у 2008 році, прийняття Цивільного та адміністративного процесуального кодексу підтвердило незалежність процедур адміністративного позову від звичайних судових процедур, крім того, нещодавно (у 2022 році) було засновано шість апеляційних адміністративних судів для зміцнення принципу двоступеневості судочинства в адміністративних справах.

Дослідження дозволило зробити низку висновків. Найважливішим є те, що створення шести (06) апеляційних адміністративних судів у містах Алжир, Оран, Константина, Варгла, Таманрасет та Бешар втілює принцип двоступеневості судочинства в адміністративних справах; Крім того, нові реформи свідчать про те, що алжирський законодавець рухається у напрямку електронного судочинства, схваливши можливість електронного подання позовів, як зазначено в новій статті 815 Закону № 22-13, який змінює та доповнює Цивільний та адміністративний процесуальний кодекс: «Позов подається до адміністративного суду у паперовій або електронній формі». У 2022 році алжирська адміністративна юстиція досягла якісного прориву, заснувавши апеляційні адміністративні суди, тим самим завершивши формування всіх судових структур на всіх рівнях (адміністративні суди, апеляційні адміністративні суди, Державна рада), Це супроводжувалося змінами до Цивільного та адміністративного процесуального кодексу та Закону № 98-02, що регулює діяльність Державної ради.

Ключові слова: розвиток; конструкції; Адміністративне судочинство; судова система; Алжир.

Introduction.

The judicial system in Algeria has undergone significant transformations throughout its history, shaped by political, economic, and social conditions. By tracing the evolution of administrative jurisdiction structures, it becomes evident that Algeria inherited from French colonization a distinct administrative judiciary separate from the ordinary judiciary. This system was initially represented by three administrative courts in Algiers, Oran, and Constantine, whose rulings could be appealed before the French Council of State. Under Law No. 62-157 of 31 December 1962, French legislation remained in force unless it conflicted with national sovereignty.

The Law No. 63-218 of 18 June 1963 established the High Council (later renamed the Supreme Court), signaling a shift from judicial duality to judicial unity at the apex of the judiciary. This transition was further reinforced by Ordinance No. 65-273 of 16 November 1965, which dissolved the three colonial-era administrative courts and replaced them with 15 courts of justice (later expanded to 31). Each court incorporated an administrative chamber, alongside a dedicated chamber within the High Council. Procedural frameworks, such as the Code of Civil Procedures (Ordinance No. 66-154), were enacted to uphold legal unity. Despite these reforms, Algeria's judicial system during this period defied clear classification as either unified or dual, owing to economic constraints and insufficient resources to fully replicate judicial structures.

The growing volume of administrative disputes, coupled with the ordinary judiciary's lack of expertise in public law matters and protracted litigation, necessitated urgent reforms. The 1996 constitutional amendment (Article 152) marked a pivotal shift by institutionalizing judicial duality through Organic Laws No. 98-01 (Council of State), No. 98-02 (administrative courts), and No. 98-03 (Court of Conflicts). Subsequent advancements included Law No. 08-09 of 25 February 2008, which introduced the Code of Civil and Administrative Procedure to formalize specialized administrative litigation processes.

The 2020 Constitution (Presidential Decree No. 20-442) further constitutionalized administrative judiciary reforms. Article 179(2) designates the Council of State as the supervisory authority over administrative courts and courts of appeal. This provision paved the way for the establishment of six Administrative Courts of Appeal in 2022 (Law No. 22-07), located in Algiers, Oran, Constantine, Bechar, Ouargla, and Tamanrasset. Additionally, Law No. 22-13 revised procedural mechanisms for administrative litigation, aligning Algeria's judicial framework with modern principles of efficiency and accessibility.

Problem of the study.

What has been the trajectory of the development of administrative judicial structures in Algeria from independence to the present?

To address this question, the study is structured as follows:

- Introduction
- First Chapter: The Incomplete Judicial Duality Phase (1962–1996)
- Second Chapter: The Complete Judicial Duality Phase (1996–2022)
- Conclusion: Key Findings and Recommendations

The Importance of the Study.

The development of administrative judicial structures in Algeria represents a critical area of inquiry within specialized legal studies. The independence of administrative jurisdiction, characterized by structures distinct from those of ordinary jurisdiction, is essential for achieving judicial duality in its precise technical sense. This separation ensures specialized and efficient adjudication of administrative disputes, reinforcing the rule of law and enhancing the overall integrity of the judicial system.

Objectives of the Study.

The study aims to achieve several objectives, the most important of which are:

- To examine the most important milestones that the Algerian judicial system has passed through throughout its history, based on political, economic, and social circumstances;
- To understand how Algeria has dealt with the administrative judiciary inherited from French colonialism;
- To identify the various stages through which the Algerian administrative judiciary has passed;
- To examine the latest developments in the 1996 constitutional amendment and the issuance of the Organic Law on the Council of State and Administrative Courts;
- To shed light on the process of administrative judicial reform.

The Adopted Approach.

A descriptive-analytical approach was employed, involving the compilation and systematic analysis of scientific data from diverse sources. This methodology was combined with critical and historical perspectives to evaluate the evolution of administrative judicial structures and draw evidence-based conclusions.

Status of The Problem.

Certainly, to understand the detailed progression of the evolution of administrative judicial structures in Algeria from 1962 to 2022, the plan was divided into two Chapters: the First Chapter will deal with the inaccurate (incomplete) phase of judicial duplication 1962–1996; whilst the Second Chapter will deal with the actual (complete) phase of judicial duplication 1996–2022.

Presentation of the Main Material.

1. The inaccurate judicial duplication phase (incomplete): 1962–1996

In this phase, we herein highlight that the Algerian legislator chose the system of judicial duplication, but the political, economic and social circumstances prevented the full embodiment thereof; as the system of judicial duplication requires a distinction between ordinary disputes and administrative disputes in terms of law and judicial structures; whilst the system of judicial unity has one legal system, which is the common law that includes both ordinary disputes and administrative disputes; besides, it is based on the jurisdiction of the judiciary at all levels to adjudicate in all disputes, regardless of their nature, according to one law and one procedure, the system of which is widespread in Anglo-Saxon countries.

However, it shall be difficult, for anyone who follows the Algerian judicial system in this time period (1962–1996), to classify such system and include it within the system of judicial unity or judicial duplication. As a result, I chose the phrase of inaccurate judicial duplication phase (incomplete).

In light of which, we hereinafter provide details about the reasons for this phase as follows:

2. The Inaccurate Judicial Duplication Phase (Incomplete): 1962–1996

In this phase, we emphasize that the Algerian legislator chose the system of judicial duplication, but political, economic, and social circumstances prevented its full embodiment; as the system of judicial duplication requires a distinction between ordinary disputes and administrative disputes in terms of law and judicial structures, whereas the system of judicial unity operates under a single legal system (common law), encompassing both ordinary and administrative disputes; additionally, it relies on the judiciary's jurisdiction at all levels to adjudicate all disputes, regardless of their nature, under one law and procedure, a system widespread in Anglo-Saxon countries. However, it would be difficult for anyone analyzing the Algerian judicial system during this period (1962–1996) to categorize it as either a system of judicial unity or duplication; consequently, the term “inaccurate judicial duplication phase (incomplete)” was selected.

The reasons for this phase are outlined below:

2.1 The Transition Period (1962–1965)

After independence and the restoration of national sovereignty in 1962, the Algerian judicial system began to pursue its own direction, distinct from the French judicial system due to political, economic, and social circumstances resulting from the revolution and the effects of the war [1]; additionally, Algeria continued applying French legislation through Law No. 62-157 of 31 December 1962; nonetheless, Algeria avoided radical changes to its judicial system at this phase due to limited resources and its recent independence; thus, the existing administrative judicial bodies—represented by the three administrative courts in Algiers, Oran, and Constantine—were retained, while an administrative court was added in Laghouat under the law of 31 December 1962 [2]; in addition, the Algerian legislator sought to eliminate the system of judicial duality inherited from the French era, replacing it with judicial unity; the judicial system was unified at the highest level through the establishment of the High Council under Law No. 63-218 of 18 June 1963, designed to function as both the Court of Cassation for ordinary disputes and the Council of State for administrative disputes; consequently, the Supreme Court's formation marked a significant step toward abolishing the colonial-era administrative judiciary, while the High Council became a cornerstone of Algeria's judicial unity system.

Undoubtedly, the Algerian legislator curtailed the authority of lower courts in favor of the High Council (Supreme Court); this was achieved by assigning the High Council responsibility for adjudicating administrative disputes, including those related to compensation, taxes, public works, and roads; decisions in these cases could be appealed before the High Council, centralizing judicial oversight further.

Based on these developments, the legislator opted for unity at the judicial hierarchy's apex via the High Council, while retaining a dual structure at lower levels; this involved preserving the three existing courts and introducing a new administrative court in Laghouat, as outlined in the law of December 1962 [3].

2.2 The Period of Administrative Chambers (1965–1990)

During the first phase, the Algerian judicial system oscillated between unity and duality; however, Algeria adopted judicial unity under Ordinance No. 65-273 on judicial organization, abolishing the dual framework inherited from France; the administrative courts from the prior phase were dissolved, with their competencies transferred to administrative chambers within Courts of Justice; this was affirmed by Article 1 of Ordinance No. 65-273 [4], which established 15 Courts of Justice in provinces such as Algiers, Annaba, Batna, Bechar, Constantine, El Asnam (now Chlef), Medea, Mostaganem, Oran, Ouargla, Saida, Setif, Tiaret, Tizi Ouzou, and Tlemcen [5]; subsequently, the number of Courts of Justice increased to 31, with the legislator stating: “He created thirty-one (31) Courts of Justice across the national territory, their headquarters and jurisdictions to be fixed by decree” [5].

Organizationally, administrative judicial bodies were integrated into ordinary courts, with a Court of Justice at the base level and the High Council at the apex; Article 5 of the law stipulated that competencies of pre-independence administrative courts be transferred to chambers, which continued applying administrative law substantively; procedurally, however, they operated under a unified framework guided by the Code of Civil Procedures, akin to other disputes [6].

A. Revision of the Code of Civil Procedures (1971): Under Ordinance No. 71-80, the Courts of Justice in Algiers, Oran, and Constantine were authorized to rule via administrative chambers at the first instance; their judgments could be appealed before the High Council in cases involving the State, Province, or Municipality [7].

B. Expansion of Administrative Chambers (1986): The legislator revised Article 7 of the Code of Civil Procedures through Law No. 86-01, aiming to improve accessibility and address shortcomings in the three regional administrative chambers; the revised Article 7 stated: “Courts of Justice are empowered to adjudicate at the first instance, with judgments appealable before the High Council in all cases where the State, a Province, a Municipality, or a public administrative institution is a party...” [8]. From this provision, it is clear that competencies were exercised by Courts of Justice, their jurisdictions determined by organizational texts [9]; Decree No. 86-107 confirmed this structure, increasing administrative chambers from 3 to 20, leaving 11 Courts of Justice without such chambers [10].

2.3 Period of Local and Regional Administrative Chambers (1990–1996):

Following the 1990 judicial reform, **Law No. 90-23** amended the Code of Civil Procedures, stipulating: “Courts of Justice are authorized to adjudicate at the first instance through judgments appealable before

the Supreme Court in all cases involving the State, a Province, or a public administrative institution, under the following jurisdictional rules:

1. Cases fall under the jurisdiction of Courts of Justice in Algiers, Oran, Constantine, Bechar, and Ouargla, with their jurisdictional scope defined by organizational regulations;
2. Appeals challenging the validity of decisions issued by Provinces;
3. Appeals concerning the interpretation or legality of such decisions.

Additionally, local administrative chambers were tasked with:

- Appeals against decisions by Presidents of People's Communal Assemblies or administrative institutions;

Disputes over the civil liability of the State, Province, Municipality, or public administrative institutions seeking compensation [11].

Decree No. 90-407 outlined territorial jurisdictions [12]:

- **Algiers Court of Justice:** Medea, Tizi Ouzou, Boumerdes, Bejaia, Blida, Tipaza, Bouira, Ghardaïa, Laghouat, Djelfa;
- **Oran Court of Justice:** Aïn Temouchent, Tlemcen, Mascara, Mostaganem, Relizane, Tiaret, Chlef, Saida, Ain Defla, Tebessa;
- **Constantine Court of Justice:** Mila, Skikda, Annaba, Al-Tarf, Jijel, Oum El Bouaghi, Khenchela, Guelma, Souk-Ahras, Batna, Biskra, Setif, M'Sila, Bordj Bou Arreridj;
- **Bechar Court of Justice:** Tindouf, Naâma, El-Bayadh, Adrar;
- **Ouargla Court of Justice:** El Oued, Ilizi, Tamanrasset.

Jurisdictional Allocation:

- **Regional Administrative Chambers:** Hear appeals against provincial decisions;
- **Local Administrative Chambers:** Address communal assembly decisions, liability disputes, and interpretative appeals;
- **Supreme Court Administrative Chamber:** Adjudicate appeals against central administrative decisions and oversee procedural legality.

3. Evaluation of Reforms (1962–1996):

This phase faced structural inconsistencies between administrative and ordinary jurisdictions, exemplified by:

- **Shortage of judges:** Limited qualified judges restricted administrative chambers to three regions [13]; official statistics noted 800 judges in 1976 versus fewer than 30 in 1962 [14];
- **Financial constraints:** Only three administrative chambers were established due to budget limitations;
- **French influence:** Algeria adopted regional courts instead of nationwide administrative tribunals, mirroring France's model; however, the 1965 reforms failed to improve accessibility for litigants [15].

4. The Accurate Judicial Duality Phase (Complete): 1996–2022

The 1996 Constitution (Article 152) institutionalized judicial duality, establishing independent administrative judicial structures, including:

- Council of State;
- Administrative Courts;
- Court of Conflicts.

Key Legislation:

- **Statute No. 98-01 (1998):** Governs the Council of State's supervisory role;
- **Statute No. 98-03 (1998):** Establishes the Court of Conflicts to resolve jurisdictional disputes;
- **Code of Civil and Administrative Procedures (2008):** Formalizes administrative litigation rules;
- **Law No. 22-07 (2022):** Creates six Administrative Courts of Appeal (Algiers, Oran, Constantine, Bechar, Ouargla, Tamanrasset).

Reasons for Judicial Duality:

- Rising administrative disputes requiring specialized adjudication;
- Ordinary judges' lack of expertise in administrative law;
- Judicial specialization enhancing precision in rulings;
- Increased human resources (2,364 judges – 1996);
- Sociopolitical reforms post-1989 Constitution promoting legislative diversity.

4.1. The Administrative Courts and the State Council (1996–2020):

Upon ratification of the 1996 Constitutional Amendment, the system of judicial duality was explicitly adopted, as this amendment brought a radical transformation to the Algerian judicial system, which differs in structure and procedure from the system prevailing since independence; however, the most significant change introduced by this system was the establishment of new administrative judicial structures independent of the ordinary judiciary, including the State Council, Administrative Courts, and the Court of Conflicts [17].

Article 152 of the 1996 Constitutional Amendment states: “The Supreme Court shall oversee the functioning of administrative judicial bodies, ensure the consistency of jurisprudence nationwide, and uphold the rule of law; a Court of Conflicts shall resolve jurisdictional disputes between the Supreme Court and the State Council” [18].

Key outcomes of adopting judicial duality include:

- Law No. 98-01 (May 30, 1998), governing the Council of State’s jurisdiction, organization, and operations, which states in Article 2: “The Council of State supervises administrative judicial bodies under judicial authority”;

- Law No. 98-03 (May 30, 1998), addressing the Court of Conflicts, stipulating in Article 3: “The Court of Conflicts adjudicates jurisdictional disputes between administrative judicial bodies under conditions specified in this law” [19].

- Code of Civil and Administrative Procedure No. 08-09, which designates Administrative Courts as general jurisdiction bodies for administrative disputes under Article 800(1);

- The establishment of Administrative Courts of Appeal under Article 179(2) of the 2020 Constitution and Article 8 of Law No. 22-07 (2020).

Reasons for Adopting Judicial Duality

- Rising administrative disputes, evidenced by the overwhelming caseloads in judicial authorities;

- The specialization required for administrative disputes, which differ from civil, commercial, labor, or maritime cases;

- The need for judicial specialization, enabling judges to develop expertise in specific dispute branches;

- Enhanced human resources post-1996, with hundreds of qualified judges joining strengthened institutions, totaling 2,364 judges, 170 courts, and 31 court branches nationally [20];

- Sociopolitical transformations post-1989, including Algeria’s shift to a bicameral legislature under the 1996 Constitutional Amendment [21].

4.1.1. Administrative Courts

The 1996 Constitutional Amendment established judicial duality, implemented via laws creating administrative courts as first-instance bodies for administrative disputes; Algeria’s 31 administrative courts hold general jurisdiction at the foundational level, formalized under Law No. 98-02 (May 30, 1998) [22].

A. Constitutional Basis

- Article 152 (1996 Constitution) designates the Council of State as the supervisory body for administrative courts;

- Article 179(2) (2020 Constitution).

B. Legal Basis

- Law No. 98-02 (May 30, 1998) on Administrative Courts [23];

- Law No. 22-10 (June 9, 2022) on Judicial Organization;

- Executive Decree No. 98-356 (November 14, 1998), implemented by Executive Decree No. 11-195 (May 22, 2011).

4.1.2. Council of State

The Council of State, defined under Article 2 of Law No. 98-01 as “a supervisory body for administrative judicial bodies under administrative authority, ensuring jurisprudential unity and law adherence”, serves as Algeria’s supreme administrative judicial body [24].

Legal Framework

A. Constitutional Basis: Article 179(2) (2020 Constitution);

B. Legal Basis: Law No. 22-11 (June 9, 2022), amending Law No. 98-01.

Judicial Jurisdictions

- Adjudicates appeals against Administrative Courts of Appeal rulings, particularly involving annulment, interpretation, or legality of decisions by central authorities, national institutions, and professional bodies¹ [25];

- Reviews cassation appeals against final administrative judgments¹ [26].

Advisory Jurisdictions

- Issues opinions on draft laws, proposing necessary amendments¹ [27].

4.2 The Administrative Courts of Appeal (2020–2022)

Constitutional Basis: Article 179(2) (2020 Constitution);

Legal Basis: Law No. 22-07 and Statute No. 22/10.

Jurisdiction:

- Hear appeals against administrative court rulings;
- Resolve jurisdictional conflicts **between administrative courts**;
- Submit annual reports to the Council of State.

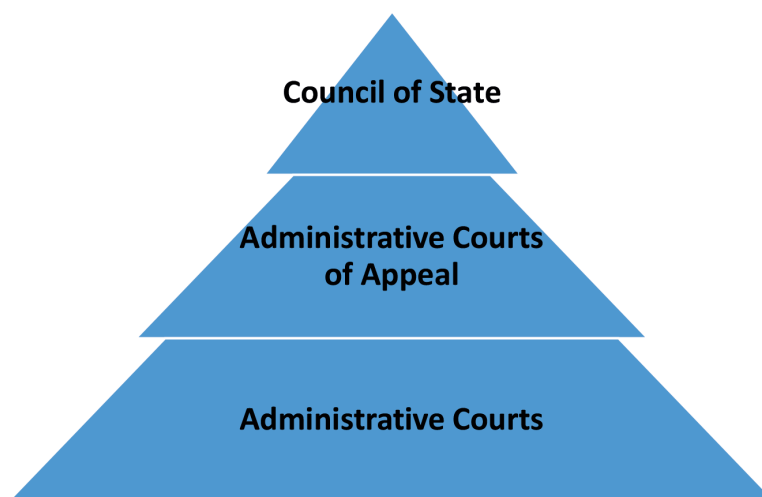
Composition: Three judges (president and two advisers).

Objectives:

- Complete the administrative judiciary framework (**Courts → Courts of Appeal → Council of State**);

- Strengthen **two-tier litigation**;
- Ensure legal oversight of administrative bodies;
- Reduce the Council of State's caseload to focus on jurisprudence development.

Figure illustrating the Algerian Administrative Judiciary structures:



Source: Prepared by the researcher, based on the provisions of Article 4 of Law No. 5-11, op. cit.; and the provisions of Article 8 of Law No. 22-07, issued on 4 Shawwal 1443 AH, corresponding to 5 May 2022, pertaining to the Judicial Division; published in Official Gazette No. 32, dated 14 May 2022.

In this context, it should be noted that the Algerian administrative judiciary structures comprise administrative courts, administrative courts of appeal, and the Council of State; additionally, it should be emphasized that the administrative courts of appeal were recently established in May 2022; subsequently, lawsuits related to administrative matters are filed before administrative courts, and appeals thereof may be lodged before administrative courts of appeal, while appeals in cassation may be pursued before the Council of State, whose headquarters are located in Algiers near those of the Supreme Court and the Constitutional Council.

5. Conclusions:

By the help and blessing of Allah, We have completed this paper, entitled “The Evolution of the Structures of Administrative Jurisdiction in Algeria from 1962 to 2022: A Critical Analytical Study”; the key findings and recommendations arising from this study are outlined below:

Firstly: Results

- The judicial organization in Algeria has undergone numerous transformations since independence, influenced by political, economic, and social factors;

– The adoption of the 1996 Constitution marked a pivotal moment in the evolution of Algerian administrative law, establishing the Council of State, administrative courts, and the Court of Conflicts; consequently, the administrative judiciary became independent, with distinct structures separate from the ordinary judiciary, alongside the Court of Conflicts, which adjudicates jurisdictional disputes between ordinary and administrative judicial bodies;

– The creation of six administrative courts of appeal in Algiers, Oran, Constantine, Ouargla, Tamanrasset, and Bechar reflects the implementation of the two-tier litigation principle in administrative matters;

– Recent reforms underscore the Algerian legislator's shift toward electronic litigation, permitting the electronic submission of lawsuits; this is enshrined in Article 815 of Law No. 22-13, which amends the Code of Civil and Administrative Procedures: "A lawsuit may be filed before the administrative court either through a paper application or electronically";

– In 2022, the Algerian administrative judiciary achieved a landmark with the establishment of administrative courts of appeal, finalizing its hierarchical structure across all levels (administrative courts, administrative courts of appeal, and the Council of State); this reform coincided with amendments to the Code of Civil and Administrative Procedures and updates to Statute No. 98-02, regulating the Council of State.

Secondly: Recommendations

– Urge the legislative authority to prioritize enacting a statute specifically regulating administrative courts of appeal;

– Advocate for the expansion of administrative courts of appeal to all 58 provinces to alleviate pressure on the existing six courts (Algiers, Oran, Bechar, Ouargla, and Tamanrasset);

– Recommend organizing consultative workshops with administrative law scholars during legal reforms, particularly those pertaining to administrative matters, to integrate expert insights; this will enhance legislative quality, advance the rule of law, and position Algeria as a regional and international leader in legal and judicial fields.

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