

The arbitration jurisdiction of independent administrative authorities as an alternative mechanism for settling disputes of an economic nature

Dr. BOUHABEL Fayssal¹ and Dr. TAHIR Abdennacer²

¹ Mohamed Seddik BENYAHIA, University of Jijel, Algeria. Email: fayssal.bouhbel@univ-jijel.dz

² Centre de recherche en technologies agroalimentaires, Route de Targa Ouzemmour, Campus universitaire, Bejaïa 06000, Algérie. Email: abdennacer.tahir@crtaa.dz

Abstract---The Algerian legislator has enshrined a modern approach to economic regulation by assigning a range of powers previously exercised by the administration to independent administrative authorities. This reinforces the principles of specialization and independence, and keeps pace with the rapid transformations in the economic environment. Among the most prominent of these powers is arbitration, which enables certain authorities to adjudicate disputes between economic operators within the sector under their supervision. This allows for a swift and effective resolution that aligns with the technical nature of regulated activities. However, this jurisdiction remains subject to legal constraints that define its subject-matter and sectoral scope. It has not been granted to all independent administrative authorities, but rather is limited to those whose establishment law explicitly stipulates it. These bodies issue administrative decisions of a special nature, blending regulatory functions with quasi-judicial aspects, while remaining subject to judicial review. They are also obligated to respect the procedural guarantees afforded to economic operators, thus upholding the principle of legality and ensuring a balance between economic efficiency and the protection of rights.

Keywords---Independent administrative authorities, Economic regulation Economic operators, arbitration jurisdiction.

How to Cite:

BOUHABEL, F., & TAHIR, A. (2026). The arbitration jurisdiction of independent administrative authorities as an alternative mechanism for settling disputes of an economic nature. *The International Tax Journal*, 53(1), 655–667. Retrieved from <https://internationaltaxjournal.online/index.php/itj/article/view/563>

The International tax journal ISSN: 0097-7314 E-ISSN: 3066-2370 © 2026

ITJ is open access and licensed under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License.

Submitted: 02 February 2025 | Revised: 03 May 2025 | Accepted: 01 November 2025

Introduction

The withdrawal of the state from the economic field led to the emergence of what is known as independent administrative authorities, which is a new form of state intervention, as it has thus transformed from an interventionist state to a state that regulates economic activity through these authorities. One of the justifications for creating these authorities is to activate competitive movement between economic operators in order to achieve fair competition between them, and thus abandon the idea of central management of economic activity, which has proven its shortcomings and inadequacy. As a result, the legislator has granted these authorities several powers that were previously entrusted to the traditional administration.

Arbitration is considered one of the most important legal means employed by independent administrative authorities to resolve disputes. Disputes between conflicting parties are submitted to these authorities under conditions they specify, allowing the authorities to adjudicate impartially. However, the exercise of this jurisdiction is not broad; it is limited by legal controls imposed by the legislature. Furthermore, the authorities possessing arbitration powers are limited, confining their role to resolving disputes arising within the sector they are tasked with regulating, between economic actors. Based on the above, the research problem is as follows: To what extent is the arbitration authority granted to independent administrative authorities effective as an alternative means of settling economic disputes?

To answer this question, the research paper is divided into two sections: the legal nature of the jurisdiction of independent administrative authorities in the field of arbitration (Section 1), and the legal guarantees for a fair resolution of disputes when exercising arbitration jurisdiction (Section 2).

Section One: The Legal Nature of the Jurisdiction of Independent Administrative Authorities in the Field of Arbitration

Arbitration is defined as "a type of private adjudication and an alternative to state courts, in which the parties freely agree to resort to arbitration to resolve any disputes that may arise between them in the future, by virtue of a decision that has judicial value."¹

The meaning of arbitration encompasses several ideas or concepts, including neutrality, wisdom, security, knowledge, will, and decision. Arbitration is the result of several parties agreeing to present their dispute to a body other than the judiciary for resolution. It can also be defined as a system whereby a non-judicial entity intervenes to resolve a dispute arising between several parties, exercising a judicial function granted to it by those parties. It is characterized by several features: the existence of a dispute, the parties' right to resort to arbitration, and the arbitrator's judicial authority to decide the dispute, similar to a judge in a state. This judicial criterion distinguishes arbitration from other similar concepts such as mediation and conciliation. There are two types of arbitration: contractual or consensual arbitration, which results from an agreement, and arbitration resulting from a legal obligation, which can be described as mandatory arbitration.²

The legislator granted the authority to resolve disputes to a specific number of independent administrative authorities, which is embodied in its main form, arbitration, with the exception of what the legislator stipulated regarding granting some authorities the power to conduct conciliation procedures, in the case of the Electricity and Gas Regulatory Commission, according to the text of Article 132 of the Electricity and Gas Connection by Pipelines Law No. 02-01³

First requirement: The limits of the legislator's granting of arbitration jurisdiction to independent administrative authorities.

The authority granted by the legislator to independent administrative authorities does not result from an agreement between the parties to the dispute; in other words, there is no contract regulating this

procedure, but rather it is an authority exercised by regulatory bodies directly through the law. ⁴This area is limited at this level, as it concerns a limited number of sectors, namely the stock exchange and financial markets sector, the electricity and gas sector, the postal and electronic communications sector, in addition to the arbitration jurisdiction granted to the audiovisual regulatory authority. ⁵

Section One: Justifications for Granting Independent Administrative Authorities Arbitration Jurisdiction

Here, we can distinguish between two types of justifications: those related to the judicial system itself, and those related to the independent administrative authorities. These considerations generally relate to the diminishing role of judges in adjudicating general economic cases.

First: Justifications Related to the Judge

Issues related to sectors of economic activity present a challenge for judges due to their specific nature and the complex technical regulations, which in themselves constitute a justification for preferring recourse to independent administrative authorities over judges. ⁶

However, when it comes to the time it takes to resolve cases, what matters to the economic operator is not only winning the dispute, but also the time it takes. This explains why some texts relating to the resolution of disputes arising from economic regulation issues stipulate that they be resolved within very short timeframes, compared to the timeframes required for resolving disputes before the courts. ⁷

Second: Justifications related to independent administrative authorities

The justifications related to independent administrative authorities are as follows: ⁸

- Reducing the number of disputes brought before the courts.
- Achieving efficiency through the swift resolution of these disputes, which is the primary objective of arbitration.
- Regulatory authorities control economic matters within the sectors under their supervision, leveraging their significant experience in dispute resolution. The law grants them broad discretionary power in resolving disputes, whereas a judge adjudicating such disputes is bound by the rules stipulated in agreements between the parties and lacks the discretionary power granted to economic regulatory authorities.
- Furthermore, arbitration offers these authorities greater flexibility in dispute resolution, both in terms of rules and procedures, compared to the strict application of the law by a judge.

Section Two: Organization and Scope of Arbitration Jurisdiction Granted to Independent Administrative Authorities

The Algerian legislator granted arbitration jurisdiction to the Stock Exchange Operations Regulation and Monitoring Commission, as well as to the Electricity and Gas Regulatory Commission, through internal bodies separate from the Commission itself, called the Arbitration Chamber. The Postal and Electronic Communications Regulatory Authority was also granted arbitration jurisdiction without stipulating the establishment of a separate internal body. Similarly, the Audiovisual Regulatory Authority was granted arbitration authority within its own jurisdiction. ⁹

First: The organizational structure of the arbitration bodies: the "Arbitration Chamber" and the "Disciplinary and Arbitration Chamber"

Regarding the Disciplinary and Arbitration Chamber at the level of the Stock Exchange Operations Regulation and Supervision Committee, the legislator stipulated that "a Disciplinary and Arbitration Chamber shall be established within the Committee, consisting, in addition to its chairman, of ¹⁰:

- Two members elected from among the members of the committee for the duration of its term.
- Two judges appointed by the Minister of Justice, chosen for their expertise in the economic and financial fields.

As for the Electricity and Gas Regulatory Commission, Article 133 of Law 02-01 concerning electricity and gas distribution stipulates that "a department called the 'Arbitration Chamber' shall be established

within the Regulatory Commission to adjudicate disputes that may arise between operators at the request of one of the parties, with the exception of disputes relating to contractual rights and obligations."¹¹

Its composition, as stipulated in Article 134, consists of¹²:

- Three members, including the chairperson and three alternates, appointed by the Minister of Energy for a renewable six-year term.
- Two judges appointed by the Minister of Justice.

The difference between the composition of the two committees is clear. All members of the Electricity and Gas Regulatory Committee are entirely from outside the government, unlike the Stock Exchange Operations Regulation and Oversight Committee, where the chairperson and members are drawn from within the Chamber, with the exception of the two judges appointed from outside the committee. This ensures the complete impartiality of the body in the first committee and relative impartiality in the second committee's disciplinary and arbitration chamber.¹³ The second approach concerns the authority regulating postal and electronic communications.¹⁴ The legislator granted the Postal and Electronic Communications Regulatory Authority the task of arbitration, consisting of a board and a director general.¹⁵

The Regulatory Authority Council consists of seven (07) members, including the Chairman, appointed by the President of the Republic upon the proposal of the Prime Minister. They are selected based on their technical, legal, and economic competence for a term of three (03) years, renewable once.¹⁶

The Independent National Audiovisual Regulatory Authority was also granted the power of arbitration without specifying another form or body to undertake the arbitration task, similar to the regulation and monitoring of stock exchange operations and the Electricity and Gas Regulatory Authority. According to Article 43 of Law 23-20, this authority is composed of 9 members appointed by presidential decree for a term of 5 years, renewable once.¹⁷

Second: The Jurisdictions of Economic Regulatory Authorities in the Field of Arbitration

The areas of jurisdiction for resolving disputes differ among these authorities. For example, the Stock Exchange Operations Regulation and Supervision Committee's jurisdiction for resolving disputes through arbitration includes technical disputes arising from the interpretation of laws and regulations governing the operation of the stock exchange, which arise as follows:¹⁸

- Between brokers in stock exchange transactions.
- Between brokers in stock exchange transactions and the stock exchange management company.
- Between brokers in stock exchange transactions and companies issuing shares.
- Between brokers in stock exchange transactions and those ordering withdrawals in the stock exchange.

The law does not stipulate the procedures to be followed in the field of arbitration, except for the identification of those entitled to appeal to the committee, which operates at the request of the committee, at the request of the observer authorized by the committee to monitor stock exchange meetings, at the request of the parties mentioned in Article 52, based on an appeal from any interested party. The same chamber also has disciplinary jurisdiction to examine any breach of professional duties and ethics by brokers in stock exchange transactions and any violation of the legislative and regulatory provisions applicable to them.¹⁹

- For the Electricity and Gas Regulatory Commission, the Arbitration Chamber is competent to adjudicate disputes arising between operators at the request of one of the parties, with the exception of disputes relating to contractual rights and obligations, in accordance with the provisions of Article 133 of Law 02-01. This concerns disputes relating to access to or use of public electricity transmission or distribution networks, natural gas transmission or distribution facilities, or natural

gas storage facilities. In addition to its jurisdiction to adjudicate such disputes, the Arbitration Chamber is competent in the following two cases:

- The first case relates to the refusal of the electricity or gas distributor via pipelines, for legitimate reasons, to provide electricity or gas to the applicant, in accordance with the provisions of Article 03 of Executive Decree 02-149, which includes the specifications relating to the conditions of supply of electricity and gas via pipelines²⁰ .
- The second case concerns disagreement over costs resulting from restoration, demolition, height increase, enclosure, construction, etc., in accordance with Article 162 of the Electricity and Gas Distribution by Pipelines Law, where the dispute is referred, at the request of the customer, to the Conciliation Authority or the Arbitration Chamber.²¹.

The Postal and Electronic Communications Regulatory Authority is authorized by the legislator to adjudicate disputes arising between operators when it comes to interconnection, access, infrastructure sharing, and national roaming, in addition to settling disputes arising between operators and subscribers.²².

Regarding the Independent National Audiovisual Regulatory Authority, the legislator granted it the power to arbitrate disputes between legal entities operating audiovisual communication services, whether between themselves or with third parties, in accordance with Article 40 of Law No. 23-20 concerning audiovisual activity.

Second Requirement: The Legal Nature of the Function of Independent Administrative Authorities During Their Exercise of Arbitration. The nature of arbitration issued by independent administrative authorities has occupied a significant place in legal scholarship. Many scholars have attempted to ascertain its legal nature, which is shrouded in ambiguity and differing interpretations. This stems from the contractual basis upon which arbitration rests and the judicial outcome reached by the arbitrator, i.e., the arbitration award. The arbitration practiced by economic regulatory authorities and the functional structure of arbitration have led to divergent opinions regarding its nature, between those who consider them judicial bodies issuing judicial rulings and those who consider them administrative bodies issuing special administrative decisions²³.

First Branch: Considering Independent Administrative Authorities as Judicial Bodies Issuing Judicial Rulings

This concerns arbitration as an optional procedure for settling disputes outside of courts and official bodies, to which the disputing parties resort after agreeing between them. Thus, the arbitrator has his jurisdiction based on the will of the parties through their agreement to resort to the arbitrator in the event of a dispute and not the judge. Accordingly, a written agreement must be concluded in accordance with what is stipulated in the Code of Civil and Administrative Procedure. However, in the case of the arbitration jurisdiction that the legislator granted to the economic regulatory authorities, the matter does not require an agreement because the jurisdiction is granted by the text of the law²⁴.

The function granted by the legislator to these authorities is a judicial function originally belonging to the judge, and the term arbitration is used metaphorically only to denote the function of resolving disputes in general, far removed from the technicality of arbitration in the strict sense of the term. The term arbitration may be applied to many procedures that are considered special methods for resolving disputes in the absence of an explicit agreement between the parties .²⁵

Some liken these authorities, when they possess this jurisdiction, to actual judicial bodies. This analogy stems from the function assigned to them by law, which originally belonged to a judge. Consequently, their work is judicial in nature, and their arbitration decisions are judicial rulings. If regulatory authorities perform the same function as the judiciary—namely, resolving disputes and achieving justice

between disputants—then they necessarily acquire a judicial character. Therefore, considering a dispute before them follows the same procedures as before a judge and concludes with a ruling similar to a judge's ruling, both in terms of appeal and enforceability.²⁶

A major trend in jurisprudence supported this idea, as they resorted to adapting the economic regulatory authorities to the judiciary based on the functional criterion, considering that the judicial character is derived from the material competencies and is linked to the functional objectives of this body. Whoever rules must be adapted as a judge. In addition, the dedication of the same judicial procedures before the independent administrative authorities when they adjudicate disputes, such as the principle of adversarial proceedings, respect for the rights of the defense, and guaranteeing the principle of impartiality, led some to question the administrative nature of these authorities in favor of their enjoying a judicial nature. This is either based on the elements and features common between the independent regulatory authorities and the judiciary, related to the method of establishment by legislative text, or the collective composition that these authorities have, similar to judicial bodies, or in view of the dominance and hegemony of those procedural rules applied before the judiciary in disputes brought before the regulatory authority, or based on the powers that the latter possesses to impose penalties, issue orders, and adjudicate disputes. This falls under the functional criterion²⁷.

In summary, proponents of this view consider arbitration to be a binding form of adjudication for disputing parties once they agree to it. They see it as replacing the state's compulsory judicial system, and the arbitrator's work as simply a form of state-administered justice. If the state permits parties to resort to arbitration, the arbitrator's role becomes limited to exercising a judicial function. Therefore, the arbitrator's work is considered judicial because it possesses the essential elements of judicial action: a claim, a dispute, and a person legally authorized to resolve the conflict. Furthermore, the arbitrator's award is considered a judicial act in the strict sense, following the same procedures as issuing court judgments. In terms of substance, the arbitrator typically applies the rules of substantive law, adjudicates a genuine dispute between the parties, and is obligated to respect the rights of the defense.²⁸

The second branch: Considering independent administrative authorities as administrative bodies that issue special administrative decisions.

Some legal scholars believe that the idea of adapting economic regulatory powers to judicial bodies when they adjudicate disputes is unacceptable for several reasons:²⁹ The first consideration relates to the nature of the decisions issued by these bodies, which do not, in reality, possess the same legal force as judicial decisions or rulings issued in the same field. A judge, when deciding a dispute, issues a judgment that has the force of *res judicata*, whereas independent administrative authorities issue executive decisions.

The second consideration relates to the procedures that independent administrative authorities adhere to when adjudicating disputes. These procedures are primarily the responsibility of the legislature, granted to it by the constitution. However, these authorities often establish the rules governing these procedures themselves, either in their internal regulations, through organizational structures, or by decisions issued by them. As for the reason why some adopt the judicial adaptation of independent administrative authorities, it is due to the confusion between the judicial function and the dispute resolution function. It is true that judicial functions are the domain of the judge, but there are functions close to them in which jurisdiction is granted to regulatory authorities. Some legal scholars characterize these as quasi-judicial, but in reality, they are dispute resolution functions. The difference between them and the former is that the judicial function is exercised by the judge, while the dispute resolution functions can be exercised by regulatory bodies, with a common factor between them, which is that both are subject to adjudicating disputes. Therefore, as a result, the decisions issued by independent administrative authorities when adjudicating disputes are special administrative decisions. This particularity is related to the dispute resolution function that economic regulatory authorities exercise within the framework of their performance of the function of regulating sectors. The legislator's

recognition of the arbitration and dispute resolution authority of some independent administrative authorities is merely a new method for the state to perform its assigned economic role under the policy of free orientation, which revolves around protecting and promoting competition³⁰.

What can be concluded is that the administrative nature of regulatory authorities is what makes arbitration decisions administrative decisions of a special nature. They differ from traditional administrative bodies, but they constitute a new category within administrative bodies. The basis for this is the nature of the decisions issued by them, as well as the jurisdiction of the administrative judiciary with regard to disputes related to them. The French Council of State has confirmed the administrative nature of independent administrative authorities, based on the methods of appealing their decisions and the powers granted to them. As for the Algerian legislator, he explicitly stipulated the administrative nature of some regulatory authorities, as is the case with the Stock Exchange Operations Regulation and Control Commission, and the Postal and Electronic Communications Regulatory Authority³¹.

Section Two: Legal Guarantees for Economic Operators When Exercising Arbitration Jurisdiction

If granting certain independent administrative authorities the power to adjudicate disputes falls within their regulatory function, which necessitates expertise, specialization, and technical capabilities that enable them to resolve complex disputes, then guarantees are essential to ensure a fair resolution when exercising arbitration jurisdiction. This transition from a fair trial to a fair dispute resolution process, followed by judicial oversight of the decisions of regulatory authorities in the field of arbitration.

First Requirement: Guaranteeing a Fair Dispute Resolution

Independent administrative authorities, in the view of some, do not possess the legitimacy of judges. Therefore, they should be subject to a procedural framework similar to that applied to courts. Thus, guaranteeing a fair dispute resolution requires ensuring the impartiality of the adjudicating body, in addition to respecting the principle of due process and the rights of the defense.

Section One: Ensuring the Principle of Neutrality Achieves a Fair Dispute Resolution

To guarantee the neutrality of independent administrative authorities, it is necessary to address the independence of arbitration bodies within these authorities vis-à-vis the executive branch, and then the independence of these arbitration bodies vis-à-vis the market.

First: The Extent of the Independence of Arbitration Bodies within Independent Administrative Authorities vis-à-vis the Executive Branch

The independence of independent administrative authorities vis-à-vis the executive branch is achieved by protecting them from all forms of pressure that political authorities might exert on them in favor of public institutions intervening in the market. Ensuring the independence of regulatory authorities vis-à-vis the executive branch is crucial, given that most disputes adjudicated by these bodies involve a primary party: the historical public operator (the public institution) and the private operator.³²

The independence of the regulatory body cannot be discussed from the perspective of the multiplicity of entities possessing appointment authority, given that the President of the Republic is legally authorized to exercise this power, even if the process differs depending on whether the nomination is made by the Prime Minister, as is the case with the Postal and Electronic Communications Regulatory Authority, or with the Electricity and Gas Regulatory Commission, where the Minister of Energy and the Minister of Justice share the power to appoint members and judges. Similarly, at the level of the Stock Exchange Operations Regulation and Oversight Committee, the power to appoint members and judges is shared between the President of the Republic and the Minister of Justice.³³

We will arrive at the same conclusion if we examine the extent to which the second criterion, related to the term of office, is met. For the Stock Exchange Operations Regulation and Control Commission, the chairman and two members serve a term of four (4) years, without the legislator specifying the

possibility of renewal, unlike the two appointed judges. As for the members of the Arbitration Chamber at the Electricity and Gas Regulatory Commission, the three members, including the chairman, in addition to the alternate members, serve a term of six (6) years, renewable. The legislator has not specified this for the two judges. Members of the Postal and Electronic Communications Regulatory Authority are appointed for a term of three (3) years, renewable once (Article 20/2 of Law 18-04), as is the case with the Audiovisual Regulatory Authority, where they serve a term of five (5) years, renewable once.³⁴

Consequently, although the legislator has established arbitration chambers within the Stock Exchange Regulation and Oversight Committee and the Electricity and Gas Regulatory Commission, it remains difficult to guarantee the independence of these members, both within these arbitration chambers and within the regulatory bodies themselves (such as the Postal and Electronic Communications Regulatory Authority and the Audiovisual Regulatory Authority) in relation to the executive branch. This difficulty extends to ensuring the impartiality of these chambers and bodies when adjudicating disputes between public and private operators.

Secondly: The Extent of the Independence of Arbitration Bodies at the Level of Independent Administrative Authorities in Relation to the Market

The essential guarantees for ensuring the independence of arbitration bodies in relation to the market primarily involve the inclusion of conflict-of-interest regulations. These regulations prevent members of these bodies from holding any public or private positions that are incompatible with their membership in arbitration bodies, or from having interests in various institutions involved in the sector. Furthermore, the application of a recusal procedure is crucial to prevent a member from participating in resolving a dispute if they have a personal relationship with one of the parties or a vested interest in the case before them.³⁵

Incompatibility generally relates to conflicts with any other function, whether public or private, or with any professional activity or elected office. This falls under the category of functional incompatibility or the direct or indirect ownership of interests by members in the specific sector concerned, which falls under the category of financial incompatibility. The incompatibility may be absolute or relative. As for the procedure of abstention, it refers to the application of a technique through which members of independent regulatory authorities are excluded from participating in deliberations concerning the institutions under discussion, on the grounds of their personal relationship with them. This is intended to ensure the impartiality and objectivity of the members.³⁶

Regarding the Algerian legislator's enshrining of this guarantee at the level of independent administrative authorities, we find in the Electricity and Gas Regulatory Commission that a system of absolute incompatibility has been established, as Article 121 of Law 02-01 stipulates the following: "The position of a member of the Board of Directors is incompatible with any professional activity, national or local contractual mandate, public office, or any direct or indirect ownership of an interest in an institution affiliated with a sector or an institution that has the status of a qualified customer." However, this system is not applied to the members of the Arbitration Chamber, namely the three original members concerned from outside the Commission and the three alternate members, with the exception of the two judges to whom the Statute of the Judiciary applies. As for the members of the Disciplinary and Arbitration Chamber at the level of the Stock Exchange Operations Regulation and Control Committee, both the president and the two elected members are subject to the proportional incompatibility system with each electoral term, and with each public position or any other activity except for education or artistic or intellectual creativity. In addition, the law establishing the authority did not prevent them from having interests in institutions related to the jurisdiction of the Disciplinary and Arbitration Chamber, as they can have interests in brokerage firms in stock exchange operations or companies issuing shares. Even Article 25 of Legislative Decree 93-10 relating to the Stock Exchange, which prevents the president and permanent staff of the committee from carrying out any commercial

transactions regarding shares accepted on the stock exchange, cannot guarantee their impartiality, given that it does not prevent them from owning shares in companies operating on the stock exchange, with the exception of the incompatibility system to which the two judges are subject, similar to the two judges who are members of the Arbitration Chamber at the level of the Arbitration Chamber at the level of the Electricity and Gas Regulatory Commission.

Both the Postal and Electronic Communications Regulatory Authority, which the legislator included under Article 23 of Law 18-04 concerning the rules relating to postal and electronic communications, remain subject to a system of absolute incompatibility. This article states, "Without prejudice to the provisions of legislation in force, the status of member of the Regulatory Authority's board and the status of Director General of the Regulatory Authority are incompatible with any other professional activity or public office, as well as with the direct or indirect ownership of interests in an institution belonging to the postal, electronic communications, audiovisual, and information technology sectors." Similarly, the Independent National Audiovisual Regulatory Authority is subject to a system of absolute incompatibility according to Articles 45 and 46 of Law 23-20.

With reference to Order No. 97-01 relating to incompatibility cases and special obligations related to certain jobs and functions, the legislator has unified the application of incompatibility cases to include everyone who occupies a senior position in public institutions or administrations, public institutions, public economic institutions, mixed companies in which the state owns at least 50 percent of the capital, regulatory authorities, and every similar public body charged with the function of regulation, supervision or arbitration, where it is prohibited for them to own, inside or outside the country, interests in institutions or bodies that they are responsible for supervising or monitoring, or with which they have concluded an agreement or contract, and the employees concerned by this system are subject to it even two years after the end of their job³⁷.

Section Two: Respect for the Principle of Adversarial Proceedings and the Rights of the Defense

These guarantees, within the framework of a fair dispute resolution, relate to respecting the equality of both parties with regard to their right to present their statements and arguments, in accordance with the principle of adversarial proceedings, and their right to legal representation.

First: Respecting the Principle of Adversarial Proceedings

The Algerian legislator stipulated the principle of adversarial proceedings in the Code of Civil and Administrative Procedure, but did not pay attention to such procedures in the laws establishing independent administrative authorities, whether with regard to the legislative decree relating to the Commission for Regulating and Monitoring Stock Exchange Operations, or the law relating to the Electricity and Gas Regulatory Commission. It merely stipulated that the arbitration chamber adjudicates the dispute after hearing the disputing parties, in accordance with Article 56 of Legislative Decree 93-10 relating to the Stock Exchange, as well as Article 136 of Law No. 02-01, which referred to regulation regarding the procedural rules applicable before the arbitration chamber at the level of the Electricity and Gas Regulatory Commission. As for the Postal and Electronic Communications Regulatory Authority, it worked to define the procedures followed before it during the settlement or adjudication of disputes by means of a decision issued by it. The regulatory authority notifies the defendant by means of a registered letter with acknowledgment of receipt, or by any other method that allows for proof of receipt, in order to provide it with a response petition and the corresponding supporting documents. The deadline for the response is set at fifteen (15) Day, and the plaintiff's comments are sent by the regulatory authority in the same forms mentioned above, and the latter has a period of ten (10) days to submit his comments³⁸.

Based on the recommendations proposed by the committee, and after reviewing the notification, response documents, and written observations received from the parties concerned, the Regulatory Authority Board may summon the parties to the dispute at least seven (7) working days before the date

of the deliberation session, by any means that allows proof of receipt, in order to hear the parties in an open discussion. However, the decision issued by the Regulatory Authority itself cannot supersede the law, because the latter can, at any time, amend or change this decision by narrowing or increasing the increase.³⁹.

Second: The Right to Legal Assistance

The legislator did not neglect to stipulate the procedure of adversarial proceedings, nor did it address the right to legal assistance at all, as if its intention was to exclude this guarantee, except in the case of pronouncement of penalties. This applies to the Stock Exchange Operations Regulation and Monitoring Committee, and to the Arbitration Chamber of the Electricity and Gas Regulatory Commission. As for the Postal and Electronic Communications Regulatory Authority, the decision stipulates that the petition submitted to the authority must be written and signed by the legal representative or a person legally authorized by the electronic communications operator or by the subscriber who possesses the capacity, standing, and interest to act.

Consequently, the legislator has shown a lack of attention to these guarantees, even though some provisions exist without a consistent, precise, unified, and clear vision across the texts.

Second Requirement: Judicial Oversight of Decisions of Independent Administrative Authorities in the Field of Arbitration

The Algerian legislator has subjected all administrative decisions to the oversight of the administrative judge in application of the principle of legality, as stipulated in Article 168 of the Constitution. Therefore, we will examine the establishment of this oversight at the level of independent administrative authorities, and then the extent of judicial oversight of these decisions. Section One: Establishing the Principle of Oversight of Decisions of Independent Administrative Authorities in the Field of Arbitration

The Algerian legislator subjected the decisions of the Postal and Electronic Communications Regulatory Authority to the oversight of the administrative judge, as stipulated in Article 22 of Law 18-04, which contains the rules relating to postal and electronic communications. The text of this article reads as follows: "Decisions of the Regulatory Authority Council may be subject to an appeal, which is not suspended from execution, before the Council of State within one month from the date of notification." Similarly, the legislator, in the law relating to audiovisual activity, subjected the decisions issued by the Audiovisual Regulatory Authority without distinction or detail, as Article 88 of the Audiovisual Law states: "Decisions of the Audiovisual Regulatory Authority may be appealed in accordance with the legislation in force⁴⁰".

Furthermore, decisions issued by the Disciplinary Chamber at the level of the Stock Exchange Operations Regulation and Oversight Committee in the field of arbitration are not subject to appeal, with the exception of decisions issued in the disciplinary field, in accordance with the text of Article 57 of Legislative Decree 93-10, as amended by Article 18 of Law 03-04, which stipulates the following: "Decisions of the Chamber in the disciplinary field are subject to appeal for annulment before the Council of State within one month from the date of notification of the decision being challenged. The appeal shall be investigated and adjudicated within six (06) months from the date of its registration.⁴¹".

It should be noted that prior to the amendment of Legislative Decree 93-10, the latter granted jurisdiction to consider appeals against decisions in the arbitration and disciplinary field to the Administrative Chamber at the level of the Judicial Council, according to the text of Article 57 of Legislative Decree No. 93-10. As for the decisions of the Arbitration Chamber at the level of the Electricity and Gas Regulatory Commission, the legislator stipulated absolutely that these decisions are not subject to appeal before the courts, according to the text of Article 137 of Law 02-01, which reads

as follows: “Decisions of the Arbitration Chamber are subject to appeal and, as such, are enforceable.”⁴²

The Algerian legislator's approach regarding the non-appealability of these decisions before the courts is unconstitutional, based on the constitutional principle that all administrative decisions are subject to judicial review according to Article 168 of the Constitution. Therefore, the two previous texts that exempt arbitration chamber decisions from judicial review are tainted by unconstitutionality.⁴³

Section Two: The Extent of Judicial Oversight of Decisions by Independent Administrative Authorities
The principle of judicial oversight of arbitration decisions issued by independent administrative authorities is, in itself, a guarantee of the rights of disputing parties, both procedurally and in terms of the validity of the decision. However, the difficulty a judge may face lies in their ability to comprehend and control the complex issues adjudicated by these authorities.

First: Judicial Oversight of the Validity of the Procedures Under Which the Dispute Was Resolved

The oversight exercised by the judge generally aims to ensure that the decision resolving the dispute is issued according to fundamentally sound procedures. The judge must verify that the regulatory authority respected the principle of due process and ensured equality between the disputing parties with regard to their rights of defense. The judge also examines all procedures from the initial submission of the complaint to the regulatory authority until the issuance of the arbitration award.

The judge must also ensure that the decision was issued by a body that enjoys the necessary independence to guarantee its impartiality. Thus, by overseeing the availability of these procedures, the judge aims to compel economic regulatory authorities or arbitration chambers to issue their decisions in accordance with judicial procedures. **Second: The effectiveness of judicial oversight in ensuring the soundness of the decision resolving the dispute.**

The more the oversight focuses on suitability, the greater the need for specialization and technical knowledge. To bolster this knowledge, the judge requires transparency in the interventions of economic regulatory authorities, ensuring access to all relevant sector-specific information through publications on their websites. The judge also needs adequately qualified experts to assist them.⁴⁴

In this area, the judge focuses their oversight on the reasons and arguments upon which the independent administrative authority based its final decision in the dispute. Although the Algerian legislator did not emphasize the element of justification for decisions issued by independent administrative authorities, with the exception of decisions issued by the Electricity Regulatory Commission according to Article 39 of Law 02-01, this does not mean excluding this essential element of administrative decisions. The Algerian Council of State affirmed this in its Decision No. 13 dated February 9, 1999, in the Union Bank case against the Governor of the Bank of Algeria, where it obligated the Banking Commission to justify its decisions, even if the Monetary and Credit Law did not require it, especially when the matter concerns the rights of the parties.

Conclusion

The arbitration jurisdiction of independent administrative authorities is considered an alternative means of settling disputes between parties outside the traditional court system. Given the shortcomings and deficiencies of the traditional judiciary, the legislator was compelled to find a new method that aligns with developments in the economic field. The arbitration jurisdiction of independent administrative authorities constitutes the optimal means of adapting legal rules to the technological developments occurring in sectors subject to economic regulation. When an administrative body seeks to resolve a dispute, it prioritizes the protection of competition. To achieve this, it adapts the legal rule to align with the specific characteristics of each sector and the dispute before it. In this way, this jurisdiction plays a crucial role in fostering free competition and encouraging private initiative, thus contributing to the

state's economic role. However, while this is the vision the legislator seeks to realize by granting non-judicial bodies the authority to adjudicate disputes, shortcomings have hindered the realization of the arbitration function of regulatory authorities. These shortcomings lie in the absence of implementing regulations outlining the various procedures for exercising arbitration jurisdiction, given that the legislator has left the organization of this jurisdiction to the executive branch, as exemplified by the arbitration chamber within the Electricity and Gas Regulatory Authority.

Regarding the issue of ensuring that this arbitration jurisdiction is surrounded by the fundamental guarantees that ensure a fair trial for disputing parties, these guarantees are not universally applied across all authorities. What has been enshrined in these guarantees is limited, particularly in the laws governing stock exchanges and/or postal and electronic communications. These shortcomings could infringe upon the rights of disputing parties and have created a degree of legal instability, thus limiting the effectiveness of this jurisdiction.

In conclusion, this study proposes the following:

1. Extending arbitration as an alternative dispute resolution mechanism for economic disputes to all independent administrative authorities in order to reduce the number of cases brought before the courts.
2. Unifying the procedural framework for arbitration jurisdiction granted to independent administrative authorities by establishing specific legislation that outlines the various arbitration procedures before these authorities.
3. Strengthening the guarantees afforded to stakeholders in the laws pertaining to independent administrative authorities by amending these laws and ensuring their effective implementation.

List of footnotes:

-
- ¹ Kharshi Ilham, *Independent Administrative Authorities under the Regulatory State*, Thesis submitted for a PhD in Public Law, University of Setif 2, Algeria, 2015, p. 270.
 - ² Ashraf Muhammad Khalil Hammad, *Arbitration in Administrative Disputes and its Legal Effects, A Comparative Study*, Dar Al-Fikr Al-Jami'i, Alexandria, Egypt, 2010, p. 132.
 - ³ Law No. 02-01, dated February 5, 2002, relating to electricity and gas distribution by pipes, Official Gazette, No. 08, issued on February 6, 2002, amended and supplemented by Law No. 14-10, dated December 30, 2014, Official Gazette No. 78, issued on December 31, 2014, amended and supplemented by Ordinance No. 15-01, dated July 23, 2015, Official Gazette No. 40, issued on July 23, 2015.
 - ⁴ Makhlof Bahia, *The Arbitration Jurisdiction of Independent Administrative Authorities*, Master's Thesis in Public Law, Abdel Rahman Mira University, Bejaia, 2010, p. 118.
 - ⁵ ZOUAMIA Rachid, *l'autorité de régulation de l'audiovisuel*, revue académique de la recherche juridique, vol 17, n° 01, faculté de droit et sciences politiques, université A. MIRA, Bejaia, Algérie, 2018
 - ⁶ Sawalhiyeh, Imad, *The Arbitration Jurisdiction of Independent Administrative Authorities*, Journal of In-Depth Legal Research, Lebanon, Issue 37, January 2020, p. 41.
 - ⁷ Kharshi Ilham, previous reference, p. 272.
 - ⁸ Hassan Nawfal, *Arbitration in Administrative Contract Disputes, A Comparative Study*, Dar Houma for Printing, Publishing and Distribution, Algeria, 2016, pp. 80-81.
 - ⁹ Boujmelin Walid, *Economic Regulation Law*, Dar Belkacem, Algeria, 2015, p. 61.
 - ¹⁰ Article 51 of Legislative Decree No. 93-10, dated May 23, 1993, relating to the Stock Exchange, Official Gazette No. 34, issued on May 23, 1993, amended and supplemented by Order No. 96-10, dated January 10, 1996, Official Gazette No. 03, issued on January 14, 1996, amended and supplemented by Law No. 03-04, dated February 17, 2003, Official Gazette No. 11, issued on February 19, 2003.
 - ¹¹ According to the text of Article 133 of Law No. 02-01, amended and supplemented, previous source.
 - ¹² Article 134, same source.
 - ¹³ Makhlof Bahia, previous reference, p. 19.
 - ¹⁴ Article 11 of Law No. 18-04, dated May 10, 2018, which sets out the general rules relating to post and electronic communications, Official Gazette No. 27, issued on May 13, 2018, states that: "An independent regulatory authority for post and electronic communications shall be established, possessing legal personality and financial independence, and shall be referred to in the text as the regulatory authority".

-
- ¹⁵ According to the text of Article 19 of Law No. 18-04, same source.
- ¹⁶ According to the text of Article 20, same source.
- ¹⁷ Article 43 of Law No. 23-20, dated December 2, 2023, relating to audiovisual activity, Official Gazette, No. 77, issued on December 2, 2023.
- ¹⁸ Article 52 of Legislative Decree No. 93-10, amended and supplemented, previous source.
- ¹⁹ Articles 53 and 54 of Legislative Decree No. 93-10, amended and supplemented, previous source.
- ²⁰ Article 3 of Executive Decree No. 194-02, dated May 28, 2002, includes the specifications relating to the conditions of supply of electricity and gas via pipes, Official Gazette, No. 39, issued June 2, 2002.
- ²¹ Article 162 of Law No. 02-01, amended and supplemented, previous source.
- ²² Article 13, paragraphs 9 and 10 of Law No. 18-04, previous source.
- ²³ Lazhar Ben Said, International Commercial Arbitration in accordance with the Civil and Administrative Procedures Law and Comparative Laws, Dar Houma for Printing, Publishing and Distribution, Algeria, 2012, p. 18.
- ²⁴ Article 1007 and Article 1011 of Law No. 08-09, dated February 25, 2008, containing the Code of Civil and Administrative Procedure, Official Gazette No. 21, issued April 23, 2008, amended and supplemented by Law No. 22-13, dated July 12, 2022, Official Gazette No. 48, issued July 17, 2022.
- ²⁵ Kharshi Ilham, previous reference, p. 279.
- ²⁶ Lazhar Said, previous reference, p. 21.
- ²⁷ ZOUAIMIA Rachid, les instruments juridiques de la régulation économique en Algérie, Édition Belkeise, 2012, p. 129.
- ²⁸ Lazhar Ben Said, previous reference, p. 23.
- ²⁹ ZOUAIMIA Rachid, les instruments juridiques de la régulation, économique en Algérie, Op.cit, p-p 129-131.
- ³⁰ ZOUAIMIA Rachid, les autorités de régulation indépendantes face aux exigences des la gouvernance, Edition Belkeise, 2013, pp 148-153.
- ³¹ Hanafi Abdullah, Independent Administrative Authorities, A Comparative Study, Dar Al-Nahda Al-Arabiya, Cairo, 2000, pp. 66-67.
- ³² ZOUAIMIA Rachid, les instruments juridiques de la régulation économique en Algérie, Op.cit. p 136.
- ³³ Article 51 of Legislative Decree No. 93-10, amended and supplemented, previous source.
- ³⁴ Article 43 of Law No. 23-20, previous source.
- ³⁵ Kharshi Ilham, previous reference, p. 288.
- ³⁶ ZOUAIMIA Rachid, les autorités administratives indépendantes et la régulation économique en Algérie, édition Houma, Alger, 2005, p-p, 99-102.
- ³⁷ Order No. 07-01, dated November 25, 2007, relating to cases of incompatibility and obligations specific to certain positions and jobs, Official Gazette, No. 16, issued on March 7, 2007.
- ³⁸ Decision No. 61/A Kh/ R M/ S D B I I / 202, dated December 23, 2020, which includes procedures for settling disputes by the Postal and Electronic Communications Regulatory Authority, is available on the website: www.arpce.dz.
- ³⁹ ZOUAIMIA Rachid, les instruments de régulation économique en Algérie, Op.Cit, p, 146.
- ⁴⁰ Article 22 of Law No. 18-04, previous source.
- ⁴¹ Article 57 of Legislative Decree No. 93-10, amended and supplemented by Article 18 of Law 03-04, previous source.
- ⁴² Article 137 of Law No. 02-01, amended and supplemented, previous source.
- ⁴³ ZOUAIMIA Rachid, Les instruments juridiques de la régulation économique en Algérie, Op.cit. p 148.
- ⁴⁴ Kharshi Ilham, previous reference, p. 296.