

The annulment judge as a mechanism for balancing rights and freedoms against the requirements of administrative policing

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Abstract---Since its inception, administrative justice has been one of the most significant practical mechanisms within public law for safeguarding rights and preserving freedoms. It discharges this function through its jurisdiction to resolve disputes and protect individuals from any excess that may arise from the arbitrary conduct of public legal persons—particularly given the extensive prerogatives that the administration wields vis-à-vis individuals, which may generate serious incursions upon fundamental rights and public freedoms under the pretext of achieving administrative policing objectives. This study accordingly seeks to illuminate the essential role played by the independent annulment judge in forging a balance between the preservation of individual rights and freedoms, on the one hand, and the requirements of administrative policing through which the administration endeavors to enforce public order, public security, public tranquility, and public health, on the other—a balance that ultimately serves the goal of security and stability within the state.

Keywords---Public Liberties, Administrative Judge, Action for Annulment, Administrative Policing, Public Administration.

Introduction

The subject of human rights and fundamental freedoms has emerged as one of the most prominent concerns of the international community. International and regional instruments have consecrated these rights as an essential guarantee of human dignity, and this concern is reflected in most modern constitutions, including the Algerian Constitution of 2020,¹ which declares that the promotion and protection of these rights constitute primary objectives of the state, and entrusts the judicial authority with the responsibility of overseeing their protection. Yet mere constitutional entrenchment of rights and freedoms is insufficient to ensure their effective enjoyment: they remain susceptible to restriction or violation, particularly when the administration exercises its activities or issues regulatory decisions aimed at maintaining public order. This reality makes the existence of an independent administrative judiciary—capable of reviewing the legality of such decisions and ensuring that they do not overstep legal limits—an imperative necessity.

Various legal systems have recognized that this equilibrium can be achieved only through judicial review of the acts of administrative authorities. The annulment judge is thus regarded as the judicial instrument par excellence for ensuring the administration's subjection to the principle of legality and for nullifying decisions that transgress the law or violate individuals' fundamental rights. Whenever public authorities encroach upon the fundamental rights and freedoms of individuals,

¹ Presidential Decree No. 20-442, dated 15 Jumada al-Ula 1442 (December 30, 2020), on the promulgation of the Constitutional Amendment approved by referendum on November 1, 2020, Official Gazette of the Algerian Republic, No. 82.

jurisdiction as a general rule vests in the administrative judge, who undertakes to ensure that administrative authorities respect the law.²

It is in this context that the role of the annulment judge in achieving a balance between the requirements of public order and the demands of protecting rights and freedoms becomes apparent—a balance secured through judicial review of regulatory decisions. Such judicial oversight of the acts of public administration in general, and of regulatory decisions in particular, is aimed primarily at protecting the principle of legality, establishing the rule of law, and preventing the administration from acting arbitrarily toward individuals. The action for annulment constitutes the most effective means of attaining this objective: it enables the administrative judge to verify the legality of administrative policing decisions and underscores his role, which rests fundamentally on the necessity of reconciling the protection of constitutionally guaranteed rights and freedoms with the preservation of public order.³ The effectiveness of this role can only be realized if the administrative judge enjoys full independence, subject in the exercise of his judicial functions to no authority other than the law. This consideration highlights the importance of studying the annulment judge's role as a mechanism for achieving equilibrium between the protection of public order and the safeguarding of rights and freedoms—given that the action for annulment is regarded as the foremost judicial instrument established to ensure the principle of legality and protect individuals' rights from any excess or arbitrariness on the part of the administration, especially in the domain of regulatory administrative decisions.

The theoretical significance of this study lies in clarifying the legal and doctrinal foundations of the annulment judge's role in protecting rights and freedoms, while its practical significance lies in highlighting the role of administrative justice in confronting contemporary challenges such as administrative corruption and violations committed under the cover of public order.

This study aims to underscore the pivotal role of the annulment judge in giving effect to the principle of legality and ensuring the administration's compliance with the law; to strengthen the annulment judge's role in the face of challenges associated with administrative corruption and the growing violations of rights and freedoms under the guise of preserving public order; to shed light on the distinctive features of the Algerian model of judicial review of regulatory decisions; and to evaluate the

²Sach Djazia, "The Independence of Algerian Administrative Judiciary in Light of the 2020 Constitutional Amendment," *Journal of Legal and Political Research*, Faculty of Law and Political Science, Mohamed Lamine Debaghine University - Setif 2, Vol. 6, No. 2, 2025, p. 3.

³Othman Za'al Faris al-Ma'atiah, "Judicial Review of Administrative Police Measures," *The Legal Journal*, Faculty of Law, Cairo University, Vol. 8, No. 4, November 2020, p. 1648.

effectiveness of the action for annulment as a means of protecting individuals from the administration's excesses in the field of administrative policing.

Against this background, the study poses the following central research question: To what extent does the annulment judge succeed in performing his role as a mechanism for achieving balance between fundamental rights and freedoms, on the one hand, and the requirements of administrative policing, on the other?

The answer to this question is developed through an analytical methodology, involving the analysis of relevant constitutional and legislative texts, complemented by a descriptive methodology that describes the role of the annulment judge in Algeria and assesses his effectiveness in achieving the balance between authority and freedom. The study is organized into two principal sections:

- The Independence of the Annulment Judge as a Guarantee of Fundamental Rights and Freedoms
- The Role of the Annulment Judge in Protecting Fundamental Rights and Freedoms

1. The Independence of the Annulment Judge as a Guarantee of Fundamental Rights and Freedoms

The protection of fundamental rights and freedoms can only be achieved through a robust constitutional and legal framework that ensures the administration's subjection to the principle of legality. The annulment judge is the central instrument for activating this framework through the action for annulment, which grants individuals the right to challenge unlawful administrative decisions. He is the primary guarantor of the principle of legality and the guardian of rights and freedoms against administrative arbitrariness, possessing the authority to annul administrative decisions that transgress the law and encroach upon individuals' fundamental rights. This role is grounded in clear constitutional and legal foundations, which render the action for annulment an effective vehicle for achieving the balance between authority and freedom. An examination of this section accordingly requires consideration of the constitutional framework for the protection of rights and freedoms and for guarantees of legality, followed by an analysis of the most significant guarantees of the administrative judiciary's independence.

1.1. The Constitutional Framework for the Protection of Rights and Freedoms and Guarantees of Legality

The Algerian Constitution, in common with many comparative constitutions, enshrines a body of fundamental rights and freedoms that serve as essential guarantees for protecting individuals from administrative arbitrariness. Paragraph 15 of the preamble to the 2020 Constitutional Amendment affirms that "the Constitution guarantees the separation of powers and the balance between them, the

independence of justice, legal protection, oversight of the acts of public authorities, and the assurance of legal and democratic security." The term "guarantees" refers to the various legal controls and mechanisms aimed at protecting rights and freedoms from any infringement upon them.⁴ The most prominent of these guarantees are the following:

1.1.1. The Principle of the Rule of Law

The principle of the rule of law—or the principle of legality—is considered the foundation of governance in the state. It signifies that all state institutions and individuals are subject to the law, and it requires the administration to respect the law in all its actions.⁵ This principle constitutes the constitutional framework that enables individuals to resort to the courts to challenge administrative decisions affecting their legal positions and rights, and that confers upon the annulment judge the authority to nullify unlawful administrative decisions, thereby ensuring the balance between the imperatives of pursuing the general interest and the protection of individual and collective rights and freedoms. The constitutional legislature has entrenched the principle of the rule of law in paragraph 14 of the preamble to the 2020 Constitutional Amendment,⁶ and has likewise given it effect through Article 35 thereof.⁷

1.1.2. The Principle of Separation of Powers

The principle of separation of powers signifies the distribution of jurisdiction among the organs of the state, such that each of the three powers—legislative, executive, and judicial—exercises independently the functions entrusted to it by the Constitution, without encroachment, thereby preventing tyranny and the abuse of authority. The separation of powers reinforces the principle of legality and ensures respect for individuals' rights and freedoms.⁸ The Algerian constitutional legislature gave expression to this principle in paragraph 15 of the preamble to the 2020 Constitutional Amendment,⁹ and Part Two of the Constitution, entitled "Organization of Powers and Their Separation," is devoted to it, with a separate chapter allocated to each of the three powers. It should be noted that the principle of separation of

⁴ Na'im Atiyya, *The General Theory of Individual Freedoms*, Dar al-Qawmiyya lil-Tiba'a wal-Nashr, Cairo, 1965, p. 247.

⁵ Suleiman Muhammad al-Tamaawi, *Administrative Judiciary*, Vol. I: Annulment Jurisdiction, Dar al-Fikr al-'Arabi, Cairo, 1972, p. 22.

⁶ Constitutional Amendment of 2020, promulgated by Presidential Decree No. 20-442, dated December 30, 2020, *Official Gazette*, No. 82, December 30, 2020.

⁷ Article 35 of the 2020 Constitutional Amendment states: "The State guarantees fundamental rights and freedoms; the institutions of the Republic aim to ensure equality of all citizens in rights and duties by removing obstacles that hinder the development of the human person and prevent effective participation by all in political, economic, social and cultural life."

⁸ Al-'Arabi Buka'ban, "Judicial Independence as a Guarantee of Rights and Freedoms," *Algerian Journal of Legal, Economic and Political Sciences*, University of Algiers, No. 3, 2002, p. 121.

⁹ Preamble, paragraph 15 of the 2020 Constitutional Amendment: "The Constitution guarantees the separation of powers and the balance among them, the independence of justice, legal protection, oversight of public authorities, and the assurance of legal and democratic security."

powers does not contemplate an absolute separation between the organs of state, but rather a flexible one characterized by cooperation and complementarity among them,¹⁰ particularly between the legislative and executive powers; the judiciary, however, must remain independent in all circumstances in order to safeguard the principle of justice.¹¹

1.1.3. The Principle of Judicial Independence

The independence of the judiciary in general, and of the administrative judiciary in particular, is one of the most fundamental pillars of the rule of law. It is an essential guarantee for the protection of individuals' rights and freedoms, and for the elevation of the principle of legality. It also counts among the core principles enshrined in most modern constitutions, including the Algerian Constitution,¹² since there can be no meaningful discourse on the rule of law or the separation of powers without an independent judiciary that operates free from any influence or interference by the legislative or executive powers. The judiciary is the guardian of fundamental rights and freedoms¹³ and the measure by which justice within the state is assessed; enabling it to discharge its functions accordingly requires that it enjoy full independence in its work.¹⁴

1.2. Guarantees of the Independence of the Annulment Judge

The principle of the administrative judge's independence is one of the fundamental principles that ensure the integrity and effectiveness of administrative justice, and that guarantee the protection of litigants' fundamental rights and freedoms from violations that may emanate from administrative authority. Judicial independence means that no authority may interfere with the exercise of judicial powers.¹⁵ Accordingly, the legislative authority may not enact legislation that results in the annulment of court judgments or the suspension of their execution, and the executive authority may not interfere with judgments, whether by refusing to execute them or obstructing their implementation.¹⁶ Nor may it intervene in the professional affairs of judges, the organization of which is reserved to the Supreme Judicial Council,¹⁷ a matter that constitutes a direct corollary of the principle of separation of powers.

¹⁰F. P. Benoit, *French Administrative Law [Droit administratif français]*, Dalloz, Paris, 1968, p. 286.

¹¹Ahmad Mufid, *The General Theory of Constitutional Law*, Anfo Print Press, Fez, 2007, p. 70.

¹²See Article 163 of the Algerian Constitution.

¹³Claud Leclercq, *Public Freedoms [Libertés publiques]*, LITEC, 3rd ed., Paris, 1996, p. 173; Jacques Chevalier, *The Rule of Law [L'état de droit]*, 3rd ed., Montchrestien, Paris, 1999, pp. 75-76.

¹⁴Yahya al-Jamal, *The Constitutional System of the Arab Republic of Egypt*, Dar al-Nahda al-'Arabiyya, Cairo, 1974, p. 238.

¹⁵Article 163 of the Constitution states: "The judiciary is an independent authority; the judge is independent and subject only to the law."

¹⁶Musa Mustafa Shahada, *op. cit.*, p. 144; Muhammad Bahi Abu Yunis, *Judicial Review of the Legality of General Administrative Sanctions*, Dar al-Jami'a al-Jadida, Alexandria, 2000, p. 19.

¹⁷Article 180 of the Constitution states: "The Supreme Judicial Council guarantees the independence of the judiciary"; Article 172, para. 3: "The judge shall notify the Supreme Judicial Council in the event of any interference with his independence."

The independence of the administrative judge further signifies that, in the exercise of his judicial functions, he is subject to no authority other than the law and his conscience.¹⁸ He is functionally independent and does not answer to any authority whatsoever while adjudicating the case before him,¹⁹ his role being confined to the performance of his natural function—the resolution of disputes in accordance with the principles of legality, equality, and impartiality.²⁰

The most significant guarantees of the administrative judge's independence rest upon essential pillars, chief among which are the administrative and financial guarantees that secure his independence in the performance of his functions free from any external influence; the guarantee of irremovability, which protects him from any pressure or external interference; and the guarantee of his impartiality and integrity, which entrench confidence in his judgments and reinforce the standing of administrative justice in general, and of the annulment judge in particular, as the guardian of rights and freedoms.

1.2.1. Administrative and Financial Guarantees

The constitutional legislature has entrusted the Supreme Judicial Council, as an independent constitutional institution charged with ensuring judicial independence, with the administrative affairs of judges—including their appointment, regularization, discipline, secondment, leave, and promotion.²¹ This means that the management of the professional career of judges proceeds without interference by the executive authority: it is the Supreme Judicial Council that decides, in accordance with the legally prescribed conditions, the appointment, transfer, training, and disciplinary oversight of judges,²² thereby ensuring their independence and impartiality. To reinforce the judge's independence, Article 172(2) of the Constitution provides that "the judge shall notify the Supreme Judicial Council of any interference with his independence,"²³ while Article 178(2) provides that the law shall punish any person who interferes with the independence of the judge or obstructs the proper administration of justice and the execution of its decisions. Judges are also subject

¹⁸See Article 28 of Organic Law No. 26-03, dated March 23, 2026, comprising the Basic Statute of the Judiciary, Official Gazette of the Algerian Republic, No. 23; Musa Mustafa Shahada, "The Principle of the Right to a Fair Trial in Administrative Disputes and Its Application in the Decisions of the French Council of State and the European Court of Human Rights," *Journal of Law, Kuwait University*, No. 2, Year 28, June 2004, p. 146.

¹⁹Abd al-Rahman ibn 'Amru, "The Independence of the Judiciary Between Legislation and Law," accessed February 10, 2026: <http://www.ahewar.org/debat/show.art.asp?aid=25010>.

²⁰Musa Mustafa Shahada, *op. cit.*, pp. 141-146.

²¹See Article 180 of the Constitution; Article 2 of Organic Law No. 22-12, dated June 27, 2022, determining the methods for electing members of the Supreme Judicial Council and governing its organization and operation, Official Gazette of the Algerian Republic, No. 44.

²²See Article 181 of the Constitution.

²³See also Article 47 of Organic Law No. 22-12.

to a special basic legal statute²⁴ whose rules are derived from the provisions of the Constitution and organic laws. This statute aims to entrench their independence and impartiality through guarantees relating to appointment²⁵ and promotion,²⁶ as well as to the enhancement of their professional competence.²⁷ These guarantees ensure professional stability and enable judges to discharge their judicial functions with confidence and security, free from any pressure or arbitrary measures that might affect their integrity or impartiality. They also provide financial and social protection²⁸ and reinforce their independence within society, shielding them from all temptations and influences of whatever nature.

These principles have been established not only to protect judges and ensure their independence, but also to safeguard the rights and freedoms of individuals and to inspire the confidence of litigants before the courts, thereby giving practical effect to the principle of the rule of law. The administrative judiciary—through its institutions of the Council of State, the Administrative Courts of Appeal, and the Administrative Courts—forms an integral part of the judicial authority; its members enjoy the same guarantees accorded to other judges under the Basic Statute of the Judiciary, which defines their rights and duties and organizes their professional careers, reinforcing the independence of the administrative judiciary and entrenching its role in protecting legality and the legal order of rights and freedoms.

1.2.2. The Guarantee of Irremovability of the Administrative Judge

The guarantee of irremovability means that a judge may not be removed from his judicial post by dismissal, or compulsorily retired, suspended, or transferred to another function, except in exceptional circumstances and in accordance with the conditions and safeguards established by the Constitution, by instruments accorded constitutional value, or by constitutional custom.²⁹ The Algerian constitutional legislature has expressly provided for irremovability in Article 172 of the 2020 Constitutional Amendment, which states: "An adjudicating judge may not be transferred except under the conditions set out in paragraph two below. A judge may not be dismissed, suspended, or subjected to a disciplinary sanction in the exercise of, or in connection with, his functions, except in the cases and subject to the safeguards prescribed by law, by a reasoned decision of the Supreme Judicial Council." The legislature has also affirmed the principle of judicial tenure as a

²⁴See Article 1 of Organic Law No. 26-03, dated March 23, 2026, comprising the Basic Statute of the Judiciary.

²⁵See Articles 3 and 49 of Organic Law No. 26-03, and Article 50 of Organic Law No. 22-12.

²⁶See Articles 58, 59, and 68-70 of Organic Law No. 26-03, and Article 52 of Organic Law No. 22-12.

²⁷See Articles 53 to 56 of Organic Law No. 26-03.

²⁸See Articles 13 to 17 and 21 to 23 of Organic Law No. 26-03.

²⁹Mahmoud 'Atif al-Banna, *The Compendium of Political Systems*, Dar al-Nashr al-'Arabi, Cairo, 2nd ed., 1994, p. 369; Ahmad Fathi Surur, "Judicial Independence as a Human Right in Egyptian Law," *Journal of Law and Economics*, Year 50, 1980 (Special Issue), p. 282.

fundamental pillar of the judge's independence under the provisions of Organic Law No. 26-03.³⁰

The principle of irremovability does not imply that a judge retains his post for life regardless of misconduct or improper behavior; rather, its primary purpose is to protect him from any retaliation or pressure that might be exerted by the executive or legislative authorities. This guarantee is established in the public interest, which consists in the independence, impartiality, and proper administration of justice, ensuring the protection of individuals' rights and freedoms. Nonetheless, this protection does not preclude the disciplinary accountability of a judge who breaches his professional duties,³¹ the sanction potentially extending to transfer or permanent dismissal,³² and the constitutional legislature has, pursuant to Article 181(2) of the Constitution, assigned responsibility for the disciplinary supervision of judges to the Supreme Judicial Council, presided over by the First President of the Supreme Court.³³ To ensure the integrity of judicial work, disciplinary decisions of the Supreme Judicial Council must be reasoned and signed by the President of the Disciplinary Council and the Session Secretary, and they are subject to challenge by way of cassation before the Council of State.³⁴

1.2.3. The Guarantee of Impartiality and Integrity of the Administrative Judge

The impartiality and integrity of the judge constitute the most important attributes of the independence of judicial authority³⁵ and represent a fundamental guarantee of a fair trial and the realization of the rule of law.³⁶ Judicial impartiality refers to the judge's capacity to decide and adjudicate the case before him on the basis of the facts and in accordance with the law, remaining above any interest and removed from all influences and pressures, and deciding the case without prior bias or prejudice toward any of the litigants.³⁷ The constitutional legislature has taken care to

³⁰Article 8 of Organic Law No. 26-03 states: "The right to tenure is guaranteed for the adjudicating judge, who may not be appointed to any of the positions referred to in Article 11 of this organic law except with his consent ..."

³¹Muhammad Kamil 'Ubayd, *Judicial Independence: A Comparative Study*, Doctoral Dissertation, Faculty of Law, Cairo University, 1988, p. 454.

³²See Articles 75, 82, and 85 of Organic Law No. 26-03.

³³Article 53 of Organic Law No. 22-12 provides: "The First President of the Supreme Court shall preside over the Council when it convenes in its disciplinary formation to rule on disciplinary proceedings brought against judges."

³⁴See Articles 65-1 and 66 of Organic Law No. 22-12.

³⁵Danièle Loschak, *The Political Role of the French Administrative Judge [Le rôle politique du juge administratif français]*, Doctoral Dissertation, LGDJ, Paris, 1972, p. 32.

³⁶Labib 'Ali Labib Ghunaym, *The Political Role of the Administrative Judge: An Applied Study in Egypt*, Doctoral Dissertation, Faculty of Law, Cairo University, 1993, p. 44.

³⁷Fathi Surur, *Constitutional Legitimacy and Human Rights in Criminal Procedure*, Dar al-Nahda al-'Arabiyya, Cairo, 1933, p. 302.

reinforce the independence of the administrative judge through Article 173, which provides that: "The judge shall abstain from any act that impairs the duties of independence and integrity, and shall be bound by the duty of restraint."

To ensure the judge's impartiality and independence, the legislature has required him to observe the duty of restraint, to avoid any appearance of bias, and to refrain from any conduct that might prejudice his impartiality and independence; it has also required him to respect the obligations imposed upon him by the profession and to conduct himself in the manner befitting an honorable judge.³⁸ The legislature has further required him to exercise caution in his use of social media networks and information and communications technology, prohibiting him from using such platforms to discuss judicial files outside the legally prescribed frameworks.³⁹

To confirm his political impartiality, the legislature has required him to refrain from membership in any political party and has prohibited him from engaging in any political activity or holding any elective mandate. He is also required to notify the Supreme Judicial Council through its permanent bureau of any membership in an association, in order to enable the Council to take the necessary measures to protect the independence and dignity of the judiciary.⁴⁰

Furthermore, the legislature has required him to refrain from engaging in any remunerated activity, whether in the public or private sector, and has prohibited him from holding, whether directly or through an intermediary and under whatever designation, interests in any institution that conflict with his professional duties or prejudice the independence of the judiciary. By way of exception, a judge may, with the authorization of the competent authority, engage in teaching and training activities and may prepare academic, literary, or artistic works that are not incompatible with his status as a judge.⁴¹

1.3. The Impact of the Annulment Judge's Independence on Fundamental Rights and Freedoms

The independence of the administrative judiciary is one of the most important constitutional and legal guarantees for the protection of public freedoms and their preservation from any administrative arbitrariness or excess of executive power. The independence of the administrative judge reflects the judiciary's capacity to discharge its supervisory role free from pressure or external interference, and this has a positive impact on individual and collective rights. However, these freedoms are frequently subject to restriction within the framework of what is known as

³⁸See Article 26 of Organic Law No. 26-03.

³⁹See Article 27 of Organic Law No. 26-03.

⁴⁰See Articles 34 to 36 of Organic Law No. 26-03.

⁴¹See Articles 37 to 39 of Organic Law No. 26-03.

administrative policing, which ranks among the most important instruments through which the state gives concrete form to public order: through administrative policing, the administration seeks to maintain order, security, tranquility, and public health. It is here that the role of the independent administrative judiciary in achieving a balance between the requirements of administrative policing as a legitimate objective of public order and the necessity of protecting public freedoms becomes apparent, through a set of mechanisms that may be summarized as follows:

1.3.1. Entrenching the Principle of Legality and Protecting Rights and Freedoms

The independence of the administrative judiciary reinforces the principle of legality by compelling administrative authorities to respect the law and to refrain from adopting decisions or measures capable of encroaching upon rights and freedoms except within the limits the law permits. In this context, the annulment judge plays an essential role by extending his review to the acts of the administration through the examination and adjudication of challenges brought against unlawful decisions. Through this oversight, the administrative judge ensures the administration's subjection to the principle of legality and consolidates his standing as a faithful guardian of the application of the law.⁴² The independence of the annulment judge likewise constitutes a firm bulwark for the protection of individual and collective rights and freedoms.

1.3.2. Achieving the Balance Between Authority and Freedom

The independence of the administrative judiciary achieves the balance between the requirements of public order that the administration seeks to uphold through its policing powers and the public freedoms that must be preserved; this is what entrenches the rule of law and prevents the prioritization of authority at the expense of freedom. The Algerian constitutional legislature has affirmed that fundamental rights and freedoms are guaranteed and that the substance of fundamental freedoms may not be infringed.⁴³ This reflects the direct connection between the independence of the administrative judiciary and the protection of these rights, as well as the assurance of their exercise within a framework of legality.

1.3.3. Reinforcing Confidence in Justice

The independence and impartiality of the administrative judiciary make the annulment judge's review of administrative decisions more effective; they enhance the integrity of administrative judicial decisions and entrench the citizen's confidence in the administrative judiciary as the genuine guarantee of legality and the rule of law,

⁴²Mumuni Ahmad, "The Principle of Administrative Judicial Independence as a Guarantee of the Principle of Legality in Light of Algerian Legislation," *Journal of Law and Local Development, Laboratory of Law and Local Development, Adrar*, Vol. 2, No. 2, June 2020, p. 120.

⁴³See Articles 34 and 35 of the 2020 Constitutional Amendment.

thereby inspiring a sense of security in litigants and giving effect to the principle of equality before the law.

2. The Role of the Annulment Judge in Protecting Fundamental Rights and Freedoms

From a practical standpoint, the principle of the rule of law can be given concrete form only through the activation of judicial review of the decisions and acts emanating from the various administrative organs. This review has become the primary and most prominent mechanism capable of ensuring the protection of individuals' rights and freedoms and of creating a form of equilibrium between the general interest of the administration and the particular interests of individuals. For a more detailed analysis of this section, it is necessary to identify the legal bases upon which the annulment judge's authority to review administrative decisions rests (Part I), before proceeding to examine the role of the annulment judge in entrenching the principle of legality and protecting fundamental rights and freedoms (Part II).

2.1. The Legal Bases of the Annulment Judge's Authority to Review Administrative (Regulatory) Decisions

The action for annulment is the fundamental legal instrument for challenging unlawful administrative decisions that affect the rights and freedoms of individuals,⁴⁴ particularly those relating to administrative policing. It is an objective action aimed at protecting the principle of legality: the administrative judge examines the legality of the administrative decision challenged before him and delivers a judgment annulling it if its departure from the principle of legality is established.⁴⁵ Within this framework, the annulment judge occupies a central position in the Algerian administrative judicial system: he is the sole judicial authority empowered to nullify administrative decisions and the primary guarantor of the principle of legality. His role is not confined to the protection of individual interests from administrative arbitrariness; it extends to encompassing the protection of the legal order of fundamental rights and public freedoms through the entrenchment of judicial review of the acts of the administration and the assurance of the administration's subjection to the law. In so doing, the annulment judge reinforces the principle of separation of powers and achieves the balance between authority and freedom. The annulment judge's exercise of this review rests upon clear constitutional and legislative texts, which confer upon him the authority to annul unlawful regulatory decisions. There is accordingly a set of foundations upon which the administrative judge relies to activate his role in the protection of these rights and freedoms, which may be examined as follows:

⁴⁴Ubayd Reem, "The Action for Annulment Under the Code of Civil and Administrative Procedure," *Journal of Human Sciences*, Muhammad Khaydar University, Biskra, Vol. 17, No. 1, 2017, p. 291.

⁴⁵Abd Allah Ramadan Banini, "The Scope of the Action for Annulment: A Comparative Study," *Journal of Legal and Shari'a Sciences*, Faculty of Law, University of Zawiya, Libya, June 2015.

2.1.1. The Constitutional Basis of the Annulment Judge's Powers

The annulment judge derives his powers from constitutional provisions that have entrenched the principle of legality and affirmed the administration's subjection to the law, making him the primary guarantor of the protection of rights and public freedoms from any administrative arbitrariness. The Algerian constitutional legislature has affirmed that the judiciary operates on the basis of the principles of legality and equality and is accessible to all,⁴⁶ while Article 164 of the Constitution provides that the judiciary has the authority to protect society and the freedoms and rights of citizens, and Article 168 confers upon it the authority to examine and adjudicate decisions issued by administrative authorities—which constitutes the most important constitutional foundation for the action for annulment.

Judicial review of acts of administrative policing through the action for annulment is one of the most important forms of review aimed at protecting individuals' rights and freedoms from any excesses that the administrative policing authorities may commit in issuing their regulatory decisions. Article 152 of the 1996 Constitutional Amendment, which corresponds to Article 179 of the 2020 Constitutional Amendment, has entrenched the existence of the administrative judiciary and has granted individuals the right to challenge administrative decisions before the administrative courts, the Administrative Courts of Appeal, and the Council of State, thereby reflecting an express constitutional recognition of the citizen's right to have recourse to the administrative judiciary as an essential guarantee for the protection of the legal order of rights and freedoms. Article 178(1) of the Constitution further requires all competent state organs to ensure the execution of judicial decisions, including those rendered in actions for annulment, which reinforces the effectiveness of judicial review of the administration and ensures compliance with the decisions and judgments of the annulment judge. The constitutional provisions thus not only entrench the principle of legality and the administration's subjection to the law, but also vest the annulment judge with clear powers to exercise effective oversight of the acts of the administration, rendering the action a fundamental judicial mechanism for the protection of rights and public freedoms from administrative arbitrariness and for achieving the balance between authority and freedom and establishing the rule of law.

2.1.2. The Legislative Basis of the Annulment Judge's Powers

The annulment judge in the Algerian administrative judicial system derives his powers from legislative provisions that have established his role as guardian of legality and guarantor of the protection of fundamental rights and public freedoms from administrative arbitrariness. Article 10 of Organic Law No. 98-01, as amended and

⁴⁶See Article 165 of the Constitution.

supplemented,⁴⁷ provides for the jurisdiction of the Council of State to hear appeals against decisions rendered by the Administrative Court of Appeal in Algiers; and the provisions of Article 902 of Law No. 22-13, amending and supplementing Law No. 08-09 comprising the Code of Civil and Administrative Procedure,⁴⁸ confirm this jurisdiction by conferring upon the Council of State the authority to examine and adjudicate appeals against first-instance judgments rendered by the Administrative Court of Appeal of Algiers in actions for annulment, interpretation, and assessment of the legality of administrative decisions issued by central administrative authorities, national public bodies, and national professional organizations.

Article 900 bis of the Code of Civil and Administrative Procedure, as amended and supplemented, further provides for the jurisdiction of the Administrative Courts of Appeal to adjudicate appeals against judgments and orders issued by administrative courts, including actions for annulment, interpretation, and assessment of the legality of administrative decisions, as well as cases expressly assigned to them by special provisions. The jurisdiction of the Administrative Court of Appeal of Algiers also extends, pursuant to paragraph 3 of Article 900, to examining and adjudicating at first instance actions for annulment, interpretation, and assessment of the legality of administrative decisions issued by central administrative authorities, national public bodies, and national professional organizations, with its judgments subject to appeal before the Council of State. Under Articles 800 and 801 of the Code of Civil and Administrative Procedure, as amended and supplemented, the administrative courts are vested with general jurisdiction and competence to adjudicate administrative disputes, including actions for annulment, interpretation, and review of legality, by means of first-instance judgments subject to appeal.⁴⁹

2.2. The Role of the Annulment Judge in Entrenching the Principle of Legality and Protecting Fundamental Rights and Freedoms

The annulment judge's review of regulatory administrative decisions is one of the most prominent forms of judicial oversight aimed at protecting fundamental rights and freedoms from any excess the administration may commit in the exercise of its jurisdiction. It is an essential guarantee and an effective instrument for entrenching the principle of legality. The action for annulment is an objective and *in rem* judicial

⁴⁷Organic Law No. 98-01, dated May 30, 1998, on the jurisdiction, organization, and operation of the Council of State, *Official Gazette of the Algerian Republic*, No. 37; as amended and supplemented by Organic Law No. 22-11, dated June 9, 2022, *Official Gazette*, No. 41, June 16, 2022.

⁴⁸Law No. 08-09, dated February 25, 2008, comprising the Code of Civil and Administrative Procedure, *Official Gazette of the Algerian Republic*, No. 21; as amended and supplemented by Law No. 22-13, dated July 22, 2022, *Official Gazette*, No. 48.

⁴⁹Article 800-2 provides: "The administrative courts shall have jurisdiction to rule at first instance, by a judgment subject to appeal, in all cases in which the State, a wilaya, a municipality, a public institution of an administrative character, a national public body, or a national professional organization is a party."

action directed against the defective administrative decision,⁵⁰ brought by parties with standing and interest before the administrative courts, seeking the annulment of unlawful decisions. The authority of the annulment judge is confined to examining the legality of the challenged decision in all its formal and substantive aspects and to delivering a judgment annulling it if its illegality is established, by means of a decision bearing general and absolute *res judicata*.⁵¹ The significance of the action for annulment does not reside merely in its character as a procedural means of challenging defective decisions; it extends beyond that to become a substantive instrument for entrenching the sovereignty of the law and protecting individuals from any arbitrariness or deviation on the part of administrative authorities, particularly in the domain of regulatory decisions. The annulment judge's review of administrative policing decisions encompasses the review of formal legality and the review of substantive or internal legality.

2.2.1. Review of Formal Legality

Review of formal legality pertains to the external elements of the administrative decision—namely, jurisdiction, form, and procedure.

➤ *Review of the Jurisdictional Element*

The defect of lack of jurisdiction⁵² arises whenever a decision is issued by an authority that does not possess the power to issue it or that has exceeded the scope of its subject-matter, territorial, or temporal jurisdiction. The rules governing jurisdiction are characterized by their connection to public order—indeed, they are perhaps the only ground for annulment that is distinguished by this characteristic⁵³—and accordingly neither the holder of jurisdiction may agree with individuals to modify these rules (otherwise the decision would be vitiated by lack of jurisdiction), nor does this ground lapse even if the merits of the action have been entered. The party concerned may also raise this ground at any stage, even after the expiry of the time limit for challenging administrative decisions, and may do so before the Administrative Court of Appeal if it was not previously raised before the

⁵⁰André de Laubadère, J. C. Venezia, and Y. Gaudemet, *Treatise on Administrative Law [Traité de droit administratif]*, Vol. I: *General Administrative Law*, Librairie Générale de Droit et de Jurisprudence, 15th ed., Paris, 1999, p. 528.

⁵¹Ammar 'Awabdi, *The General Theory of Administrative Disputes*, Vol. II: *Theory of Administrative Action*, Office of University Publications [Diwan al-Matbu'at al-Jami'iyya], Algiers, 1995, p. 314.

⁵²Lack-of-jurisdiction [incompetence] is historically the first ground on which French administrative courts exercised review of administrative decisions through the action for *détournement de pouvoir*, as established by the Council of State's decision of March 28, 1807 in the *Debt-Priassi* case. In Algeria, this ground was first applied by the Supreme Court's judgment of November 20, 1976, holding that the mayor of Boudouaou lacked jurisdiction to permanently close a drinking establishment, since such closure fell within the exclusive competence of the judiciary. For further analysis, see: Sakakni Baya, *The Role of the Administrative Judge in Protecting Fundamental Rights and Freedoms*, Doctoral Dissertation, Faculty of Law and Political Science, Mouloud Mammeri University, Tizi Ouzou, 2011, p. 146.

⁵³Amer Ahmad Muhammad Mustafa 'Amer, "The Role of Administrative Courts in Protecting Personal Freedoms," *Journal of Ibd' in Literature and Human and Social Studies*, Vol. 1, No. 3, June 2025, p. 781.

administrative court. Furthermore, the administration may not invoke the public interest or urgency as a justification for departing from jurisdictional rules, subject to the provisions governing the doctrine of exceptional circumstances and the doctrine of necessity, with the administration remaining in all circumstances subject to judicial oversight.⁵⁴ The judge himself may raise this ground of his own motion at any stage of the proceedings; an administrative decision is accordingly considered valid only if it has been issued by administrative authorities to which the law grants the competence and capacity to do so—it is this legal capacity that constitutes the jurisdictional element of the administrative decision.⁵⁵

➤ ***Review of the Formal and Procedural Element***

The defect of form and procedure refers generally to the failure of the administration to observe the formalities and procedures imposed upon it in the drafting of the administrative decision. Administrative courts have generally drawn a distinction between cases where the formal or procedural violation relates to substantive requirements that affect the interests of individuals and cases where it concerns non-substantive requirements whose disregard does not affect those interests, with invalidity attaching only to violations of the first type.⁵⁶ The administrative judiciary has accordingly distinguished between substantive formalities whose disregard entails the annulment of the administrative decision and non-substantive formalities whose violation does not entail invalidity. The most widely accepted criterion for distinguishing substantive from non-substantive formal requirements is the gravity of the formal defect: if the defect is so serious that its avoidance could have influenced the decision and altered its substance, the formal requirement is deemed substantive; if the defect does not attain that degree of gravity, the requirement is classified as secondary. Among the substantive formalities whose non-observance entails invalidity are certain requirements of reasoned basis, procedural rights, and mandatory consultations with bodies prescribed by law.⁵⁷

The formal and procedural element serves as an important means in the service of a specific objective; there is accordingly no warrant for sanctioning the administration for non-compliance with a legally prescribed formality unless that non-compliance has affected, in one way or another, the objective that the legislature sought to achieve by imposing that formality or procedure—that is, where the formalities or procedures are substantive and their non-observance has a decisive impact on the content of the administrative decision. Where the contrary holds true and the formalities or procedures concerned do not have a decisive and fundamental impact on the

⁵⁴ Amer Ahmad Muhammad Mustafa 'Amer, op. cit., p. 781.

⁵⁵ A. de Laubadère, *Treatise on Administrative Law [Traité de droit administratif]*, 11th ed., LGDJ, Paris, 1987, p. 329.

⁵⁶ Atif Abd Allah al-Makawi, *The Administrative Decision*, Tiba Publishing and Distribution, Cairo, 2012, pp. 54-55.

⁵⁷ Muhammad al-Saghir Ba'ali, *Administrative Judiciary in the Action for Annulment*, op. cit., p. 330.

administrative decision, no annulment will follow, and the formality concerned will be regarded as secondary.⁵⁸

The administrative judge, while insisting upon the necessity of complying with substantive formalities and procedures established for the benefit of individuals' rights and freedoms in the interest of safeguarding public order—such as the requirement to state reasons for regulatory administrative decisions, the protection of the rights of the defense, and the consultation of certain bodies and institutions prescribed by law—has nonetheless affirmed at the same time the permissibility of disregarding these formalities and procedures in circumstances of necessity and urgency, given the imperative in such circumstances of prompt action in order to protect public order.⁵⁹

In application of this approach, the administrative judiciary has sought to achieve a balance between, on the one hand, refraining from insisting too rigidly on formal or procedural rules to the point of impeding administrative action and, on the other, not abandoning these rules to the point of disregarding the general interest and the interests of individuals. It has settled upon the position that an administrative decision is not to be annulled merely by reason of a violation of any formal requirement: there are formal conditions that must be observed, the non-observance of which leads to annulment, while the violation of other formal or procedural rules does not give rise to invalidity.⁶⁰

2.2.2. Review of Substantive Legality

The administrative judiciary has not confined its review to the external legality of administrative decisions; its authority has extended to the exercise of review over the internal elements of administrative decisions, which encompasses an inquiry into the legality of the substantive elements of the administrative decision—namely, the cause, the purpose, and the object.

➤ Review of the Causal Element

It is not sufficient for the legality of an administrative decision that it be issued by a competent administrative authority, that its content conform to legal provisions, and that it satisfy the required formalities and procedures; it must also be based on legal grounds that are factually existent and legally sound, even where the administration is not required to state reasons for its decisions unless the legislature so obliges it, and the absence of a statement of reasons does not negate the existence of the decision.⁶¹ The administrative judge's review of the causal element of administrative

⁵⁸Sakakni Baya, *op. cit.*, p. 151.

⁵⁹Sakakni Baya, *op. cit.*, p. 155.

⁶⁰Amer Ahmad Muhammad Mustafa 'Amer, *op. cit.*, p. 783.

⁶¹For further detail, see: Bashir al-Sharif Shams al-Din, "The Powers of the Administrative Judge in Reviewing the Legality of Administrative Decisions," *Bar Bulletin [Nashrat al-Muhammi]*, No. 18, August 2012, p. 30; Abu Dharr 'Abd al-Karim Shakir, "The Action for Annulment of Administrative Decisions,"

decisions is one of the primary guarantees of the administration's compliance with the principle of legality.⁶² Although the administrative authority enjoys broad discretion in the exercise of its jurisdiction, it may only issue administrative decisions in response to actual circumstances and may only issue a decision it considers appropriate within the limits of the facts that justify it and in accordance with the legal provisions that define its powers and regulate the procedures for their exercise.⁶³ The cause must accordingly be specific, manifest, and clear: a general and vague cause does not suffice, and as a general rule the cause must be existent, subsisting, and lawful.⁶⁴

➤ ***Review of the Purpose Element***

The purpose element of an administrative decision constitutes the final outcome that the administrative officer aims to achieve in issuing the decision.⁶⁵ Accordingly, the administrative officer's use of his authority to achieve an objective other than that for which the authority was conferred⁶⁶ renders the decision vitiated by the defect of *détournement de pouvoir*. The review of this defect by the administrative judge is a substantive review that turns on the psychological motivations that may have led the administration to act: the defect of *détournement de pouvoir* is a defect of choice—the administrative officer, instead of pursuing the objective specified for the administration's powers and authorities, pursues a different objective, whether or not his intent was improper.

➤ ***Review of the Object Element***

The object of an administrative decision consists in the legal effect it produces, whether in the creation of new legal positions, their modification, or their extinguishment. This element must accordingly be verified by the administrative judge as a condition for the validity of the administrative decision: it must be possible, lawful, and consistent with applicable provisions and the general principles of law.

Conclusion

The foregoing study has led to an important conclusion: the administrative judge discharges a fundamental role in the action for annulment through the effective oversight he exercises over the various acts and decisions of the administration, and constitutes a decisive mechanism in protecting individuals' rights and freedoms from

Journal of Administration and Economics, Faculty of Administration and Economics, Mustansiriyah University, Iraq, Year 35, No. 93, 2012, p. 156; Mizyani Farida, op. cit., p. 127.

⁶²Bashir al-Sharif Shams al-Din, op. cit., p. 30.

⁶³Bu'alsha'ur Wafa', The Powers of the Administrative Judge in the Action for Annulment in Algeria, Master's Thesis, Faculty of Law and Political Science, Badji Mokhtar University, Annaba, 2011, p. 85.

⁶⁴Amer Ahmad Muhammad Mustafa 'Amer, op. cit., p. 784.

⁶⁵Mizyani Farida, op. cit., p. 127.

⁶⁶See Henri Laferrière, "The Use by an Administrative Officer of His Power for a Purpose Other Than That for Which It Was Conferred upon Him," in *A Treatise on Administrative Jurisdiction* [Un traité de la juridiction administrative], Paris, 1896, p. 546.

any potential arbitrariness of the administration in the course of its policing activities.

The role of the annulment judge is no longer confined to the elevation and articulation of the legal text in the reasoning of the decision he issues; it may extend to encompass supervisory and preventive functions that ensure the legality of administrative activity and provide the necessary protection for rights and freedoms. This occurs through the diligent oversight of the proper execution of judgments with a view to reconciling the administration's growing prerogatives with the rights and freedoms of individuals that it must respect and observe. This balance is achieved through the powers that the annulment judge wields against the administration's prerogatives—powers that enable him to annul any administrative decision, whatever its source, if it encroaches directly or indirectly upon the legal positions, rights, or freedoms of individuals without justification. The role of the administrative judge does not stop at verifying compliance with legal form and prescribed procedures; it extends to examining the substance of the administrative decision and its conformity with substantive rules, with a view to ensuring that authority has not been exceeded or powers and functions misused—which contributes to reducing administrative violations and encroachments and reinforces a climate of trust between individuals and the public administration, by providing individuals with effective and robust judicial guarantees enabling them to protect their legitimate interests through clear and established means.

In this context, the administrative judge possesses the authority to intervene with urgency and to adopt expeditious measures aimed at staying the execution of, or annulling, any administrative decision whose violation of applicable legal rules has been established or whose incompatibility with the principles of the protection of rights and freedoms recognized by legal and constitutional provisions has been demonstrated. All of this serves the goal of achieving a delicate balance between the imperative of preserving public order and ensuring the regular functioning of public services, on the one hand, and the protection and safeguarding of individuals' fundamental rights against any administrative measures that might encroach upon them without lawful justification, on the other. This is accomplished through the provision to the annulment judge of various instruments enabling him to investigate and adjudicate the action in the manner he deems appropriate and suitable for attaining the desired equilibrium between the private interest of individuals and the general interest that the administration seeks to promote.

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