



Economic control authorities: a reading of Algerian law

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ABSTRACT

The emergence of independent administrative authorities and their granting of repressive powers in matters of economic control are the result of the economic transformations that Algeria has experienced since the adoption of the free economic approach. Given the adoption of this approach, the judiciary was not prepared to examine the conflicts arising from this development, but remained unable to keep up with the pace and techniques. These new economic areas have led the legislator to grant repressive powers to independent supervisory authorities in most economic sectors. The repressive powers of independent police authorities result from the phenomenon of decriminalization, which involves the removal of the repressive power of the criminal judge in favor of other bodies and the replacement of criminal sanctions by administrative sanctions.



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1. Introduction

The executive and legislative authorities are convinced of the need to create legal rules compatible with the nature of the business sector, particularly with regard to economic activities characterized by a certain degree of sophistication and complexity, with the aim of opening up the route for the entry of foreign investors who seek legal guarantees before making their investments. This led to the creation of independent police authorities responsible for law enforcement functions.

The state chose the method of total removal from the market, and left it to the market itself to control it and prices as a general principle, and it appeared under a new, traditionally unknown face, by granting the power to control the market. The economy is moving towards new organizations which do not resemble traditional organizations, which are independent administrative authorities.

The regulatory process carried out by independent administrative bodies has numerous advantages: speed, knowledge of the sector of activity in question and the competence of its members. These powers therefore make it possible to quickly put an end to certain practices, particularly in terms of illegal agreements. It constitutes an alternative to the criminal procedures that the legislator had previously used in order to decriminalize certain practices, particularly in matters of competition law¹.

¹ J.-M. COULON, *The decriminalization of business life*, French documents, 2008, p.29.

These bodies also contribute to the significant powers granted to traditional administrative bodies, which can direct orders and control entry into the commercial sector, enabling them and the power to organize. However, oppressive force appears to be one of these elements. This is one of the most dangerous powers granted to these organizations, because it represents a threat to the fundamental rights of economic agents.

Based on the above, the problem of the study is embodied in the following: To what extent does the scope of economic control powers extend to imposing administrative penalties?

To answer the previous problem, we will address the economic control powers in imposing administrative penalties by transferring the repressive jurisdiction to these bodies, highlighting the manifestations of the repressive jurisdiction of a group of bodies that we will refer to as examples.

2. The problem of transferring repressive jurisdiction from the criminal judge to an independent administrative body

The criminal judge has been faced with several difficulties in handling cases of an economic nature, because this type of crime is characterized by mobility, speed, flexibility and knowledge of economic and technical issues. On this basis, it was necessary to grant jurisdiction to examine them. case to a specialized organization.

2.1. The repressive jurisdiction of independent administrative authorities between necessity and deficiency

The appearance of independent administrative authorities and their granting of repressive powers in the area of economic control are the result of the economic transformations that Algeria has experienced since the adoption of the free economy approach. In light of adopting this approach, the judiciary was not prepared to do so. We must consider the conflicts resulting from this opening and the emergence of economic entities in the form of commercial companies. Indeed, the judiciary remained unable to keep up with the pace and techniques of these new economic areas, which led the legislator to grant repressive measures. powers to independent supervisory authorities in most economic sectors.

The aim of controlling economic areas is to find solutions unusual in traditional law by relying on punitive authority, because it is not possible to separate punitive authority from economic control. Independent administrative bodies directly address any violation of industry rules. be controlled by imposing penalties, thus allowing a return to balance.

On the contrary, the administrative sanction adapts to most economic factors, since it excludes direct intervention by public authorities and leaves workers in the same sector to control the activity, which makes it more flexible

because it uses technical elements, and more effective because it uses technical elements. it results from the specialization of the different supervisory authorities².

The repressive powers of independent supervisory authorities result from the phenomenon of decriminalization³, which involves the removal of the repressive power of the criminal judge for the benefit of other bodies and the replacement of criminal sanctions by administrative sanctions in the field of competition, with the issuance of orders. 03-03 relating to competition, the criminal judge has been completely excluded from the judgment of disputes linked to the application of the provisions of this law. The legislator has entrusted the power to control violations affecting the competition system to the Competition Council, which has broad repressive powers.

The reason for the transfer of repressive jurisdiction from the Competition Council is due, on the one hand, to the lack of technical knowledge of the criminal judge and to a careful analysis of the market in this type of offense. On the other hand, unlike criminal prosecutions, financial sanctions are imposed according to precise standards which contribute to enriching the treasury. Even more, the establishment of these organizations follows the speed and mobility which characterize economic activity, thanks to the speed of judgments. cases in relation to the courts.

The competence to suppress violations in the stock market area belongs to the Committee for the Regulation and Supervision of Stock Market Operations, and in the banking sector, to the Banking Committee, and the sanctions imposed by these bodies generally take the form of a financial fine. which may affect the financial liability of the legal entity that committed the violation.

2.1.1. Independent Administrative Authority and European Court of Human Rights

Within the framework of the sanctioning powers attributed to independent administrative authorities, financial sanctions appear to be the most repressive.

The judge therefore monitors compliance with the requirements of Article 6, paragraph 1, of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) by independent administrative authorities when they exercise this sanctioning power.

For the European Court of Human Rights, a court is characterized in the material sense by its jurisdictional role, which consists of "deciding, on the basis of

² BENKERRI Sofiane, *Decriminalization of commercial company law*, Academic journal of legal research, Faculty of law and political science, University of Béjaïa, Algeria, number 2, 2017, p.410.

³ Georges. LEVASSEUR, "the problem of decriminalization", Archive of criminal policy, No. 06, 1983. pp. 53-69.

standards of law and at the end of an organized procedure, any question falling within its jurisdiction"⁴.

So The Court of Cassation was the first to draw the consequences of this broad conception of the jurisdictional function and the guarantees attached to it. It indeed acknowledged, in its COB v. Oury judgment of 5 February 1999, that the Commission des opérations de bourse, although it does not constitute a court, is subject to the provisions of Article 6 of the ECHR⁵.

In its Didier judgment of 3 December 1999, the Council of State also considered that, when dealing with actions that could give rise to financial penalties, the Financial Markets Council "must be regarded as deciding on the merits of criminal charges" within the meaning of the provisions of Article 6, paragraph 1, of the ECHR.

On that case, the administrative judge, recalling that the Financial Markets Council sitting in disciplinary formation was not a court under domestic law, nevertheless admitted that the argument based on the violation of a principle recalled in Article 6 could, "having regard to the nature, composition and powers of this body, be usefully invoked in support of an appeal brought before the Council of State against its decision".

Consequently, European law "leads to the consideration that administrative authorities are sometimes administrative bodies, sometimes jurisdictional bodies, depending on the type of power that, in a specific case, they exercise.

Thus, when civil or criminal matters are at stake, it is as they are courts in the European sense of the term that the AAI must provide the guarantees linked to a fair trial and impartial jurisdiction".

2.1.2. Independent administrative authorities and the expansion of the scope of criminalization.

In this regard, some criticize it and consider it as a form of broadening the scope of criminalization in light of the extent of its jurisdiction⁶:

2.1.2.1. Violation of material rules: Unlike the penal code which precisely defines offenses and sanctions, independent administrative authorities have a wide margin to assess the violations and sanctions that suit them. Thus, the elements of the offense benefit from great flexibility, as do the sanctions. that they impose are characterized by severity, some of which is of a professional nature, which means that these authorities combine the powers of criminalization and sanction.

⁴ ECHR, 27 August 1991, Demicoli v. Malta.

⁵The decision of the Court of Cassation of October 5, 1999, SNC Campenon Bernard SGE, on the sanctioning powers of the Competition Council.

⁶ Ibid, p.411.

Independent administrative authorities have great freedom of action to repress all possible violations. Prohibited acts are rarely provided for, the texts simply referring to the violation of legislative or regulatory texts or to breaches of professional duties. For example, by referring to the competition law in the part relating to the fight against competition. -competitive practices, we note. These texts do not provide for any monitoring of violations and thus pave the way for the sanction of any act that the Competition Council considers to be a practice or a proposed act contrary to the competition rules.

These independent administrative authorities are also criticized on several points, since the Financial Markets Authority itself sets its regulations, ensures their implementation and sanctions non-application, likely to violate the principle of separation of powers. Furthermore, independent administrative authorities cannot compensate victims excluded from this system, the latter being able only to appeal to the civil judge.

2.1.2.2. Violation of procedural rules: Contrary to the procedural guarantees available before the judiciary, commercial companies find themselves confronted with procedures without providing the minimum guarantees of follow-up, because independent administrative authorities have the power to inspect and audit all company documents and review. bank statements and statements. They also have the power to investigate and hear representations to determine whether the company has fulfilled its obligations to prevent violations and to take the necessary preventive measures to do so.

Likewise, the presumption of innocence and the right to defense, enshrined in the Constitution, are difficult to know to what extent they are respected given the absence of stipulation on them in the texts established for independent administrative authorities and the absence of prior arrangements. practical, given the limited activity and intervention. However, the rule of law requires that proceedings before independent administrative authorities conform to the judicial model⁷.

Thus, certain French jurisprudence⁸ considered that this was a violation of the principles set out in Article 6 of the European Convention on Human Rights, relating to the presumption of innocence, respect for neutrality and the principle of legality⁹.

⁷ MICHEL Gentot, *Independent administrative authorities*, 2nd Édition, LGDJ, Paris, 1994, P.86.

⁸ J.-M. COULON, op.cit., p.29.

⁹ However, the qualification process activated by the European Court of Human Rights is different, almost opposite, to that of French law. Indeed, it starts from trivial qualifications and the effects of the rules to induce the relevant legal category. Thus, criminal matters do not correspond to the contours of criminal law, any more than civil matters correspond to civil law, which made the submission of administrative decisions rendered by independent administrative authorities to Article 6 of the Convention admissible.

2.2. Justifications of the legitimacy of the repressive power of independent administrative authorities

The aim of this repressive power granted to these bodies is not the complete suppression of criminal law in certain sectors, but in fact, it aims to reconsider criminal repression which has failed to repress certain violations, the prescribed sanctions being become ineffective¹⁰.

2.2.1. The principle of separation of powers accepts the idea of administrative punishment of independent administrative authorities

Modern jurisprudence considers the traditional interpretation of the principle of separation of powers to be rigid and impractical, as it is no longer suitable as a mechanism for distributing powers and is not applicable, as it cannot respond to the developments taking place in modern societies and the requirements of the modern state, and it does not necessarily express Montesquieu's view and thinking¹¹.

In this context, the principle of separation of powers must be applied proportionally and then interpreted as a flexible separation of powers, as required by the exigencies of the times and reality, provided that the three functions remain exercised within the limits of the authority of the State¹².

In this context, the case law has based its adoption of a flexible interpretation of the principle of separation of powers to justify the harmony of the repressive powers of independent administrative bodies with the Constitution, on an analysis according to which the requirement of separation of powers does not prevent the same apparatus from enjoying multiple functions, provided that there are agencies distinct from each other and that there is a distribution of powers between them¹³.

The independence enjoyed by judges as a guarantee of their impartiality should not be interpreted as meaning that their role is limited to applying the law, as if it were a mechanical practice¹⁴. A repressive law has emerged that goes

¹⁰ AISSAOUI azedine, *The repressive power of independent administrative bodies in the economic and financial field*, Majistere's dissertation, Faculty of Law, Mouloud Mammeri University, Tizi Ouzou, Algeria, 2004-2005, pp. 19-20.

¹¹ TEITGEN-COLLY (C), "Regulatory bodies and the constitution", RDP, 1990, p.222.

¹² DEGOFFE(M). "Constitution and economic normative competences of regulatory authorities", L.P.A. Special issue, January 22, 2009, No. 16, p.20.

¹³ LOMBARD(M) "Institutions of economic regulation and political democracy", A.J.D.A. n°10, 2005, p.539-540.

¹⁴ LOMBARD(M) "Why independent authorities in economic matters? Typology of their mission". In MARCOU(G) and MASING(J).(s/dir) "the model of independent regulatory authorities in France and Germany", Coll. of the UMR of comparative law of Paris, volume 25, p.147 and s.

beyond the traditional boundaries that exist between criminal repression and administrative repression, especially since criminal repression, like administrative repression, falls within the scope of "criminal matters" within the meaning of the European Convention on Human Rights as such. Consequently, administrative repression is not contrary to the principle of separation of powers¹⁵.

The transfer of repressive competence from a judicial body to an independent administrative body is contrary to the provisions of the Constitution, which enshrines the principle of separation of powers, which distinguishes the powers of the legislative power, the powers of the executive power, and finally the powers of the judicial authority. If judicial authority is exercised by judges, then where do independent administrative authorities with the power of sanction come from?

The French Constitutional Council ended up removing the constitutional obstacles to this attribution through a set of decisions, by which it confirmed the compatibility of the granting of this authority with the principle of separation of powers from two angles¹⁶:

2.2.1.1 the principle of job distribution does not constitute an obstacle to the recognition of the punitive power of independent administrative authorities, through the examination of three important decisions:

- The first decision is Resolution No. 84/181 of 10/11/1984, which concerns the Commission for Transparency and Pluralism of the Press, in which it was declared unconstitutional to grant this commission punitive power, not on the basis of it is in contradiction with the principle of separation of powers, but because of the system applied to sanctions which... Requires prior authorization and restricts the exercise of this freedom¹⁷.

- The second resolution is Resolution 88/248 of 01/17/1989 relating to the Higher Audiovisual Council¹⁸, where the Council considered that the legislator could grant an administrative authority responsible for ensuring that audiovisual communication exercises repressive powers within the limits necessary for the

¹⁵ ROSENFIELD(E) and VEIL(J), "administrative sanction, criminal sanction", Powers, January 2008, no. 128, p. 61 et seq.

¹⁶ BENAMRANE Souhaila, JABALI Sabrina, *the extent of the legitimacy of the repressive power conferred on independent administrative authorities*, Journal of Law and Political Science, University of Khencela, Algeria, Volume 7, Number 2, June 2020, pp. 108-110.

¹⁷ Constitutional Council. Decision No. 84_181 DC of 11/10/1984, law aimed at limiting concentration and ensuring financial transparency and pluralism of press companies. Official Journal of 13 October 1984, p3200.

¹⁸ Constitutional Council. Decision No. 88-248 DC. of January 17, 1989, law amending law No. 86-1067 of September 30, 1986, relating to freedom of communication, considering 15 www.conseil-constitutionnel.fr.

2019/12/07.

exercise of its functions, without this grant being prejudicial to the principle of separation of powers¹⁹.

- The third resolution No. 89/260 of 07/28/1989 concerns the Stock Exchange Commission, where the Constitutional Council approved that independent administrative authorities have the power to impose sanctions, which is in no case contrary to the principle of separation of powers, but it is stipulated that these sanctions do not result in the deprivation of freedoms and that this power is exercised within a legal framework in such a way as to lead to the protection of the rights and freedoms guaranteed by the Constitution, and therefore it has been explicitly stated that punitive authority is in no way contrary to the principle of separation of powers²⁰.

2.2.1.2 the principle of non-cumulative functions does not conflict with the recognition of punitive power by an independent administrative authority.

These are independent administrative authorities which combine both regulatory and punitive specializations. The French Constitutional Council stated in its previous resolution No. 89/260 that this is not a strict separation of functions, but rather cooperation between agencies to carry out the functions. The Constitutional Council considered that the independent administrative authorities were endowed with privileges allowing them to impose sanctions.

Consequently, the exercise by independent administrative bodies of the power to impose sanctions falls within the exercise by the latter of the privileges of public authority, provided that the matter is not linked to public freedoms and that the sanctions imposed by them cannot go to the point of affecting individual freedom²¹. Imprisonment or restriction of individual freedom cannot be part of the administrative sanctions imposed by these bodies, because the constitutions stipulate that the judicial authority is the only authority that restricts individual freedoms and therefore a person cannot be imprisoned or arrested as per. a court order.

The Constitutional Council decided that providing the possibility of appealing against the decision rendered to annul and compensate administrative sanctions is a condition for affirming the constitutionality of these sanctions. It also decided to emphasize that the principle of separation of powers is not a constitutional principle in itself. What is therefore important is the principle according to which the judiciary is the guardian of individual freedom. While

¹⁹ Guédon, Marie-José, *Independent administrative authorities*, General bookstore of law and jurisprudence, Paris, 1991, P.119.

²⁰ Decision No. 89_260 DC of 28/07/1989, law relating to the security and transparency of the financial market, considering N6. Jo. of 01_08_1989, P9676.

²¹ LEFEBVRE(J), "The power of sanction, the repressive network", in DECOOPMAN (N), (S/dir), the disorder of independent administrative authorities, PUF, Coll. Ceprisca, Paris, 2002, p.119-121

separation of powers is one of the highest constitutional principles, while separation of activities of authorities is not one of these constitutional principles. When the independent administrative body exercises judicial jurisdiction, it must adhere to the rules of this function in accordance with the objective standard. It must respect the principles of impartiality of the members of the committee²² and the principle of confrontation regarding the separation between the independent administrative body²³ and the judiciary, this is not in itself a constitutional principle. The independent administrative body can make decisions. It is linked to the judicial power, and the judicial body can make administrative decisions concerning the organs of independent administrative bodies, and therefore the French Constitution. The Council concluded that the administrative sanctions issued by the above-mentioned bodies are constitutional, in all areas and in general, and also judged that the imposition of such sanctions does not violate the European Convention on Human Rights²⁴.

The competence of the economic control authorities to approve and impose sanctions falls within the framework of their control function, the legislator having provided the economic control authorities with a permanent control system which includes, from a point of view material, the degree of compliance with current laws and regulations, and from an organic point of view, all market participants, including traders and consumers, and the relationships between them²⁵. This supervisory power is exercised through two important means: the investigative authority, which aims to ensure compliance, the legitimacy of competition and compliance with the legal rules governing the sector, and the power to initiate legal procedures and measures against economic operators, with the legislator granting these authorities broad powers in the field of control of the behavior of economic operators when they violate laws and regulatory rules. Through the power to impose administrative sanctions adapted to the nature of the violations.

However, the transfer of punitive powers from the criminal judge to the administrative authorities, in particular to the economic control authorities, was not absolute, but limited to two fundamental conditions. The first is that the sentence should not be custodial. The second condition is that administrative

²² ECHR 26 October 1984, *De cubber v. Belgium*, Series A, No. 86; CE 3 Oct. 2011, No. 328326, Independent Research and Information Committee on Genetic Engineering, *Spiroux de Vendomois*, Dalloz actualité, 14 Oct. 2011, obs. R. Grand; CE 18 Jul. 2018, req. No. 411345, *Obligation of impartiality of members of independent administrative authorities*, Dalloz actualité, 30 Jul. 2018, obs. Jean-Marc Pastor.

²³ EPRON (Q), “*The status of regulatory authorities and the separation of powers*”, RFDA, 2011, p.155.

²⁴ SOUALHIA imad, *Approval of the Punitive Authority of Independent Administrative Bodies*, Journal of Social and Human Sciences, University of Tebessa, Algeria, Volume 10, Number 3,2017, pp. 49-50.

²⁵ GUYOMAR (M), “*Administrative sanction*”, LPA, n°9, 2006, p.8.

sanctions are subject to the same penal principles as criminal sanctions²⁶, in particular the principle of the legitimacy of criminalization and the sanction, the principle of the necessity of the sanction..., etc²⁷.

On the other hand, the repressive power of independent administrative authorities is part of the process of decriminalization, and that the latter results in a transfer of the traditionally recognized competence of the judge for the benefit of the administration²⁸, the latter being called the term "judicial without a judge"²⁹. » The phenomenon of decriminalization aims to limit the interference of the judiciary through criminal sanctions, and this is due to its negative effects, because people began to suffer from the expansion of the jurisdiction of the criminal judge to violations. which do not require criminal prosecution because they do not pose a threat to society or to the rights of individuals.

2.2.2. The punitive power of independent administrative bodies in the service of market control as a constitutional function of the state

It seems necessary to adopt a new approach to framing the economy within the framework of the controlling State. From another angle, the State can exercise this role of control through its public powers. Supervision therefore involves measures which, even if they differ or are multiple and are traditionally attributed to different authorities, nevertheless find their unity in the area in which they are practiced³⁰. Repressive power therefore appears as an essential tool that guarantees the effectiveness of the task of controlling the market as a role of the State³¹.

Independent administrative authorities are based on the reconciliation of constitutional principles and economic objectives, which allows them to have different functions³². On the other hand, it has a conflicting function, so there is no

²⁶ ODERZO (J-C), *Independent administrative authorities and the constitution*, doctoral thesis in law, University of AIX-Marseille, 2000, P.437.

²⁷ HASSOUNA Abdelghani, *The specificity of the punitive system in commercial crimes*, Al-Mufakir review, Mohamed Kheidar University, Biskra, Algeria, Volume 15, Number 03, 2020, p.191.

²⁸ ZOUAIMIA Rachid, *Independent administrative authorities and economic regulation*, IDARA, No. 26, 2003. p83.

²⁹ Marie-José. GUEDON, *The independent administrative authorities*, general bookstore of law and jurisprudence, Paris, 1991; p 118.

³⁰ DELVOLVÉ(P), "The power of sanction and the control of the judge", LPA, n°185, September 2001, p.8.

³¹ TETGEN-COLLY, op, cit, p. 225-226.

³² DU MARAIS (B), "The substantive legal rules applicable to independent authorities", In MARCOU (G) and MASING (J). (S/dir) the model of independent regulatory authorities in France and Germany, collection of the UMR, comparative law of Paris, v.25, 2011, p.245; DECOOPMAN (N), "Towards a new order?", in DECOOPMAN (N), (S/dir), *the disorder of*

room to talk about judicial authorities monopolizing repressive power³³. Therefore, independent administrative authorities may be competent to examine disputes related to the repression of illegal economic practices³⁴.

We note that the control bodies are experts in a technical field where violators do not appear in the eyes of the public as real deviants³⁵. This advantage is considered a strong argument for the control bodies, given that the administrative sanction is imposed by authorities that have technical expertise and acquired practical experience, which allows them to correctly assess the violations committed and make the sanction proportionate to them³⁶.

Accordingly, the legislative authorization of independent supervisory authorities with the power to impose sanctions has become a constitutional function of the State in the service of constitutional principles, in particular the protection of economic rights and freedoms guaranteed by the Constitution for economic operators, as well as other relevant constitutional rights³⁷.

The legislator has granted the supervisory bodies repressive powers within the framework of the market control mission for which they were created. However, due to the judicial origin of these unilateral measures, the legislator had to take into account the principle of separation of powers. as a constitutional principle while granting such repressive power, which can only be achieved by limiting its scope; This means that it is granted to these independent bodies only to their minimum limits and as required by the role of regulator³⁸.

3. Manifestations of the repressive competence of independent administrative bodies

In order to enable independent administrative bodies to exercise their functions, the legislature has endowed them with broad powers, such as the power to regulate and powers similar to those enjoyed by the judiciary, taking the form of investigation or taxation. sanctions. We will discuss here the manifestations of

independent administrative authorities: the example of the economic and financial sector, PUF, Paris, 2002, p.199.

³³ DOUEB (F), *Financial sanctions of administrative authorities*, Doctoral thesis in law, Paris II, 2003, P.126.

³⁴ QUILICH (P), "Regulating is not judging: reflection on the nature of the sanctioning power of economic regulatory authorities", AJDA, n°20, 2004, p.1063.

³⁵ SOHN (B-H), *The process of decriminalization in contemporary criminal law*, thesis, University of Paris I, 2005, p.403.

³⁶ DELZANGLES (H), *The independence of sectoral regulatory authorities: electronic communications, energy and postal services*, doctoral thesis in law, Montesquieu-Bordeaux IV University, 2008, P.430.

³⁷ DELMAS-MARTY (M) and TEITGEN-COLLY (C), *Punish without judging? From administrative repression to criminal administrative law*, Economica, Paris, 1992, P.7.

³⁸ FRISON-ROCHE (M-A), "The law of regulation", Dalloz, 2001, n°7, p.614.

these organizations in the banking field (the first branch) or in the stock market and competition field (the second branch).

3.1. Manifestations of the repressive jurisdiction of independent administrative bodies in the banking field

We will discuss here the manifestations of the repressive competence of the Monetary and Banking Council (first), as well as the Banking Committee (second).

3.1.1. The repressive competence of the Monetary and Banking Council

The Monetary and Banking Council is composed of: members of the Board of Directors of the Bank of Algeria and a person chosen because of their competence in economic and monetary matters who are appointed by decree of the President of the Republic, a person chosen by virtue of his competence in the field of Islamic banking, and member of the Bank of Algeria having at least the rank of general director, provided that the last three members are by presidential decree³⁹.

The Monetary and Banking Council is chaired by the governor of the Bank of Algeria, who convenes it and sets its agenda. The Council determines its internal regulations and decisions are taken by simple majority of votes. In the event of a tie, the President's vote is decisive.

The Monetary and Banking Council holds at least four ordinary sessions per year and can be convened whenever necessary, at the initiative of its president or two of its members. In this case, they propose the council agenda. Holding Council meetings requires the presence of at least five of its members and no councilor may be authorized to represent it at the Council meeting⁴⁰.

The intervention of certain economic supervisory authorities in the imposition of certain administrative sanctions is devoted to the intervention of the Currency and Loans Board, as an independent supervisory authority in the banking field, in the withdrawal of credit to banks and financial institutions if the conditions to which the credit is subject do not become available, or if the credit is not used for a period of 12 months Or if the activity subject to accreditation stops for a period of 6 months⁴¹.

³⁹ Article 61 of Law No. 23-09 of June 21, 2023 includes the Monetary and Banking Law, Official Journal of the Algerian Republic, No. 43, of June 27, 2023.

⁴⁰ Article 62 of Law No. 23-09 of June 21, 2023.

⁴¹ Article 104 of Law No. 23-09 of June 21, 2023.

3.1.2. The repressive jurisdiction of the Banking Commission

The Banking Committee is responsible for monitoring the extent to which banks and financial institutions comply with the legislative and regulatory provisions applied to them, as well as sanctioning any violations noted. The committee also sets the operating conditions of banks and financial institutions and ensures the quality of their financial situations, as well as compliance with the rules of good conduct of the profession.

Where applicable, offenses committed by persons carrying out the activities of a bank or financial institution without being accredited will be examined and disciplinary sanctions will be applied to them, without prejudice to other criminal and civil proceedings⁴².

The Banking Committee is composed of⁴³:

- ◎ The Governor is President,
- ◎ Three members are chosen based on their skills in banking, finance and accounting.
- ◎ Two judges are appointed: the first from the Supreme Court and chosen by its first president, and the second from the Council of State and chosen by the president of the Council, after consulting the Superior Council of the Judiciary.
- ◎ A representative of the Audit Council chosen by the President of this Council from among the first advisors,
- ◎ A representative of the Ministry of Finance, having at least the rank of director.

The members of the Banking Committee are appointed by the President of the Republic for a period of five years. Committee members are not authorized to disclose, directly or indirectly, facts or information of which they became aware in the course of their duties, without prejudice. to the obligations imposed on them by law, except in cases where they are called to testify in a criminal case, this same obligation is imposed on any person used by the Banking Committee to exercise its functions.

The natural result of the report aimed at strengthening the supervisory role of the Banking Committee over banks, financial institutions and other persons is a sanction report in the event that it finds a management defect⁴⁴. Thus, when an establishment subject to the supervision of the Banking Commission violates the rules of good conduct, the Banking Commission can send it a warning after giving its managers the opportunity to provide their explanations⁴⁵. The Banking Committee may also invite any bank or financial institution, when its situation

⁴² Article 116 of Law No. 23-09 of June 21, 2023.

⁴³ Article 117 of Law No. 23-09 of June 21, 2023.

⁴⁴ BEN LATRACH Mona, *Independent administrative authorities in the banking field: a new face of the role of the State*, Administration Review, National School of Administration, Algeria, Volume 12, Number 2, 2002, p.72.

⁴⁵ Article 123 of Law No. 23-09 of June 21, 2023.

justifies it, to take all measures likely to restore or support its financial balance or to correct its management methods within a specified period⁴⁶.

The Banking Committee may also appoint a provisional administrator, to whom are transferred all the necessary powers to manage and manage the affairs of the establishment concerned or its branches in Algeria, and it has the right to pronounce the cessation of payments⁴⁷.

Furthermore, the Banking Commission may impose disciplinary sanctions in the event of misconduct by members of the banking profession, or in the event of violation of one of the legislative or regulatory provisions linked to their activity. The Commission may impose one of the following sanctions, which are: warning, reprimand and prohibition from carrying out certain operations. And other types of limitation of the exercise of the activity, or temporary suspension of one or more managers with or without appointment of an interim manager, or cessation of functions of one or more of these same persons with or without appointment, without appointing an interim manager, as well as withdrawing accreditation. The Commission may also impose, either in place of these sanctions or in addition to them, a financial sanction at most equal to the minimum capital that the bank or financial institution is required to provide. The Treasury collects the appropriate amounts⁴⁸.

3.2. Manifestations of the repressive competence of other independent administrative bodies

We will address here the repressive competence of the Committee for the Regulation and Supervision of Stock Market Operations (first) as well as the Competition Council (second).

3.2.1. The repressive competence of the Committee for the Regulation and Supervision of Stock Market Operations

With the entry of Algeria into a market economy and the withdrawal of the State from the economic and financial sphere, the evolution of the role of the State is highlighted, from a controlling State to a State of control, and this, through the establishment of new forms of control in the economic and financial field. financial sphere⁴⁹.

⁴⁶ Article 124 of Law No. 23-09 of June 21, 2023.

⁴⁷ Article 125 of Law No. 23-09 of June 21, 2023.

⁴⁸ Article 126 of Law No. 23-09 of June 21, 2023.

⁴⁹ HADRI Samir, *Independent administrative authorities who decide in economic and financial matters*, Doctoral thesis, Faculty of Law and Commercial Sciences, M'hamed Bougra University, Boumerdes, Algeria, 2006, p.12.

The Stock Exchange Operations and Surveillance Committee is considered one of the independent administrative authorities in the economic field⁵⁰, responsible for ensuring the proper functioning of the stock market by ensuring transparency and equality between traders in this market. It is also a supervisory and regulatory body responsible for regulating the supervision and development of the capital market, and providing more confidence and credibility to the exchange of transferred securities⁵¹.

The commission for the regulation and control of stock market operations is made up of a president and six members⁵², as specified by the legislator⁵³: "The members of the commission are appointed according to their skills in the financial and stock market fields, for a period of four years, according to the following terms: under the conditions specified by the organization, and according to the following distribution:

- A judge proposed by the Minister of Justice;
- One member proposed by the Minister responsible for Finance;
- A university professor proposed by the Minister responsible for Higher Education;
- A member proposed by the Governor of the Bank of Algeria;
- A member chosen from among the managers of the legal entities issuing the contributed assets;
- A member proposed by the National Liquidator of Chartered Accountants, Chartered Accountants and Chartered Accountants.

Thus, they are appointed by decision of the Minister responsible for Finance for a period of four years and their functions end in the same manner⁵⁴. Half of the composition of the committee, with the exception of the president, is renewed every two years, and this renewal does not extend over the duration of the first mission of the committee⁵⁵.

⁵⁰ Article 20-1 of Legislative Decree No. 08-93 of May 23, 1993 relating to the stock market, Official Journal of the Algerian Republic No. 34 of May 23, 1993 amended and supplemented by law, and No. 1. Council of Administrators of the Algerian Republic, n°11 of February 19, 2003, specifies the following: "An independent control body, enjoying legal personality and financial independence. »

⁵¹ BENAZOUZ Fatiha, *The role of the regulatory and supervisory committee for stock market operations in the protection of the shareholder of a joint stock company*, Doctoral thesis, Faculty of Law and Political Science, Abu Bakr Belkaid University, Tlemcen, Algeria, 2015/2016, p.40.

⁵² Article 24 of Legislative Decree No. 08-93 of May 23, 1993.

⁵³ Article 25 of Legislative Decree No. 08-93 of May 23, 1993.

⁵⁴ Article 6 of Executive Decree No. 94-175 of June 13, 1994 includes the application of Articles 21, 22 and 29 of Legislative Decree No. 93-10 of May 23, 1993 relating to stock market, Official Journal of the Algerian Republic., No. 41, of June 26, 1994.

⁵⁵ Article 23 and 62 of Legislative Decree No. 08-93 of May 23, 1993.

It appears from the composition of the committee that it was constituted collectively and that they are appointed based on their abilities and knowledge in the financial and stock market field. There are also appointments made directly on proposal and some on the basis of a specific list. There is also a judicial element among the members.

The Algerian legislator⁵⁶ granted the Commission for the Regulation and Supervision of Stock Market Operations the power to carry out investigations into banks and financial establishments, without it having the right to invoke professional secrecy.

In return, the members of the Stock Market Operations Regulation and Surveillance Committee and its agents are bound by professional secrecy regarding the facts, acts and information to which they have access due to their function, and under penalty of the sanctions provided for in the Penal Code⁵⁷.

The inquiry and investigation process is carried out by the Commission for Regulation and Surveillance of Stock Exchange Operations and is carried out by qualified agents that it designates. It can also resort to the assistance of external agents⁵⁸, like what the French legislator has provided for the assistance of agents, the supervisory authority for prudence and solutions, accountants or chartered accountants⁵⁹.

The agents responsible for investigations, as part of their duties, are authorized to enter professional workshops, to carry out all useful checks, to request communication of all documents, whatever their medium, and to take a copy⁶⁰.

The right to access professional businesses and request the production of documents aims to subject the financial market to effective control and to facilitate the suppression and punishment of violations, since the question of their inspection and proof is an easy matter⁶¹.

It appears to us that both the Algerian legislator and the French legislator did not specify the type of these documents that could be requested, but rather stipulated in a general manner all documents and whatever their medium. However, unlike the Algerian legislator, the French legislator granted the right to seize documents⁶².

⁵⁶ Article 37 of Legislative Decree No. 08-93 of May 23, 1993.

⁵⁷ Article 39 of Legislative Decree No. 08-93 of May 23, 1993.

⁵⁸ Article 39-2 of Legislative Decree No. 08-93 of May 23, 1993.

⁵⁹ R 621-31 French monetary and financial code.

⁶⁰ Article 37-2 of Legislative Decree No. 08-93 of May 23, 1993. Which corresponds to it in French legislation: L621-10 French monetary and financial code, modified by art. 36 of law No. 2013-672 of July 26, 2013 on the separation and regulation of banking activities, JORF., No. 0173 of July 27, 2013, p.12530.

⁶¹ AIT MOULoud Fatih, *Protection of Savings Invested in Movable Values in Algerian Law*, PhD thesis, University of Tizi Ouzou, Algeria, 2012, p. 457,

⁶² L621-12 al.1 French monetary and financial code.

The information that the Financial Markets Authority can obtain is only that which is valid for the conduct of the investigation, and the French legislator has explicitly specified that the Financial Markets Authority's right of access is subject to the needs of investigation⁶³.

The stock market operations regulation and control commission may also, after special deliberation, summon any person who provides it with information on the questions before it, or order its agents to summon them. The person summoned may also be assisted by a court. advisor of his choice⁶⁴.

The notion of subpoena authorized by the Commission for Regulation and Control of Stock Market Operations must be taken in its narrow sense, the Commission's investigation cannot be compared to the preliminary investigations of the Code of Criminal Procedure in which persons cannot be detained⁶⁵.

We find the application of the intervention of economic control authorities in the field of imposition of sanctions and sanctions related to the activities of the stock exchange, since the Committee for Regulation and Supervision of Stock Exchange Operations has the power to impose sanctions to those who violate the rules of organization and activity of the stock exchange by imposing sanctions which take the form of a warning, a reprimand and a temporary ban on all or part of the activity or of the definitive withdrawal of approval. In the same context, the legislator also authorized the commission to impose fines estimated at 10,000,000 DZD, an amount equal to the potential profit made thanks to the error committed, and the sums are paid to the Guarantee Fund, in the event of violations committed in violation of the legislation and regulations relating to the exchange of transferred values, and this through article 51 of the aforementioned legislative decree 93-10.

3.2.2. The repressive jurisdiction of the Competition Council

According to article 24 of Ordinance 03-03 relating to competition, which specifies: "The Competition Council is made up of twelve members belonging to the following categories:

- Six members chosen from among personalities and experts holding at least a bachelor's degree or similar university diploma, and professional experience of at least eight years, in the legal and/or economic field, and possessing a qualification in the areas of competition, distribution and consumption, in the field of intellectual property.

⁶³ L621-10 French monetary and financial code.

⁶⁴ Article 38 of Legislative Decree No. 08-93 of May 23, 1993.

⁶⁵ BOUAZZA Diden, *The supervisory performance of the Committee for Regulation and Supervision of Stock Exchange Operations on trading operations*, Journal of Legal Studies, Laboratory of Fundamental Private Law, Faculty of Law and Political Sciences, Abou Bakr Belkaid University, Tlemcen, Algeria, N 11, 2014.

- Four members chosen from among qualified professionals in practice, or having exercised responsible activities, holding a university degree and having professional experience of at least five years in the field of production, distribution, crafts, services and liberal professions.

- Two qualified members representing consumer protection associations.

Members of the Competition Council may exercise their functions on a permanent basis.

It is useful to recall that the Competition Council has a consultative power which, under Article 35 of Ordinance 03-03, allows it to express an opinion on any question related to competition if the government requests it, and to express any proposals in the areas of competition. It is also consulted by local groups, economic and financial organizations, professional and trade union institutions and associations, as well as consumer associations.

This concerns consultative powers. As for repressive powers, the Competition Council is considered a quasi-judicial body, empowered to impose punitive administrative sanctions on offenders, which take two forms: orders and financial sanctions. and in accordance with article 45 of ordinance 03-03, it issues reasoned orders. It aims to put an end to control practices restricting competition, when the requests and files submitted to it or initiated by it fall within its jurisdiction. These orders take two forms: A positive image means action, and this results in a change in conditions by restoring the competitive balance of the market. A negative image involves failing to take action to stop prohibited practices.

In other words, when a competition council is informed of agreements, the matter is investigated, the parties who can defend themselves are heard and a report is drawn up on which the council meets in session to resolve the matter. If it turns out that the establishment has committed the practice of which the Council has been informed, it may either issue orders obliging it to put an end to the prohibited practice, or conversely oblige it to carry out the act for which it has been informed. abstained. becomes clear that the case requires time to be decided, it may decide to take temporary measures until the final decision in the case.

Therefore, the orders are considered to be administrative decisions issued by the Competition Council to the relevant economic institutions in the case under consideration, which have committed a restrictive competition practice, to the extent that the orders issued by the Competition Council of competition take on a corrective or corrective character, by ordering the economic institutions to correct the practices and actions issued by them, which leads to a disruption of the market due to the practice of restriction of competition, and in the event that orders are not executed, the Council may decide to impose other sanctions.

Temporary or urgent measures are measures taken with the aim of avoiding the worsening of the seriousness of a harmful situation or the continuation of an illegal situation. They are used either to preserve the legitimate rights of institutions or to preserve the public interest. These measures are also

called precautionary measures. Their goal is not to impose punishment, but rather to prevent possible harm. These are temporary measures, and that is what distinguishes them from punishment. However, they are included because they remain an oppressive measure, taken by the Council within the framework, to exercise its repressive authority.

Also, in the event that orders related to interim measures are issued and are not executed, Article 58 of the same order provides for the possibility of imposing a threatening fine of at least 150,000 DZD for each day of delay.

The legislator also conferred on the Competition Council a repressive power, represented by article 56 of Ordinance 03-03 relating to competition, to impose financial fines not exceeding 12 percent of the amount of the competition figure, business excluding expenses carried out in Algeria during the last closed fiscal year, or a financial fine equal to at least twice the profit made thanks to these practices, provided that this fine does not exceed 4 times, and if the economic agent does not have a company number, the fine n does not exceed 6,000,000 DZD, against the economic agent. economic agents who commit practices contrary to competition law.

3.3. A critical reading of independent administrative authorities in France

An independent administrative authority in France is a state institution, without legal personality but with its own power, responsible for one of the following three missions: ensuring the protection of the rights and freedoms of citizens, ensuring the proper functioning of the Administration in its relations with its citizens or participating in the regulation of certain sectors of activity.

The law of 20 January 2017 lists 26 independent authorities (19 independent administrative authorities and 7 independent public authorities), and sets the general status of independent administrative authorities (organization, ethics and operation). It should be noted, however, that some specificities remain for the Defender of Rights, the General Controller of Places of Deprivation of Liberty and the National Energy Mediator⁶⁶.

The Prudential Supervision and Resolution Authority (ACPR) is an institution integrated into the Banque de France, responsible for supervising the activity of banks and insurance companies in France. It is no longer an independent administrative authority pursuant to the law of 20 January 2017. It was founded in January 2010 by Ordinance No. 2010-76⁶⁷, through the merger of the Banking Commission, the Insurance and Mutual Insurance Supervisory

⁶⁶ Article 4, LAW No. 2017-55 of January 20, 2017 relating to the general status of independent administrative authorities and independent public authorities, JORF No. 0018 of January 21, 2017.

⁶⁷ Order No. 2010-76 of January 21, 2010 merging the banking and insurance approval and control authorities, JORF, No. 18 of January 22, 2010, p.1392.

Authority (ACAM), the Insurance Companies Committee (CEA) and the Credit Institutions and Investment Companies Committee (CECEI).

This merger is prepared by article 152 of the 2008 law on the modernization of the economy, which authorizes the Fillon government to carry it out by order. The ACPR's mission is to ensure "the preservation of the stability of the financial system and the protection of customers, policyholders, members and beneficiaries of persons subject to its control"⁶⁸.

The ACPR cooperates with the Financial Markets Authority (AMF)⁶⁹ and Tracfin. Furthermore, it represents France in international banking and insurance bodies.

The Competition Authority is an independent French administrative authority responsible for combating anti-competitive practices, monitoring mergers, formulating opinions and issuing recommendations aimed at improving the competitive functioning of markets and regulating regulated legal professions. Its purpose is to ensure compliance with economic public order, linked to "the defense of sufficient competition on the markets"⁷⁰.

In order to enforce the rules of the competition game, it is required in particular to make decisions, pronounce sanctions, or impose injunctions, subject to appeal before the Paris Court of Appeal and the Court of Cassation and the Council of State. It also issues opinions.

The Competition Authority has the power to issue injunctions, impose financial penalties, accept commitments and grant leniency to certain undertakings that cooperate by helping to detect or establish the existence of cartels. In this regard, it has been held that the commitment procedure before the Competition Authority does not infringe the principle of impartiality of the judge and does not disregard the right to an effective judicial remedy⁷¹. In addition, the Competition Authority punishes agreements, abuses of dominant positions and excessively low prices (anti-competitive practices). These decisions can be appealed before the Paris Court of Appeal.

The investigation is conducted in complete independence by the investigation services, placed under the direction of the general rapporteur. At the end of an adversarial procedure, the cases are examined by the college of the Authority, which, in most cases, sits in section.

⁶⁸ art. L. 612-1 of the Monetary and Financial Code.

⁶⁹ Report to the President of the Republic relating to Ordinance No. 2010-76 of 21 January 2010 merging the banking and insurance approval and control authorities, JORF, No. 18 of 22 January 2010, p. 1389, text No. 12.

⁷⁰ Thomas Pez, "Economic public order", New Notebooks of the Constitutional Council, no. 49, October 2015, pp. 44-57.

⁷¹ Constitutional Council. February 2, 2023, No. 2022-1035 Qpc.

4. Conclusion

Taking into account the specificity of business crimes, the Algerian legislator authorized the possibility of overriding the principle of judicial sanction, by giving certain departments the power to impose sanctions on violators of the rules governing the field of business, because these authorities have a significant margin. in assessing violations and appropriate sanctions.

On the other hand, the importance of moving away from criminal procedure in the field of business criminal law has increased to reduce cases of recourse to criminal justice, to ensure rapid settlement of violations, to reduce the burden on the courts, and move the wheel of economic development and progress of the national economy forward, given that the economic system falters with the removal of businessmen or law violators.

And the Administrative sanctions are sanctions imposed by independent control authorities and insufficiently regulated by the law, because this gap in the texts could be more dangerous for the security of business life than an ineffective sanction. There is a flaw not only in the methods of implementing these sanctions, but also in the authorities responsible for implementing them.

These independent administrative authorities are also criticized on several points, because it is the Financial Markets Authority which sets its regulations, ensures their application and sanctions non-application, which can violate the principle of separation of powers. Furthermore, independent administrative authorities can not compensate victims excluded from this system, the latter being able only to appeal to the civil judge.

And The term of office of members of an independent administrative authority, between 3 and 6 years depending on the authorities, is irrevocable and renewable once. Members exercise their functions with dignity, probity and integrity and ensure that any conflict of interest is prevented or immediately put an end to. They are bound by the secrecy of deliberations and exercise professional discretion. Various incompatibilities are provided for by law⁷².

In its two rulings of 21 March 2016⁷³, the Council of State opened the appeal for abuse of power against so-called "soft law" acts of the regulatory authorities. The Litigation Assembly ruled on the one hand that "the opinions, recommendations, warnings and positions adopted by the regulatory authorities in the exercise of the missions with which they are entrusted may be referred to the judge of abuse of power when they are in the nature of general and mandatory provisions or when they set out individual requirements that these authorities could subsequently censure for non-compliance". These acts may also be the subject of an action for annulment "when they are likely to produce significant effects, in particular of an economic nature, or are intended to significantly

⁷² Articles 5-10, Law No. 2017-55 of January 20, 2017.

⁷³ CE, ass., March 21, 2016, Fairvesta International GmbH et a., No. 368082, Lebon. - CE, ass., March 21, 2016, Sté NC Numericable, No. 390023, Lebon.

influence the behaviour of the persons to whom they are addressed". A series of decisions have since punctuated the case law with clarifications as to the extent of this control.

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