

Independence of the Audiovisual Regulatory Authority (A Study in Light of Law 23-20)

مدى استقلالية سلطة الضبط السمعي البصري (دراسة على ضوء القانون 20-23)

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Abstract:

The Algerian legislator explicitly emphasizes the independence of the audiovisual regulatory authority as an independent administrative authority. This independence distinguishes it from other classic entities in the state, granting it organic and functional independence recognized by law. This means that the authority is not subject to any administrative or supervisory authority, but a closer examination of the legal texts regulating the audiovisual regulatory authority as an entity entrusted with regulating the audiovisual sector reveals that this independence is relative. This raises several questions and interpretations about the effectiveness of this independence, both organically and functionally. This interpretation is primarily attributed to financial and administrative considerations practiced by the executive authority, which makes it relatively subordinate to the executive authority. This aspect will be highlighted in this research paper.

Keywords: Regulation; Independence; Authority; Audiovisual.

الملخص:

نص المشرع الجزائري صراحة على استقلالية سلطة ضبط السمعي البصري كسلطة إدارية مستقلة كون أن هذه الاستقلالية هي التي تميزها عن باقي الهيئات الكلاسيكية في الدولة، فهي بذلك تتمتع باستقلالية عضوية ووظيفية معترف بها قانونا ما يعني عدم تبعية الهيئة كسلطة إدارية مستقلة لأي سلطة إدارية أو وصائية على حد سواء، غير أن المتمعن في النصوص القانونية المنظمة لسلطة ضبط السمعي البصري كهيئة أسندت لها سلطة ضبط القطاع السمعي البصري، أن هذه الاستقلالية نسبية تثير عدة تساؤلات وتأويلات حول مدى فعالية هذه الاستقلالية سواء من الجانب العضوي أو الوظيفي وتفسير ذلك يرجع لاعتبارات متعلقة أساسا بالجوانب المالية والإدارية الممارسة من السلطة التنفيذية عليها الأمر الذي يجعل منها في تبعية نسبية للسلطة التنفيذية وهو ما سنبرزه من خلال هذه الورقة البحثية.

الكلمات المفتاحية: الضبط، الاستقلالية، سلطات، السمعي البصري.

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Introduction

The repercussions of the economic crisis in the 1980s were not limited to the economies of major countries but also affected other nations, including Algeria, as it is part of the global economic system. Algeria has witnessed several upheavals starting from its adoption of the socialist system, which did not achieve its intended goals, until the enactment of the 1989 constitution. At this point, the Algerian government reconsidered its intervention in the economy by creating mechanisms and mechanisms, prompting the legislature, institutionally, to withdraw the state and establish a new organizational form known as "independent administrative authorities".

The beginning was marked by the establishment of the Higher Council for Information as the first regulatory authority for the media sector in 1990 under Presidential Decree 90-339¹. However, it was dissolved three years later under Presidential Decree 93-252². Subsequently, the Organic Law on Media was issued in 2012³, which established the regulatory authorities for the written press and audiovisual media to embody media pluralism in Algeria. These authorities were tasked with regulating media activities instead of the traditional entities in the state. They were granted independence according to the legal texts regulating them, distinguishing them from administration and political authority. The Audiovisual Regulatory Authority was established under Organic Law 14-04⁴, which was repealed by Law 23-20 concerning audiovisual activities⁵, embodying media openness and the actualization of freedom of media practice in Algeria. Endowed with extensive powers and authorities, it was tasked with its duties as an independent administrative authority, as granted by Article 40 of Law 23-20 concerning audiovisual activities.

However, these powers will not lead to the desired effectiveness in intervention if not exercised by an independent administrative authority with independence, which would protect the independent regulatory authority from the dominance and interference of political and administrative authority. The controls related to independence are considered the foundation of the legal system for independent administrative authorities, distinguishing them from traditional bodies in the state's administrative apparatus.

Given the issues raised by the subject, we have chosen to shed light on the Audiovisual Regulatory Authority as an independent administrative authority and pose a problem revolving around:

To what extent is the independence of the audiovisual regulatory authority organic and functional from the executive authority?

To answer this problem, our research plan, which we have adopted, necessitated a blend of scientific approaches, such as the analytical approach through analyzing the legal materials

1- Presidential Decree No. 90-339 dated November 3, 1990, concerning the regulation of the Higher Council for Information devices and structures and specifying the basic legal rules applicable to some of its users. Official Gazette of the Algerian Republic, Issue 47, issued on November 7, 1990.

2- Presidential Decree No. 93-252 dated October 26, 1993, concerning the Higher Council for Information. Official Gazette of the Algerian Republic, Issue 69, issued on October 27, 1993.

3- Organic Law No. 12-05 dated January 12, 2012, concerning media. Official Gazette of the Algerian Republic, Issue 02, issued on January 15, 2012. Amended and supplemented by Law No. 23-14 concerning media. Official Gazette of the Algerian Republic, Issue 56, issued on August 29, 2023.

4- Law No. 14-04 dated February 24, 2014, concerning audiovisual activities. Official Gazette of the Algerian Republic, Issue 16, issued on March 23, 2014.

5- Law No. 23-20 dated December 2, 2023, concerning audiovisual activities. Official Gazette, Issue 77, issued on December 2, 2023.

regulating the authority, as well as stating the sources of its independence based on the descriptive approach.

The scope of the research is defined to answer this problem by studying the independence of the audiovisual regulatory authority from two main aspects in two fundamental sections, where we address the organic independence of the audiovisual regulatory authority in (the first section) and its functional independence in (the second section).

1. Organic Independence of the Audiovisual Regulatory Authority

The degree of independence of independent administrative authorities varies from one authority to another, and through a study of Organic Law No. 23-20 concerning audiovisual activities, it becomes evident that the legislator aims to enhance several indicators of the organic independence of the audiovisual regulatory authority. On the other hand, this independence is subject to several restrictions and interventions from the executive authority, which limits the independence of the authority.

1.1- Indicators of Organic Independence

The recognized indicators of organic independence for the audiovisual regulatory authority as an independent administrative authority manifest in adherence to a set of criteria that confirm this independence concerning the legal formation of authority members and the regulatory rules governing the authority members.

1.1.1- Composition of the Members of the Audiovisual Regulatory Authority

In accordance with the provisions of Article 43 of Organic Law No. 23-20, the independent audiovisual regulatory authority consists of nine members, including the president of the authority, who is appointed by the President of the Republic. Therefore, studying the composition of the members of the independent audiovisual regulatory authority serves as an indicator of the organic independence of the audiovisual regulatory authority. This prompts us to clarify some aspects, primarily the collective nature of the authority and the diversity of its members.

A. Collective Nature of the Authority

Regarding the collective nature of the authority, the Algerian legislator adopts a collective composition for all independent administrative authorities⁶, except for the Republic's Ombudsman⁷. The diverse collective nature of independent administrative authorities contributes to activating mechanisms of dialogue and consultation among its members in studying and addressing issues, as well as proposing solutions⁸. Additionally, the collective nature ensures two fundamental advantages: balancing the influence of different bodies empowered to appoint members of independent administrative authorities and ensuring neutrality and objectivity in addressing various decisions and issues with seriousness⁹.

When considering the Audiovisual Regulatory Authority, which is the subject of the study, it becomes apparent, according to Article 43 of the aforementioned Law No. 23-20,

6- Aerab Ahmed, Independence of the Audiovisual Regulatory Authority: A Study of the Succession System of its Members, Critique Journal of Law and Political Sciences, Volume 16, Issue 4, 2021, page 528.

7- Presidential Decree No. 96-113 dated August 2, 1996, establishing the Republic's Ombudsman. Official Gazette of the Algerian Republic, Issue 20, issued on March 31, 1996.

8- Michel Gentot, Independent Administrative Authorities, 2nd Edition, Montchrestien, Paris, 1994, p. 53.

9- Bashir Al-Sharif Shams al-Din, Samiha Laqabi, Economic Regulation Law, Ain M'lila, Dar Al-Hoda, 2021, p. 51.

that the legislator has entrenched the collective composition. The National Independent Authority for Audiovisual Regulation comprises nine members, including the president. Furthermore, the appointment of authority members is exclusively entrusted to the President of the Republic¹⁰. This represents a departure from the method followed by the legislator regarding the proposal and appointment of the composition of the audiovisual regulatory authority according to Article 57 of Law No. 14-04, which was repealed. This article stipulated the following: The Audiovisual Regulatory Authority consists of nine members appointed by presidential decree as follows¹¹:

- Five members, including the president, chosen by the President of the Republic.
- Two non-parliamentary members proposed by the President of the Council of the Nation.
- Two non-parliamentary members proposed by the President of the National People's Congress.

Subsequently, Presidential Decree 16/178¹² was issued, two years after the issuance of the Organic Law defining media activity in Algeria. Following this, the authority members were inaugurated, but the new body members have not been officially inaugurated yet. This situation affects the independence and workflow of the authority.

B. Mixed Nature of the Composition of the National Independent Authority for Audiovisual Regulation

The mixed nature of the composition of the National Independent Authority for Audiovisual Regulation is considered one of the key factors in ensuring its independence and contributing to the acceptance of its decisions¹³. Upon examining the basic composition of the audiovisual regulatory authority, it becomes clear that it consists of nine members selected from individuals with expertise in technical, legal, and media fields, as well as in the audiovisual sector.

Moreover, the legislator stipulated diversity, specialization, and experience in the membership of the regulatory authority, allowing for the creation of a distinguished work environment, away from external influences. This allows for maintaining a balance among the authority members and prevents any bias due to the collective nature of these bodies¹⁴.

1.1.2- The regulatory rules for the members of the Audiovisual Regulatory Authority

Understanding the regulatory rules regarding the members of the Audiovisual Regulatory Authority requires focusing on important criteria that enhance their independence. This is accomplished through the system of tenure and the application of the conflict of interest system.

10- See Article 43 of Law 23-14 concerning audiovisual activities.

11- See Article 57 of Law 14-04, cited above.

12- Presidential Decree No. 16-178 dated June 19, 2016, appointing members of the Audiovisual Regulatory Authority. Official Gazette of the Algerian Republic, Issue 36, issued on June 19, 2016.

13- Sihem Sadiq, Aspects of the Independence of Independent Administrative Authorities in Algeria, Algerian Journal of Law and Political Sciences, Institute of Legal and Administrative Sciences, Issue 4, 2014, p. 200.

14- Lakhdar Benatia, Fatima-Zohra Tishoush, The Limitations of Regulatory Authorities in the Field of Print Media, Journal of Legal and Political Studies, Volume 06, Issue 01, 2020, p. 156.

A. Tenure System

Tenure pertains to the legal duration allocated for members of the authority to perform their duties. Consequently, they cannot be dismissed, suspended, or excluded except in cases of serious misconduct. The influence or pressure from the appointing authority is also prohibited to ensure their independence. Setting the tenure period for members of independent administrative authorities is one of the fundamental principles reflecting the independence of these authorities¹⁵.

Regarding the Audiovisual Regulatory Authority, the legislator decided to set the term of office at five years, renewable once¹⁶. According to Article 48 of the same law: "In the event of any member of the authority violating the provisions of Article 46 of this law, they shall be replaced for the remaining term of the tenure, in accordance with the prescribed procedures...".

B. Conflict of Interest System

The conflict of interest system aims to ensure the independence of independent administrative authorities and prevent them from being subject to presidential authority or administrative guardianship¹⁷. It also ensures their neutrality while performing their duties towards the institutions they oversee. This is achieved through the application and respect of the conflict of interest system. The conflict of interest system refers to the conflicting functions of members of the Audiovisual Regulatory Authority with any other position in the public or private sector, or any executive responsibility within political parties or unions, except for temporary tasks in higher education and supervision in scientific research¹⁸.

Additionally, membership in the Audiovisual Regulatory Authority conflicts with owning any interests or benefits in an entity active in the audiovisual field¹⁹. The conflict period should be extended for two years after the member's term in the authority ends. This prohibition aims to enable authority members to devote themselves to their duties and avoid any distractions hindering their implementation.

Given the role this principle plays in enhancing the independence of independent administrative authorities²⁰, the legislator has unified these obligations for all independent administrative authorities by issuing Order No. 07-01, which addresses conflict of interest cases and specific obligations for certain positions and functions²¹.

1.2- Obstacles to organic independence

Despite the legislator's dedication through Organic Law No. 23-20 to provide indicators embodying the independence of the Audiovisual Regulatory Authority, the full realization of this independence has not been achieved due to several factors hindering the independence of the Audiovisual Regulatory Authority. Among these factors, the executive authority's control

15- Diarra Abdoulaye, *Independent Administrative Authorities in Francophone African States Case of Mali, Senegal, and Benin*, Dispo, 2000.

16- See Article 43 of Law 23-14, related to audiovisual activity.

17- Dhehib Nadira, *Independence of Independent Regulatory Authorities in Algerian Law*, Master's Thesis, Faculty of Legal and Political Sciences, Mouloud Mammeri University, Tizi Ouzou, 2011, p. 29.

18- See Article 45 of Law 23-20, related to audiovisual activity.

19- See Article 46 of Law 23-14, related to audiovisual activity.

20- Zouaimia Rachid, *The Repressive Functions of Independent Administrative Authorities Ruling on Economic Matters*, IDARA, No. 28, 2004, p. 144.

21- Order 07-01, dated March 1, 2007, related to cases of conflict of interest and specific obligations for certain positions and functions, Official Gazette of the Algerian Republic, No. 16, issued on March 7, 2007.

over the appointment authority is a major obstacle, as the executive authority controls the appointment of members of the Audiovisual Regulatory Authority, exposing their independence to influence and manipulation. Additionally, the possibility of renewing and terminating the tenure of members of the authority particularly hampers the independence of the Audiovisual Regulatory Authority. When there is limited potential for reappointment or dismissal of authority members, their independence is threatened and restricts them from making decisions freely and independently. Furthermore, the absence of abstention procedures constitutes another factor limiting the independence of the Audiovisual Regulatory Authority.

1.2.1- Executive authority's control over appointment power

Based on Article 43 of Law No. 23-20, it is evident that the executive authority holds the power of appointment in the National Independent Authority for Audiovisual Regulation. According to the previous law, members of the authority are appointed by the President of the Republic, including the chairman of the authority²². This falls within what is known as the concentration of appointment power in the hands of the President of the Republic²³.

Referring to Article 57 of Law No. 14-04, which amends and supplements, the audiovisual regulatory authority consists of nine members appointed by presidential decree. The President of the Republic appoints five of these members, including the chairman of the authority, while the President of the National People's Assembly proposes two non-parliamentary members, and the President of the Council of the Nation proposes two members.

The theoretical framework of Law 23-20 has not been realized, as the executive authority, represented by the President of the Republic, exclusively holds the appointment power. Consequently, the audiovisual regulatory authority is subordinated to the executive authority, and it monopolizes the hands of the President of the Republic through the appointment of all members. This diminishes the independence and credibility of the audiovisual sector and restricts the freedom of practicing audiovisual activities constitutionally²⁴.

This situation leads to the members of the audiovisual regulatory authority, including the chairman, becoming mere instruments for implementing what the executive authority imposes, according to its loyalty logic. It would have been appropriate for the Algerian legislator to define mechanisms that ensure a balance between various appointment authorities. Actual independence of independent administrative authorities requires the distribution of appointment powers among several entities²⁵. Furthermore, the authority's

22- See Article 43 of Law 23-14, concerning audiovisual activities.

23- Presidential Decree No. 20-39, dated February 2, 2020, regarding appointments in civil and military positions, Official Gazette of the Algerian Republic, Issue 06, issued in 2020.

24- Refer to Article 54 of the Constitution of the People's Democratic Republic of Algeria, issued by Presidential Decree No. 96-438 dated December 7, 1996, Official Gazette of the Algerian Republic, Issue 76, issued on 8/12/1996, amended and supplemented by Law No. 02-03 dated April 10, 2002, Official Gazette of the Algerian Republic, Issue 25, issued on 14/04/2002, amended and supplemented by Law No. 08-19 dated November 15, 2008, Official Gazette of the Algerian Republic, Issue 63, issued on 16/11/2008, amended and supplemented by Law No. 16-01 dated March 6, 2016, Official Gazette of the Algerian Republic, Issue 14, issued on 07/03/2016, amended by referendum on November 1, 2020, issued by Presidential Decree No. 20-442 dated December 30, 2020, Official Gazette of the Algerian Republic, Issue 30, dated December 30, 2020.

25- Rachid Zouaïmia, Tools of Economic Control: Powers of Independent Administrative Authorities, Proceedings of the Seventh National Meeting on Economic Regulation in Algeria Between Legislation and Practice, University of Saïda, On December 9th and 10th 2013, p. 14.

chairman should be elected by its members after their appointment²⁶, to ensure the authority's independence from the executive authority in a real, not just symbolic, manner.

1.2.2- Renewability and Finality of Tenure

It should be noted that the renewability and finality of tenure are significant factors affecting the independence of members of the Audiovisual Regulatory Authority. However, they make the members of the authority operate under the influence and subordination of the appointing authority. Their focus is often on renewing the tenure and the method of achieving it, which negatively affects the performance of the authority.

In fact, the Algerian legislator allows the renewal of the tenure of members of the Audiovisual Regulatory Authority only once²⁷, which poses an obstacle to the independence of the authority's members. It is exploited as a tool for pressure by external parties, especially the executive authority, to blackmail members and threaten them in exchange for renewing their membership. Moreover, the non-renewal of tenure exposes the authority to challenges and doubts about its independence from another perspective²⁸.

1.2.3- Recusal Procedures

Recusal procedures differ from the conflict of interest system, where recusal prohibits the member from participating in discussions and deliberations related to issues in which they have an interest or a close relationship with one of the relevant parties²⁹.

Based on the analysis of the law concerning audiovisual activity Law 23-20, it appears that the legislator exempted members of the Audiovisual Regulatory Authority from recusal procedures. This follows the approach of other independent administrative authorities except for the Competition Council Regulatory Authority, which is the only authority that stipulates recusal according to Article 29 of Decree 03-03, amended and supplemented concerning competition. The article states that "any member of the Competition Council shall not participate in the discussion related to a matter in which he has an interest, or is related to one of the relevant parties up to the fourth degree, or has represented or represents one of the interested parties³⁰".

2. Functional Independence of the Audiovisual Regulatory Authority

Given the important role that independence plays in achieving objectives and reaching the goal of effectively and objectively regulating audiovisual activity, the legislator has given great importance to enhancing this independence for the Audiovisual Regulatory Authority. This independence is manifested in functional independence and membership independence. To assess this independence specific to the Audiovisual Regulatory Authority, we will study

26- Samiya Kassal, The Legitimacy of Independent Administrative Authorities, Proceedings of the National Forum on Independent Administrative Authorities in Algeria, Faculty of Law and Political Science, University of May 8, 1945, Guelma, 2012, p. 9.

27- See Article 43 of Law 23-20, concerning audiovisual activity.

28- Fatima Zahra Bouktah, The Independence of the Audiovisual Authority, Legal and Political Sciences Review, Volume 02, Issue 02, 2023, p. 116.

29- Mousawi Nabil, The Neutrality of Independent Administrative Authorities, PhD Thesis, Faculty of Legal and Political Sciences, Abderrahmane Mira University, Bejaia, 2019, p. 79.

30- See Article 29 of Decree 03-03, amended and supplemented by Law 08-12, dated July 19, 2003, concerning competition, Official Gazette of the People's Democratic Republic of Algeria, Issue 43, issued on July 20, 2003, amended and supplemented by Law No. 08-12, dated June 25, 2008, Official Gazette of the People's Democratic Republic of Algeria, Issue 36, issued on July 2, 2008, and amended and supplemented by Law No. 10-05, dated August 15, 2010, Official Gazette of the People's Democratic Republic of Algeria, Issue 46, issued on August 18, 2010.

this aspect starting from identifying the aspects of functional independence, then the obstacles facing the achievement of this independence.

2.1- Indicators of Functional Independence

Functional independence of the Audiovisual Regulatory Authority is manifested through a set of aspects primarily consisting of financial and administrative independence, as well as its legal independence.

2.1.1- Financial and Administrative Independence

From the legal texts related to the Audiovisual Regulatory Authority according to Law 23-20, it can be inferred that the legislator has emphasized the financial independence of the Audiovisual Regulatory Authority in managing its budget. Thus, it can be said that it enjoys financial independence. Additionally, the authority has the power to regulate and manage users and administrative interests, which further enhances its administrative independence.

A. Financial Independence

Financial independence is considered a fundamental element in determining the independence of independent administrative authorities from the executive branch³¹. It separates the economic regulatory authority from the executive branch in terms of financing³². Financial independence is achieved by these authorities having funding sources for their budgets, including their own financial resources, independent of financial support from the government. Financial independence also lies in their right to freely establish and implement their financial policies, as well as their ability to manage their financial and administrative affairs independently³³. Some scholars have recognized three main criteria for determining the financial independence of regulatory authorities³⁴:

- Budget programming independence.
- Budget execution independence.
- Management independence.

Referring to the provisions of Law 23-14³⁵, it is evident that the financial independence of the Audiovisual Regulatory Authority is clearly affirmed by Article 14, which states: "By virtue of this organic law, an independent national authority for audiovisual regulation is established, with a special character, enjoying legal personality, financial, and administrative independence."

Additionally, Article 61 of Law 23-20 clarifies that the authority has the right to impose fees on licenses for the establishment of audiovisual communication services and benefits from the financial revenues generated from its activities in the audiovisual field.

By examining these articles, it becomes apparent that the legislator has granted the Audiovisual Regulatory Authority financial

independence by securing its own financial resources through imposing fees on the services it provides to operators in the audiovisual sector.

31- Maziyani, Hicham, Regulation of Media Activity in Algerian Law, PhD thesis, Faculty of Law and Political Science, University of Abderrahmane Mira, Bejaia, 2021, p. 156.

32- Mohammed Jabri, Independent Administrative Authorities and Advisory Function, PhD thesis, Faculty of Law and Political Science, University of Algiers, 2014, p. 147.

33- Dhehib, Nadira, Op.Cit, p. 79.

34- Maziyani, Hicham, Op.Cit, p. 156.

35- Organic Law 23-14 on Media, Op.Cit.

Furthermore, the president of the authority is responsible for managing these financial resources freely and without the need for approval from other administrative authorities, which enhances the authority's independence and non-subordination to any other administrative entity³⁶.

B. Administrative Independence

The administrative independence of the audiovisual regulatory authority is manifested in several aspects, including the authority of the president of the authority to prepare the fundamental law and internal regulations of the authority and to approve them³⁷.

In this regard, Article 57 of Organic Law 23-20 stipulates: "The president of the authority shall determine the organization of the administrative and technical departments of the authority³⁸..."

This is in addition to the administration and technical management and the peaceful exercise of authority by the president of the authority over the employees subordinate to the regulatory authority.

Based on this, it is evident that the Algerian legislator has provided the audiovisual regulatory authority with independent administrative organization in terms of the authority of the president of the authority in management and organization.

2.1.2- Legal Independence of the Audiovisual Regulatory Authority

Based on Law No. 23-20 concerning audiovisual activities, it is evident that the audiovisual regulatory authority enjoys several guarantees. The legislator has ensured its right to establish its internal regulations, meaning it has the authority to determine the rules and regulatory procedures governing its internal operations. Thus, the regulatory authority has the freedom to organize its activities and make necessary decisions to perform its functions effectively, in addition to enjoying legal personality.

A. Independence in Establishing Internal Regulations of the Authority

The freedom of the regulatory authority to choose the specific rules and texts governing its operations and management without external interference, especially from the executive authority, is a clear indicator of the independence of independent administrative authorities³⁹.

The functional independence is demonstrated by the freedom of independent administrative authorities in choosing the specific rules that regulate their work and management without interference from any other entity, particularly the executive authority. This independence is also evident in the fact that their internal regulations are not subject to approval by the executive authority and are not subject to publication⁴⁰.

In this context, the audiovisual regulatory authority enjoys independence in preparing and approving its internal regulations, as evident from the formulation of Article 57 of Law No. 23-20 concerning audiovisual activities, which states "...the president of the authority shall establish the basic law for the employees of the authority and its internal regulations, which shall be approved by the authority's council."

36- See Article 61 of Law 23-20, related to audiovisual activity.

37- See Article 57 of Law 23-20 regarding audiovisual activities.

38- See Article 56 of Law 23-20 regarding audiovisual activities.

39- Bouhadda Mohamed Saad, The Role of Economic Regulatory Authorities in Establishing Legal Rules, Doctoral Thesis in Public Law, Faculty of Law and Political Science, University of Ghardaia, 2019/2020, p. 149.

40- Mousawi Nabil, Op.Cit, p. 205.

Additionally, the audiovisual regulatory authority is committed to publishing its internal regulations in the official bulletin of the authority, enhancing the independence of its function and providing everyone with the opportunity to review and comply with them, which is a strong indicator of the independence of the regulatory authority.

B. Enjoyment of Legal Personality

The audiovisual regulatory authority enjoys legal personality, as confirmed by Article 14 of Organic Law No. 23-14, as amended and supplemented, concerning media, which establishes an independent national authority for regulating audiovisual matters. This authority enjoys legal personality and administrative and financial independence.

This measure constitutes an exception in the administrative and financial system of economic regulatory authorities and has been adopted in the French legal system for some independent administrative bodies to achieve greater flexibility in their management and financing⁴¹. Among these bodies is the Higher Audiovisual Council. The Algerian legislator followed the same approach as the French system when granting legal personality to independent administrative authorities, including the audiovisual regulatory authority.

This is a step reflecting the legal and financial independence of this authority, resulting in a range of effects related to the right to litigation, financial liability, and contracting eligibility⁴².

Professor Rashid Zouaimia also believes that granting legal personality and administrative independence to independent authorities is not a decisive indicator for determining and measuring their independence⁴³.

2.2- Obstacles to Functional Independence

Although the new Organic Law No. 23-20 concerning audiovisual activity has embodied a set of indicators that support the functional independence of the audiovisual regulatory authority, including its financial, administrative, and legal independence, there are challenges that stand as obstacles to achieving this independence. These challenges stem from the practices followed by the executive authority and restrict the independence of functional work, such as the relative financial independence and the submission of annual reports from the authority to the executive and legislative authorities.

In general, achieving the desired functional independence of the audiovisual regulatory authority remains complex due to these practices, which limit its ability to perform its tasks independently and effectively.

2.2.1- Relativity of Financial Independence

Despite the explicit recognition of the independence of the audiovisual regulatory authority under Article 14 of Law 23-14, it becomes evident through the article that the legislator stipulated the financial independence of the audiovisual regulatory authority as an independent administrative authority. However, this financial independence remains relative due to the intervention of the executive authority.

41- Elham Kharshi, The Authority of Audiovisual Regulation under Law 14-04 between Regulatory Requirements and Textual Limitations, *Journal of Literature and Social Sciences*, Volume 13, Issue 1, 2016, p. 61.

42- Dhehib, Nadira, Op.Cit, p. 70.

43- Zouaimia Rachid, *Independent Administrative Authorities and Economic Regulation in Algeria*, El Houma, Algiers, 2005, p. 25.

The audiovisual regulatory authority is not explicitly recognized to have the autonomy to set its financial policies. Its budget is subject to general management rules and is constrained within the state budget. This is evident from the content of Article 61 of Law 23-20 concerning audiovisual activity, which states, "The authority's budget consists of... grants provided by the state..." Also, Article 62 of the same law stipulates, "The authority's accounting shall adhere to the rules of public accounting and financial accounting regulations. The head of the authority is responsible for expenditure."

This raises questions about the inconsistency between the provisions of Article 14 of Law 23-14, which states, "Under this Organic Law, a national independent authority is established to regulate audiovisual activities, with a special character, enjoying legal, administrative, and financial independence...", and Article 61 of Law 23-20 concerning audiovisual activity, which confines the authority's appropriations within the general state budget, indicating the financial dependence of the regulatory authority on the state and not allowing it a mechanism for self-financing through imposing fees on the entities subject to its oversight.

Thus, we conclude that the financial independence of the audiovisual regulatory authority is relative because the majority of its funding comes from state contributions to carry out its tasks. As a result of including the financial requirements of the authority within the general state budget, this leads to automatic subordination to the executive authority⁴⁴.

2.2.2- Preparation of the Annual Report

This aspect is considered one of the constraints on the independence of independent administrative authorities in carrying out their activities, as a result of the oversight exercised by the government through the submission of the annual report.

While Law 23-14 explicitly affirms the independence of the audiovisual regulatory authority as an independent administrative authority, referring to the legal text of Law 23-20 regulating audiovisual activity reveals that the independence of the audiovisual regulatory authority raises many questions when its activities, as an independent administrative authority, are subject to the oversight of the executive and legislative authorities.

By examining Article 60 of Law 23-20 concerning audiovisual activity, "The authority shall annually submit to the President of the Republic and to the Presidents of the two chambers of Parliament a report on its activities, and the report shall be published for public opinion within thirty (30) days following its submission."

The legislator thus obliges the audiovisual regulatory authority to prepare a detailed report containing all elements related to its annual activities, including decisions, opinions, studies, and consultations issued by it.

This is considered a form of constraint on the freedom of the authority to carry out its activities independently, due to the indirect oversight exercised by both the legislative authority represented in parliament and the executive authority represented by the President of the Republic. This confirms the intervention of the executive authority and makes the audiovisual regulatory authority subject to it, as mentioned earlier.

44- Abdelrahman Ben Jilali, The Degree of Independence of Media Regulation Authorities in Algeria, Legal Studies Journal, Volume 06, Issue 2, December 2019, p. 421.

Conclusion

Through our reading and analysis of Law 23-20 regarding audiovisual activity, it becomes clear to us that the guarantees provided by the aforementioned law contribute to facilitating the work of the members of the audiovisual regulatory authority and protect them from any form of political influence while performing their duties. However, despite the legislature's establishment of a set of indicators ensuring independence in its organic and functional aspects in the law regulating the audiovisual authority as an independent administrative authority, it failed to establish true independence for this authority. It remained subject to the control of the executive authority, represented by the president, in order to tighten control over the media sector in general and the audiovisual regulatory authority in particular, considering it one of the important and sensitive sectors in the state, through imposing a set of restrictions by the Algerian legislature. In addition to that, there are deficiencies and gaps in the legal texts regulating the independence of the authority as an independent administrative authority, especially in terms of organic and functional aspects. Based on the above, we have reached the following conclusions and recommendations:

Results

- Deprivation of membership of the members of the judiciary from the formation of the authority, thus lacking the judicial element in the representation of the audiovisual sector regulation.
- The President's control over the appointment of the authority, which makes the audiovisual regulatory authority a tool subordinate to the executive authority.
- Failure to ensure complete financial independence for the regulatory authority, which is one of the most prominent aspects of independence.
- Compelling the audiovisual regulatory authority to prepare an annual report and send it to the executive authority.

Recommendations

To establish true independence for this institution to enable it to perform its duties entrusted to it in the field of regulating the audiovisual sector impartially, we propose a set of recommendations that can contribute to its independence.

- Amendment of Article 43 of Law 23-20 by precisely specifying the competencies and appointing the head of the authority to someone with extensive experience in the media sector or through an election mechanism to ensure its independence.
- Ensuring the stability of the membership of the audiovisual regulatory authority and separating it from the executive authority.
- Specifying mechanisms to ensure balance between the various bodies representing the people in the matter of proposing and electing the members of the authority and its president.
- Granting the authority, the freedom to finance its activities without relying on the state treasury.
- Exempting the authority from preparing the annual report and sending it to Parliament instead of the executive authority so that it can keep an eye on the audiovisual sector.
- Activating the role of the audiovisual regulatory authority to ensure the effectiveness of the media field and enable it to perform its duties independently.

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