

Controls of the specific jurisdiction of administrative judicial bodies in Algeria

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Received: 20/04/2025, Accepted: 22/09/2025, Published: 03 /11/ 2025

Summary :

The Administrative Procedure Law No. 08/09 has been amended by Law No. 22/13. the latter contains 15 articles. by looking at them, we find that most of the amendments are based on the administrative article. one of the most important amendments in this area is those related to the specific jurisdiction of judicial and administrative bodies. these amendments can be summarized in expanding the specific jurisdiction of administrative courts in dedication to the principle of litigation at two degrees in the administrative article; By adding a new judicial body, the Administrative Courts of Appeal, and amending the terms of reference of the State Council.

Keywords : specific jurisdiction, administrative judicial bodies, administrative courts, State Council, administrative courts of Appeal.

Introduction

The constitutional founder, through the constitutional amendment of 2020, confirmed the adoption of the system of judicial duplication through the text of Article 179 of it, and what is noted on this article is the addition of a new judicial body to the administrative judicial system, called the Administrative Courts of Appeal, and accordingly the Organic Law was issued 22/11 on judicial organization, which is stated in Article 04 of it stipulates that the administrative judicial system includes the State Council, the Administrative Courts of Appeal and the administrative courts.

Thus, this structural amendment was followed by an amendment in the procedural aspect, especially since Article 37 of the judicial organization law subjected the procedures applied before the administrative judicial bodies specified in Article 04 above to the code of civil and Administrative Procedure, and thus the code of civil and Administrative Procedure No. 08/09 was amended by law 22/13 and the latter contains 15 articles, looking at which we find a most basic amendments based on the administrative article.

One of the most important amendments in this area is those related to the specific jurisdiction of administrative judicial bodies, based on this, the main problem of this study revolves around: what are the controls of the specific jurisdiction of administrative judicial bodies within the amended civil and Administrative Procedure Law supplemented by law 22/13

We will try to answer this problem by relying on the content analysis approach, through analyzing the legal texts regulating the specific jurisdiction of administrative judicial bodies to find out how the Algerian legislature regulates this area.

I. Administrative courts

Administrative courts are considered the basic structures of the administrative justice system, and in order to raise the issues related to the legislator's distinction between one region and another-which was prevalent before-the legislator, pursuant to Article 03 of executive decree 22/435 of December 11, 2022¹ Article 04 of the same decree stipulates that the new administrative courts should be installed gradually when the necessary conditions for their functioning are met.

Through this discussion, we will be exposed to the most important amendments to the organization of administrative courts within the amended law 22/13 of the code of civil and Administrative Procedure ². Both from the human point of view and from the point of Administrative Organization.

1. Organization of administrative courts

We deal with the organization of administrative courts from the human point of view and from the point of view of the composition of the Administrative Court once it is adjudicated in the dispute before it, as well as from the point of Administrative Organization.

1.1 From the human point of view

According to Article 32 of organic law 22/10, which includes the judicial organization, the Administrative Court consists of:

1 / the judges of the judgment: the chairman, the deputy chairman or two deputies if necessary, the heads of departments, the heads of branches if necessary, the judges in charge of petitions, the judges of the bailiffs of judgments.

2 /judges of the state governorate: a state governor, an assistant state governor, or two assistant state governors when required.

According to Article 33 of organic law 22/10 on judicial organization, administrative courts are adjudicated in a collegial formation, unless otherwise provided by law.

As stated in Article 814 of the amended and supplemented by Law No. 22/13³ However, administrative courts are adjudicated by a collective composition, consisting of at least three judges, including the president and two assistants. Unless otherwise provided by law.

1.2. In terms of Administrative Organization

According to Article 34 of the Organic Law 22/10 containing the judicial organization, the Administrative Court is organized into sections, and, if necessary, the sections can be divided into branches, the number of sections and branches is determined by the nature and volume of judicial activity by order of the chairman of the Administrative Court after a survey of the governor of the state.

2. Expanding the specific jurisdiction of administrative courts

The Algerian legislature, by amending the text of articles 800 and 801 of the code of civil and Administrative Procedure, has expanded the specific jurisdiction of administrative courts and we will try to highlight this as follows:

2.1 According to Article 800 of the code of civil and Administrative Procedure

Through the recent amendment, the Algerian legislator tried to re-adjust the content of Article 800 of the code of civil and administrative procedure, without departing from the general principle of the criterion of determining jurisdiction, which is the organic criterion.

With reference to Article 800 of the code of civil and Administrative Procedure, as amended by law 22/13, administrative courts are considered the general jurisdiction bodies in administrative disputes, except for disputes entrusted to other judicial bodies.

Thus, through the first paragraph of Article 800, the Algerian legislator excluded some disputes from the jurisdiction of the administrative courts, without specifying or limiting these disputes, and it is understood that the legislator means those disputes that the administrative courts are competent to appeal⁴.

As for the second paragraph of the same article, we note the inclusion or addition of national public bodies and national professional organizations within the jurisdiction of administrative courts, along with the state, state, municipality and public institutions of an administrative nature, however, looking at Article 900 bis paragraph 03, We find that the Administrative Court of appeal of Algeria is competent to adjudicate as a first instance in Cases of cancellation, interpretation and assessment of the legality of administrative decisions issued by the Central Administrative Authorities, national public bodies and national professional organizations, which suggests a kind of conflict between the text of the two articles (article 800 paragraph 02 and Article 900 bis paragraph 03), however, this can be explained by the fact that administrative courts have jurisdiction as a first instance in full judicial proceedings regarding National public bodies or national professional organizations, while the Administrative Court of Appeal has the competence to annul, interpret and assess the legality of decisions issued by it.

Thus, we find that the Algerian Legislature, through its amendment to the code of civil and administrative procedures, excluded the competence of the Council of state to consider disputes between national public bodies and professional organizations on a primary and final basis, in accordance with what was enshrined under Article 09 of organic law 98/01, granting jurisdiction to administrative courts to adjudicate in full judicial cases involving a national professional organization or a public body This is confirmed by the text of Article 801 of the amended code of civil and Administrative Procedure, which we find that neither professional organizations nor national public bodies within the jurisdiction of administrative courts have mentioned cases of cancellation, interpretation, examination of legality, along with other bodies such as state, municipal and public institutions of an administrative nature.

2.2 According to Article 801 of the code of civil and Administrative Procedure:

With reference to Article 801 of the code of civil and Administrative Procedure, we find that the legislator's hand was touched by the addition of regional professional organizations, whose jurisdiction to consider disputes was transferred to administrative courts under special provisions similar to the regional professional organizations of lawyers according to law 13/07 on the legal profession ⁵.In the absence of a special provision, the jurisdiction is assigned to the ordinary judiciary.

Thus, the provision on the jurisdiction of administrative courts to consider cases of cancellation, interpretation and examination of the legality of decisions issued by regional organizations would unify the jurisdiction for all these organizations and eliminate discrimination among them by making them subject to a single judicial authority, in addition to non-discrimination between them and national professional organizations, that is, in terms of the subordination of Regional-administrative jurisdiction (even if there is a difference in judicial authorities between the jurisdiction of administrative courts or administrative courts of Appeal)

From the foregoing, we find that the specific jurisdiction of administrative courts has been expanded through the amendment of the code of civil and Administrative Procedure under law 22/13, through the addition of new parties to the administrative dispute, which fall within the jurisdiction of administrative courts, and this is explicitly stipulated within the code of civil and Administrative Procedure and not within special texts, and it concerns And national public bodies in full judicial proceedings and regional professional organizations with regard to cancellation proceedings, interpretation and examination of legality.

II. Administrative courts of Appeal

The Administrative Courts of Appeal were created by Article 179 of the constitutional amendment of 2020 to be confirmed by Article 04 of the judicial organization Law No. 22/10⁶ Which stated: 'the administrative judicial system includes the State Council, the Administrative Courts of Appeal and the administrative courts. This is what the law 22/13, which includes the amendment of the code of civil and administrative procedures through the introduction of the first part BIS of the fourth book under the title 'in the procedures followed before the Administrative Courts of Appeal'

The establishment of this body in the administrative article is considered a real consecration of the principle of litigation at two degrees in the administrative article and constitutionally enshrined.

Before highlighting the specific jurisdiction of the Administrative Courts of Appeal, we are first exposed to their organization both from a structural and human point of view.

1. Organization of Administrative Courts of Appeal

We deal with the organization of Administrative Courts of appeal from the human point of view and from the point of Administrative Organization.

1.1. From the human point of view

According to Article 30 of the Organic Law 22/10 containing the judicial organization, the Administrative Court of Appeal consists of:

Judging judges :

- At least a president with the rank of adviser to the State Council ;
- One or two vice-presidents, if necessary ;
- Heads of rooms ;
- Heads of departments when required ;
- Consultants

Judges of the state governorate :

-Governor of a state, at least with the rank of adviser to the State Council

-Assistant State Governor, or two when required.

According to Article 33 of organic law 22/10 on judicial organization, administrative courts of Appeal are adjudicated in a collective composition, unless otherwise provided by law.

This is also confirmed by Article 900 BIS 5 of the code of civil and Administrative Procedure, which stipulates that: '**administrative courts of Appeal shall be adjudicated by a collective composition, unless otherwise provided by law, consisting of at least 3 judges, including a chairman and two assistants with the rank of adviser**' .

1.2 In terms of Administrative Organization

According to Article 34 of the Organic Law 22/10 containing the judicial organization, the Administrative Court is organized into chambers, and, if necessary, the chambers can be divided into sections, the number of Chambers and sections is determined by the nature and volume of judicial activity by an order of the chairman of the Administrative Court of Appeal after a survey of the governor of the state.

2. Specific jurisdiction of Administrative Courts of Appeal

Article 07 of law 22/13 added article 900 BIS, which provided for the various procedures followed before the Administrative Court of Appeal, either as an appellate body or as the first instance for litigation in some disputes.

2.1 As an appellant

The original jurisdiction of this court is to appeal the verdicts of the administrative courts, an embodiment of the principle of two-tier litigation enshrined in the Algerian constitution.

It is provided for in Article 900 BIS of the code of civil and Administrative Procedure, as well as confirmed by Article 29 of the Organic Law 22/10.

All administrative judicial decisions issued by the Administrative Court and the final decision on the subject of the dispute are subject to appeal to the six administrative courts provided for in Article 08 of the Judicial Division Law No. 22/07, which are located in Algeria, Oran, Constantine, Ouargla, tamengast, Bashar, and according to Article 10 of the Law No. 22/07, the determination of the These administrative courts of Appeal shall be regulated by executive decree 22/435.

Emergency orders issued by administrative courts are also subject to appeal.

Article 937 of the amended and supplemented code of civil and Administrative Procedure has fixed the time limit for appealing against urgent orders issued by administrative courts at 15 days from the date of official notification of the verdict, provided that the Administrative Court of Appeal shall adjudicate within a period not exceeding 10 days, while the time limit for appealing the appeal of judgments issued by the Administrative Court of appeal of Algeria is set at 15 days from the date of Official notification, provided that the State Council decides on the appeal within no more than 15 days in accordance with the same article.

It should be noted that the time limit for appealing the administrative court rulings is no longer estimated at two months, but it has become estimated at one month from the date of notification of the ruling in accordance with the text of Article 950 of the amended code of

civil and Administrative Procedure, while the appeal against the rulings issued by the Administrative Court of appeal of the city of Algiers remained estimated at two months in accordance with the same article, which is a distinction that does not His justification, where he sees an aspect of jurisprudence ⁷That it suggests that there is a distinction between the appeal disputes of the central authorities, national professional organizations, national public bodies and other local bodies in which the judgments to which you are a party are challenged before the Administrative Courts of Appeal, and therefore it would have been more appropriate to consolidate the deadlines and maintain the two-month period previously in force for appeals filed Both, due to the specificity of the administrative dispute and the need for a longer time in order to form the full picture about the file.

The appeal of the appeal before the Administrative Courts of Appeal has several effects, represented by the transfer effect of the appeal, and it is intended to transfer and transfer the entire case file to the Appeal judge, to re-examine it in terms of facts and law, thus the adversarial appeal is a continuation of the adversarial first instance, and the appellate judge has all the Without returning the opponents before the judge of the administrative court or before the Administrative Court of appeal of the city of Algiers, and the opponents shall have the same authority that they had before the court of first instance, except what has fallen from it⁸.

2.2 As a first-class hand:

With reference to Article 900 bis paragraph 03 of the code of civil and Administrative Procedure, it is clear to us that the jurisdiction of the Administrative Court of Appeal as the first instance belongs only to the Administrative Court of Appeal located at the level of Algiers without the other administrative courts of Appeal.

Part of the jurisprudence believes that granting the Administrative Court of Appeal at the level of Algiers this jurisdiction is one of the advantages that count for this amendment, because it enshrines the principle of litigation at two levels for disputes of central bodies⁹ The opposite of the previous situation, where the State Council was competent in a primary and final capacity in the consideration of disputes of central bodies ¹⁰ In violation of the principle of two-degree litigation in the administrative article.

However, for our part, we would have preferred that the jurisdiction in this case be assigned to the Administrative Court of Algiers, so that it would become the competent authority to consider disputes involving a central authority, a national professional organization, a public and informal body-which is in line with the rules of regional jurisdiction-so that the decisions issued in this regard can be appealed to the Administrative Court of appeal of Algeria The capital, which is its original jurisdiction - according to its designation – and left the jurisdiction of cassation appeal to the Council of state as well as its original jurisdiction.

It should be noted that with reference to Law No. 22-13 amending and supplementing the code of civil and Administrative Procedure and Organic Law No. 22-10 on judicial organization, the latter did not mention the territorial jurisdiction of Administrative Courts of Appeal, but with reference to the law of Judicial Division No. 22/07, we find that according to Article 08 of it 06 administrative courts of Appeal In Algeria-Oran-Constantine - Ouargla-tamengast-Bashar.

Article 10 of the same law stipulates that there shall be administrative courts in the circuit of each Administrative Court of Appeal. Article 09 confirmed that the determination of the jurisdiction of the judicial bodies provided for in this chapter is carried out by regulation. Accordingly, the above-mentioned Executive Decree No. 22-435 was issued¹¹ ‘Who established the territorial jurisdiction of Administrative Courts of Appeal.

III. The specific competence of the Algerian state council

Under Article 08 of law 22/13 amending the code of civil and Administrative Procedure, articles 901, 902 and 903 of the code of civil and Administrative Procedure have been amended, and under these articles the specific competence of the State Council has been amended as follows:

1. Inherent jurisdiction of the State Council

The inherent jurisdiction of the State Council means the jurisdiction granted to it by constitutional provisions¹²

Through Article 179, paragraph 02 of the constitutional amendment of 2020, we find that the constitutional founder determined the nature of the jurisdiction of the State Council in being a cassation authority in administrative materials, as the highest administrative judicial body that evaluates the actions of other administrative judicial bodies.

Proceeding from this, we will deal with the jurisdiction of the State Council as a cassation judge and we will distinguish here between the jurisdiction of the State Council as a cassation authority in the final judgments and decisions issued by administrative judicial bodies and between its jurisdiction as a cassation authority authorized by special provisions.

1.1 Cassation appeal of judgments and final decisions issued by administrative judicial bodies

Article 901 of the code of civil and administrative procedure stipulates that the State Council is competent to adjudicate Cassation Appeals in judgments and decisions issued definitively by administrative judicial bodies, which is the same as stated in the text of Article 09 of the Organic Law of the State Council as amended by Organic Law 22/11¹³.

With this amendment, we find that these articles no longer provide for the primary and final jurisdiction of the State Council to consider disputes between Central Administrative Authorities, national professional organizations and national public bodies, but rather provide for the jurisdiction of the State Council to adjudicate Appeals in Cassation in judgments and decisions issued definitively by administrative judicial bodies, that is, both administrative courts and the administrative, As well as specialized administrative judicial bodies.

In principle, it can be said that the administrative courts, in accordance with article 800 of the code of civil and Administrative Procedure, do not issue final judgments, but issue primary judgments that are subject to appeal to the Administrative Court of Appeal in accordance with the first paragraph of Article 900 BIS of the code of civil and Administrative Procedure. Thus, the door remains open only to decisions issued by the Administrative Courts of Appeal, which are considered as an appellate body, as only they can be appealed in Cassation to the Council of state.

As for the Council of State, IT issues final rulings, which are those issued by it as a competent judge to adjudicate the file before it as an appellate body, to adjudicate the appeal as a second instance body, and here it concerns the decisions issued by the Administrative Court of appeal of Algeria once dismissed as a first instance in cases of cancellation, interpretation and assessment of the legality of decisions Administrative issued by the Central Administrative Authorities, national public bodies and national professional organizations, as provided for in Article 900 bis paragraph 03, however, the State Council in its decision issued by the first chamber on 23/09/2002¹⁴ He approved the rule of non-Appealability regarding a decision issued by him, that is, the decisions issued by him are not subject to appeal before him again, and therefore the decisions considered by him as an appellate body are not subject to appeal in Cassation before him.

From here we find that the competence of the State Council in Cassation appeals against the judgments and final decisions issued by the final judicial authorities is limited to those issued by the Administrative Courts of Appeal as an appellate body.

What is meant by the function provided for by the State Council as a cassation authority is that the latter does not re-examine the case like an appeals judge, but monitors the legality of judicial decisions subject to administrative Cassation according to various judicial legal rules and Means¹⁵.

1.2 Cassation appeal under special provisions

Referring to the special texts and to the jurisprudence of the State Council, a cassation appeal to the State Council is open against the following decisions:

Decisions of the accounting board:

In accordance with Article 110 of law 95/20 on the amended and supplemented accounting board ¹⁶. The decisions of the Accounting Council issued by the composition of all chambers together are subject to cassation appeal and the decisions on cassation appeal are the decisions issued by the council in the appeals filed against the decisions of one of its chambers and the decisions in this field are intended to decisions involving the imposition of financial penalties on the group of employees in case of Generality.

Decisions of the Supreme Judicial Council :

The jurisprudence of the Council of State States that ' the Supreme Judicial Council is a constitutional institution and that its composition and follow-up procedures are before it and the special powers it enjoys when it is convened as a disciplinary council before the Council of State¹⁷".

Decisions of national committees to appeal disciplinary sanctions:

According to the State Council, the National Committee for the appeal of disciplinary penalties issued in the law article is an administrative judicial body that issues decisions of a judicial nature that can be appealed in Cassation and not invalidity ¹⁸.The same provision applies to the National Committee for the appeal of disciplinary decisions issued by the disciplinary councils of the national chambers of notaries as well as judicial bailiffs.

2. Extraordinary jurisdiction of the State Council

With reference to the law of civil and administrative procedures, as well as the organic law on the organization, functioning and competencies of the State Council, we find that the

State Council has been assigned jurisdiction as an appellate body and as a judicial body that decides first and final in some disputes under special provisions.

2.1 Appeal on appeal

According to Article 902 of the code of civil and Administrative Procedure, as amended and supplemented by law 22/13, as well as 10 of the Organic Law of the Council of state, as amended by law 22/10, we find that the Council of State is competent to adjudicate the appeal of decisions issued by the Administrative Court of appeal of Algiers in cases of cancellation, interpretation and assessment of the legality of administrative decisions issued by the central administrative authorities and professional organizations National and national public bodies.

It should be noted that according to Article 937 of the code of civil and Administrative Procedure, the time limit for the appeal of urgent orders issued at the first instance by the Administrative Court of appeal of Algiers to the Council of State is set at 15 days from the date of official notification or notification.

Article 950 of the code of civil and Administrative Procedure, as amended and supplemented by law 22/13, provides for a two – month period for appealing decisions issued by the Administrative Court of appeal of Algeria, as a first instance, effective from the day of official notification of the decision.

However, by extrapolating the text of Article 950, it is noted that the legislator used the phrase ' two months for decisions of Administrative Courts of Appeal...'Whereas it should have been more precise and stated that the decisions issued by the Administrative Court of appeal of Algeria as a first instance –exclusively-are those that accept the appeal by appeal to the Council of state within a period of two months, unlike the decisions issued by the rest of the other administrative courts that accept the cassation appeal and not the appeal.

2.2 Adjudication of cases entrusted to him by special provisions:

Whereas, under Article 903 of the code of civil and Administrative Procedure, as amended by law 22/13, as well as under Article 11 of the Organic Law of the State Council, as amended by law 22/10, the State Council is competent to adjudicate cases entrusted to it by special provisions, that is, whenever there is a special provision assigning jurisdiction to the State Council to adjudicate the dispute, the State Council The competent person in this case, from which it is understood that in this case the State Council will decide on the subject by application of a special provision.And among the disputes that the State Council specializes in under special provisions and adjudicates initially and definitively in some banking disputes granted to the jurisdiction of the administrative judiciary, represented mainly by the decisions and regulations issued by the monetary and loan council, so that the state council deals with the control of legality in accordance with Article 65 of order 03/11 on cash **and loan**¹⁹ The Council of State also specializes in appeals related to individual decisions issued by the governor of the Bank of Algeria in his capacity as chairman of the monetary and loan Council.

3. The competence of the State Council to adjudicate in the conflict of competence between the bodies of Administrative Justice

The creation of the Administrative Court of appeal within the organization of administrative justice on the one hand and the amendment of the provisions of the specific jurisdiction of the various administrative judicial bodies on the other hand, should have led to the amendment of the provisions of the adjudication of the issue of a dispute of jurisdiction between these administrative judicial bodies, so the legislator used Article 808 of the code of civil and Administrative Procedure. The jurisdiction on the issue of a conflict of jurisdiction became structured as follows:

3.1 Cases in which the chairman of the State Council dismisses

In the event of a conflict of jurisdiction between two administrative courts subordinate to the jurisdiction of two administrative courts of Appeal, for example, a conflict of jurisdiction between the Administrative Court of Stiv located in the jurisdiction of the Administrative Court of appeal of Constantine and the Administrative Court of Tlemcen and subordinate to the jurisdiction of the Administrative Court of appeal of Oran, in this case, the determination of the conflict of jurisdiction

This is according to Article 808, paragraph 02 of the amended and supplemented code of civil and Administrative Procedure.

Also, in the event of a conflict of jurisdiction between an administrative court and an administrative court of Appeal, in this case the jurisdiction to adjudicate this conflict shall be transferred to the chairman of the State Council, in accordance with article 808 paragraph 03 of the amended and supplemented code of civil and Administrative Procedure.

3.2 Cases in which the Council of State adjudicates all chambers together

Article 808, paragraph 03 of the amended and supplemented code of civil and Administrative Procedure states that in the event of a dispute between two administrative courts of Appeal, for example the Administrative Court of appeal of Constantine and the Administrative Court of appeal of Algeria, the decision on this dispute shall be referred to the Council of state in all its chambers together.

Also, in the event of a dispute between an administrative court of Appeal and the Council of state, the decision on this dispute shall be referred to the Council of State in all its chambers together.

Conclusion:

Through this study, we have reached a number of results, summarized as follows :

-Expanding the specific jurisdiction of administrative courts by amending Articles 800 and 801 of the code of civil and administrative procedure, through the addition of new parties to the administrative dispute, which fall within the jurisdiction of administrative courts, by explicitly stipulating them within the code of civil and Administrative Procedure and not within special provisions, and it concerns both national professional organizations and public bodies National and regional professional organizations in full judicial proceedings with regard to annulment, interpretation and examination of legality claims.

-Enshrining the principle of litigation at two degrees in the administrative article by adding a new judicial body, the Administrative Courts of Appeal.

-The jurisdiction of the Administrative Court of Appeal as the first instance belongs only to the Administrative Court of Appeal located at the level of Algiers without the rest of the Administrative Courts of Appeal.

-The powers of the Council of state are limited to Cassation appeals against the final decisions issued by the administrative judicial authorities, as well as appeal appeals against the decisions issued by the Administrative Court of appeal of Algiers, as well as the adjudication of cases authorized to it by special provisions.

Based on these results, we can make a set of recommendations that can be summarized as follows:

-Amending Article 800 of the amended and supplemented code of civil and Administrative Procedure to avoid conflict with article 900 bis paragraph 03 of the same law, especially since we are dealing with the rules of jurisdiction, which are considered to be of public order, in order to remove confusion and close the field to all interpretation and assumption.

-Expedite the issuance of the law regulating the work and competencies of the Administrative Courts of Appeal in line with the procedural amendment under law 22/13.

-Assigning jurisdiction to the Administrative Court of Algiers, so that it becomes the competent authority to consider disputes involving a central authority, a national professional organization, a public and shadow body –which is in line with the rules of regional jurisdiction - so that the judgments issued in this regard can be appealed to the Administrative Court of appeal of Algiers, which is its original jurisdiction according to its designation.

-Exemption of the State Council from adjudicating on appeal and maintaining its role in cassation appeal, as is the case with the Supreme Court.

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¹⁶ *Law No. 95/20 of February 04, 1995 on the amended and supplemented Accounting Council*

¹⁷ *Journal of the State Council, No. 09, 2009, p. 57.*

¹⁸ *The same reference.*

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