

The Role of the Court of Conflicts in Preserving the Rules of Subject-Matter Jurisdiction

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Abstract

The Court of Conflicts is considered a judicial body aimed at resolving conflicts of jurisdiction between the judicial bodies of the ordinary judicial system and those of the administrative judicial system. It was established pursuant to paragraph four of Article 152 of the 1996 Constitution, which stipulates that a Court of Conflicts shall be established to rule on conflicts of subject-matter jurisdiction between the Council of State and the Supreme Court. The same wording remained until the constitutional amendment of 2020 in Article 179, paragraph four, which stipulates that the Court of Conflicts shall decide on cases of conflict of jurisdiction between the ordinary judiciary and the bodies of the administrative judiciary. This was also provided for in Organic Law No. 98/03 relating to the competencies, organization, and functioning of the Court of Conflicts, as amended and supplemented, where Article 3 states: “The Court of Conflicts shall have jurisdiction over disputes of jurisdiction between the judicial bodies subject to the ordinary judicial system and the judicial bodies subject to the administrative system.” Subsequently, Organic Law No. 25/13 amending and supplementing Law 98/03 was issued, adopting the same wording.

Keywords: Court, jurisdiction, conflict, judiciary.

Introduction:

This study aims to shed light on the Algerian Court of Conflicts and its role in preserving the rules of subject-matter jurisdiction. Following the constitutional amendment of 1996, Algeria adopted a system characterized by judicial duality, which led to the establishment of a judicial body responsible for resolving conflicts of jurisdiction known as the Court of Conflicts. The Court of Conflicts occupies a special position that places it outside the hierarchical structure of both the ordinary and administrative judicial systems. It is the supreme body that decides disputes of jurisdiction arising between the ordinary and administrative judiciary. The purpose of its existence is to avoid contradictory judicial rulings and to prevent situations of denial of justice. It seeks to achieve equality, strengthen legal security, and unify judicial orientation. This leads us to raise the following problem: How are the rules of subject-matter jurisdiction preserved by the Court of Conflicts? In studying this topic, we followed the descriptive analytical method. To answer the question raised, we divided our study into two sections. In the first section, we addressed the conceptual and organizational framework of the Court of Conflicts, and in the second section we examined the competencies and procedures for adjudication before the Court of Conflicts.

Section One: The conceptual and organizational framework of the Court of Conflicts

The Algerian Court of Conflicts is a supreme constitutional judicial body established by the 1996 Constitution (Articles 152–153) and Organic Law No. 98/03 to decide positive or negative conflicts of jurisdiction between the ordinary judiciary (the Supreme Court) and the administrative judiciary (the Council of State). It is characterized by an arbitral nature, independent of the two judicial hierarchies, and composed of judges equally representing both systems. It issues binding decisions that are not subject to appeal.

First Requirement: The nature and establishment of the Court of Conflicts

The Court of Conflicts is a supreme judicial body, arbitral and independent. It does not belong to the hierarchy of the ordinary judiciary or the administrative judiciary; rather, it stands above them to resolve disputes concerning subject-matter jurisdiction. It was established by the 1996 Constitution (Articles 152–153)¹ and Organic Law No. 98/03² mentioned above. It settles disputes arising between the two judicial systems, and its objective lies in protecting the rules of functional jurisdiction and ensuring balance between the ordinary and administrative judiciary.

First Branch: The legal characterization of the Court of Conflicts

By referring to Organic Law No. 98/03, we find that this law characterizes the Court of Conflicts from the perspective of the objective for which it was established. Article 3, paragraph one, provides: “The Court of Conflicts shall have jurisdiction to decide conflicts of jurisdiction between the judicial bodies subject to the ordinary judicial system and the judicial bodies subject to the administrative judicial system under the conditions specified in this law.”³

Subsection Two: The Jurisprudential Characterization of the Conflict Court

As for the jurisprudential characterization, it is expected that there will be a clear difference among Algerian jurists in adapting it with regard to describing the legal nature of the Conflict Court. For Professor "Masoud Chihoub", the Conflict Court is considered as: "a judicial body higher than the bodies of the ordinary judiciary and the administrative judiciary, and it is independent of them."⁴ Among those who followed the same approach, we find Professor "Ammar Boudiaf"⁵ and "Mohamed Seghir Baali". However, the latter adds that it is: "of an arbitral nature", and he was followed in this by Professor "Salami Amour"⁶. As for Professor "Lahcen Ben Cheikh Ath Moulia", he characterized it as: "the body that settles conflicts between the two judicial hierarchies."⁷ As for Professor "Khloufi Rachid", he confined all the previously mentioned characterizations into a single definition, stating: "The Conflict Court is the highest judicial body, and a body that ensures the proper functioning of the dual judicial system, through the control it exercises and imposes on the two judicial hierarchies when the question of jurisdiction between them arises"⁸, As for what was stated by Professor "Bouchir Mohand Amokrane" in his view regarding the characterization of the Conflict Court, he relied on principles or elements that were not adopted by the previously mentioned professors. He considered that the Conflict Court, in the first place, is a constitutional body pursuant to the fourth paragraph of Article 152 of the 1996⁹ Constitution, and is organized under Organic Law 98/03¹⁰, headquartered in Algiers, and entrusted with a single competence, which is to decide on jurisdictional disputes between the ordinary judicial bodies and the administrative judicial bodies¹¹.

The Second Requirement: The Composition and Functioning of the Conflict Court

The Conflict Court is composed, according to Article Five of Organic Law 98/03 as amended and supplemented, of 09 judges including the President of the Court. The President of the Republic appoints half of them from among the judges of the Supreme Court, and the other half from among the judges of the Council of State for a period of five years, upon the proposal of the President of the Permanent Bureau of the Supreme Council of the Judiciary, after obtaining the conforming opinion of this council and consulting the President of the Council of State with respect to the judges of the Council of State. The President of the Conflict Court is appointed by the President of the Republic for a period of 5 years, alternately from among the judges of the Supreme Court and the Council of State, upon the proposal of the President of the Permanent Bureau of the Supreme Council of the Judiciary and after obtaining the conforming opinion of this council and consulting the President of the Council of State with respect to the judges of the Council of State¹².

The President of the Republic appoints a judge in the capacity of Commissioner of State for a period of 5 years alternately between the judges of the Supreme Court and the judges of the Council of State, upon the proposal of the President of the Permanent Bureau of the Supreme Council of the Judiciary, after obtaining the conforming opinion of this council and consulting the President of the Council of State with respect to the judges of the Council of State. Article 12 of Organic Law 98/03 as amended and supplemented provides that the Conflict Court shall be composed of at least five judges, including two judges from the Supreme Court and two judges from the Council of State, in order to ensure the validity of deliberations. The President of the Conflict Court appoints from among its members two substitute judges for each session to replace the absent member or members, taking into account the judicial system to which the absent member belongs. In the event of an impediment affecting the President of the Conflict Court, he shall be replaced by the judge with the greatest seniority from the same judicial body to which the President belongs¹³.

Section Two: Jurisdiction of the Conflict Court and Procedural Measures

Starting from the sole objective for which the Conflict Court was established, namely resolving problems of jurisdictional conflicts (conflits d'attributions) between the ordinary and administrative judiciaries, its jurisdiction is limited to achieving this single objective within the framework of the dual judicial system that justifies the existence of this court. Accordingly, Organic Law 98/03 as amended and supplemented, in Article Three, provides that: "The Conflict Court is competent to decide on jurisdictional disputes between judicial bodies subject to the ordinary judicial system and judicial bodies subject to the administrative judicial system." Therefore, what is the concept of jurisdictional conflict? And what are the procedures that must be followed?

First Requirement: Jurisdiction of the Conflict Court

The problem of jurisdictional conflict arises between two different judicial bodies if two essential factors are present:

The first factor: the existence of a contradiction between the two judiciaries, the ordinary or the administrative (le conflit de juridiction), which is completely different from the contradiction that may occur between judges within the same judicial body (le règlement des juges).

The second factor: it relates to the acceptance by both the ordinary and the administrative judiciaries of jurisdiction in a specific dispute and ruling on it in form and substance, or their refusal of jurisdiction and their failure to rule on the same case.

Subsection One: The Concept of Jurisdiction

Judicial jurisdiction is the authority granted by law to the court or judicial body to examine and decide a specific dispute. Accordingly, the jurisdiction of the Conflict Court is legally defined and limited (*compétence d'attribution*), and it does not have general jurisdiction (*compétence de droit commun*). Therefore, the role of the judge here is limited only to applying the laws and does not include reviewing their constitutionality, which falls exclusively within the competence of the Constitutional Court. Moreover, it does not rule on the substance of the dispute or the original right, but rather determines the competent judicial body. It is not permitted to intervene in jurisdictional disputes that may arise between judicial bodies belonging to the same judicial system, whether ordinary or administrative¹⁴.

Subsection Two: Scope of the Jurisdiction of the Conflict Court

According to the provisions of Article (152) of the 1996 Constitution and Articles (16, 17, and 18) of Organic Law 98/03, the scope of the jurisdiction of the Conflict Court includes the following four cases:

1. The case where both the ordinary and administrative judiciaries decide on the same dispute, which is called the positive conflict (*Le conflit positif*). The conditions of this positive conflict are three: dual jurisdiction in one case, the issuance of two decisions by the ordinary and administrative judiciaries, and the unity of parties, subject matter, cause, and objective. These conditions also apply to the case of negative conflict.
2. The case where both the ordinary and administrative judiciaries refuse to decide on the same dispute, which is called the negative conflict (*Le conflit négatif*).
3. The case where the judge refers the case file to the Conflict Court to decide on jurisdiction in order to avoid issuing a decision that contradicts a decision issued by another judicial system in the same dispute, which is called referral (*Le renvoi*). In this case, all procedures are suspended until the decision of the Conflict Court is issued, and this referral may be made by either the ordinary or the administrative judge.
4. The case where there are final judicial judgments or decisions that are contradictory, which is called the conflict of judicial decisions (*Le conflit de décisions juridictionnelles*).

The Second Requirement: Litigation Procedures before the Conflict Court

According to the provisions of Article (153) of the 1996 Constitution, and Articles (2 and 4) of Organic Law 98/03, the permanent seat of the Conflict Court is in Algiers, and all proceedings, discussions, deliberations, memoranda, and decisions are conducted in the Arabic language.

As for the procedures that must be followed before the Conflict Court, they can be summarized in nine as follows:

- 1 - With regard to the parties to the dispute, any interested person may bring an action before the Conflict Court within a period of two full months from the date on which the last decision becomes final and not subject to any appeal before the ordinary or administrative judicial bodies.

2 - The parties must be represented by lawyers accredited before the Supreme Court and the Council of State. This is in accordance with the provisions of Article (20) of Organic Law 98/03.

3 - With regard to judges, the judge must refer the entire case file to the Conflict Court accompanied by a sufficiently reasoned decision that is not subject to any appeal. This is done through the court clerk who must in turn send the file within a period of one month starting from the date of pronouncing the referral decision.

4 - The hearings are public and pleadings are presented by the lawyers after the reports are read by the reporting counselors.

5 - The cases registered before the Conflict Court must be decided within a period of six (06) months from the date of registration. This is an important procedure to avoid delay and the loss of rights due to the passage of time.

6 - After deciding the case, the Conflict Court returns the file to the judicial body that referred it within a period of one month from the date of pronouncing the decision.

7 - The decisions of the Conflict Court are not subject to any appeal.

8 - The decisions of the Conflict Court are binding on the judges of both judiciaries: the ordinary and the administrative.

9 - According to the provisions of Article Six of Organic Law 98/03, all decisions of the Conflict Court must be published so that they serve as a reference for all specialists, especially judges and lawyers, in order to avoid cases of jurisdictional conflict as a preventive measure whenever possible.

Here, it must be recalled that some decisions of the Conflict Court have indeed been published in the journal issued by the Council of State, but in small numbers and irregularly. As practical examples of the decisions of the Conflict Court, according to what is available, we record some applied examples of the decisions issued by the Conflict Court.¹⁵

-Decision No. 01 issued on 08 May 2000 due to referral:

*) Parties to the dispute: The Municipality of Rais Hamidou in Algiers and the citizen contractor (S.J).

*) Operative part of the decision of the Conflict Court: Based on the provisions of Article (338) of the Civil Code, the civil decision was officially notified and became final and not subject to any appeal, and acquired the authority of *res judicata*. Therefore, there is no place for a jurisdictional dispute between the judges due to the prior final adjudication of the subject of the dispute before the ordinary judiciary.

-Decision No. 10 issued on 25/06/2000 due to a request from a party.

*) Parties to the dispute: A lady (A.F) and an agricultural investor in Constantine.

*) Operative part of the decision of the Conflict Court: The claim of the plaintiff is inadmissible in form because the decisions of the civil and administrative chambers were not final, but could still be appealed before the Supreme Court and the Council of State.

-Decision No. 45 issued on 09 December 2007 due to referral.

*) Parties to the dispute: A municipality and a spare parts trader.

*) Operative part of the decision of the Conflict Court: The administrative chamber is competent to decide the dispute because the municipality is an essential party in the dispute.

Conclusion:

The issue of conflict regarding subject-matter jurisdiction exists in all judicial systems, whether those based on the principle of unity or those based on the principle of duality. Although Algeria experienced both systems during the stages of development of its judicial system, it ultimately adopted the system of duality of the judiciary by separating the administrative judiciary from the ordinary judiciary. In order to prevent jurisdictional conflicts that would inevitably arise between these two bodies, it established a judicial body to resolve such disputes, namely the Conflict Court, through which the legislator attempted to effectively embody the features of judicial duality. Through examining the legal system of this body, we can reach an objective evaluation of this experience.

With regard to the human composition of this body, the legislator initially recognized its independence and ensured its neutrality through its distinctive composition based on the presence of experts and specialists in public and private law. This composition also guarantees that its members do not favor the jurisdiction of one body over the other, which makes it fully aware of the principles and rules of judicial jurisdiction.

As for the competences granted to this court, it has become necessary to expand them by granting it the authority to examine the substantive aspects related to jurisdictional conflicts. This requires reconsidering the content of Article 15 of Organic Law No. 98/03 as amended and supplemented, which concerns the competences, organization, and functioning of the Conflict Court, by establishing an exception to the content of its first paragraph that grants the court the authority to address the substantive aspects of the dispute whenever necessary. If justice is the foundation of the state, then the judiciary is the instrument for achieving justice through its oversight of the legality of the practices of the good governance sought in every state.

Footnotes:

- 1) The Constitution of 1996 dated 8 December 1996, Official Gazette No. 76, issued on: 07 December 1996, as amended and supplemented by Organic Law No. 25/13 dated 03 August 2025, Official Gazette No. 59 issued on 10 August 2025.
- 2) The same characterization is found in the text of Article 25 of the Law of the Supreme Constitutional Court: No. 48 of 1979.
- 3) Masoud Chihoub, *General Principles of Administrative Disputes*, 3rd ed., Office of University Publications, Algeria, 2005, p. 152.
- 4) Professor: Ammar Boudiaf, *Administrative Judiciary in Algeria between the System of Unity and Duality*, 1st ed., Dar Rayhana, Algeria (1962–2000), pp. 83–84.
- 5) Professor: Mohamed Seghir Baali, *Summary of Administrative Disputes (Administrative Judiciary)*, 2nd ed., Dar Al-Ulum for Publishing and Distribution, Faculty of Law, University of Batna, Algeria, p. 168.
- 6) Professor: Salami Amour, *Administrative Disputes, Part One*, Office of University Publications, Algeria, 2005, p. 20.
- 7) Professor: Lahcen Ben Cheikh Ath Moulia, *The Judiciary of the Council of State, Part One*, 4th ed., Dar Houma, Algeria, 2006, p. 08.

- 8) Professor: Khloufi Rachid, Administrative Disputes Law, 3rd ed., Office of University Publications, Algeria, 2007, p. 255.
- 9) See Article 152 of the 1996 Constitution, amended by Article 171 of the 2016 Constitution, amended by Article 179 of the 2020 Constitution.
- 10) Law No. 98/03, the previous reference.
- 11) Boubchir Mohand Amokrane, The Algerian Judicial System, 4th ed., Office of University Publications, Algeria, 2005, pp. 447–448.
- 12) Professor: Salwa Brahi, Lectures on the Algerian Judicial Organization, Faculty of Law and Political Sciences, University of Batna, 1st ed., Dar Balqis for Publishing and Distribution, Dar El Beida, Algeria, 2025, pp. 69–70.
- 13) Professor: Mouloud Didane, Code of Judicial Organization, 1st ed., Dar Balqis for Publishing and Distribution, Dar El Beida, Algeria, 2025, pp. 37–36.
- 14) Previously, within the framework of the system of unity of the judiciary, and in accordance with the provisions of Articles (206 and 207) of the Code of Civil Procedure, problems of jurisdictional conflict were addressed in two ways and at two levels as follows:
 - The conflict arising between courts belonging to the same judicial council is referred to the judicial council concerned.
 - The conflict arising between judicial councils and courts belonging to different judicial councils is referred to the Supreme Court.
- 15) See:
 - Delenda Youssef, The Algerian Judicial Organization, 1st ed., Dar Al-Houda, Ain Mlila, Algeria, 2006, p. 133.
 - Journal of the Council of State, No. 9, 2009, p. 150.
 - Journal of the Supreme Court, Special Issue, 2009, pp. 139, 227, 281.