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# The Regulatory Power of the Banking Commission in Sanctioning Violations Under Law No. 23-09: Effectiveness of Supervision vs. Judicial Guarantees

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**Abstract:** The banking system constitutes a fundamental pillar of the national economy, necessitating strict legal regulation and effective supervision to ensure its stability. Within this framework, Algerian Law No. 23/09 assigns the Banking Commission broad supervisory and disciplinary powers over banks and financial institutions. This study addresses the extent to which the Commission's discretionary authority achieves a balance between effective regulatory control and the protection of defense rights under administrative judicial review. It adopts an analytical method through the examination of legal provisions governing the Commission's powers, complemented by a descriptive approach to its supervisory and disciplinary mechanisms, and a comparative perspective inspired by French administrative jurisprudence. The findings reveal that the Commission exercises its control through document-based and on-site inspections and applies a graduated system of preventive measures and disciplinary sanctions. While the legislator has established procedural guarantees, including the right of defense and judicial appeal, the wide scope of discretionary power may lead to potential misuse. Moreover, judicial oversight remains limited, particularly regarding the assessment of proportionality and appropriateness of sanctions. The study concludes that achieving an effective balance requires strengthening procedural safeguards and expanding judicial control to ensure that the Commission's powers are exercised in line with legality and the protection of rights.

**Keywords:** Banking Commission; discretionary power; administrative oversight; disciplinary sanctions; rights of defense; judicial review.

## 1. Introduction

The banking system represents a cornerstone of modern economies, playing a critical role in mobilizing financial resources and channeling them toward investment and development. Given its systemic importance, it is subject to rigorous legal regulation and oversight aimed at ensuring financial stability and protecting stakeholders. In this context, regulatory authorities—particularly banking supervisory bodies—have been vested with extensive powers to monitor compliance and impose sanctions where necessary. In Algeria, Law No. 23/09 on money and banking entrusts the Banking Commission with broad supervisory and disciplinary prerogatives, positioning it as a central actor in maintaining the integrity of the banking sector.

The growing expansion of regulatory powers granted to independent administrative authorities has sparked significant academic debate, particularly regarding the balance between effective supervision and the protection of fundamental rights. While some scholars emphasize the necessity of broad discretionary authority to ensure rapid and efficient intervention in cases of banking misconduct (Lastra 2015), others warn against the risks of administrative overreach and potential infringements on the rights of defense (Delvolvé 2006). This debate is further illustrated in comparative jurisprudence, where the French administrative courts have progressively expanded their review over discretionary decisions, especially in matters involving sanctions (Rivero and Waline 2004).

Against this backdrop, the present study seeks to examine the extent to which the Banking Commission's intervention in Algeria achieves a balance between regulatory effectiveness and legal safeguards. It analyzes the mechanisms through which the Commission detects violations and exercises its disciplinary powers, while also assessing the scope of judicial review over its decisions. The study adopts an analytical approach to the relevant legal framework, complemented by a descriptive and comparative perspective. It concludes that, although the Algerian legislator has introduced procedural guarantees, the broad discretionary powers of the Banking Commission and the limited scope of judicial oversight continue to raise concerns regarding the effective protection of rights.

## 2.Knowledge of the Banking Commission of a Bank's Breach of Required Procedures

Article 120(1) of Law No. 23-09 on Monetary and Banking Law—corresponding to Article 108(1) of Ordinance No. 03-11 relating to Money and Credit—provides that: *"The Commission is empowered to supervise the entities subject to its control on the basis of documents and on-site inspections."*

It follows from this provision that the Banking Commission exercises its supervisory and investigative powers to detect breaches committed by banks through two primary mechanisms: documentary supervision and on-site inspection.

### 2.1 Documentary Supervision

The Commission organizes the supervisory operations it conducts and determines the list of documents to be submitted, their format, and the deadlines for transmitting any documents and information it deems necessary. It is empowered to request from banks and financial institutions all information, clarifications, and supporting evidence required for the performance of its duties. It may also request any concerned person to provide any document or information, without the institution being entitled to invoke professional secrecy as a ground for refusal(Algeria 2023, Art. 121; Algeria 2003, Art. 109).

### 2.2 On-site Inspection

The Commission may carry out inspections at the premises of banks; that is, supervision may take place in the field, enabling it to detect any breach of the bank's obligations.

It should be noted that the Bank of Algeria is entrusted with organizing the supervision of the Banking Commission through its agents. Accordingly(Algeria 2023, Art. 120; Algeria 2003, Art. 108), the Commission is informed of all violations of laws and regulations committed by banks.

Under Ordinance No. 03-11 relating to Money and Credit, the Bank of Algeria was, in cases of urgency, authorized to conduct any investigative operation and report its findings to the Commission(Algeria 2003, Art. 108). However, this possibility has been abolished under the new Law No. 23-09 on Monetary and Banking Law.

Finally, it is worth noting that the Banking Commission may, within the framework of its supervisory functions, appoint any person of its choosing to carry out a specific assignment. Any person entrusted with such a task is bound by professional secrecy(Algeria 2023, Art. 121; Ben Latreche 2012, p. 93).

## 3. The Banking Commission's Response to Breaches of Banking Procedures

The Banking Commission confronts banks that violate laws and regulations through a set of measures and sanctions, exercising broad discretionary powers. At the same time, banks are granted the right to defense and to challenge the Commission's decisions.

### 3.1 Measures and Sanctions Adopted by the Banking Commission Against Bank

The Banking Commission enjoys punitive powers that authorize it to adopt both preventive measures and disciplinary sanctions.

#### 3.1.1 Preventive Measures

These are measures aimed at ensuring the proper and regular functioning of banks and financial institutions, and they include:

**a) Warning**

A warning is addressed to banks and financial institutions in the event of a breach of the rules governing the proper conduct of the profession, after giving their managers the opportunity to provide explanations (Algeria 2023, Art. 123; Algeria 2003, Art. 111).

Prior to the amendment of the Law on Money and Credit by Ordinance No. 10-04, and in the absence of clearly defined professional conduct rules, the Banking Commission enjoyed wide discretionary power in issuing warnings. Although a warning does not constitute a sanction per se and does not directly produce legal effects on the institution concerned, it nonetheless serves as a deterrent, since failure to comply with it may justify, pursuant to Article 126 of the Monetary and Banking Law, the imposition of a disciplinary sanction(Ben Latreche 2002, p. 72)..

At that time, the Monetary and Banking Council had no role in defining the rules of proper professional conduct; such rules were determined solely by the Banking Commission under the supervision of the State Council (Conseil d'État).

Following the issuance of Ordinance No. 10-04, Article 62 of Ordinance No. 03-11 relating to Money and Credit was amended to provide that: *"The Council, acting as a monetary authority, is vested with powers in the following areas: ... (n) the rules of proper conduct and professional ethics applicable to banks and financial institutions."*

These powers were reaffirmed under Law No. 23-09 on Monetary and Banking Law, notably in Article 64, which provides that: *"The Council, acting as a monetary authority, is vested with powers in the following areas: ... (s) the rules of proper conduct and professional ethics applicable to banks and financial institutions, independent intermediaries, exchange offices, and payment service providers."*

Accordingly, the legislator has expressly withdrawn from the Banking Commission the authority to define and assess what constitutes proper professional conduct, granting it instead to the Monetary and Banking Council, which is now required to establish such rules within the framework of its regulatory authority. These rules are expected to be published and made accessible to banks and financial institutions, which are then required to comply with them. It should be noted, however, that the Council has not yet issued these rules( Ben Latreche 2022, p p. 119-220).

Pending the issuance of such regulations, the rules of proper professional conduct remain flexible and broadly defined.

**b) Order**

The Commission may also require any bank, within a specified period, to adopt all necessary measures to restore or strengthen its financial position or to rectify its management practices(Algeria 2023, Art. 124).

**b) Appointment of a Temporary Administrator**

The Banking Commission may appoint a temporary administrator vested with all necessary powers to manage the affairs of the institution concerned or its branches in Algeria. Such administrator may also declare cessation of payments Algeria 2023, Art. 125; Algeria 2003, Art. 113).

**3.1.2 Disciplinary Sanctions**

The Banking Commission may impose sanctions where banks commit violations related to legislative or regulatory provisions governing their activities, fail to comply with an order, or disregard a warning. These sanctions include Algeria 2023, Art. 126; Algeria 2003, Art. 114).:

- Warning (formal notice),
- Reprimand,
- Prohibition from carrying out certain operations or other restrictions on business activities,

- Temporary suspension of one or more managers, with or without the appointment of a temporary administrator,
- Dismissal of one or more managers, with or without the appointment of a temporary administrator,
- Withdrawal of authorization (license).

The Commission may also impose a financial penalty either as a substitute for or in addition to the aforementioned sanctions. It retains discretionary authority both in determining the nature of the financial penalty—whether principal or ancillary—and in assessing its amount (Bouchkhou and Moukeh 2021, p139), provided that such penalties do not exceed the minimum capital required of the supervised entity (Algeria 2023, Art. 126 Algeria 2003, Art. 114).

A pertinent question arises in this context: do all these measures and sanctions apply to any violation of legal or regulatory provisions?

The Banking Commission is one of the most significant regulatory authorities, given the extensive and sensitive powers conferred upon it by the legislator in the banking sector, which constitutes the backbone of the economic system.

The French Conseil d'État has subjected the procedures followed before the Banking Commission to the fundamental principles governing judicial bodies (courts). (Zouaimia 2004, pp. 47-48) Given its powers, particularly its authority to impose disciplinary sanctions, which fall within judicial competence, the French legislator has, in a sense, regarded the Banking Commission as a judicial body(France 2001, Art. L613-23). This has led some scholars to characterize it as such(Dib 2001, pp. 20–21).

However, the Algerian Conseil d'État has legally characterized the Banking Commission as an independent administrative authority, whose decisions are administrative in nature, including those related to the exercise of disciplinary power, such as issuing warnings, reprimands, withdrawing licenses, prohibiting certain banking operations, suspending staff, and imposing sanctions provided for under Article 126 of Law No. 23-09 on Monetary and Banking Law(Ghennai 2005 p.36) .

Moreover, the decisions of the Banking Commission are immediately enforceable and do not require approval from any higher supervisory authority. This grants it significant protection against external interference, thereby reinforcing its autonomy and decision-making power (Zouaimia 2004, p. 62).

In light of the foregoing, the Banking Commission, as an independent administrative authority, enjoys discretionary powers enabling it to adopt a wide range of preventive measures and disciplinary sanctions against banks that breach banking procedures. This necessitates the existence of judicial oversight over such discretionary powers.

In this regard, the French Conseil d'État has sought to strike a balance whereby the administration can exercise its powers to achieve the public interest, while simultaneously safeguarding individual rights and freedoms. To this end, it progressively curtailed the scope of absolute administrative discretion, making all administrative decisions subject to judicial review.

After consolidating this oversight in the field of legality, administrative courts extended their control to the appropriateness of administrative decisions—assessing the seriousness of the facts invoked and the proportionality of the measures adopted. This marked a departure from the traditional principle of judicial restraint in matters of administrative discretion.

Recognizing the risks associated with the expansion of discretionary power, the Conseil d'État has, in more recent jurisprudence, refined its approach to prevent misuse or abuse of such powers, thereby restoring balance and ensuring adequate protection of individual rights and freedoms(Zerrouki 2007, p. 159).

It is therefore desirable that the Algerian Conseil d'État follows a similar trajectory by strengthening its oversight over administrative decisions issued within the scope of discretionary authority and by granting broader powers to the administrative judge in supervising the administration (Boudiaf 2006, p106 ; Zerrouki 2007, p. 160).

Discretionary power remains inherent to independent administrative authorities and ceases only with their disappearance( Ben Latreche 2002,p 82). However, when such powers are misused, the consequences may be severe. Judicial oversight—whether through traditional review (verification of the material existence of facts, their accuracy, and their legal characterization) or modern approaches (manifest error and cost-benefit balancing), (Zerrouki 2007, p. 126).—serves to limit abuses and maintain equilibrium.

Finally, although the Banking Commission enjoys discretionary authority, the preventive and disciplinary decisions it adopts may not be free from error or even arbitrariness. This has led the Algerian legislator to recognize the necessity of guaranteeing the concerned bank the right of defense, which will be addressed in the following section.

### 3.2. Procedural Rules of Litigation and Appeals Against the Banking Commission

This section addresses the procedures governing litigation through notification and banking complaints, followed by the appeals lodged against the Banking Commission in its capacity as an administrative authority.

#### 3.2.1. Litigation Procedures

Litigation procedures consist of the notification of supervisory findings and the bank's right to submit a complaint:

**a) Notification**

When the Banking Commission renders a decision, it informs the concerned bank of the facts attributed to it by means of a non-judicial document or any other method sent to its legal representative. It also notifies the latter of the possibility of consulting, at the Commission's headquarters, the documents evidencing the established breaches(Algeria 2023, Art. 127 Algeria 2003, Art. 114).

**b) Right of Defense**

The right of defense was expressly enshrined by the amendment introduced through Ordinance No. 10-04 to the Law on Money and Credit(Algeria 2010). Article 114 bis, paragraph 3, provides that: "The legal representative of the concerned entity must submit his observations to the Chairman of the Commission within a maximum period of eight (8) days from the date of receipt."

This provision corresponds to Article 127 of Law No. 23-09 on Monetary and Banking Law. It ensures that the concerned party is granted the opportunity to present explanations before the Banking Commission.

Notably, even prior to the amendment of Ordinance No. 03-11, the Banking Commission had already guaranteed this right on its own initiative through Decision No. 93-01 of 6 December 1993 on the rules governing its organization and functioning, later repealed and replaced by Decision No. 2005-04 of 20 April 2005. Although, strictly speaking, the Commission lacked the legal authority to adopt such regulatory decisions, this initiative can be justified by the legislator's silence at the time regarding the organization of the right of defense, until the intervention of Ordinance No. 10-04( Ben Latreche 2002,p 81; Ben Latreche 2022, p p. 114).

**3.2.2 Appeals Against Decisions of the Banking Commission**:

Action for Annulment (Recourse for Excess of Power)

The activities carried out by the Banking Commission are administrative in nature. Accordingly, its decisions are, in principle, administrative acts subject to challenge before the administrative courts, like ordinary administrative decisions(Zouaimia 2004, pp. 19-20).

However, only specific decisions—namely those relating to the appointment of a temporary administrator or liquidator, and the disciplinary sanctions provided for in Article 126 of Law No. 23-09—are subject to annulment proceedings before the Administrative Court of Appeal of Algiers, within the time limits prescribed by the Code of Civil and Administrative Procedure (Algeria 2023, Art. 119).. Under Ordinance No. 03-11, such appeals were exclusively brought before the Conseil d'État (Algeria 2003, Art. 107).

The legislator has thus distinguished between appealable and non-appealable decisions. Individual acts adopted by the Commission within the framework of its disciplinary powers may be challenged by way of annulment before the Administrative Court of Appeal. Conversely, other decisions—such as orders and warnings—do not fall within the scope of such appeals, although they remain administrative acts subject to judicial review, typically at a first level of jurisdiction. This is noteworthy given that orders issued by the Commission are binding in nature, particularly as non-compliance may lead to disciplinary sanctions.

An action for annulment seeks to eliminate all legal effects of the contested decision, both retroactively and prospectively. It must be brought within a period of four (4) months from the date of notification(Algeria 2003, Art. 107), in accordance with Article 900 bis 07 of the Code of Civil and Administrative Procedure (Algeria 2022).

Such an action may be based on four principal grounds (defects); (Abou Dhar 2012, pp, 147-161):

**-Procedural and Formal Defect**: where the decision is vitiated by procedural irregularities, such as lack of reasoning or failure of proper notification.

**-Lack of Jurisdiction (Ultra Vires)**: (Mouaydi 2021,pp, 253-271) where the Commission issues a decision beyond the scope of its legally conferred powers, whether the defect is minor or serious (e.g., imposing a disciplinary sanction not provided for by law, such as confiscation).

**Misuse of Power (Abuse of Authority):** where the purpose of the administrative decision deviates from the public interest it is supposed to serve (e.g., imposing a sanction ostensibly for a legal breach but in reality to favor a competing bank), ( Ben Latreche 2012,133).

**Violation of Law:** where the Commission disregards a binding legal rule, whether through action or omission (e.g., imposing a financial penalty exceeding the minimum capital required of the institution).

It should be noted that, under Ordinance No. 03-11, appeals fell within the jurisdiction of the Conseil d'État and were not suspensive(Algeria 2003, Art. 107). Under Law No. 23-09, there is no explicit provision stating that decisions of the Banking Commission are non-suspensive. Therefore, reference must be made to the Code of Civil and Administrative Procedure((Algeria 2022, Art 900 bis 08, Algeria 2008, Art. 833), which establishes that appeals against administrative decisions do not, in principle, suspend their execution.

Since decisions of the Banking Commission, like all administrative acts, are immediately enforceable, the presumption that they may be tainted by illegality highlights the potential risks involved. Moreover, annulment proceedings may take considerable time, during which the effects of the contested decision may already have fully materialized and become irreversible—such as in the case of appointing a temporary administrator.

Accordingly, it is essential to enable the sanctioned bank to seek the suspension of execution of such decisions through expedited procedures( Ben Latreche 2002,p,80).. In practice, the concerned party may submit a request to the Administrative Court of Appeal for a stay of execution of the contested administrative decision (Algeria 2008, Art. 833).

## 4. Conclusions

This This study demonstrates that the intervention of the Banking Commission in addressing breaches by banks of legal and regulatory requirements falls within the broader objective of ensuring effective supervision and maintaining the stability of the banking system. This objective justifies granting the Commission broad discretionary powers to adopt preventive measures and disciplinary sanctions. However, such effectiveness can only be legitimately achieved if it is exercised in compliance with the guarantees of the rights of defense and subject to judicial review by administrative courts.

Accordingly, while a balance between these two considerations exists at the theoretical level, it faces certain shortcomings in practice, particularly due to the limited scope of judicial review over the appropriateness (proportionality) of administrative decisions and the breadth of discretionary powers.

Moreover, the evolving role of the Banking Commission and the increasing impact of its decisions—especially those directly affecting banking activities—necessitate strengthening judicial oversight mechanisms and reinforcing procedural safeguards to prevent any misuse or deviation from its lawful objectives. Thus, achieving the desired balance between effective supervision and the protection of rights remains contingent upon the development of the legal framework and judicial practice in this field.

**First: Findings**

- The Banking Commission plays a central role in regulating banking activities through extensive supervisory and disciplinary powers.
- Law No. 23-09 establishes a graduated system of measures and sanctions aimed at ensuring discipline within the banking sector.
- Despite the recognition of the rights of defense and appeal, the breadth of discretionary power may, in certain cases, lead to potential abuse.
- Judicial review over the decisions of the Banking Commission, although established, remains limited—particularly with regard to the review of appropriateness and proportionality.

**Second: Recommendations**

- The necessity of establishing clear and codified rules governing proper banking conduct by the Monetary and Banking Council.
- Strengthening the guarantees of the right of defense, particularly with respect to procedural deadlines and full access to the case file.
- Expanding the scope of administrative judicial review to include proportionality and the appropriateness of sanctions in relation to the violation.
- Introducing more effective mechanisms for the suspension of enforcement of disciplinary decisions that may produce irreversible consequences.
- Supporting and developing Algerian administrative jurisprudence to keep pace with modern developments in the control of discretionary powers.

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