

The role of the Audiovisual Regulatory Authority in the field of advertising in Algerian law

Bouaoune Zakarya *

University of Constantine 1 Mentouri Brothers (Algeria) /

Zakarya.bouaoune@umc.edu.dz

Laboratory of Contracts and Business Law

Received: 15/01/2025

Accepted: 15/05/2025

Published: 02/06/2025

Abstract:

Through this study, we highlight the role of the Audiovisual Regulatory Authority in the field of advertising in Algerian law, as this body established under Article 14 of the organic law on media No. 23-14 dated 2023 is the competent and specialized authority in the field of audiovisual media. This is done by clarifying the tasks assigned to it and the powers granted to it in the context of its operations, as well as the administrative penalties for which it is responsible, as stipulated in the new law No. 23-20 dated 2023 concerning audiovisual activities.

Keywords: Advertising, audiovisual, media, promotion, sponsorship.

* Corresponding author.

INTRODUCTION

The marketing strategy of each player in the market has always varied, but what remains constant is the importance of advertising as one of the means adopted within this strategy aimed at reaching the consumer. Advertising is a legally recognized right for every competitor to introduce their products; it reflects the advertiser's ability to influence and attract the consumer in order to induce them to contract for a product or service. Given the advertiser's desire to reach the consumer in the shortest ways, especially after the technological developments that humanity has witnessed and the openness of the media landscape to the audiovisual sector in Algeria, along with the emergence of many private channels, relying on audiovisual services as a means to broadcast their advertising message has become essential.

It has thus become necessary for the Algerian legislator to protect the consumer from the flood of advertisements they receive at every moment, especially since advertising and comparison, techniques can change the consumer's opinions and desires in a short time¹. This is through the establishment of the Audiovisual Regulatory Authority² as a body responsible for organizing and regulating this sector under Article 14 of the Media Law No. 23-14 dated 2023. However, the stipulation of its legally granted powers to carry out this mission was under Law No. 23-20 dated 2023 concerning audiovisual activities. The legislator distinguished in this law between public sector audiovisual communication services and the licensed ones, stating the former in Chapter One of Section Two in Articles 08 to 10, while the licensed ones are mentioned in Chapter Two in Articles 11 to 30 within two sub-sections. In this regard, the Audiovisual Regulatory Authority has been granted numerous powers to regulate this sector.

RESEARCH PROBLEM

The problem of this research revolves around investigating the role of the Audiovisual Regulatory Authority in the realm of advertisement in Algeria and most particularly, its relationship and jurisdiction regarding this domain. Accordingly, the main questions of this research are: what is the role of the Audiovisual Regulatory Authority in the field of advertising under the Algerian law? And what are the jurisdictions and powers granted to this authority by the Algerian legislator in the advertisement domain?.

RESEARCH METHODOLOGY

This research adopts a descriptive and analytical approach that focuses on of the existing laws and regulations concerning the role and jurisdictions of the Audiovisual Regulatory Authority stipulated by the Algerian legislator. The descriptive approach constitutes in presenting the legal texts that addressed this authority whereas the analytical method relies on analyzing different regulations set forth to organize this institution as well as the different powers granted to it. Accordingly; we have divided the research into two parts:

First Chapter: The powers of the audiovisual regulatory authority in the context of its operational tasks.

Second Chapter: The powers of the audiovisual regulatory authority in imposing administrative penalties.

Chapter I: Powers of the Audiovisual Regulatory Authority in the Context of Its Tasks

The legislator has granted the Audiovisual Regulatory Authority multiple powers in the field of advertising, including regulatory³, oversight, and consultative powers. This will be detailed in these two sections.

1. 1 Its powers in the field of control and monitoring

We will first address in the first paragraph the powers granted to the Audiovisual Regulatory Authority in the field of regulation, and then in the second paragraph, we will discuss its powers in the field of oversight.

1.1. 1 In the Field of Regulation

The fourth paragraph of Article 41 of Law No. 23-20 concerning audiovisual activity states:

"- Determining the conditions that allow audiovisual communication service programs to display products or broadcast acquisition programs via television, and audiovisual on-demand services."

This power granted to the Audiovisual Regulatory Authority is confirmed by the last paragraph of Article 16, as it predefines the rules applicable to advertising, sponsorship, and television acquisition.

Referring back to Article 03 concerning definitions, we find that the legislator defined advertising as follows: "Advertising: any message in the form of a design, written text, or audiovisual broadcast in exchange for payment or compensation, either for promoting the presentation of goods and/or services within the framework of commercial, industrial, handicraft activities, or a liberal profession, or for ensuring the commercial promotion of an institution."

It is understood from these two terms "for a fee or compensation" that advertising may be in exchange for a monetary fee, while compensation can be any other counterpart in return for the advertising process. It can be said that Article 03 introduces two types of advertising :

- Direct advertising: which is for goods or services in exchange for a fee or compensation.
- And indirect advertising (sponsorship): defined in Article 03 as "sponsorship: any contribution from a natural or legal person subject to public law or private law in financing the services of audiovisual media or programs with the aim of promoting their name, brand, image, activities, or products."

Therefore, two conditions must be met for us to be in the presence of sponsorship advertising: there must be a contribution from a natural or legal person subject to public law or private law, and the purpose of the contribution must align with the objectives set by the legislator (with the aim of promoting their name...or products). Thus, if this contribution is made for another purpose, it is not considered sponsorship and would violate the provisions of this law. For instance some practices can be intended to exploit the medium (radio, television, etc.) to harm the reputation of a competing entity or for purposes that serve political interests... and others.

As for acquisition through television, Article 03 defines it as: "the broadcasting of direct offers to the public for the purpose of supplying in exchange for payment for goods or services, including real estate and the rights and obligations resulting from it." The authority for audiovisual regulation, within the framework of its regulatory mission, is the one that determines the conditions for broadcasting acquisition programs on television.

It can be said that television acquisition, despite being defined in a stable paragraph as advertising, is actually considered a type of advertising for products or services. It includes the following elements (offers directed at the public - with the aim of providing it with goods or services including real estate - in exchange for payment), which corresponds to the provisions of advertising.⁴

It is understood from "in exchange for payment" that this refers to the payment for broadcasting the television acquisition program by this advertiser, which is what the legislator expressed in the definition of

advertising as payment or compensation, as previously stated.

It is also noted that the legislator's specification of service offers, including real estate, and not including them in the definition of advertising, may primarily be due to the specific duration of advertising as well as the specific duration of broadcasting a television acquisition program. This is due to the fact that the latter is typically longer than the former. Advertising on television acquires a vital and distinctive role due to the techniques provided by this communication medium that are sufficient to attract advertisers.

It should be noted that both advertising and television acquisition do not fall within the category of audiovisual works, as confirmed by Article 3 in its definition of the audiovisual category. As it states: "Any work produced using audiovisual means and techniques, excluding cinematographic works, news bulletins, news programs, musical variety shows, games, rebroadcast sports programs, advertising commercials, and television acquisition." ⁵

The legislator's insistence on defining these conditions by the audiovisual regulatory authority is primarily explained by the text of Article 32, aimed at avoiding any form of false claims, indications, or offers that could mislead consumers. It imposes an obligation to respect the legal and regulatory provisions related to advertising and sponsorship ⁶. This obligation is also set forth to make people refrain from broadcasting misleading media or advertising content, and even prohibits the sale of spaces designated for advertising for electoral campaigns.

The Algerian legislator defines misleading advertising in Article 28 of Law No. 04-02 ⁷, amended and supplemented, concerning commercial practices, stating : "Without prejudice to other legislative and regulatory provisions applicable in this field, any misleading advertisement is considered illegal and prohibited, particularly if it :

- 1- Contains statements, data, or formulations that can lead to misrepresentation by defining a product or service or its quantity, availability, or features.
- 2- Includes elements that may lead to confusion with another seller or with its products, services, or activities.
- 3- Relates to a specific offer of goods or services while the economic operator does not have sufficient stock of those goods or cannot guarantee the services that should typically be provided compared to the magnitude of

the advertisement."

The elements included in this article are taken into account when the authority performs its duties in identifying what may constitute a legal violation.

It is worth mentioning that showcasing a product is also an advertising method adopted by operators, which is defined in Article 03 as displaying products, services, or brands for viewing during the broadcasting of cinematic or audiovisual fictional or promotional works.

1.1. 2 In the Field of Monitoring

The tasks of the Audiovisual Regulatory Authority regarding advertising do not stop at merely setting its conditions as a form of prior control over advertising. However, its role extends, through the powers granted to it, to exercising subsequent control over advertising and ensuring that it (advertising activity) operates in accordance with its specified rules.

As for the mechanism adopted to carry out the monitoring, the legislator has permitted the Audiovisual Regulatory Authority to do so by all appropriate means.

It is noted that the scope of this monitoring includes both the subject and content, as well as the programming methods of these advertising messages and spots, along with their prices. Article 41 of Law No. 23-20 dated 2023 states: "In the field of monitoring: ...

- Monitoring the subject, content, and methods of programming advertising messages and spots.
- Ensuring the compliance of the hourly volume of advertising messages and spots with the provisions of the specifications imposed on audiovisual communication services.
- Ensuring the determination of the minimum prices for advertising messages and spots according to the rules of competition, fairness, and transparency of commercial practices..."

The subject may be, for example: advertising related to a specific product such as a car, beverage, electronic devices, or internet services. As for the content: any monitoring of advertising in terms of the elements or information or data contained within it, whether it is truthful or if it contains exaggerations that render it false or misleading advertising.

The legislator's distinction between the subject and content of advertising is of great importance, as it reflects the extent of the advertising's compliance with the rules and standards of legality and legitimacy. This is because there

are certain products that are prohibited from being advertised altogether due to their subject matter. For example, the prohibition of advertising tobacco and alcoholic beverages according to Articles 51 and 60 of the Algerian Health Protection Law⁸, which prohibits any form...

Advertising is prohibited here from broadcasting due to its subject matter without delving into its content. It is illegal advertising, meaning it is not lawful. The protection of the consumer or the recipient in general necessitates this measure to prevent encouraging them to acquire and consume these goods, due to the harm they cause.

However, if the advertising is lawful, monitoring its legality is also a necessary task that falls under the oversight authority of the audiovisual regulatory body. This occurs through examining the content of this advertisement and what it contains in terms of information, images, or other forms, whether they are visual only, audio only, or audiovisual. That is, is it compliant with legal provisions in that it is truthful advertising or not? Despite the relativity of truth in it, as there is no advertisement free from deceit, since there is no absolute truth in advertising. But without exaggeration and within the normal limits of praise⁹. Or does the advertisement, considering its content in terms of the characteristics it contains, constitute either false or misleading advertising?

It can be said that advertising may be characterized by legality and legitimacy together if it complies with the provisions of advertising in terms of subject matter and content. It may also be characterized by only one of these qualities, meaning it may be lawful in terms of subject matter but not legitimate in terms of content, or it may not be lawful and thus lacks legitimacy, making it impermissible by law in both subject matter and content.

In the field of regulation, the Audiovisual Regulatory Authority ensures, in accordance with Article 41 of Law 23-20¹⁰, the extent of the use of the two national languages and expression in advertising, as this is one of the obligations of the institution owner in the terms of reference. Non-compliance allows the regulatory authority to apply the legally stipulated penalties: "ensuring respect for the minimum proportions allocated to national audiovisual production and expression in the two official national languages."

In this regard, Article 31 of the Audiovisual Law stipulates a preference for the use of the two national languages in programs and advertising

messages, regardless of the method of broadcasting or distribution, while considering the stated exceptions. From the wording of this paragraph, it can be inferred that the legislator emphasizes and is keen to enhance and protect various consumer rights, especially the right to information. This is done by ensuring the interests of a large segment of Algerian consumers who rely on the Amazigh language, and by ensuring that the advertising message fulfills its function and achieves its intended goal.

The legislator used the term "the two national languages," referring to both Arabic and Amazigh, as stipulated constitutionally¹¹.

It is also understood from this paragraph that the advertising message can be in both languages or in one of them, either Arabic only or Amazigh only.

However, by this ruling, he excluded cinematographic and audiovisual works in their original version and musical works whose text is entirely or partially written in a foreign language, as confirmed by the same paragraph. This means that the legislator allowed the broadcasting or distribution of these mentioned works in another foreign language without using the two national languages, without it constituting a violation of the terms of reference, as it did not stipulate the obligation of dubbing or subtitling, which allows either to carry out this dubbing or to refrain from doing so. It should be noted here that these excluded works are defined exhaustively and definitively, not by way of example, which is inferred from the term "except" and is also confirmed without leaving any room for doubt by the phrase: "except in these cases..."

Moreover, the legislator permitted the non-use of the two national languages in advertising messages and opened the door for the use of a foreign language¹², but he conditioned all of this on the requirement of dubbing or subtitling at the bottom of the screen.

Dubbing or subtitling refers to translating the message either into Arabic or Amazigh or into both languages to understand its meaning and grasp its content. It is expressed as "except in these cases, resorting to dubbing or subtitling is mandatory."

This, and advertising messages may be television¹³, radio... according to Article 3, whether presented through audiovisual communication services belonging to the public sector as stipulated in Chapter One of Section Two, or through licensed audiovisual communication services, as stated in the articles of Chapter Two of the same section. This is confirmed by the phrase used in the formulation of the article "... regardless of the method of

broadcasting or distribution...".

The audiovisual regulatory authority, in exercising its supervisory powers, may request, when necessary, any useful information from publishers and distributors of audiovisual communication services to perform its tasks. It also has the right to collect the necessary information from administrations, bodies, and institutions without being subject to any limits other than those stipulated in the applicable legislation and regulations, in order to prepare its opinions and decisions according to Article 41.

From reading the article, two matters emerge :

The first matter: is the legislator's desire to grant extensive supervisory authority to the audiovisual regulatory authority by stipulating its right to collect necessary information from all previously mentioned bodies without being subject to any limits, meaning it enjoys all facilities in exchanging information without any restriction or condition, which is expressed by saying "... without being subject to any limits...".

The second matter: the interpretation of the text of the article also reflects the legislator's concern about the potential misuse of these powers granted to the members of the authority (audiovisual regulatory authority) to obtain sensitive and dangerous information that may threaten the public security of the state, whether in its economic or security aspects... Therefore, it added by saying: "... other than those stipulated in the applicable legislation and regulations."

Additionally, the right to request information must be aimed at preparing the authority for its opinions and decisions. This raises the question of how to verify and ensure that a request for information was made with the intention of relying on it to guide an opinion or issue a decision. In other words, it is contrary to the principle that the audiovisual regulatory authority may not request information from any entity unless it is for the specific purpose and goal defined for it, which is to prepare an opinion on a specific issue or to rely on that information to issue a decision.

1.2 Its Powers in the Advisory and Dispute Resolution Field

We will divide this section into two paragraphs; the first will be dedicated to the powers granted to the Audiovisual Regulatory Authority in the advisory field, and then in the second paragraph, we will address its powers in the area of disputes.

1.2.1 In the Advisory Field

Article 41 stipulates these powers, where the Regulatory Authority conducts studies on the national strategy for developing audiovisual activities, which includes the specific strategy for advertising in terms of updating and developing the rules and regulations that govern it.

It also expresses its opinion on every draft legislative or regulatory text related to audiovisual activities, and it is understood from the wording of this paragraph that consulting the Audiovisual Regulatory Authority is mandatory for the concerned parties in every draft legislative or regulatory text. However, whether to adopt its opinion or not remains optional and not obligatory. In this regard, we emphasize the necessity of consulting the Audiovisual Regulatory Authority on the draft Algerian law under study concerning advertising, due to the direct link of the draft law to the audiovisual sector.

Additionally, the Audiovisual Regulatory Authority also provides recommendations within the framework of its advisory powers to promote competition in the field of audiovisual activities.

It also has the right to cooperate with national authorities or bodies ¹⁴, similar to the authority regulating the printed press¹⁵, as well as the Competition Council, for example, always with the aim of benefiting from expertise and exchanging information in order to effectively manage the audiovisual sector. It may even cooperate with foreign authorities or bodies active in the same field, especially if there is a dispute of a multilateral international nature.

By investigating the relationship between the Competition Council and the Audiovisual Regulatory Authority, it can be said that advertising—despite having legal specifications—if issued by an institution engaged in practices contrary to competition in the market, will ultimately be deemed false advertising. This is because false advertising is defined as any advertisement that contains false information regarding the source, origin, price, etc. Given that price is governed by the law of supply and demand, if there is collusion between operators and they engage in a prohibited agreement, for example, in determining the price of a particular product or service in a given market, the price advertised in the advertising message will be a false price that does not comply with the law of supply and demand. Competition, as Montesquieu says, is what sets a fair price for goods and services ¹⁶.

Therefore, the role of the Competition Council in adjudicating and

detering this practice or others will undoubtedly contribute to protecting the consumer from any false or misleading advertisements. Additionally, for example, one of the forms of prohibited agreements or abuse of a dominant position is obstructing a competitor's entry into the market. Consequently, the advertiser will be at ease regarding the information it disseminates in its advertising message and will apply its marketing policy as it wishes. However, the entry of another competitor into the same market will undoubtedly affect the content of the advertising message and compel the first operator to reconsider it, especially regarding the advertised prices. This will ultimately benefit the consumer by obtaining the product or service at a lower price and/or in less time and with better quality.

Therefore, eliminating practices that restrict competition ultimately leads to combating false or misleading advertising aimed at promoting counterfeit consumer goods¹⁷. Furthermore, it improves and adjusts the content of the advertising message to align with consumer desires¹⁸. This matter cannot be discovered and reached without the coordination and cooperation efforts between the Competition Council's services and the audiovisual regulatory authority's services.

Moreover, the legislator has also allowed it to express its opinion to the judicial authorities if requested by any party, provided that its consultation pertains only to disputes related to the practice of audiovisual activities.

1.2.2 In the Dispute Area

The powers of the Audiovisual Regulatory Authority in the dispute area, according to Article 41, consist of arbitrating disputes between legal entities that exploit audiovisual communication services, whether among themselves or with others. The question arises: Does the Audiovisual Regulatory Authority, in its composition, represent an arbitration body? Or how can the absence of the legislator's use of the term "deciding disputes" be explained, as it is expressed as "arbitration in disputes"? If it is so, does what it issues count as an arbitration decision? And are these decisions subject to the provisions of the Algerian Civil and Administrative Procedure Law No. 08-09 of 2008¹⁹ regarding the composition of the arbitration body and the recognition and enforcement of these decisions? The practical application and actual implementation of these rules are sufficient to answer these questions.

Furthermore, the Audiovisual Regulatory Authority has the authority to consider complaints from political parties, trade unions, and/or associations,

as well as from any other natural or legal person who notifies it of a violation of the law by a legal entity exploiting audiovisual communication services, in accordance with the last paragraph of Article 41 of Law No. 23-20 dated 2023 concerning audiovisual activity.

It is understood from this paragraph that there are conditions that must be met for the Audiovisual Regulatory Authority to initiate an investigation:

- a) **Filing a Complaint** : The Audiovisual Regulatory Authority cannot conduct an investigation unless a complaint is submitted to its relevant departments, as the complaint is considered a formal procedure that must be fulfilled. The legislator did not specify the form or content of this complaint, which can be either written or oral.
- b) **Persons Eligible to File a Complaint (Those with Standing to File a Complaint)**²⁰: The article specifies that these include political parties, trade unions, and/or associations, as well as any other natural or legal person. It does not distinguish between private and public legal entities, meaning that both are permitted to initiate the notification process. Furthermore, the article does not require that the notifier has suffered harm or that there is an obligation to demonstrate an interest in order to proceed with the notification; rather, it suffices that there has been a violation of the law by the concerned individual to initiate the notification.
- c) **Violation of the Law by a Legal Entity Utilizing Audiovisual Communication Services**: It is noteworthy that the article is stated in general terms, indicating that the legal entity may be either private or public.

It is also important to emphasize that the content of this paragraph does not include "automatic notification" to the Audiovisual Regulatory Authority. The legislator should have stipulated this mechanism in this paragraph, given its utmost importance in expanding the authority's powers and not restricting it to requiring notification through the filing of a complaint, as long as it becomes aware by any appropriate means that there is a violation of the law by a legal entity utilizing audiovisual communication services. This latter is considered one of the most significant and prominent expected violations of commercial advertising regulations.

However, upon returning to the text of Article 75 of Chapter Eight concerning administrative penalties of Law No. 23-20, we find that the

legislator has rectified this procedure of "automatic notification" by stating: "The authority may initiate it automatically or based on a notification...."

As for the outcome of the investigation into the notification, it is determined by the extent to which a violation of the law is established or not in order to issue the necessary penalties. It is noteworthy that the legislator did not clarify how the investigation is conducted, who carries it out, and what happens to this investigation, i.e., whether a report is prepared regarding it or a decision is issued?

The matter remains unclear, especially in light of the absence of rules that clarify this, and the internal regulations of the audiovisual regulatory authority have not yet been issued. While we believe that the investigation may conclude in one of two ways :

- Either the investigation ends with no violation of the law being recorded, and thus the notification is archived.
- Or a violation of the law is recorded, and thus the necessary penalty is issued in that regard.

Chapter II: Powers of the Audiovisual Regulatory Authority in the Context of Its Tasks

The composition of the Audiovisual Regulatory Authority is empowered to impose a set of administrative sanctions on individuals who violate the provisions of the audiovisual law including those related to advertising after conducting the necessary deliberations. This will be detailed in the following two subsections.

1.1 Composition and Conduct of Deliberations of the Audiovisual Regulatory Authority

We will detail the composition of the Audiovisual Regulatory Authority in the first paragraph, and then dedicate the second paragraph to the conduct of its deliberations.

1.1.1 Composition of the Audiovisual Regulatory Authority

Based on the provisions of Article 43 of Law No. 23-20 dated 2023, the Audiovisual Regulatory Authority consists of 9 members, including the president, who are appointed by presidential decree²¹

It is required that the members of the authority be among the personalities, researchers, and experts with actual experience, especially in the fields of media, technology, law, and economics, and recognized for their works, research, and contributions to the development of the audiovisual sector, in accordance with the provisions of Article 43,

Paragraph 02.

Moreover, Article 43, Paragraph 1 specifies the term of membership as five years, renewable once²². No member may be dismissed except in the cases stipulated in this law, such as if the member is in a state of conflict of interest due to practicing another profession or position... or anything that contradicts their membership in this authority, except for temporary assignments in higher education and supervision in scientific research, as confirmed by Article 45 of the same law.

In addition to the nine members specified, there is the Secretary-General appointed by the President of the Republic based on a proposal from the President of the Audiovisual Regulatory Authority by means of a presidential decree in accordance with the provisions of Article 56 of the Audiovisual Law.

The Secretary-General is assigned the task of managing the administrative and technical services placed under the authority of the President of the Audiovisual Regulatory Authority according to Article 56, and the organization and operation of these administrative and technical services is determined by a decree as confirmed by Article 57.

He can also sign any document related to the operation of the administrative and technical services if he is granted a delegation of signature by the President of the Audiovisual Regulatory Authority as confirmed by Article 58 of the same law.

1.1.2 Deliberations of the Audiovisual Regulatory Authority

The authority is formed according to Article 53 from a deliberative body called the Council, which consists of the members of the authority and the president, and it also includes an executive body placed under the authority of the president.

The Council of the authority deliberates, makes decisions, and issues opinions and recommendations in accordance with the tasks assigned to it, which are published in the official bulletin of the authority, and these decisions are subject to appeal before the competent judicial authorities according to Article 54.

According to Article 55, the executive body formed from the General Secretariat and the administrative and technical services is responsible for preparing and implementing the deliberations approved by the Council of the authority.

It is noted that the members of the authority and its employees are obliged

to maintain professional secrecy regarding the facts, actions, information, and documents that they may be exposed to by virtue of their duties throughout their tenure according to Article 55.

It is indicated that the Secretary-General, in addition to his task of managing the administrative and technical services, participates in the deliberations of the Audiovisual Regulatory Authority, prepares a report on them, and works to implement the decisions made, and he does not have the right to vote. His participation in the deliberation is limited to attendance only, without the right to vote, according to the text of Article 59.

Based on this, it can be said that the tasks of the Secretary-General in managing, participating, preparing the minutes, and working on implementing decisions in the deliberations of the Audiovisual Regulatory Authority are part of his ordinary and permanent duties. However, his task of signing every document related to the functioning of administrative and technical services is an exceptional task, which depends on the condition of being granted a signature authorization from the President of the Regulatory Authority. The article does not specify the circumstances under which the President grants the Secretary-General a signature authorization, but leaves this to the will and discretion of the President.

In this regard, the President stated: "The President of the Audiovisual Regulatory Authority may grant the Secretary-General a signature authorization...." Thus, it is discretionary and not mandatory. The Audiovisual Regulatory Authority sends a report to both the President of the Republic and the Presidents of the two chambers of Parliament (House of Representatives and Senate) according to Article 60, with the condition that this report is published for public opinion within 30 days following its delivery.

1.2 Administrative Penalties Resulting from Violating Advertising Provisions

The legislator has imposed several administrative penalties on individuals who violate advertising provisions, which are within the jurisdiction of the Audiovisual Regulatory Authority to issue. These penalties are outlined in Chapter Five of Law No. 14-04, in Articles 98 to 106. Article 50 of the same law confirms that without prejudice to the penal penalties stipulated in this law and the applicable legislation, non-compliance with the terms of the general specifications exposes its owner to

administrative penalties taken by the Audiovisual Regulatory Authority in accordance with the provisions of Chapter Five of this law.

It is understood from the article that penal penalties fall outside the jurisdiction of the Audiovisual Regulatory Authority and are under the jurisdiction of the judicial authorities.

1.2.1 Issuance of a warning to the legal entity violating the provisions of commercial advertising and its publication

Articles 74 and 75 stipulate that the audiovisual regulatory authority may issue a warning on its own initiative or after being notified by political parties and professional and trade union organizations representing audiovisual activity and/or associations or any other natural or legal person in the event of non-compliance by the licensee and/or public sector audiovisual communication services. This is done under the conditions set forth in legislative and regulatory texts—specifically including violations of advertising provisions—aimed at compelling them to comply within a timeframe determined by the audiovisual regulatory authority.

Legal entities in the private sector may also be subject to a warning in the event of non-compliance with the terms of the agreement concluded with the audiovisual regulatory authority, specifically violations of the specifications document that mainly includes the commitment to adhere to advertising provisions and respect all its rules. Furthermore, paragraph 2 of Article 74 obliges the audiovisual regulatory authority to notify the media outlet concerned and to publish this warning by all appropriate means.

1.2.2 Paragraph Two : Imposing a Financial Penalty

Based on Article 76, the Audiovisual Regulatory Authority imposes a financial penalty in the event of non-compliance by the public sector audiovisual communication service or the licensee, and its failure to respond to the warning within the specified period according to Article 74. A decision will be issued imposing a financial penalty, the amount of which is set between one million dinars and ten million dinars, and the payment deadlines will be determined.

It is noted in this regard that the legislator has raised the maximum limit of the financial penalty compared to the repealed Law 14-04, from two million to ten million DZD.

It can also be inferred from the text of the article that the mere expiration of the deadline set by the Audiovisual Regulatory Authority results in the

imposition of the financial penalty, even if the legal entity responds to the warning but after the specified deadlines have passed.

1.2. 3 Order for Partial or Total Suspension of the Program

If the licensed legal entity does not comply with the warning despite the financial penalty mentioned in Article 76,

the Audiovisual Regulatory Authority may issue a reasoned decision :

- Either for the partial or total suspension of the program subject to the violation.
- Or for the total suspension of the licensed audiovisual communication service programs, as is the case when violating the commitment to refrain from broadcasting misleading media or advertising content, or violating the commitment to refrain from selling advertising spaces for electoral propaganda, or in the case of broadcasting commercial advertisements that violate public morals as stipulated in the obligations contained in the specifications.

It should be noted here that the suspension penalty is not a final suspension, but rather for a specified period not exceeding one month, according to the last paragraph of Article 77.

1.2. 4 License Revocation Penalty

It should be noted at the outset that the legislator granted the authority the right to notify the competent judicial authority to revoke the license without issuing a warning.

According to Article 78, the license can be revoked for:

- Violating the provisions imposed in the field of national defense, security, public order, and public morals.
- Transferring a license to establish an audiovisual communication service without the prior approval of the minister in charge of communication.
- Bankruptcy or judicial liquidation.
- When a natural or legal person owns shares or stakes in more than one licensed public and/or thematic audiovisual communication service.
- Engaging in extortion in any form.
- Conducting negotiations for illegal purposes.

Additionally, Article 22 in its second paragraph states that the license is automatically revoked by the beneficiary without the need to issue a warning or take any other action, in the event of non-compliance with the deadline for starting the exploitation of the audiovisual communication service, which is set at one year (1 year) for television broadcasting

services, and six (6) months for radio broadcasting services and web radio services.

This means that advertising issued by a legal person who is in one of these situations and has their license revoked will inevitably be considered illegal advertising as it is issued by a person whose activity is not originally legitimate.

The audiovisual regulatory authority only has the authority to suspend without revocation, which is to be done by the judicial authorities, whether in the case of partial or total suspension. They are obliged to prepare a reasoned report only and carry out the notification, while the decision to revoke or not remains outside their jurisdiction.

1.2. 5 The Order to Include a Statement

Article 79 states that the audiovisual regulatory authority orders the licensed beneficiary to include a statement in its broadcast programs that includes its violation of legal and regulatory obligations as well as the administrative penalties taken against it.

This means that the publication of the administrative penalties taken must be in the form of a statement published by the violating legal entity. If the violation by the legal entity relates to advertising provisions in terms of subject matter or content, or if it broadcasts false or misleading advertising, it is obliged to publish a statement to the public (which serves as a rectification and correction of its actions) clarifying that the advertisement was in violation of and not compliant with legal provisions.

The legislator has allowed, through the text of paragraph 02 of Article 54, the parties concerned with the decisions of the audiovisual regulatory authority to appeal to the competent judicial authorities.

It should be noted in this context that Law No. 23-20 dated 2023 includes specific penal provisions, which reinforce the protective legal system for the consumer recipient, consisting of five (5) complete articles, which are found under Chapter Eight, starting from Article 80 to Article 84.

CONCLUSION

It is clear from this study that the enactment of Law No. 23-20 dated 2023 by the legislator had significant implications that highlight the legislator's awareness and understanding of the importance of the audiovisual sector on one hand and its dangers on the other, especially regarding its use in advertising, in order to reach the largest segment of

consumers with the aim of persuading them to acquire a particular product or service. Therefore, we have outlined in this study the mechanisms of the audiovisual regulatory authority granted to it to regulate this sector and protect the consumer from any advertising that deviates from its intended purpose and/or is contrary to the regulatory rules governing it. This can only be achieved through the powers granted to it within the framework of its duties, as well as its authority to impose a range of administrative penalties against violators as forms of prior and subsequent control over this commercial activity.

Thus, we summarize at the conclusion of this study the most important recommendations as follows:

- Accelerate the establishment of the regulatory authority for written and electronic press to ensure direct coordination with it in order to achieve the objectives set by the ministry.

- Prepare and approve the internal regulations of the audiovisual regulatory authority.

- Define the internal provisions related to the organization and operation of the administrative and technical services managed by the Secretary-General and placed under the authority of the head of the audiovisual regulatory authority.

- Work on organizing study days and forums aimed at encouraging competitive activity in the audiovisual sector.

- Increase the value of the financial penalty imposed by the audiovisual regulatory authority on the legal entity exploiting the audiovisual communication service in violation of the provisions of this law, especially concerning the provisions and conditions of advertising, in line with the value or revenues of the advertising, to provide the necessary protection for the consumer.

- The Audiovisual Control Authority should be consulted with regard to the draft law on advertising that is currently being prepared and studied, given the direct relevance of this law to the audiovisual sector.

- The need for the national strategy for audiovisual activity to keep pace with technological developments and work to frame them and regulate their legal provisions, especially in the field of advertising.

- Activate the role of the authority with all actors, especially the National Agency for Pharmaceuticals and others in order to control all advertising practices.

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Volume: 10/ N°: 01 (2025)**

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Appendices:

¹ _ Chebayki Saadan. 'Commercial Advertising and Consumer Protection'. Journal of Economics and Management Sciences, Issue 06, 2006. p. 20.

² _ The first president was inaugurated on Sunday 21-September-2014. Its temporary headquarters is located at 117 - Rue Didouche Mourad - Algiers. For details see: <http://www.radioalgerie.dz>.

³ _ Some define it as news or advertising with the intention of introducing the consumer to a particular good or service by highlighting its advantages and praising its effects in order to attract the public. See: S,Guinchard,publicité commerciale et protection des consommateurs,juris,class,comm,1989,n8.

⁴ _ Publicity is an element that precedes the final contract. See: sauphie baumel,la publicité trompeuse dans la jurisprudence,thèse de doctorat,faculté de droit,l'université de montpellier1,1990,p40.

⁵ _ Saad Salman Al-Mashhadani. Television advertising and its impact on the audience. First edition, Jordan, 2012, p.8.

⁶ _ The consumer was singled out by law No. 09-03 dated 25 February 2009, J.R.R. No. 15.

⁷ _ Law No. 04-02 of 23 June 2004, J.R. No. 41. Amended and supplemented.

⁸ _ Law 18-11 of 02 July 2018 on health. J.R. No. 46 of 29 July 2018, as amended and supplemented.

⁹ _ Because lying may be legitimate in many cases. See: Thikra Muhammad Hussein Al-Yasin. 'Legitimate Lying in Commercial Advertisements'. Local Investigator's Journal of Legal and Political Sciences, Issue 1, pp. 207-241.

¹⁰ _ Advertising has many different types depending on the angle from which it is viewed. For details, see: Mohamed Bouras, 'The Legal System of Advertising for Products and Services', New University House, Egypt, 2014, pp. 52 et seq.

¹¹ _ Arabic and Amazigh are national and official languages. See the Algerian Constitution of 8 December 1996, J.R. No. 76, as amended.

¹² _ This is due to the policy aimed at promoting the two official national languages and the national culture, which is explicitly assigned to the audiovisual regulatory authority according to Article 40, Article 06.

¹³ _ Advertising is distinctly different from media, for details see: Mohammed Abd Hussein. 'Commercial Advertising'. Dar Al Raya for Publishing and Distribution, Jordan, 2015, p. 54.

¹⁴ _ It also ensures that advertising standards are respected and monitors the purpose and content of advertising, which has not yet been installed. See Law 23-19 of 02 December 2023 on the written and electronic press. J.R. No. 77.

¹⁵ _ The Algerian Competition Council was first established by Ordinance 95-06 of 1995 on competition, then abolished by Ordinance 03-03 of 2003 C.R. No. 43, as amended and supplemented by Laws 08-12 of 2008 and 10-05 of 2010.

¹⁶ _ pironon valérie ,droit de la concurrence, editions gualino lextenso,paris2009,p14.

¹⁷ _ For a more detailed discussion of the concept of false advertising and its elements, see Mohamed Bouras, PhD thesis, Faculty of Law, Aboubekr Belkaid University of Tlemcen, 2011-2012. P. 269 et seq.

¹⁸ _ For details, see: Aven Kaka Ziad Mohammed, ‘Criminal Promotion of Fraudulent Consumer Goods through Advertising’. Zain Law Publications, Lebanon, 2015.

¹⁹ _ Law 08-09 of 23 April 2008 on Civil and Administrative Procedures. J.R. No. 21. Amended and supplemented

²⁰ _ In other words, the notification filed by consumer protection associations or others includes a violation of the terms and conditions of the advertisement causing harm to the consumer.

²¹ _ This is a fundamental change from the repealed Law No. 14-04, which stipulated 5 members, including the President, chosen by the President of the Republic, 2 non-parliamentary members proposed by the President of the National Assembly, and 2 non-parliamentary members proposed by the President of the National People's Assembly.

²² _ According to Article 60 of Law No. 14-04, the term of membership for each person, including the President, is limited to 6 full years, but this term is not renewable.