

# **French Administrative Judiciary**



# Historical Development



# The French Revolution







# Administration / Judiciary Schism

- Law of 16-24 August 1790 – prohibition for ordinary courts to judge administrative disputes (repeated from the Edict of Saint-Germain of 1641)
- Law of 7-14 October 1790 – administrative disputes resolved by the King (later Head of State)

# L'Ancien Régime





# Creation of *Le contentieux pour excès de pouvoir*



# Change of legal nature of the *Conseil d'État*





**1799 (*justice retenue*)**



**1872 (*justice deleguee*)**





# KEY FEATURES





# Organization and Jurisdiction of Administrative Judiciary

- *Conseil d'Etat* (1799, 1872)
- *Cours administratives d'appel* (1987)
- *Tribunaux administratifs* (1953)
  
- Case backlog – app. 26,000 cases
- Not all disputes are dealt with in three-instances
- Competition disputes, parliamentary elections disputes
- Specialised courts (e.g. *La Cours de comptes*)





# Type of Lawsuits / Disputes

- *Le contentieux pour l'exces de pouvoir*
- *Le contentieux de pleine juridiction*
- *Les recours en declaration*
- *Le contentieux de la repression*



# Challengeable Acts / Claims

- Individual administrative acts
- General administrative acts (CE only, *exces de pouvoir* only)
- Administrative contracts
- Claim for damages (factual acts of administration, tort liability)
- Administrative silence



# Le contentieux pour l'exces de pouvoir

- L'acte de pure administration (CE, Egret-Thomassin 1818, Langrin 1823) – lack of jurisdiction, excess of powers (all acts were discretionary)
- Decree of 1864 – no taxes and fees and no legal representation (*ministere d'avocat*)
- L'exception de recours parallele – saved *plein contentieux*

# Expansion of *contentieux pour l'exces de pouvoir*

- 1) expansion of legal grounds - from lack of jurisdiction to legality
- 2) expansion of challengeable acts:
  - a) *les actes detachable* (CE, *Martin*, 1905) – adm. contracts, third persons, 'special disputes' (*plein contentieux objectif*)
  - b) pecuniary claims, damages (CE, *Lafage*, 1912)
- 3) expansion of powers:
  - a) *l'injonction* (orders administration what to do or, for discretionary acts, deadline) (Law of 8 February 1995 );
  - b) *l'astreinte* – fines to administration in case of non-execution of judgments (Law of 8 February 1995 );
  - c) expansions *rationae temporis* – taking new facts into account (CE, *Bourezak*, 1997), modulation in time (CE, *Agir contre le chomage ! Et autres*, 2004, *Societe Techna*, 2006)
  
- CE, *Damme Lamotte*, 1950 – *contentieux pour l'exces de pouvoir* is open against all acts even without law





# ***Le contentieux de pleine juridiction*** **- in general -**

- First to appear
- *Le contentieux administratif proprement dit, le contentieux ordinaire*
- *ministere d'avocat* and taxes
- Linked with certain acquired (subjective) right (legal or contractual)
- New facts are taken into account, both *in melius* and *in peius*
- Also available before appellate courts and *Conseil d'Etat*



# ***Le plein contentieux subjectif***

- a) action against administrative contracts (parties, *concurrents evinces*)
- b) claim for damages in case of tort liability
- c) action against an act allowing the change of personal name



# ***Le plein contentieux objectif***

- Prescribed by the law
- Created by the *Conseil d'Etat*
  
- a) 'Historical special disputes' (e.g. administrative elections, fiscal disputes, civil and military pensions, perishable building, industrial objects endangering environment)
- b) New disputes concerning individual legal acts
- c) Disputes concerning administrative sanctions



# *Les recours en déclaration*

- Prejudicial or main disputes
- Judicial powers:
  - a) interpretation of an administrative act
  - b) declaration that an act is illegal
- Reason for main declaratory dispute – not going to a more expensive litigation before the situation is clear





# ***Le contentieux de la repression***

- Misdemeanors
  - Sanctions against individuals issued by administrative courts
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# Judicial control of discretionary acts

- ▶ Legally binding elements:
- ▶ a) Competence
- ▶ b) Procedure
- ▶ c) Form of act
- ▶ d) Facts of the case
- ▶ e) Excess of powers
- ▶ f) *Detournement de pouvoir* – legal aim pursued (difficult to prove)
- ▶ g) *Le controle restreint* – legal qualification of facts (conclusion based on correct facts is erroneous) – only if there were manifest (obvious) mistakes
- ▶ h) *Le controle maximum* – legal qualification of facts – control of proportionality in special administrative domains (bordering control of opportunity)




# Les referes d'urgence

- Provisional (interim) measures
- a) refere-suspension (adherent to main dispute) – delays execution of an administrative act
- conditions: urgency; serious doubt about legality of challenged act.
- b) refere-liberte – measures to protect fundamental rights
- conditions: urgency; serious and manifestly illegal attempt at a fundamental right by a public authority or public service
- c) refere mesures utiles (refere-conservatoire) – e.g. requesting a document
- conditions: urgency; necessity of requested measures




# Oral Hearing

- The procedure is predominantly written
  - Oral hearing only where prescribed by the law (e.g. *les refere-urgence*, social aid, disciplinary measures, refugees)
  - Only explanation of written submissions is allowed
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# Decisions

- ▶ Annulment or cancellation of challenged (individual or general) administrative act – *le contentieux pour l'excès de pouvoir*
  - ▶ Deciding on the merits of the case – *le contentieux de pleine juridiction*
  - ▶ Declaration of illegality or interpretation – *le contentieux en declaration*
  - ▶ Sanctioning private persons – *le recours de la repression*
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# Legal recourse

## - Appeal -

- **Appeal** (*le recours en appel*):
- as a rule open against all the decisions of the first-instance administrative courts (general clause with negative enumeration)
- filed with appellate administrative courts
- no suspensory effect
- Points of law and fact
- No legal, but economic filters (representation by a lawyer, legal aid)



# Legal recourse - Cassation -

- **Cassation** (*le recours en cassation*):
- Extraordinary legal remedy
- filed with the *Conseil d'Etat*
- against decisions of appellate administrative court or the first-instance courts
- no suspensory effect
- Points of law (form, procedure, legal error)
- Filters - receivable (deadline, special lawyer, content) and based on serious grounds (causes doubt as to legality of challenged act, elaborated, not in contradiction with established CE case-law)



# Relations to administrative procedure

- ▶ Le recours administratif préalable
- ▶ Non-mandatory legal recourse to the same or higher administrative authority
- ▶ Could be mandatory in special administrative domains (e.g. *plein contentieux subjectif*, fiscal disputes, university elections, access to information)



Thank you for your attention!

