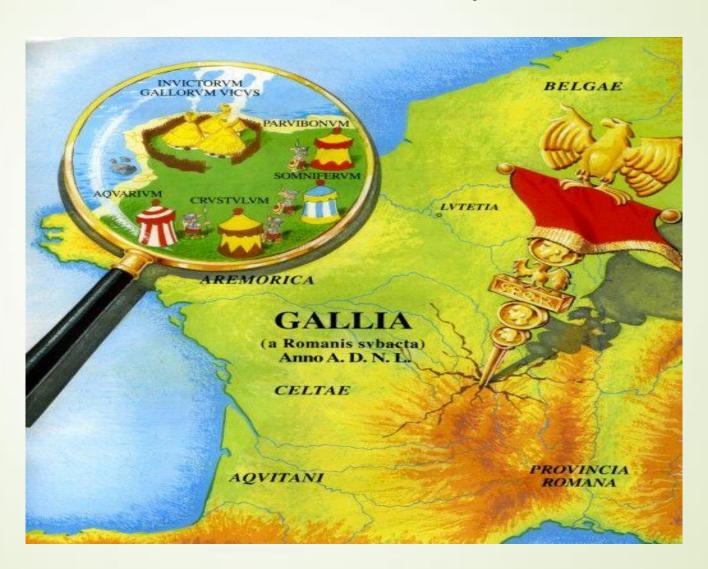
French Administrative Judiciary

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



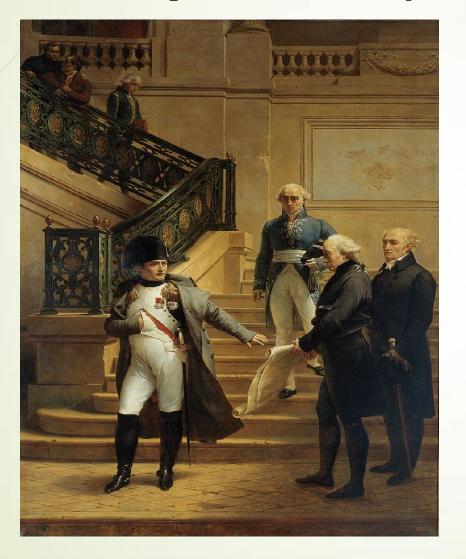
Creation of Le contentieux pour excès de pouvoir



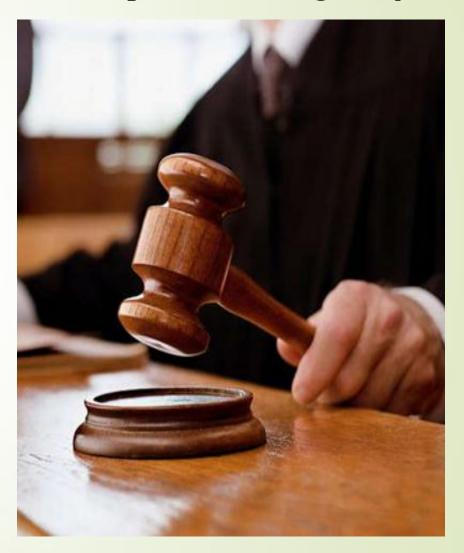
Change of legal nature of the Conseil d'État



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

- <u>L'acte de pure administration</u> (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 <u>lack of jurisdiction</u> to <u>legality</u>
- 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 appelate 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 declaration

- 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

Judicial control of discretionary acts

- <u>Legally binding elements:</u>
- a) Competence
- b) Procedure
- c) Form of act
- d) Facts of the case
- e) Excess of powers
- f) Detournment de pouvoir legal aim pursued (difficult to prove)
- g) Le controle restreint legal qualification of facts (conclusion based on correct facts is erroneus) – 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

Decisions

- Annulment or cancellation of challenged (individual or general)
 administrative act le contentiuex 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

Legal recourse - Appeal -

- Appeal (le recours en appel):
- as a rule open against all the decisions of the firstinstance 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 -

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

Relations to administrative procedure

- Le recours administratif prealable
- 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!