EUROPEAN ACADEMIC RESEARCH
Vol. VI, Issue 5/ August 2018

Impact Factor: 3.4546 (UIF)
DRJI Value: 5.9 (B+)

ISSN 2286-4822
www.euacademic.org

Different competences of the administrative judge in Malian legal system

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Abstract:

Establishing independence between the active administration and the administrative judge is more than necessary in the sense that the administrative judge is an essential bulwark between the administration and the citizens. This autonomy is a guarantee of the rule of law in any democratically organized society. For in such a society, it is inconceivable to envisage a judge and a party administration.

At the origin of the existence of the administrative judge in France was a political reason to exclude the executive power from any jurisdictional control because of its prerogatives of public authority. But today, it is clear that this will have turned into a means of submission of the administration into law in states imitating the French legal system. Indeed, the administrative action must develop in compliance with a set of legal rules that found, facilitate, channel and limit this action. This is the technical justification of the administrative judge. According to Professor André de DELAUBADERE, it can be said that by creating a rather special administrative right to require a specialized judge, the administrative court has itself created its own reasons for existence, making itself necessary.

The submission of administrative action to the right to remain a dead letter if there was no specific judge and independent of the administration to control and punish possible violations of this law.

Key words: Administrative action, administrative jurisdiction, competence of administrative judge.

1. Introduction

In order to accomplish its activities, any State necessarily relies on its administration through administrative action. Administrative action refers to all the activities of public persons and, by extension, to private persons to whom public persons have delegated certain service management tasks.[1] In other words, all the legal acts and legal facts produced in the exercise of the administrative function. This administrative activity has two objectives.

Firstly, it consists in allowing social life to take place in the best possible conditions. This optimal functioning can only be achieved by respecting certain individual or collective constraints. This is called the social order, but we must not forget that this sometimes negative aspect (order) is only the means to achieve social harmony. In carrying out these activities, the public services or the individuals in charge of supporting them, produce legal norms, which add to existing legal norms, and contribute to complete the legal ordering specific to each State.

Secondly, the administrative activity consists of providing to any citizen who so requests, services which are considered essential for the functioning of the company and whose availability must be guaranteed in such a way as to require public intervention through service complex.

Administrative activity can therefore be analyzed from two angles. That is to say a normative function and a service function which consists in guaranteeing, by all means, a minimum estimated vital of common services whose realization

[1] See GILLES GUGLIEMI, *Droit administratif*, collection Universitoo, Paris, 2003, p. 19.

requires legal acts and the fulfillment of legal facts in favor or against the people administered.[2]

These multiple functions of the administration are not possible without the contribution of the administered. Indeed, the administration-administered relationship is not devoid of any misunderstanding especially with regard to the imbalance of the forces involved.[3] So, is not control over the administration necessary?

In Mali, the jurisdictional control of the administration is ensured by the administrative jurisdiction composed of the administrative courts and the administrative section of the Supreme Court; which are responsible for verifying, when they are seized of an appeal if the conduct of the administration was in conformity with the law.[4] Such control exists when the independence of the members in charge of control is assured and the decision made on the basis of the law is res judicata. Anyone who feels aggrieved by an administrative act may appeal to a competent administrative court to challenge the act in question. This is a position stemming from that retained in France. Indeed, after independence, most of the former West African colonies have adopted this solution[5] by imitating legislation, regulations, jurisprudence, and even the doctrine applied in France. It must be emphasized that judicial review is not the only means of controlling the administration. There could be a purely political control system of the administration.

[2] Ibidem p.20.

[3] It means that the administration in its relations with individuals has prerogatives of public power that allow it to assert its will to them without their consent.

[4] See Article 8 of Law No. 94-006 of 18 March 1994 on the organization and functioning of administrative tribunal and Article No. 42 of Law No. 96-071 of 16 December 1996 governing the Supreme Court in Mali.

[5] See BAH Tidiane, *Droit du contentieux administratif Burkinabé*, collection précis de droit Burkinabé, éd. 2007, p. 41. ; see also FALL Ismaël Madior, cours de droit administratif, I.S.P.R.I.C., Bamako, 2010, unedited.

The advantage of this political control lies in the fact that the political power which enacts the fundamental rules of which the executing body of decisions is the administration would ensure the respect of these rules and decisions. But this form of control also has drawbacks and is often difficult to apply.

Firstly, because the administration is likely to be uncontrollable in many sectors where the texts were not planned by the political power.

Secondly, because the mass of administrative acts to be controlled would be immense and one would see the creation of a paralyzing bureaucracy and even a parallel administration. One can then imagine an administrative control, that is to say a control within the administration itself. The idea in it is simple: at each degree of hierarchy, the highest organs will control the lower organs.

This system would also be difficult to implement for at least two reasons. Indeed, the texts, themselves prohibit or limit the interference of the hierarchical authority in the competence circle of the inferior authority and the more one advances in the administrative hierarchy, the more the control becomes difficult. For these reasons, judicial review is practically adopted by all modern states. In this system it is the administration or sometimes the administration itself that seizes the judge to enforce the texts.

Jurisdictional control of the administration can be done by ordinary courts as in Anglo-Saxon countries[6], or by administrative tribunals in countries which distinguish between private and public law. Administrative jurisdictions can therefore be defined as all the special jurisdictions that judge disputes involving the violation of administrative law in a system of jurisdictional dualism. These two systems are equally

[6] In those countries without the existence of an administrative law such as the United States, the administration in the exercise of all its functions (missions of general interest, or those assimilated to the activities of private persons) is subject to the same legal rules as individuals.

legitimate, and in any case the foundation is the same, namely the separation of powers and the control of the administration. These are simply the historical conditions[7] and a particular interpretation of the rule of separation of powers that led to the specific situation of France, a situation that was imitated by Mali in terms of judicial control of the administration.

This particular interpretation is as follows: from the principle of the separation of powers there has been a transition to the principle of the separation of administrative and judicial authorities. This principle finds its foundation in France in an old text of 1790 which states that "the judicial functions are distinct and will always remain separate from the administrative functions. The judges cannot, on pain of forfeiture, disturb in some way the operations of the administrative bodies, nor to summon before them the administrators for reason of their function".[8] Because it was difficult to enforce, this law was confirmed by law of 26 fructidor year 3 which states that "iterative defenses are made to the courts to know acts of administration of any kind that they are to the penalties of law".

The autonomy of the administrative judge is both organic and functional. The judge is then obliged to reconcile two imperatives namely, the necessity of the administrative action and the protection of the citizens. In such a context, the effectiveness of the judicial review would be a safeguard against abuses by the administration.

In Mali in the early days of independence and prior to 1988, the existence of the administrative judge was limited to the counselors of the administrative section of the Supreme Court who acted as first instance judge, judge of appeal and judge of cassation. It was not until the 1988 reform to announce

[7] See ARBOUSSIER, La primauté du droit dans les nouvelles institutions de la République du Sénégal, Penant, 1961, p.14.
[8] See article 13 of the law of 16 and 24 August 1790 in France.

the creation of the first degree administrative tribunal.[9] Indeed, announced by the law n ° 88-40 of February 8th, 1988, the administrative tribunals were instituted in Mali only on March 18th, 1994, in the jurisdiction of the courts of appeal of Bamako, Kayes and Mopti by the law 94-006 on the organization and functioning of administrative tribunals.[10] This law was amended by Laws Nos. 95-057 of August 2, 1995, and No. 98-06 of December 31, 1998. These various laws in their part which gave the administrative judge special status was repealed in their turn by Law no. 02–055 of 16 December 2002 on the status of the judiciary. From this a unified body of magistrates of the judicial order and the administrative order was born.

The study on the jurisdiction of the administrative judge tells us, first of all, about the nature of the political regime. But its mere existence is not sufficient for such a qualification. Thus, when he is not independent or the difficulties related to the performance of his duties prevent him from being effective, the judge finally appears in his life as a legal fiction.

Unlike the judicial judge, in Mali the existence of a specific judge to control the administration seems ignored by the citizens. This ignorance could be explained by the fact that they are the most familiar with the courts. Because, most often the disputes falling within the attributions of the judicial judge touch the daily life of the citizens (divorce, civil or contractual liability…). This finding is not a problem for the administrative judge. It reflects only the strong existence in human societies of disputes of a more private than administrative nature.

Unlike the judicial judge, in Mali the existence of a specific judge to control the administration seems ignored by the citizens.[11] This ignorance could be explained by the fact that

[9] See Article 1 of Law No. 88-40 of 08 February 1988 reorganizing the judiciary in Mali.

[10] See Article 1 of Law No. 94-006 of 18 March 1994 on the organization and functioning of tribunals Malians.

[11] This observation was made from an interview of several people (teachers, students, shopkeepers, councilors, students, drivers, policemen, gendarmes…)

they are the most familiar with the courts of the judicial system. Because, most often the disputes falling within the attributions of the judicial judge touch the daily life of the citizens (divorce, civil or contractual liability…). This finding is not a problem for the administrative judge. It reflects only the strong existence in human societies of disputes of a more private than administrative nature. Does this state of affairs not warrant attention to the functions of the administrative judge in Malian law? Because these important elements condition the existence and the effectiveness of the administrative judge. Thus, the purpose of this article and the following developments is to set out the different powers and powers that the Malian administrative judge has in his function of control and advice of the administration.

2. The contentious jurisdiction of the administrative judge

In the resolution of the administrative dispute, the powers of the Malian administrative judge are multiple and varied. Among which we can remember: the power of the annulment, the power of interpretation, the power of reformation and the power of pecuniary condemnation.

2.1. The Power of Annulment

This is the domain of recourse for excess of power. This remedy is defined by Professor DUPUIS as: "the action by which any person (physical or moral) having an interest in it can provoke the annulment with retroactive effect of an administrative decision enforceable by the administrative judge because of the illegality of it".[12]It is provided in Mali by the law n ° 96-071 of December 16, 1996, on the organic law setting organization, the

in different districts of Bamako. Of these persons, only a small number (i.e. 30 out of 800) could tell us that they are aware of the existence of a judge known as an administrative judge.

[12] See DUPUIS GEORGES, GUEDON MARIE JOSE CHRETIEN PATRICE, Droit administratif, 8e éd. Armand colin, paris, 2002, p. 32.

operating rules of the Supreme Court and the procedure followed before it[13] and the law n ° 94-006 of March 18, 1994, bearing organization and operation of administrative tribunals.[14] Here the question raised by the applicant before the court is that of the lawfulness of the act and the breach by that act of a rule of general and impersonal law. This idea is sometimes expressed by saying that the administrative judge is the judge of the legality of the administrative acts to the law as the constitutional judge is the one of the control of the constitutionality of the laws to the constitution.

In this appeal, the judge's powers are limited to the annulment of unlawful acts subject to his censorship. Thus, in his decision the judge is each time limited to the annulment or confirmation of the administrative act contested before him.

Cancellation has considerable consequences. Indeed, a judgment of annulment for abuse of power has retroactive and general effect. The retroactive effect means that the annulled decision will be considered never to have existed in the legal order. In these circumstances the effective date of the annulment of an unlawful decision is the date on which it was taken by the administrative authority. As for the general scope, it means that the cancellation produces an objective effect. The illegal act is erased from the legal ordering for everyone. The cancellation has, as we say, an erga-omnes effect whose consequences go beyond the parties to a dispute.

In the recourse for excess of power, as soon as the judge pronounces his decision of annulment, his mission is terminated. The execution thereof is the responsibility of the author of the illegal act which must draw the legal consequences. The power of annulment available to the Malian

[13] See Article 42 of Law No. 96-071 of 16 December 1996 on the organic law establishing the organization, the operating rules of the Supreme Court and the procedure followed before it.
[14] See Article 8 of Law No. 94-006 of 18 March 1994 on the organization and functioning of administrative tribunals.

administrative judge gives it the title of the guarantor of the principle of legality. Whenever he considers that an administrative decision is illegal, he cancels it by restoring the legality.

2.2. The Judge's Power of Interpretation

This is essentially the litigation of interpretation. In Mali, in the area of administrative justice, this power of interpretation of the judge is exercised in three cases.

Firstly, the administrative judge exercises his interpretation competence following a referral by another judge. Indeed, it often happens that certain jurisdictions, in repressive or non-punitive matters, cannot proceed on their own to the interpretation of an obscure administrative act (individual or general) to which an individual has disobeyed because of the lack of intention fraudulent on the part of the offender. The purpose of this referral is to determine whether the fault to which an accident was attributed is or is not a personal fault that can be detached from the service. In this hypothesis, the administrative judge is seized for reasons of interpretation by the parties at the trial of a court of law.

Secondly, the interpretation competence of the administrative judge is established in matters of direct appeal in interpretation. Indeed, it is possible that the latter is seized of an action whose purpose is and in the absence of any dispute, to highlight the meaning of an obscure administrative act.

In the end, the administrative judge can interpret his own decisions: it is his jurisdiction in actions to interpret court decisions. When a decision is obscure, it is up to the judge who has rendered it to make sense of it and to determine its significance. Here the work requested of the judge is not intended to bring back the latter on what has been finally decided, but to clarify a decision. In other words, the interpretation of a court decision must not lead to its distortion or to the rejuvenation of a case already decided otherwise the

judge would disregard the authority of res judicata. The best illustration given by Malian case law on this point is provided by a 1989 judgment of the administrative section of the Malian Supreme Court.

After having been dismissed from his application for inclusion in the administrative hierarchy A of the Supreme Court by a judgment of 24 May 1988, the appellant lodged an appeal on the grounds of that judgment, which reads as follows: "… Since the intervention of the status of general of the civil servants, the decrees which served as a basis for integration into the higher hierarchy of the administration have become obsolete. "

The High Court rejected its claim in a judgment of 16 October 1989 on the ground that the terms of the recital are neither obscure nor ambiguous.[15] This position of the judge is not without interest. Indeed, she explicitly admits that the judge may be led to interpret the obscure points of his own decisions.

The Malian judge was not content merely to release his competence of interpretation, he also framed it. It systematically discards any claim that goes beyond interpretation as evidenced by its 1990 jurisprudence.

In his request, the appellant asked the court for the interpretation of Article 1 (9) of Decree 112 bis amending Decree No. 52/PGRM of 21 April 1967. In addition to this work of interpretation, in the same application, the appellant sought the judge to say and to judge from the documents produced his membership in category B of the civil service before 1960.

The court ruled as follows: "Considering that in the matter of an application for interpretation an appellant can only submit conclusions for interpretation to the exclusion of

[15] See Judgment No. 41 of 16 October 1989 of the Supreme Court of Mali: Issa FOFANA Vs Judgment No. 24 of 27 May 1988 of the Supreme Court.

other questions […]". [16]In that recital, the Court declared inadmissible the claims to the effect that the appellant was in category B of the civil service before 1960 and that he therefore sought to refer him to the competent administrative authority for examination of his situation. Through the jurisprudences studied, it is easy to see that the Malian administrative judge has a competence of interpretation. In the exercise of this one he is not called to make a decision produce direct effects. It is only responsible for providing information that another authority (judge or the administration) would apply to concrete situations.

2.3. The power to pronounce pecuniary sentences

Undeniably, in the same manner as a judicial judge imposing penalties for the payment of damages to individuals, the administrative judge also has the power to impose similar penalties against the administration or against the co-contractors of administration.

With regard to pecuniary sanctions against the administration, the competence of the administrative judge can be illustrated in this respect by two judgments of the administrative section of the Malian Supreme Court which can hold a long-time attention.

The first case concerns the judgment in the case of Alfred SPINGER against the services of the National Directorate of Customs.[17]

In this case, the appellant was helped by a customs officer in committing a customs offense, namely the illegal sale of a vehicle in transit. Once the offense was committed, the agent required him to pay a fine. He refused, his vehicle was

[16] See, Judgment No. 49 of 8 November 1990 Administrative Section of the Supreme Court, Mamadou MACALOU Vs Decree No. 112 bis/PGRM of 17 September 1971.

[17] See Supreme Court of Mali, administrative section, judgment No. 30 of 10 December 1980, Alfred SPRINGER Vs National Directorate of Customs of Mali.

seized and auctioned. Then follows the appeal of Mr. SPINGER against the customs administration who was sentenced by the Supreme Court to pay the value of the vehicle seized and sold. But also to the payment of symbolic Francs as damages.

With regard to the second case, that is to say, the condemnation of the contracting parties of the administration to the payment of damages, the judgment of 26 July 1990 of the administrative sections of the supreme court of Mali can be an example of drawing.[18] In this case law, the administrative judge highlights his power of pecuniary sanctions against the defaulting contractors of the administration.

In that case, under a public contract, Mr. ATCH had to deliver a truck to the solar energy laboratory within one month. As Mr. ATCH did not react within the deadline, the Ministry of Industry brought legal action against him to defend his interests.

The court found that, despite the fact that the administration had fulfilled all its contractual obligations, the other party (the contractor) did not execute the contract on the agreed date. As a result, the judge ordered the defendant to repay the total amount of the contract which amounted to 7,554,375FCFA. But to pay a sum of 7,000,000 francs CFA in damages for the benefit of the Ministry of Industry.

[18] See Administrative Section, Judgment No. 7 of 18 September 1978, Mamadou KEITA Vs Direction des Domaines de l'Etat. For other decisions of the administrative judge condemning the administration, refer to Judgment No. 397 of the Bamako Administrative Court of 8 September 2010, Société diffusion Equipement Vs Assemblée Nationale du Mali et le Ministère des finances ; No. 385 of Bamako administrative tribunal of 08 September 2010, SOSACO Sarl Vs Assemblée Nationale du Mali.

2.4. The power of reformation

The power to reform a decision of the administration is especially recognized to the Malian administrative judge in the electoral litigation and in the fiscal dispute.[19]

In electoral disputes, unlike the judge of the excess of power, the judge of the election is not a prisoner of the alternative cancellation rejection.

The multiplicity of powers devolving upon him finds its source in the following observation: "If it is a dispute of full jurisdiction, the electoral dispute is not yet a truly subjective litigation, insofar as it is the loyalty of the election which is primarily sought after."[20] Thus, in his decision, the judge can either confirm, cancel or reform the results of the election.[21] Here, the administrative judge appears as the superior judge of the vote count. Indeed, he knows the materiality of the votes. In other words, he can himself calculate the votes after the census organ. In doing so, he can:

-Reduce the errors made by the administration whenever it considers it possible to accurately reconstruct the number of votes obtained by the candidates and thus restore the results in accordance with the will of the electorate. Otherwise, it will cancel all electoral operations. For lack of certainty he cannot of his own volition modify the results of the election. It is this position that stems from one of the judgments of the administrative tribunal of Bamako dated July 30, 2009. By this decision, the judge cancels the elections for lack of certainty to reconstruct the mistakes made.[22]

[19]This is the contentious issue of local and administrative elections and not that of legislative or presidential elections which fall within the competence of the constitutional judge.

[20] KAMATE Azer, course of administrative litigation, National Institute of Judicial Training, Bamako, 2000, p. 17 unpublished.

[21] See VEDEL Georges, DELVOLVE Pierre, *Droit administratif*, PUF, col. Thémis, 11e édition, tome2, pp. 53-54.

[22] See Judgment No. 009 of the Administrative Tribunal of Bamako of July 30, 2009, Sidi M. SOUMARE and others against Vs Gouverneur du district de Bamako.

—Rectifier the proclamation of the results by canceling for example the results of one or more bureau (s) of voting of a commune. In doing so, the judge can substitute a new decision for that taken by the census organ by modifying the percentage of the votes obtained as a result of the ballot by a candidate or by a political party as evidenced by his judgment number 011 of July 30, 2009.[23]

In addition, the power of reform of the Malian administrative judge is exercised in the tax litigation. In fact, the judge knows the tax reduction claims presented to him by taxpayers. What must be remembered here is that the dispute over the method of calculating the tax and not the law of finance? This method of calculation, which comes under the jurisdiction of the administration, therefore falls within the contentious powers of the administrative judge. Thus, for example, the judge may modify by increasing or reducing the amount of an imposition or a penalty by reforming the administrative decision of taxation.

3. The advisory competence of the administrative judge

The administrative judge's advisory jurisdiction is the power he or she has to advise the administration. In certain cases, he can take the initiative himself to give advice to the administration. Often, it is at the request of the administrative authority that the judge exercises this power.

3.1. The exercise of the judge's advisory jurisdiction over self-referral

The exercise of the jurisdiction of self-referral of the administrative judge is based on Law No. 96-071 of 16

[23] See Judgments No. 011 of the Administrative Tribunal of Bamako of July 30, 2009, Karamoko KONE Vs Préfet du cercle de Ségou, see also on the same question Judgment No. 015 of the Administrative Tribunal of Bamako of July 30, 2009, Daman DIAWARA Vs Préfet du cercle de San.

December 1996 establishing an organic law establishing the organization, the operating rules of the Supreme Court and the procedure followed before it states: "the consultative chamber may, on its own initiative, draw the attention of the public authorities to legislative, regulatory or administrative reforms which appear to it to be in the general interest".[24] This attribution of the judge to seize himself could be explained by the fact that the political motive often pushes the public authorities to pass over the reforms indispensable to the safeguarding of the interest of the whole community in certain domains like education and economic sector, justice, etc. Thus, the opportunity is given to the judge to call objectively the attention of these public authorities on all issues involved in the proper functioning of the administration in its public service mission. Here, it is easy to see that in the self-referral exercise of its advisory powers, the administrative judge plays a decisive role in the smooth running of any administration that wants to be modern and democratic.

3.2. The exercise of the judge's consultative jurisdiction over referral

The fulfillment of the advisory powers of the Malian administrative judge on the seizure of an authority is based on Law 96-071 of 16 December 1996 on the organic law establishing the organization, the operating rules of the Supreme Court and the procedure followed before s it. In fact, this article provides: "the Consultative Chamber gives its opinion on all draft laws and decrees and in general on all matters for which its intervention is provided for by the legislative or regulatory provisions or which are submitted to it by the head of the government."[25] In other words, in

[24] See Article 77 of Law No 96-071 of 16 December 1996 in Mali.
[25] See Article 76 of Law 96-071 of 16 December 1996 establishing an organic law establishing the organization, the operating rules of the Supreme Court and the procedure followed before it.

administrative matters it gives advice to the government following a request. When the government is confronted with a legal difficulty, it can resort to the expertise of the administrative judges in order to conform to its actions and acts to the legality before taking any decision. This is the participation of the judge in the drafting of bills or decrees of governmental origin. The opinions given by the administrative judge are not of a judicial nature and do not have the authority of res judicata.

The administrative section ruling in its contentious formation may adopt a legal solution contrary to that previously indicated by an opinion of the advisory formation. It is for this reason that it is forbidden for a single judge to decide in litigation what he had known in consultative matters. Sometimes the consultation of the judge is an obligation made to the government (for example for the orders of article 74 of the Malian constitution of 25 February 1992); sometimes it is optional for the government. The obligation if it exists concerns the consultation itself and not the follow-up to be given to it. In general, the government is free to follow or not to follow the opinion of the administrative judge. The situation is different only if a text imposes an assent. In that case, if the government or the minister concerned has to make a decision, that decision must be in accordance with the opinion of the judge. But the authority concerned may also give up following up on its draft decision.

However, despite its consultative jurisdiction, the judge must remain confined to his jurisdictional role. He is prohibited from performing administrative duties directly. In other words, it is impossible for the administrative judge to act as a director. The judge has no right to take the place of the administration, his only role is to resolve a dispute by giving him a solution in conformity with the law or to give the administration notice. It is by a courageous action of the French Council of State that this principle of separation of active administration and

administrative justice has emerged.[26] It is also the principle that governs in Mali and the judges give it an important place. Indeed, seized in 1993 by appeal for abuse of power in which the applicant asked the court to complete the drafting of a ministerial order for the reason that this decree failed to rule on its balance by not specifying the period from which his salary must take effect once he has joined the civil service as a civil administrator.

The Supreme Court declared the said complaint inadmissible in its 1996 judgment. On the grounds that in no case, in the case of an appeal for an excess of power, can judge act as an active director by taking over, supplementing or amending the formula drafting of an administrative decision.

4. Conclusion

In the context of this article, we wanted to highlight the most important aspects relating to the jurisdiction of the administrative judge. In Mali the institution of the administrative judge has always been to exercise control over the actions of the administration. This is a requirement of the rule of law. In addition to this jurisdictional function, the administrative judge is also empowered to advise the administration. Indeed, the status of this one allows him to exercise this dual function. For when a judge is consulted and the opinion is issued, the latter is no longer authorized to hear the same case in litigation. This justifies the existence of two chambers (the Contentious Chamber and the Consultative Chamber) within the Administrative Section of the Supreme Court. Controlling and advising the administration are two different functions of the administrative judge. In other words, the judge must have in addition to his power of sanction an educational value and be able to teach good administration to

[26] See French Council of State, December 13, 1889, Cadot, Rec. 1148, concl. Jagerschmidt.

the administration itself. Hence the expression according to René CHAPUS: "to judge the administration is still administering".[27] Such control should normally give rise to an ethic of public interest within the administration. It is then that one could speak about competent administration and pledge of a rule of law. Rule of law which will be based on the respect of the law not only by the citizens but also by the state organs. The legality defended by the administrative judge requires a political will adhering to the idea of the rule of law and subsequently the translation of this will into political facts. This requires the submission of the administration to the law which is the cornerstone of the rule of law. It is at this price that the legal protection of the administered will be ensured as Jacqueline MORAND underlines it in his book of administrative law.[28] As the state cannot do without its administration, the administrative judge is also indispensable for the protection of the citizen's rights. This is inherent in any society that wants to be modern and democratic.

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