LL.M. SEMESTER II

COURSE CODE : 204E (GR-B)

COURSE TITLE : COMPARATIVE ADMINISTRATIVE LAW

UNIT II : MERITS OF FRENCH ADMINISTRATIVE LAW, REMEDIES AVAILABLE UNDER FRENCH AND INDIAN ADMINISTRATIVE LAW

2.2 REMEDIES AVAILABLE UNDER FRENCH ADMINISTRATIVE LAW

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INTRODUCTION

- The administrative justice in France oscillates between classicism and singularity.
- Multiple factors explain how administrative justice has come to occupy a particular place in French administrative law.
- Administrative justice has not only settled disputes between administration and private persons, but as well, built the French administrative law.
- One of the main tasks during 19th and 20th century consisted in strengthen the independence from the executive branch and the efficiency in order to satisfy the idea of good justice.
- Many reforms have been led since the 1990's.

REMEDIES AVAILABLE BEFORE THE ADMINISTRATIVE COURT

- Citizens can challenge the lawfulness of acts adopted by the administration or assert rights against the latter through various remedies.
- The current classification of appeals available in the administrative courts comes history.
- It was forged by the courts and the systematization of jurisprudence.
- Two main classifications have been put forward.

FIRST CLASSIFICATION

- The first classification is formal.
- Developed in the nineteenth century, it is derived from the synthesis of the work of two state councilors, Leon Aucoc and Edouard Laferriere, who distinguished different types of litigation on the basis of the powers recognised to the court when considering the merits of the claim.
- They identified four types of litigation:
  1. actions brought on grounds of *ultra vires*, in which the court may only annul the challenged decision;
  2. full litigation or full jurisdiction litigation, in which the judge can reform the administrative act;
  3. litigation on interpretation or validity, through a referral for a preliminary ruling made the judicial court to the administrative court, in which the latter rules on the lawfulness of an act without settling the dispute between the parties; and
  4. enforcement litigation, in which the court can order a citizen to repair the damage caused to the public domain.

SECOND CLASSIFICATION

- The second classification is material.
- It results from the work of Leon Duguit who, in the late 19th century, established the distinction between different types of litigation on the basis of the nature of the issue put to the court.
- This criterion serves to identify Objective litigation, which concerns the lawfulness of an act, such as appeals brought on grounds of
    1. *ultra vires*,
    2. actions involving an assessment of lawfulness, or
    3. certain other cases such as tax or electoral disputes; and
- Subjective litigation, in which the court must rule on the existence of individual rights which the applicant derives from a single situation, such as contractual or liability disputes.

EXPLANATION

- These classifications, the primary value of which is educational, are not contradictory and may be combined.
- In practice the formal classification is the most important, however, because it helps to understand the different facets of the role played by the administrative court.
- Depending on the case concerned, the legal rules applicable to the appeal will not be the same.
- Within this classification, the appeal on grounds of *ultra vires* and full remedy actions hold a special place because they are predominant in the jurisdictional activity of the administrative courts.
- This distinction has evolved over time.
- To this must be added litigation concerning the implementation of the *question prioritaire de constitutionnalite* (priority preliminary ruling on constitutionality), to challenge the constitutionality of a law already in force.

CONCLUSION

Comparative Law has a number of functions within the *Conseil d'Etat*. Firstly, it serves to strengthen or reverse the legitimacy of established case law, particularly in the context of the integration of European norms. The finding of an isolated position in relation to other foreign courts regarding the interpretation of the law of the European Union may for example lead to a long overdue reversal of precedent. Conversely, an analysis of judicial decisions handed down by the European courts adopting a divergent position can strengthen the *Conseil d'Etat* in its stance by wanting to mark stand apart on particular issues. Lastly, the comparative law argument can drive the creative force of the administrative courts and bring about changes in the state of the law on a sensitive social issue.

REFERENCE :

1) Hugo Flavier and Charles Froger, Administrative Justice in France: Between Singularity and Classicism, Brics Law Journal, Volume III, Issue 2, 2016, https://ssrn.com/abstract=2903077, visited on 06.06.2020.