

THE ADMINISTRATIVE JUDGE IN CAMEROON: HELPLESS BEFORE AN ADMINISTRATIVE ACT

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ABSTRACT

A litany of positive and prospective writings [1] have flooded academic shelves on the creation of administrative courts and the innovatory aspects of the 2006 law [2] which decentralises administrative justice in Cameroon as a kingpin in the consolidation of the rule of law. But hardly has there been an evaluation of what actually happens in legal laboratories which are the court rooms with respect to the orientation of the law and the general expectations from the judge as a “*legal protector*” [3] The administrative judge [4] is still far from being the messiah he is destined to be. He has been yoked by the might of the executive and the legislative powers. Even though there is an increasing tendency in the number of courts and specialised judges in administrative litigations, the protection the courts can offer to its citizens has been short-circuited by a rainbow of prohibitions. His jurisdiction has been perpetually trespassed. His helplessness faced with his primary assignment which is the control of administrative act is dazzling after more than half a century of his existence in different forms. [5]

Keywords: Administrative judge, Helpless, Administrative act, Rule of law.

INTRODUCTION

Democracy [6] has become not only common but an indispensable artifact of the political system of most African states [7] especially Cameroon. As well as a global move, the rule of law will also feature among the principles pressed upon by international donors as capital to good governance. However, at the dawn of the 20th century there will be a lot of power abuse and the proliferation of totalitarian regimes in the world at large. The myth of the state and administrative sovereignty will be revisited and trimmed to prioritise human rights and the respect of the rights of citizens, by compelling government to act within the confines of the law. This wish will be formally reinforced through the setting up of regional administrative courts to prone potential overreach of the administration. The expectations from these courts can be summarised in the words of Professor ROBERT Jacques who holds that « *justice, whatever it may be, is never meant for the judges or auxiliaries of justice, for their proper comfort or their proper security. It is for the litigants. It is therefore on their side that one is supposed to stand in order to appreciate the criteria of a well administered justice* » [8].

With the intention to guarantee a better semblance of this justice, Cameroon, partly inspired by the French system has opted for the independence of administrative courts [9] on like France where the administrative Court is part of the administration or the executive power. This demonstrates the desire of the constituent power [10] to give noticeable latitude to the administrative courts in the control of administrative act [11]. The intention is to promote the rule of law where state officials can only act within the confines of the law. According to Professor KAMTO, “*Administrative justice is the concrete expression of the protection of citizens against the arbitrariness of the administration. In effects it appears as a means of defending the individual against public authorities, not with the aim of compromising the authority of the State but to fight against any eventual despotism*” [12]. Judicial review allows individuals, physical and moral persons or even groups to challenge the lawfulness of decisions made by national and local authorities and by other public bodies [13]. The main grounds of review are that the decision maker has acted outside the scope of its statutory powers, that the decision was made using an unfair procedure, or that the decision was an unreasonable one [14]. This is also known as the control of legality. This principle is linked to a precise legal civilisation that of the Rule of Law, [15] which Cameroon is striving to consolidate.

The rule of Law can only be effective if the judge [16] or more precisely the Courts can in all independence, adjudicate cases dealing with the violation of the laws and the rights of the citizens. It is under these conditions that administrative justice is said to be the fundamental cornerstone, the keystone of the Rule of Law [17].

Within the context of this work, an administrative judge is a magistrate exercising a “*litigious function*” [18] in disputes concerning individuals and the state, territorial collectivities or public establishments. The word helpless refers to the state of being without help or powerless. An administrative act is an act taken by an administrative authority and which creates rights and obligation meanwhile the rule of law means a situation where the law is the ruler [19]. A research on such a topic is important based on two reasons: it is an open door to new perspective in the domain of research on administrative litigations and it is also an eye opener not only to the judge to better assert his authority but especially to the legislator who is expected to revisit the powers of the administrative judge to make him a better protector of rights. Our analyses will be based on doctrinal writings and legal texts on the one hand and case law on the other hand, polished by a comparison of legal systems. What is therefore left for the administrative judge when he cannot review some administrative acts and where he can, his powers are severely curtailed?

Despite the prospective writings [20] on administrative justice in Cameroon and the 2006 law [21] which organises administrative courts, the administrative judge is still away from fully embracing his protective mandate. His impuissance faced with his primary assignment which is the control of administrative act is mind troubling. This assertion hinges on the fact that, the administrative court has been circumvented from the examination of some administrative acts (I) and even when he is examining the petition (II).

THE ADMINISTRATIVE JUDGE HAS BEEN CIRCUMVENTED FROM REVIEWING SOME ADMINISTRATIVE ACTS

It is not an uncommon situation under administrative law to find legal proscriptions which are in direct dissonance with what is legitimate and incompatible with the fundamental tenets of

the rule of law. This unfamiliar construct becomes even more disturbing within the meaning of Cameroonian administrative law. This is anchored on the fact that; the circumvention of the judge is to a greater extent cautioned by law (A) and exceptionally by the nature of the act (B).

A- Circumvention orchestrated by legal proscriptions

The essence of the existence of administrative justice is to curb administrative multidimensional abuses yet the law proscribes the control of one of the greatest aspects where abuse is most likely [22]. What is curious about these legal injunctions is that, the constitution which is the supreme law of the land has not expressly or impliedly sapped the powers of the administrative courts. The constituent legislator intended the freedom of administrative courts [23].

The first and most virile of these legal injunctions in which the judge does not even have the guts to know of the matter is the act of government. Taking its origin from the Prince Napoleon case of 1875 [24] and imported to Cameroon as a result of colonial history, this concept has always embarrassed many Cameroonian jurists [25]. It is mostly used to refer to acts accomplished by the administrative authorities and which is insusceptible to recourse before the administrative jurisdictions. This act is usually and more political than legal. It is the creation of case law and it takes its origin from it [26].

According to Pr. KAMTO, the notion of act of government must be clearly distinguished from the notion of “*the state reason*”. To him, “*the state reason*” consists of certain elements which are actually beyond what is commonly known as the discretionary powers of the administration [27]. To him an act of government is a pretext [28] that carries in it serious abuses [29]. The notion of the act of government is legally couched today [30] and usually contains a political motive [31]. An act of government is “*an act accomplished by an executive power, in his relation with another authority escaping all jurisdictional control*” [32]. From this definition we can identify “*the political and non-administrative activity of certain authorities emanating from the executive power*” [33]. It is generally an act regulating the relationship between the executive and the parliament and those concerning diplomatic and international relations [34].

At first instance it concerns the acts of internal administrative authorities. The act by which the government collaborates with the parliament in the enactment of laws falls under this category. These include acts of initiation of laws [35] and those on enactment [36]. It also includes an act by the President of the Republic to submit a project of law to a referendum [37]. Still under this internal ministerial act, the act of the President of the Republic to dissolve the parliament [38] cannot be an object of litigation no matter the jurisdiction [39]. It is clear from this perspective that any act falling within this category benefits from an absolute jurisdictional immunity.

At second instance this act will include acts relating to international relations. This act includes those [40] that put a state in to direct relationship with another state. Acts also connected to the procedure of development or denunciation of international bills or agreements and conventions fall within this domain of act of government and their legality cannot be controlled [41]. The acts of the representatives of a state abroad in the exercise of their diplomatic functions cannot be subject to jurisdictional control. Acts relating to the staging of a war and even the facts of the war are not subject to review [42] since they fall within the jurisdiction of international courts [43]. In other words, the legislator excludes from the domain of competence of any jurisdiction [44] the control of an act of government [45].

Despite its codification by positive law, no definition has been given to this category of “administrative acts” and engenders the problem of its legal nature. This seemingly legislative inadvertence is more likely to be interpreted as legislative abdication in favour of a “jurisprudential” legislation [46]. Their principal characteristic is their absolute immunity from jurisdiction [47]. The absence of a legal definition has provoked an adoption of other illegitimate concepts to this category of act of government. We mean here other administrative acts that immune from jurisdiction not because they are acts of government but because the jurisdiction of the courts has been ousted by law.

First under this category law n° 64/LF/1 of 26 June 1964 relating to the reparation of damages caused by terrorist action which also immune from jurisdiction [48]. This jurisdictional immunity has to do only with claims for damages for loss suffered. These claims for damages, are as per section 2 of the same law, are solely the jurisdiction of the head of state who can

award to victims of terrorism a reasonable amount or contribute to the economic and social development of the country, funds within the limit of available funds to that effect or grant them aid in any form. The Cameroonian administrative Court in the case of *Société Forestière de la Sanaga Vs. State of Cameroon* [49] dismissed the petition of the claimant as falling within the ambit of section 1 of law n° 64/lf/16 of 26 June 1964. Only these acts are insusceptible to judicial review. This situation has been lengthened by the anti-terrorism law of 2014 [50] which have sparked a wave of criticism across the political chessboard – from opposition political leaders to civil society, church ministers and trade unions. One can sense therefore a perpetual threat on the right to justice and the control of the legality of acts taken under the guise of terrorist attacks. This is because with the increasing level of terrorist attacks in the state and also rising instability in most African states [51], there is the fear of living under the perpetuity of this provision.

Second under this category of assimilation are acts on the enthronement of traditional rulers and those delimitating administrative units which also benefits from jurisdictional immunity. It can be observed from the conduct of the administrative courts that despite their judicial independence, the latter is always tilted towards the application of the law or blinded by the legislative screen. This choice is justified from a number of decisions of the administrative court. This is due to the fact that even before the enactment of the laws that governs this legislative screen in Cameroon by 1980 on the designation of traditional rulers and 2003/016 on the regulation of disputes concerning administrative units, the judge has declined jurisdiction in such matters. The cases of *Société des grands travaux de l'Est* against the Federated State of East Cameroon of 28 October 1970 and *Claude HALLE* against the Federated State of East Cameroon of 8 December 1970 demonstrates the position of the Cameroon administrative court which is similar to the French case of *Arrighi* [52]. While basing his decision on the principle of the “*sovereignty of the law*”, the judge in the both cases declared his incompetence to appreciate the constitutionality of laws [53] while examining an administrative court.

Law n° 79/17 of 30 June 1979, the Cameroonian legislator consecrated that:

“Litigations brought as a result of the designation of traditional rulers are before the authority that has the power of designation who decides at first and last resort” [54]. The administrative authority has been given full powers to solve litigations arising from the enthronement of these traditional authorities thereby ousting the jurisdiction of the Administrative courts. The legislator decided to sound the prohibition of jurisdictions more clearly one year after the previous law by voting law n°80/31 of 27 November 1980 [55] has had far reaching consequences on the theory of legislative screen because it has been inscribed openly against section 40 of the Constitution of 18 January 1996 relating to the principle of the contestability of all administrative acts that creates rights and obligations [56]. It ousts administrative jurisdiction from all litigations on the homologation of traditional authorities.

In one of very illustrative decisions of the administrative court, the submission of the court to the whims and caprices of the law was seen from the wordings of the judge while delivering judgment in the case of BATEG Daniel [57], in which he maintained that: *« considering that, this case in relation to the contestation brought at on the occasion of the designation of traditional rulers is excluded from the competence of this jurisdiction, the law does not precise if it concerns matters brought up during consultations or after the prefectural order of designation»*. The words of the judge in this case are disturbing: does the judge through his powers of interpretation of the laws which makes him more than just the *« mouth piece of the law »* not interpret this legislative vagueness otherwise? The attitude of the courts as to the control of legality which is a necessary ingredient in the consolidation of the rule of law is thus questionable. The judge is left impuissant (powerless or impotent) in front of an administrative act that violates rights. These prohibitions will not be disturbing if there was guarantee that the homologation process will not violate rights. The reverse is true. At times the homologation is in total discountenance with the position of the king makers. This is because, traditional rulers being the auxiliary of the administration are chosen based on their readiness to support administrative activities. This reasoning is not bad in itself but it is hardly practiced. What is common is that, rulers are homologated based on their political affiliations with the ruling party to act as party representatives before their people. This is most often the source of chaos within village communities.

The fact that most laws in Cameroon are mostly not bills from the parliament itself but projects of law which are in effect the imposition of executive will (which is the ruling party) on the legislator through parliamentary majority. This is however regrettable. It suggests a situation where abuses are legalised and enforced.

This situation seriously hurts the rule of law. It is a concept repeatedly invoked by judges to explain the basis and extent of their judicial review jurisdiction [58]. This can be justified from the words of the law lord that: “*There is however another relevant principle which must exist in a democratic society. That is the rule of law...The principles of judicial review give effect to the rule of law. They ensure that administrative decisions will be taken rationally, in accordance with a fair procedure and within the powers conferred by Parliament...*” [59]. Also, “*...the rule of law enforces minimum standards of fairness, both substantive and procedural*” [60]. There is no way the rule of law can prosper without the governance of judges. Because where the executive and the legislative power have conspired to limit the rights of the citizens, the only hope that is left is the judge.

B- Circumvention induced by the nature of some administrative acts

Besides, there are other banishments based on the nature of the act such as preparatory acts. It is a measure aimed at preparing another decision [61]. It is a procedure geared towards the elaboration of another decision which may or may not be taken and its exact content unknown according to Rene Chapus [62]. Preparatory act is not susceptible to be an object of a petition before the administrative court [63]. This position rests on the fact that, it does not express a definite position of the administration on an issue. The presumption is that at this level, it does not constitute a decision capable of creating rights and obligation. This doctrinal position is highly disputable when it comes to land matters in Cameroon. For example, the decision of the Land Consultative board to visit a site and plant beacons in favour of the applicant already gives the applicant possessory rights which are legally protected, although still a preparatory act for the subsequent issuance of a land certificate. Cameroon administrative case law is consistent on the inadmissibility of petition lodge against preparatory acts [64].

A typical example of the inadmissibility of a petition against preparatory act is illustrated by the Administrative Bench of the Supreme Court in the case of Otto PONDY SIMON Vs the State of Cameroon [65]. The petitioner in this case was contesting a letter signed by the minister of justice, calling on him to stop his judicial activities. This ministerial correspondence was to permit the minister to prepare the project of the decree to put him on retirement. The petition was declared inadmissible because it was lodged against a preparatory act. The Cameroon administrative case law offers numerous examples in which the inadmissibility of petition against preparatory acts was upheld [66].

Case law is elastic on the notion of preparatory acts. It extends to administrative suspension in the public service [67]. These acts do not modify the legal order and so cannot be petitioned against. Nevertheless, case law in France has dissected statutory and interpretative preparatory acts (circulars). Statutory preparatory acts are actionable meanwhile interpretative acts are not. There is the tendency that the former will soon be operational in Cameroon when it comes to land matters and matters concerning the attestation of designation of some traditional rulers pending the final ministerial act (that is if the court are finally given jurisdiction or they seize jurisdiction by case law). The helplessness of the administrative judge is not only felt where his jurisdiction has been ousted by law or by nature but also due to some other factors.

THE ADMINISTRATIVE JUDGE HAS BEEN WEAKENED MECHANICALLY

There are yet certain elements in the litigious process that trespasses on the authority of the administrative judge and are of “*public policy character*” [68]. It happens generally during examination of the petition and making of court orders. The judge is forbidden to issue injunctions against the administration (A) and bolted from reviewing administrative discretion (B).

A- The judge is forbidden to issue injunction against the administration

The French model of administrative justice produced far reaching impacts on administrative litigations around the world. This influence has engineered significant consequences on the conduct of administrative litigations in countries that were affected by this legal crosspollination. In France, and specifically under the *Ancien Régime*, the *parlement* was forbidden [69] from hearing matters concerning the state. This edict was eloquently clear on the point that the *parlements* and the Court of Paris were established specifically to give justice to “*subjects*” [70]. It went further to issue “*injunctions and prohibitions*” on the court to hear matters of the administration [71]. The problem of the independence of judges under the regime became endemic as the monarchs legitimised their oppression by bounding the judiciary. The consecration of the separation of powers [72] at the end of the French revolution will still not show any light in the tunnel. Through the constitution of An VIII [73], the Conseil D’Etat will be created and given just an advisory role. To crawl out of this delusive bondage, the walls of administrative invincibility will crush down through a salutary decision by the Tribunal des Conflicts in arret Blanco [74] that instrumentalised a paradigm shift. The absolutists approach to judicial ostracism from administrative matters will bid its final farewell.

Nevertheless, there is still the virus of administrative shield hovering around the corridors of administrative jurisdiction. This is the prohibition from issuing injunction against the administration. This injunction has been formalised by section 126 of the Cameroon Penal code which stipulates that: “*whoever being a legal or judicial officer, issues any orders or prohibition to any executive or administrative authority-shall be punished with imprisonment from six (6) months to five (5) years*”. This provision is in conflict with the office of the administrative court. Section 27 of the 2006/022 law on the organization and functioning of administrative courts gives the president of the administrative court or any judge deputising for him powers to make “*any orders*” as he deems fit in urgent matters. These orders include injunctions. Under sections 2 and 3 of the same 2006/022 law, jurisdiction has been shared between the administrative courts and the ordinary courts. The ordinary courts in cases of trespass to person and trespass to land is expected to repair completely the damage suffered and this includes making orders against the administrative agent concerned.

The first uncertainty that surrounds this notion it's the absence of a definition within the specific concept. In its primitive stage, an injunction was considered to be "*a device to avoid the threats or continuance of an irreparable injury*" [75]. Injunctions even though available to the administration in certain matters [76] are usually the domain of the lower courts against administrative agents [77]. Injunction is not just a commandment, it imposes a burden, an obligation to do or not to do to a person, forcing the person to perform an action that he did not do and, in some cases that he did not want to do. Its purpose is to ensure the performance of a standard. Before the recent law on the judicial organization in Cameroon, the ordinary courts could issue these injunctions [78] against the administrative agents. There is no doubt why the jurisdiction was seized from the ordinary courts. The decentralisation of administrative justice through the advent of administrative courts is supposed to have conferred the powers of injunction on the administrative courts. Unfortunately, this is not what is observed since many theorists including some practitioners are still of the opinion that injunctions cannot be issued against the administration. The general believe is that to issue injunctions against the administration is to violate the principle of separation of powers. This is debatable because even in cases of strict separation of powers, there is a system of check and balances to mitigate the potential excesses of each power. This prohibition is expressed in many forms such as "*you cannot issue injunction against the administration*", "*it is forbidden to forbid the administration*". This notion is inconsistent with the substance of administrative law and that of the rule of law. What makes a decision of justice just is its ability to reconstitute the parties to their legal rights. This restitution at times is achievable only through injunctions.

The administrative courts are gradually opting for a change through decisions concerning full remedy litigations. In judgment n° 342/2020/TA-YDE of 15th September 2020, Dame BILAI AMOUDOU Germaine et autre vs the State of Cameroon, the administrative court partially annulled land certificate no 41623/Mfoundi ordered that certain names be cancelled from the land certificate and replaced with others. This also follows in electoral litigations where the court often orders ELECAM to cancel from the electoral list names of certain candidates and replace them with another candidate specified in the judgment. Nevertheless, this bravery at times is being suffocated by the limitations set by the second instance jurisdiction in administrative matters [79]. The helplessness of the judge in such a case will systematically lead to

a spirit of disinterestedness and frustration faced with a wrong that need a remedy but which he cannot offer as a result of this series of “*thou shall not*” [80] in the job. The application of these injunctions is simply dogmatic for they have very little or nothing to do with the reality. This is evidenced in the detour from this concept by the country from where this principle originated. The administrative jurisdictions can issue a variety of injunctions against the administration [81].

B- The Judge is bolted from reviewing Administrative Discretion

It is a reality that has become commonplace today based on the consistency of case law and could be attributed to the overdue dilution of administrative jurisdiction within the Supreme Court [82] and their inability to fabricate a case law-based [83] administrative justice. Thanks to the regionalisation of administrative justice [84], that there was a flip over [85] in the pages of administrative justice. The general stand for a long time now has been that of denial of jurisdiction of the courts in matters concerning the control of assessment or proportionality of an administrative act. When it comes to disciplinary measures against civil servant, only the disciplinary authority decides discretionarily whether to sanction or not or even the time to sanction. The choice of whether to apply one sanction or the other most often remains discretionary. This applies same for the determination of when to issue a receipt for an association that has been declared. As such when the judge specifies that a litigant had no right to be promoted on a fixed date [86] or that the court cannot assess the appropriateness of sanctions taken by a competent authority, the judge is in effect asserting administrative autonomy in appreciating the opportunity of their decisions. So, whether to act or not to act remain the discretionary privileges of the competent administrative authority [87].

There is serious judicial timidity in the control of the content of discretionary act of the administration despite the abundant literature [88] on the jurisdiction of the administrative court. Consequentially, where the law has not specified the content of the administrative act, the courts will often shy away from control the content of the decision taken by the competent administrative authority. The administration has the freedom to adapt in such a case her decision to the most suitable case. The approach of the courts towards measures of opportunity

(appropriateness) is the same position adopted when it comes to the control of proportionality of discretion exercised. On this point, neither can the court decide on whether the dismissal of a civil servant was “*timely or too stringent*” [89] nor can it assess the appropriateness of a sanction and its connection to the cause of the sanction [90]. This position is however questionable from the point of the preservation of the rule of law in Cameroon. The administrative judge carried out a self-limitation of his competence, while refraining from assessing the appropriateness of the dissolution [91]. On this subject, the judge has not been able to show courage in the control in Cameroon of the proportionality of the measure or its adequacy. Even though he can use the general principles of law [92] to limit the irrational and unreasonable use of discretion, this position is rare. This attitude is not prescriptive for the protection of the rights of citizens.

The insufficiency in the control of legality has stretch the imagination and creativity of some administrative judges to new concepts like “*manifest error of appreciation*” [93] and that of the *cost effectiveness* [94] to salvage the dwindling imperium of the judge faced with these acts. The former is of Swedish origin [95] though expanded by French [96] administrative jurisdictions gross error. Meanwhile the latter, allows the judge to examine in depth administrative activity and put on a balance their merits and demerits.

However, in some two [97] cases, the courts controlled opportunity though not proportionality. This position is similar in the domain of the control of administrative police. Nevertheless, the control mechanisms still spare proportionality and therefore limiting the powers of the judge as far as the control of an administrative act is concerned, to curb arbitrariness and guarantee the rights of individuals. It can better limit the unreasonable and abusive use of discretion. This reception is desirable, especially when it comes to certain freedoms [98] in Cameroon.

CONCLUSION

Contrarily, the Cameroon administrative court has vast unexploited potentials that stand the position of making administrative justice in Cameroon unique. This is because of her bijurial

system which is inspired by the French and English systems and if eclipsed will completely transform the administrative justice in Cameroon. The rule of law (both formal and substantive) can be seen achieved not only by spelling out the control of legality in legal norms but by making it workable through the extension of the powers of the courts to fully assume their function as an independent entity from the executive and the legislature [99]. This will a big shot towards the intention of the Cameroon constituent legislator who crowned the administrative courts as part of judicial power [100] as oppose to other countries like France [101]. An expansion in the remedies available to the courts in the settlement of disputes will also be commendable. For examples the express authorisation of injunction orders [102] in full remedy litigations and the execution of court decisions by way of an executory formular. That alone will be a great puissance to the administrative judge.

ENDNOTES

- 1 KEUTCHA TCHAPNA (C), « La réforme attendue du contentieux administratif au Cameroun », *Juridis Périodique*, n°70, avril-mai 2007. p.24 ; voir aussi ABA'A OYONO (J-C), « La nouvelle révision du Droit de la Justice Administrative », *Revue Africaine des Sciences Juridiques et Politiques*, n°1, Vol 8. p. 231.
- 2 Law n° 2006/022 of 29 December 2006 to lay down the organisation and functioning of administrative courts.
- 3 DEMBA SY, « la condition de juge en Afrique: l'exemple du Sénégal », *Revue afrilex* n°3, op. cit, p. 37.
- 4 The word judge and courts are most often used interchangeably. The former refers to the person that mans the latter for the settlement of disputes between the state and private individuals. See section 1 of Law n° 2006/022, op.cit.
- 5 From the Conseil du Contentieux Administrative right up to the regional Administrative Courts.
- 6 It is usually defined as government of the people, by the people and for the people. This definition was given by one-time American head of state Abraham Lincoln.

- 7 CONAC Gérard, « Les processus de démocratisation en Afrique », in CONAC Gérard (dir.), *L’Afrique en transition vers le pluralisme politique*, Paris, Economica, 1993, 510 p., p.1.
- 8 ROBERT J., « La bonne administration de la justice », *AJDA* 1995, p. 119.
- 9 See section 37 of the Constitution of 18th January 1996.
- 10 The constituent power of the January 18 1996 constitution of Cameroon
- 11 This is defined as “a legal act taken by an administrative authority in the exercise of an administrative power and which creates rights and obligations to individuals”. This definition was given in *Arret N° 20/CFJ/AP du 20 Avril 1968, Ngongang Njanke Martin c/ Etat du Cameroun*.
- 12 KAMTO (M.), *Droit Administratif processuel du Cameroun. Que faire en cas de Litige avec l’Administration*, University Press of Cameroon, Yaounde, 1990, p.7.
- 13 Such as independent administrative authorities like Elections Cameroon which is responsible for the management of electoral matters in Cameroon.
- 14 See section 2 of law n° 2006/022 of 29 December 2006 to Lay down the organisation and functioning of the administrative courts.
- 15 “...(that is) the putting in place of a Rule of Law, which is not the state of any type of law, but one in which the law express the values of liberty, equality and tolerance, placing individuals as the main processors of the law opposable to the state and recognising institutional and legal means through which they can ensure their existence”, D. Rousseau, cited by KEUTCHA TCHAPNGA (C.), “Le Juge Constitutionnel, Juge Administratif au Bénin et Gabon?”, in *RFDC*, 2008. P.19.
- 16 Exposé de Droit Public: L’Indépendance des juges, web cite (<http://alays.rigaut.free.fr/>).
- 17 DONFACK SONKENG (L.), « l’Etat de droit en Afrique », in *Afrique Juridique et Politique (la revue du CERDIP)*, vol. 1, N°2, July – December 2002, p.110.
- 18 Bruschi (Chr), « *Parquet et politique pénale depuis le XIX^e siècle* », Paris, PUF, janvier 2002, p. 10.
- 19 CUMPER Peter, *CONSTITUTIONAL & ADMINISTRATIVE LAW*, BLACKSTONES, LLB, 1996, p.332.

- 20 KEUTCHA TCHAPNA (C), « La réforme attendue du contentieux administratif au Cameroun », *Juridis Périodique*, n°70, avril-mai 2007. p.24 ; voir aussi ABA’A OYONO (J-C), « La nouvelle révision du Droit de la Justice Administrative », *Revue Africaine des Sciences Juridiques et Politiques*, n°1, Vol 8. p. 231.
- 21 Law n° 2006/022, op.cit.
- 22 That is the domaine of act of government as provided for under section 4 of Law n° 2006/022 law, op.cit. Other prohibitive concepts have been assimilated to this legal injunction.
- 23 This is construed from the fact that the administrative courts constitute part of judicial power under section 37 of the constitution cited earlier.
- 24 C.E. 19 february 1875, Prince Napoléon.
- 25 **Pr. OWONA Joseph**, sur la question de savoir si la décision du Président de la République concernant la répression du terrorisme ne constitue pas un « *acte de gouvernement de type nouveau* ». Cf. *Droit administratif spécial de la République du Cameroun*, Yaoundé (séries manuels et travaux de l'Université de Yaoundé), EDICEF, 1985, p.
- 26 Ibid.
- 27 KAMTO Maurice « actes de gouvernement et droit de l’homme au Cameroun », *lex lata* no 026, may 1996, pp.9 14.
- 28 «a qualification with pretentious explanation given to certain acts emanating from state authorities, in which jurisdictions be it administrative or judiciary refuse their competence to know them and which in general concerns the relation between the government and the parliament or directly putting in to question the appreciation of the conduct of international relations by a state » **GUILLIEN (R.) et VINCENT (J.)**, *Lexique des termes juridiques*,.
- 29 Ibid.
- 30 See section 4 of the 2006/022 law, op.cit.
- 31 CE, 9 May 1967, Duc D’ Aumale, Rec., p.472. in this case the CE stated that political acts by their nature cannot be an object of a litigation for ultra-vires.
- 32 ODOT (R), *Contentieux administratif*, Cours IEP, Paris, 1970/1971, p. 304.
- 33 MOREAU (J), *Droit administratif*, PUF, 1989, p.66.

- 34 CS/CA of 31 may 1979 Kouang Guillaume Charles, CS/CA of 29 march 1980 Essomba Marc Antoine and CS/CA of 29 may 1980 Monkam Tientcheu David.
- 35 CE 1968 Tallagrand.
- 36 See section 8(4) of the cameroon constitution.
- 37 CE 1962 Rubin de Servens.
- 38 See section 8(12) of the Cameroon constitution.
- 39 This is because section 4 of the 2006/022 law oust the jurisdiction of all the courts and not just that of the administrative court, the injunction is therefore inclusive.
- 40 That is treaties, conventions, agreements, accords etc.
- 41 Ibid.
- 42 CE 1995 Association Greenpeace France: La décision de reprendre les essais nucléaire car non détachable de la conduite des relations internationales de la France. Solution validated by the CEDH.
- 43 The ICJ, the ICC etc.
- 44 CS/S 14/7/1977, Tsanga Soter C/ Banque Camerounaise de Développement.
- 45 First dedicated by the federal law of 19 November 1965 relating to the modes of seizing the Federal Court of justice sitting in administrative matters, the jurisdictional immunity bound to government's acts will be reiterated after the advent of the unitary state in ordinance n°72/06 of August 26, 1972 to lay down the organization of the Supreme court of Cameroon (section 9 paragraph 5) modified by the law n°76/28 of December 14, 1976. This requirement will finally be taken in the law n°2006/022 of December 29, 2006 to lay down the organization and functioning of the administrative courts (section 4).
- 46 CS/CA of 31 may 1979 Kouang Guillaume Charles, op.cit.
- 47 **GUILLIEN (R.) et VINCENT (J.)**, *Lexique des termes juridiques op.cit.*
- 48 Section one of this text stipulates that: « Est irrecevable nonobstant toutes dispositions législatives contraires, toutes actions dirigées contre la République fédérale, les Etats fédérés et les autres collectivités publiques dans le but d'obtenir la réparation des dommages de toute nature occasionnés par les activités terroristes ou pour la répression du terrorisme ».

- 49 CFS/AP, Arête No 5 du 15 Mars 1967, Société Forestière de la Sanaga d'Etat du Cameroun.
- 50 Law no. 2014/028 of 23 December 2014 on the suppression of acts of terrorism.
- 51 Cameroon, Nigeria, Tchad e.t.c.
- 52 C.E. Section, 6 november 1936, Arrighi, Recueil. p.966, concl. **Roger LATOURNERIE**.
- 53 **SIETCHOUA DJUITCHOKO (C.)**, « **Du nouveau pour la coutume en droit administratif camerounais : la constitutionnalisation de la coutume et ses conséquences** », op.cit, p.150.
- 54 law n°79/17 of 30 june 1979 relating to disputes raised during the homologation of traditional rulers.
- 55 Law n° 80/31 of 27 novembre 1980 ousting the jurisdiction of courts in disputes raised during the homologation of traditional rulers.
- 56 **SIETCHOUA DJUITCHOKO (C.)**, « **Du nouveau pour la coutume en droit administratif camerounais : la constitutionnalisation de la coutume et ses conséquences** », op.cit p.150.
- 57 Jugement n°08/CS/CA/02-03 du 31 October 2002, BATEG Daniel c/ Etat du Cameroun. In this case, the operations of designation took place in good conditions; the administrative authority, in this case the prefect, ratified the decision. Some months after, his hierarchical superior, the minister of territorial administration summons him an order to abrogate his act (the minister abrogated it even though he is not competent). Haven been seized to decide on this serious illegality, because of the minister's incompetence, the judge refuses to preside.
- 58 Craig, Paul, The Rule of Law, paper included as Appendix 5 to House of Lords, Select Committee on the Constitution, 6th Report of Session 2006–2007, Relations between the executive, the judiciary and Parliament (2007), p101- The principles behind the constraints imposed on government under judicial review include 'legality, procedural propriety, participation, fundamental rights, openness, rationality, relevancy, propriety of purpose, reasonableness, equality, legitimate expectations, legal certainty and proportionality'.

- 59 Regina (Alconbury Developments Ltd and Others) v Secretary of State for the Environment, Transport and the Regions [2003] 2 AC 295, paragraph 73 per Lord Hoffmann.
- 60 Regina v Secretary of State for the Home Department, Ex parte Pierson [1998] AC 539, 591F per Lord Steyn.
- 61 COMBREXELLE (J.D.) « L'irrecevabilité des recours pour excès de pouvoir contre les actes préparatoires », conclusion sur Conseil d'Etat. Assemblé, 15 avril 1996, in RFD adm.12 (6). nov-dec, 1996, p.1170.
- 62 Droit du contentieux administratif , 5 éd, no 515 cited by COMBREXELLE (JP), «L'irrecevabilité du recours pour excès de pouvoir centre les actes préparatoire », op. cit.p.117.
- 63 Ibid.
- 64 The administrative judge in judgment no 49 of 24 June 1993, MBALLA Dieudonné Vs State of Cameroon,
- 65 Judgment no 73 of 31 January 1991, Otto Pondy Simon Vs State of Cameroon.
- 66 Judgment no 50/CA/CS, of 15th January 1990, Essama Joachim Michel Vs. State of Cameroon; judgment no 95/CA/CS, of 7th August 1986, Mme Ngousse Vs. State of Cameroon; judgment no 67/CA/CS, of 14th march 1985, Atangana Ntonga Sylvestre Vs. State of Cameroon; judgment no 54/CA/CS, of 26 January 1985, Kamgo Léon Vs. State of Cameroon.
- 67 See, observation of Pr NLEP(RG.) on jugement no 12/CA/CS, of 29 janvier 1982, Dame Binan, née Ngo Njom Fidèle in Recueil penant, 1986 ,pp347-360.
- 68 A term which is hidden in it a lot of abuses.
- 69 The edict of saintgermain 1641, recueil général des anciennes lois françaises, depuis l'an 420 jusqu'à la revolution de 178, t. XVI 529 (isambert et Taillandier, Paris 1829).
- 70 Ibid.
- 71 Ibid.
- 72 See section 16 of the Declaration of the rights of man and of the Citizen; See also The law of 16–24 august 1790 on judicial organisation, which is still in force, thus prescribes at article 13 that “*judicial functions are separate and shall always remain separate from administrative functions. Courts shall not, on pain of forfeiture, disrupt*

in any way the operation of administrative bodies, or summon administrators to appear before them by reason of their duties/functions” ; the Decree of 16 Fructidor Year iii, according to which “iterative prohibitions are made to the courts to review administrative acts, of whatever kind, subject to the penalties provided by law.”

73 This constitution saw the light of the day during the reign of emperor Napoleon Bonaparte who codified the French legal system. This court was created under section 52 of the said constitution.

74 TC, 8 February 1873, Blanco, rec. 61. and before: Ce, 6 décembre 1855, rec. 707: *“the liability that may be incumbent on the State for damage caused to private individuals by actions performed by persons that it employs in the civil service, may not be governed by principles established in the Civil Code, with regard to relations between private individuals”*.

75 FRANKFURTER FELIX & NATHAN GREENE, the labor injunction, 1930, p. 47; see also sections 27 and 30 of the 2006 law on the organization of administrative courts.

76 This is often used to temporarily settle land disputes by the competent administrative authorities.

77 CHAYES Abram, The Role of the Judge in Public Law Litigation, 89 Harv. L. Rev. 1281 (1976); Frank M. Johnson, The Constitution and the Federal District Judge, 54 Tex. L. Rev. 903 (1976); Robert F. Nagel, Separation of Powers and the Scope of Federal Equitable Remedies, 30 STAN. L. Rev. 661 (1978).

78 These injunctions took the form of a writ of certiorari and mandamus and they were executory.

79 The Administrative Bench of the Supreme Court most often quashes the decisions of the lower courts especially in electoral matters based on the fact that the lower courts ordered that the replacement of one name with another whereas the decision of replacement is the jurisdiction of ELECAM. This position is however regrettable because in full remedy litigations, the judge is expected to reconstitute the petitioner to his full legal rights.

80 An expression used in Exodus Chapter 20 and from verses 13-17 of the Holy Bible to indicate absolute prohibition by God to Christians from carrying out certain activities.

- 81 There are now imposition of administrative duty to act, imposition of pecuniary fines and imposition of coercive fines (astreint).
- 82 KEUTCHA TCHAPNA (C), « La réforme attendue du contentieux administratif au Cameroun », op.cit, p.24; voir aussi ABA’A OYONO (J-C), « La nouvelle révision du Droit de la Justice Administrative », op.cit., p. 231.
- 83 This is due to their fundamentally private law-based training. KAMDEM (J-C), Cours photocopié de contentieux administratif, tome 1, F.S.J.P. de l’Université de Yaoundé. pp. 57-58. « Une chose est sûre, c’est que le juge judiciaire ne peut valablement connaître du contentieux administratif, il n’a ni les connaissances, ni la tournure d’esprit nécessaires pour trancher les litiges administratifs » ; see NLEP (R-G), in note sous CS/CA, du 29 juin 1989, Société RAZEL CAMEROUN, Panant, n°807, 1991. p. 397 ; NCHOUWAT (A), Le juge et l’évolution du droit administratif au Cameroun, thèse pour le Doctorat de 3e cycle, Université de Yaoundé, FSJP, 1993-1994. 454p. see also BIPOUM-WOUM (J-M), « Recherches sur les aspects actuels de la réception du Droit administratif dans les Etats d’Afrique noire d’expression française : le cas du Cameroun, R.J.I.C, 1972, n°3, juillet-septembre, pp. 378-380 ; see Alain BOCKEL, L’administration publique Camerounaise, Encyclopédie administrative, I.I.A.P., Paris, Berger-Levrault, 1971, p. 14.
- 84 KEUTCHA TCHAPNA (C), Les grandes décisions annotées de la juridiction administrative au Cameroun, l’Harmattan Cameroun, 1ere édition 2017, p. 31; see also section 5 of law no 2006/022 of 29 December 2006, op.cit.
- 85 KEUTCHA TCHAPNA (C), Les grandes décisions annotées de la juridiction administrative au Cameroun, l’Harmattan Cameroun, op. cit, p. 30 ; ABA’A OYONO (J-C), « La nouvelle révision du droit de la justice administrative », op. cit, pp. 225 et s ; ANDELA (J-J), « Les implications juridiques du mouvement constitutionnel du 18 janvier 1996 en matière d’environnement au Cameroun », in Revue juridique de l’Environnement, n°, 2009, pp. 421 et s ; KAMTO (M), « La fonction administrative contentieuse de la Cour suprême du Cameroun », in Les cours suprême en Afrique, vol. III, la jurisprudence administrative, sous la direction de CONAC (G) et DE GAUDUSSON (J), Paris, Economica, 1988, pp. 31.

- 86 Arrêt de la CFJ/AP du 18 Octobre 1967, Oyono Ngomo Jean C/Etat du Cameroun; voir aussi l'ordonnance N° 19/OPCA/CS du 26 septembre 1998 du 26 septembre 1991, Affaire Kom Amboise c/ Etat du Cameroun « Que s'il est compétent pour connaître si l'association dissoute tombe par ses agissements sous le composition de la loi, il n'apprécie cependant pas l'opportunité de la dissolution ». V.aussi O.C.D.H c/Etat du Cameroun dans la meme année.
- 87 Professor Davis Kenneth analyzed this type of discretion thoroughly in his seminal work, *Discretionary Justice*. "Discretion is a tool, indispensable for individualization of justice. Rules alone, untampered by discretion, cannot cope with the complexities of modern government and of modern justice." DAVIS K, *DISCRETIONARY JUSTICE: A PRELIMINARY INQUIRY*, 1969, p. 25. Davis further stated: "For many circumstances the mechanical application of a rule means injustice; what is needed is individualized justice, that is, justice which to the appropriate extent is tailored to the needs of the individual case. Only through discretion can the goal of individualized justice be attained". Indeed, a major contribution of his book is to urge the benefits of a combination of such discretion and rules. Davis recognized that even this type of discretion is not without its negative aspects, but nevertheless urged, "Let us not oppose discretionary justice that is properly confined, structured, and checked".
- 88 ENGOUTOU (J-L), *La Cour fédérale de justice et le droit administratif camerounais*, Thèse de doctorat/Ph. D en Droit public, Université de Yaoundé II, FSJP, octobre 2010, 411p ; FOUMENA (G.T), *Le juge administratif et la preuve : contribution à l'étude de la construction jurisprudentielle du droit de la preuve au Cameroun*, Thèse de Doctorat/Ph. D en Droit public, Université de Yaoundé II, FSJP, 25 juin 2015, 691p ; GUESSELE ISSEME (L. P), *L'apport de la cour suprême au droit administratif camerounais*, thèse de doctorat/Ph. D en droit public, Université de Yaoundé II, 2010, 703 ; ABANE ENGOLO (P. E), *L'application de la légalité par l'administration au Cameroun*, thèse de doctorat/Ph. D en droit public, université de Yaoundé II, 2009, 515p etc.
- 89 Mekoumie C/ Administration du Territoire, Décision N°31 C.C.A/11 Août 1950.
- 90 Arrêt N°457/C.C.A du 25/02/1956, Ngoa Louis C/Administration du Territoire.

- 91 See CAP- liberté contre cet Etat de Cameroun and ruling N°20/OPCA/C1 du 26 Septembre 1991 dans l’Affaire Kom Ambroise contre Etat du Cameroun.
- 92 C.E, 5 Mai 1945, Dame veuve Tromprier-Gravier à propos du non renouvellement de l’autorisation d’exploiter un kiosque à journaux et où le juge sauvegarde le principe général des droits de la défense.
- 93 BRAIBANT G., Conclusion sous CE, 2 novembre 1973 ; Librairie Maspero, op.cit.
- 94 see arrêt Ville Nouvelle Est le 28 Mai 1971.
- 95 LARGASSE D., L’erreur manifeste d’appréciation en droit administratif « essai sur les limites du pouvoir discrétionnaire de l’administration », Bruxelles, Bruylant, 1986, p. 223.
- 96 LETOURNEUR M., « Le contrôle de l’erreur manifeste d’appréciation dans la jurisprudence du Conseil d’État », Mélanges Ganshof van der meersch, 1972, T3, p. 576.
- 97 Mekoumie C/ Administration du Territoire, Décision N°31 C.C.A/11 Août 1950; Arrêt N°457/C.C.A du 25/02/1956, Ngoa Louis C/Administration du Territoire.
- 98 Especially freedom of association when it comes to suspension and dissolution of an association, a political party, the press and the media which at times may just be a demonstration of an abuse of discretion.
- 99 Section 80 of the Constitution of Sénégal cited by DEMBA SY, « la condition de juge en Afrique : l’exemple du Sénégal », Revue afrilex n°3, op. cit, p.37.
- 100 Section 37 of the 1996 constitution of Cameroon op. cit.
- 101 The 1958 constitution of France.
- 102 Which for now are available only in fiscal litigations and urgent administrative applications.