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Research Article

The Crisis of the Administrative Judge in Cameroon and Congo

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Abstract

The diversified inflation of litigation in contemporary society has led to a shift from the State as master of justice to the State as litigant. This justiciability of the *cold monster* is more perceptible before the administrative judge. The Cameroonian and Congolese litigation arenas offer us the opportunity to appreciate (perhaps to varying degrees) the setting in motion of the diptych equality-legality, which is the primary element in the office of this Judge. However, it happens to be in crisis. A crisis whose characteristics are based on its legitimacy and identity. To resolve this crisis, the Cameroonian and Congolese administrative judges must play an active role in legitimizing himself by discovering his true identity, in order to fully play his role in building and consolidating the rule of law. He must therefore combine the figures of Saint Louis and Solomon to deliver "Justice".

Keywords

Administration, Administered, Crisis of the Judge, Rule of Law, Identity, Administrative Judge, Legitimacy

1. Introduction

The *"Social Contract"*! This famous intellectual construct dear to John LOCKE and Jean-Jacques ROUSSEAU has stood the test of time. For them, it was a matter of *"finding a form of association which defends and protects the person and property of each associate with all the strength of the community, and by which each, uniting with all, obeys only himself and remains as free as before"* [1]. In this way, all contracting parties are equally bound by the terms of the contract. The Universal Declaration of Human Rights states that *"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood"*[1].

To this end, these Central African societies [2] have devised a system for regulating conflicts and pacifying social relations in order to avert the risk of implosion [3]. Hence the need for *a "judge in the city"* [4]. Avenger of our cowardice, compensator for our lack of imagination, the judge is the *"guardian of our social pact*[2] *and of the principles of the Republic"* [5].

The judge, part of the jurisdictional body, is a permanent institution invested with the most terrible of powers[3] whose majesty must be strong and prestigious [6]. *"The judge manifests himself in an ever-growing number of sectors of social life"* [7]. A certain jurisdictionalization of collective life is

[1] Article 1 of the Universal Declaration of Human Rights of December 10, 1948.

[2] Conflict is consubstantial with the social pact.

[3] As ROBESPIERRE put it.

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thus taking shape. Social conflict is no longer exclusively a matter of private interests. Social conflictuality has conquered administrative lands[4]. This is why, on the basis of the separation of powers, it was necessary to create an institution capable of *"hearing administrative acts"*[5], especially since its revolutionary interpretation[6] led to the principle of the separation of administrative and judicial authorities.

The legal underpinning of this principle is crystallized in the Law of August 16 and 24 1790, article 13 of which states: *"Judicial functions are distinct and will always remain separate from administrative functions. Judges shall not, under penalty of forfeiture, disturb in any way whatsoever the operations of administrative bodies, nor summon before them administrators for reasons of their functions"*. In practical terms, this principle has two consequences: legal courts are prohibited from dealing with the administration, and[7] courts are prohibited from hearing administrative disputes, and from judging the administration. This is how the dual jurisdictional system[8] was devised, to which Cameroon and Congo have subscribed with their own specific features.

In Cameroon, the relationship between administrative jurisdiction and the passage of time can be readily assessed in the light of the country's twofold political and institutional evolution[9].

In the Congo, on the other hand, the evolution of administrative jurisdiction has not been linear. It existed before the country's independence in 1959, disappeared after independence (1961) and reappeared with some hesitation in 1962. It was confirmed in 1983[10].

If everything and everyone is now subject to the law [7], we have now moved from the State as master of justice to the State as subject to the law. Contemporary justice is marked by an inflation of litigation [8]. Today, the judge's mission is much more plural and complex than it was in the time of Baron De la Brède. This is how Cameroonian and Congolese administrative judges are emerging, revitalized by current legislation[11]. As Bernard AKERE MUNA rightly points out: *"Africa must re-establish a renovated judicial system to make it compatible with a dynamic society, by introducing different structures and methods for conflict resolution"* [9].

As the link between equality and legality, the administrative judge cannot be insensitive to the socio-political pulses and convulsions that mark the life of the State, and therefore the proof that the judge must not only be an expression of the State itself, but also a weapon of society [10]. Lord Justice AWASOM Florence insists that we must never forget the social dimension of Justice[12]. All in all, the aim is to *"raise the quality, effectiveness and efficiency of the public justice service to meet a demand for justice that is constantly growing in terms of both quantity and quality"* [11]. How can we effectively and appropriately resolve the most intense conflict in society? [12] How can the growing number of disputes generated by the activities of public authorities be settled sustainably, i.e. at a high level of quality and at a cost that can be borne by the budget?

[4] Conflicts between the Administration and citizens.

[5] Decree of 16 fructidor year III.

[6] French Revolution of 1789.

[7] Of the judiciary, that is.

[8] While political reasons underpinned this principle at the outset, today it is technical reasons linked to the intrinsic nature of litigation that ensure its maintenance and development.

[9] Political and economic dependence (total), Internal autonomy (extended internal autonomy), Independence, Federation, Unitary state).

[10] Administrative justice came into being in the Congo before independence with Law no. 31/59 of June 30, 1959 on administrative litigation and the creation of the first Brazzaville Administrative Court, which heard administrative disputes in the first instance, subject to appeal to the Council of State. This was simply a transposition to the Congo of the normative and institutional elements of the legal system in metropolitan France. However, article 3 of Law no. 6-61 of January 11, 1961, setting out the organization of the judiciary, makes no mention of the administrative courts. After this post-colonial eclipse, administrative justice underwent a formal renaissance with Law n ° 6-62 of January 20, 1962 relating to the jurisdiction of the Court of appeal, the High Courts and the procedure followed before these courts in administrative matters. This law gave the existing judicial court's jurisdiction over administrative disputes, and laid down administrative litigation procedures for the first time. Under the terms of article 1, High Courts are ordinary courts of first instance in all matters (including administrative matters), subject to the exceptional jurisdiction of the Supreme Court, the Court of Appeal, the Criminal Court, the Labor Courts, the Courts of instance and jurisdictional bodies. In administrative matters, the High Court thus heard claims for compensation, disputes concerning contributions levied by public authorities, disputes concerning the pecuniary or statutory benefits granted to civil servants and agents of the various administrations, and actions brought by administrations against private individuals. This was the consecration of jurisdictional monism, since administrative justice was rendered by the courts of the judicial order. Subsequently, appeals for cancellation on the grounds of excess of power came into being with the creation of the Supreme Court, which also had jurisdiction to rule on appeals to the Supreme Court on the grounds of lack of jurisdiction, violation of the law or custom (articles 2 and 3 of Law no. 4-62 of January 20, 1962 creating the Supreme Court). Law no. 51-83 of April 21, 1983 maintains the single order of judicial jurisdictions. The High Court remain ordinary courts of first instance in administrative matters, and in litigation, they are competent to interpret the decisions of the various administrative authorities and assess their legal validity at the request of one of the parties. However, they are not empowered to annul decisions, which is the exclusive competence of the Supreme Court (article 44 of the aforementioned Law of April 21, 1983). It should be pointed out that this law already created Administrative Chambers within the High Courts, but these have never been operational. In Brazzaville, for example, it was the High Court's second civil chamber that heard administrative disputes at first instance until 2014, with the creation of the Brazzaville Administrative Court. It was finally with the adoption of political pluralism (following the Sovereign National Conference of February 1992) that the new organization of the Judiciary resurrected the Administrative Court from its ashes, as article 1er of Law n ° 022/92 of August 20, 1992 on the organization of the Judiciary innovated by including Administrative Courts on the list of jurisdictions competent to dispense justice on behalf of the Congolese people. Following the Law of August 1992, amended in August 1999, which created the Administrative Courts, only the Brazzaville Administrative Court was initially created (Law no. 8-96 of March 20, 1996), with jurisdiction over the Commune of the same name. This was followed by the creation of the Pointe-Noire Administrative Court under Law no. 9-96 of March 20, 1996. These two Administrative Courts only became effectively operational in August 2014, following the session of the High Judicial Council at which magistrates were appointed to these Courts (followed by their installation in office by members of the Court of appeal).

[11] Law no. 8-96 of March 20, 1996 creating the Administrative Court of Brazzaville; Law no. 9-96 of March 20, 1996 creating the Administrative Court of Pointe-Noire; Law no. 19-99 of August 15, 1999 amending and supplementing certain provisions of law no. 022-92 of August 20, 1992 organizing the judiciary (Congo); Law no. 96-06 of January 18, 1996 revising the Constitution of June 02, 1972 (Cameroon); Law no. 2006/022 of December 29, 2006 to lay down the organization and functioning of the Administrative Courts; Decree no. 2012/119 of March 15, 2012 opening the Administrative Courts.

[12] Lord Justice AWASOM Florence, former President of the North-West Administrative Court, made us understand this during our jurisdictional internship.

Cameroon and Congo, two sister Republics because they border on each other, share the same cultures - foremost among which is the *Fang-Beti* culture - *and* operate more or less in the same legal tradition[13], are experiencing a crisis in their Administrative Judges[14]. This should come as no surprise, given that the notion of crisis has become commonplace in the public arena, having spread to all sectors of society. As Edgard MORIN lamented *"The crisis of the concept of crisis is the beginning of the theory of crisis"*.

For General Loup FRANCART, by destabilizing a system, a crisis is first and foremost *"a rupture, revealing new realities"*. Thus, crisis is no longer simply the result of the realization of an external threat, it is also a product of society, highlighting the concept of a *crisis without an enemy*. Pierre DRAI[15] echoes this reading when he says of the judge's crisis that it *"attaches itself to our condition as demanding and impatient men",* in other words, the judge ontologically bears the seeds of his own crisis.

If we consider a crisis in terms of disturbances, deviations from a standard, what are the characteristics of the crisis of the administrative judge in the contentious areas of Cameroon and Congo?

There are two areas to consider: a crisis of legitimacy and a crisis of identity.

2. The Unveiled: A Crisis of Legitimacy

"Justice is very often approached emotionally, reactively and defensively. It is described as an institution 'in crisis', 'abandoned', 'disaster-stricken', etc." [7].

Pierre DRAI, then First President of the Paris Court of Appeal, gave a speech at the formal hearing on January 6, 1988, on *"the judge and his legitimacy"*. The judge's legitimacy, is the confidence of the litigant; it is this confidence that authorizes him to exercise the formidable power to judge [13]. The combination of these two realities, as applied to Cameroon and Congo, contributes to the divorce between the judge and public opinion.

The new Cameroonian and Congolese administrative judges[16], in their fragility and vulnerability, have to face up to the dogma of judicial infallibility. Public confidence in the judicial system is the major problem to be resolved. Subject to all kinds of epithets[17], the Judge is in crisis [14].

It is clear that the administrative judge is operating in a difficult context. This difficulty is driven by both the public and the Administration. In the first case, he is seen as a double agent, in that as part of the Administration, he is *supposed to* judge it. In the second, and this is the curiosity of the analysis, the administrative judge in our *"non-democratic"* societies[18], is curiously considered by the Administration as a *pebble* in its shoe. If he has ever had to ask himself the question: what do people think of me? He will find the answer in the following pages.

2.1. A Context Made Difficult For the Administrative Judge by the Public

From box-office[19] to secret state missions[20], the administrative judge in Cameroonian and Congolese litigation appears under the sieve of their respective societies as a double agent[21]. As an agent and judge of the Administration, it is clear that it is very difficult for administrative judges to escape the original suspicion that is grafted onto their *egos*.

Theoretical and even institutional discourse, which does not really convince the public, reveals that the Administrative Judge is an institution whose primary mission is to ensure that the Administration complies with the law. However, it is a fact that, before being an administrative judge, he is a *judge*, *and* is therefore suffering from all the symptoms of his crisis[22]. All of which makes the administrative judge look like a wolf in sheep's clothing[23].

2.1.1. The Ordinary Figure of the Administrative Judge Tainted

The administrative judge is first and foremost an (ordinary) judge, before being administrative as he is considered in the societies in which he moves. To this end, he is statutorily tainted by the original sin[24].

[13] While Congo has an exclusively Romano-Germanic legal tradition, Cameroon has a hybrid legal tradition (Common and Civil Law) due to its pre-independence heritage.

[14] A crisis is the sudden breakdown of an equilibrium considered to be stable, calling into question the survival of a system.

[15] Former President of the French Court of Cassation.

[16] It should be noted that the administrative judge concerned *hic an nunc* is the judge of the administrative courts. In the Cameroonian and Congolese jurisdictions, he is a newcomer, since these courts have only just been set up, with the appointment of magistrates to their seats. In 2012 for Cameroon, and in 2013 (appointment of the President) and 2014 (appointment of judges) for Congo.

[17] Distant judge, fussy judge, asthenic judge, sheriff-judge, expedient judge...

[18] This characterization is the work of the West. That's why we don't want to risk determining the nature of Cameroonian and Congolese societies. Because the democratization process proposed by the West is not necessarily the best. Professor MWAYILA TSHIYEMBE assumes as much when he says: "History teaches us that no people can take up the challenge of surviving and renewing itself, relying solely on the history and culture of other peoples, while denying its own history, its own culture and its own creative genius". As if to say that Africa must turn to its own history and creative genius as a first step towards finding the inspiration to build a new, democratic society.

[19] By way of illustration, Double Agent is an American spy film directed by Billy Ray, released in 2007, based on the true story of Eric O'Neill, an FBI agent in training, who led to the arrest of agent Robert HANSSEN, convicted of spying for the USSR and the Russian Federation.

[20] A case in point is Aldrich AMES, a CIA agent (USA) who sold information to the KGB (Russia).

[21] A double agent is a person who works on behalf of two different organizations (*lato sensu*), without the knowledge of one of them. The term is semantically associated with treachery.

[22] Other symptoms include the slowness of the justice system, the lack of public confidence in judges, and the risk of magistrates losing their independence as a result of the current methods of appointment, promotion and investigation of certain cases.

[23] A spy, as article 103 of the Cameroon Criminal Code (Law no. 65/LF/1 of June 12, 1967) lists the situations that can be qualified as espionage.

[24] The original sin here refers to the reproaches levelled at the judiciary. This is because in both Cameroon and Congo, the administrative judge, like the judicial judge, is governed by the Statute of the Judiciary of these respective States.

"In societies that readily give in to the temptation of "victimization", the search for the guilty is becoming more pressing by the day. Judges are no exception to this trend" [15]. The judge is accused of all evils. From time immemorial, the harshest and most radical sentences have been passed on them, conveying contempt for their work down the ages. Thus, placed before public opinion, the judge's activity is exposed. The judge is exposed to direct and sometimes violent public criticism. The gaze of public opinion exposes operational shortcomings, the illegibility of procedures and the fragility of decision-making circuits. The audience for justice is no longer a sparse courtroom. Judges are neither immune to invective nor mockery. They are often accused of being corrupt, submissive[25], biased, against liberty, negligent, incompetent and likened to the mafia by certain individuals, among others. They also denounce the slowness of the judiciary, pointing out that the time taken by the justice system does not take into account the time of the litigant or the time of the economy. The *Doing Business* reports confirm this last point. The judge, the only visible figure in the judicial system, fuels media storms. Misunderstandings and criticisms highlight the shortcomings of his communication system. His fragile status as an impartial decision-maker is severely undermined [16].

The litany of shortcomings thus highlighted is based at the very least on the nature of the criticism levelled. Some of them are exaggerated, even excessive, all the more so as they are generally made without any prior research into the real causes of this state of affairs.

All in all, the judge's credibility is undermined, leading to a crisis of confidence on the part of those subject to trial. The corollary is undoubtedly that the judge himself becomes the target of those he is called upon to judge. In fact, the judge is only a judge because he is wanted by society, so it is logical that society should be the guardian of the guardians it has chosen. It is therefore incumbent on the judge to undergo, without fear, regret, bitterness or anger, the objective (and very often subjective) criticism of those whose freedom, honour or property he has to dispose of. Antoine GARAPON corroborates this point of view when he states that the judge must accept "*to be questioned, to appear (...); it is to expose oneself to public scrutiny, it is the very possibility of scrutiny and questioning"*. This evil is so deeply entrenched that the President of the Republic of Cameroon, His Excellency Paul BIYA, noted on December 31, 1998, during his New Year's address to the Nation: *"There are still many examples where justice is not dispensed as it should be. That is to say, swiftly, impartially and in strict compliance with the laws and procedures in force.... These shortcomings run the risk of casting suspicion on the entire institution. However, as the judiciary is now vested with "power", it has a particular responsibility"*. This concern, expressed a little less than twenty (20) years ago, is a legitimate demand on the part of litigants and reveals a strong expectation on the part of the public.

[25] Subject to the executive power in particular.

Considered as the guardian of the legality of administrative action, the administrative judge, whether Cameroonian or Congolese, faces specific problems.

2.1.2. The Specific Figure of the Administrative Judge Reproached

In Cameroon and the Congo, the administrative judge is ontologically subject to particular frustrations and invective. Essentially, they are regarded by the average citizen as an outgrowth of the State, the rulers and the aristocracy.

In North-West Cameroon, people say that the Administrative Court was set up to defend the interests of the CPDM[26]. In the West, the administrative judge is seen as the protector of the State's interests. Congolese citizens, on the other hand, see them as judges at the service of the State. This perception pollutes and dilutes the close relationship between one of the guardians of the social pact and its sovereign[27].

For society, the existence and function of the administrative judge are a mockery of the Administration's interests. A double agent, he pretends to be an impartial third party, when in fact he is merely a wolf[28]. This view of the administrative judge is the consequence of the choices made in the 1970s. The truth is that, in an authoritarian political-institutional context marked by political monolithism or characterized by a Marxist-Leninist ideology [17], the law did not seem capable of providing a liberal foundation for society.

For some observers, fear paralyzes the processive spirit of the Congolese and (to a lesser extent) Cameroonians. In the days of the single-party system, this fear was explained by what Pierre Fran ọis GONIDEC *calls the "fear of reprisals*" [18]. For litigants, it was a question of avoiding *"displeasing the political power"* [17] totalitarian and intolerant of any challenge, even if strictly inherent to its legal acts. Added to this was what Jean DU BOIS DE GAUDUSSON calls *"the mystique of the leader"* [19]. It crystallizes in a reverential fear that turns the victim away from administrative activities and the legal system.

Moreover, in both Cameroon and Congo, there is a problem of legal education, in both its substantive and processual dimensions. This lack of *"legal awareness"* [20] justifies the idea of *"popularizing"* justice and the law launched by GRANGER [21] and taken up by Joseph-Marie BIPOUN WOUM. This led Dean MOUDOUDOU Placide to conclude that *"subjecting the administration to jurisdictional control is a difficult undertaking, and one that has never been perfectly achieved"* [22].

Administrative judges are sometimes the source of the criticism levelled at them. In this case, the Congolese judge's

[26] CPDM is the political party of Cameroon's Head of State, H.E Paul BIYA.

[27] We insist on the objective nature of our criticism, which is not our own.

[28] This is the figure of the wolf in *Little Red Riding Hood*. The latter is a tale by Charles PERRAULT in which a young girl runs to her doom by giving the wolf she meets in the forest the directions she needs to find her grandmother's house. The wolf devours the old lady, hiding from the woodcutters working in the nearby forest. He then sets a trap for Little Red Riding Hood and ends up devouring her too.

rulings often fail to inspire confidence in litigants. How can it be accepted that in similar cases, the judge awards damages to some and denies them to others[29]. A state of affairs that vindicates Jean Marie BRETON, who expressed himself as follows: "*In Africa today, the judicial institution has lost most of its credibility and the confidence of individuals, because the vision they have of it, rightly or wrongly, does not correspond to what they expect, and because the vision that the effects and consequences of the judge's intervention fall far short of the results expected in the submission of the administration and the State to the respect of equal rights for all"* [23]. *On the whole*, the crisis of confidence between Congolese administrative judges and the public is fuelled by *the "poor quality"* of the decisions handed down, and a rather shaky jurisprudence*: "when all is said and done, the litigant does not have a perfect judge who is aware of the problems underlying the disputes referred to him"* [23].

It has to be said that the public, at whose service the Administrative Judge is, expect more from him, in that he carries out a sensitive public service mission, managing balances, protecting individual rights and freedoms, and securing transactions, all undeniable guarantees of a State governed by the rule of law. This does not alter the administration's perception of the Administrative Judge as a pin under its foot.

2.2. A Difficult Context Maintained by the Administration to the Detriment of the Administrative Judge

All disputes involving a public entity (the State, decentralized local authorities, public administrative establishments) or a private entity entrusted with a public service (such as professional orders, sports federations, etc.) fall (unless otherwise provided by law) within the jurisdiction of the administrative judge[30]. The latter is a judge of the Administration in the functional sense, not in the organic sense. As such, the welcome it has been given and the place it occupies are illustrative of the consideration it is given: that of the grain of sand [24] prejudicial to the socio-political, economic and cultural development of our States. What is the basis for this state of affairs, and what are its illustrations? This questioning will undoubtedly determine the genotype and phenotype of this grain of sand.

2.2.1. Reasons for the Administration's Distrust of the Administrative Judge

With the decentralization of administrative justice, the justiciability of the Administration's activities in the general interest has increased. Administrators are no longer petty emperors[31] within their own *jurisdiction*. Administrators wrongly see the administrative judge as a threat to their power. If, in the past, relations between administrative and judicial authorities have not always been a honey bowl, today, with the institution of the Administrative Judge, they are more watered down.

The fear is forged in the mold of the rejection that the contemporary administrative authority must reassure itself today, more than in the past, that its decision respects the formal and substantial canons of the enactment of a decisive administrative act. Such an important requirement is not always well received. If a regulatory act issued by the President of the Republic or the Divisional-Officer, via the decentralized authorities at local level[32] and technical level[33], is liable to be annulled and even reformed by the Administrative Judge. So, it's clear that the administrative authority is no longer free to decide as it pleases, very often in defiance of the block of administrative law.

Moreover, the administrative authority considers that the annulment of its act by the administrative judge is an attack on its person and therefore a humiliation it suffers. This philosophy is rooted in the spirit that hangs over the Cameroonian and Congolese administrations: the patrimonialization of State functions[34]. This is at odds with the principles governing public administration[35]. DAUNOU says it well enough, noting *that "administering is the work of one, "as he puts it in his explanatory memorandum; judging is the work of many. Let us add that judging between administrators and the administered is the work of several, none of whom administers"* [25]. This also reflects a sort of survival of the *"authoritarian tradition of colonial administration, largely taken over by independent States, which does not encourage the contentious approach"* [13].

In addition, the application of several provisions of Law no. 2006/022 of December 29, 2006 to lay down the organization and functioning of the Administrative Courts (Cameroon) can paralyze the office of the Administrative Judge in favour of the Administration. By way of illustration, article 51 (1) provides that: *"The Administrative Court must rule immediately, in a separate preliminary ruling, on objections to jurisdiction based on article 2 above, without going into the merit of the case"*. Before the Cameroonian administrative judge deals with either the merits or the urgency of the case, the defendant has the option of raising a plea of lack of jurisdiction[36]. Having done so, the judge renders a preliminary decision in which he retains jurisdiction. Paragraph 3 of the same provi-

[29] See Supreme Court, Administrative Bench, *Nzamba Victor v. State of Congo and Makadi F dix*.

[30] Article 2(2) of Cameroonian Law no. 2006/022 of December 29, 2006 to lay down the organization and functioning of the Administrative Courts, Article 396 of Congolese Law no. 51-83 of April 21, 1983 on the code of civil, commercial, administrative and financial procedure.

[31] The fact is that in the days when the Administrative Bench of the Supreme Court of Cameroon was the court of first instance for administrative litigations, its remoteness meant that the matter was not referred to it, and as a result, administrators were often comforted in their decisions, which were not always legal.

[32] The mayor...

[33] The General Manager of a public administrative establishment...

[34] A manager thinks that if he's been appointed as Director of a public institution, then it's his family property, and he should dispose of it as he sees fit.

[35] The administrative authority, in the exercise of its functions, acts *ex officio* and not *intuitu personae*.

[36] The incompetence in question is a material incompetence.

sion allows the defendant to lodge an appeal within ten (10) days of notification of the said decision. If he does so, the Administrative Judge's action will be paralyzed by this means of appeal.

Furthermore, under the terms of article 46 of the same text, the Attorney General, once he has been notified of the case, must propose a solution in his submissions within thirty (30) days. In practice, this time limit is almost never respected by the Attorney General, for various reasons[37]. The Judge's paralysis is evidenced by the fact that he cannot exceed the said deadline. By way of illustration, we can cite cases both on the merits and in matters of urgency in which the Administrative Court in particular (that of Littoral) had not as of June 03, 2016 yet emptied its referral, on the grounds that the Attorney General's submission remained pending. These cases are:

1) appeal no. 03/RG/F/14 dated January 02, 2014, sent to the Attorney General's Office on April 21, 2014[38];
2) appeal no. 88/RG/SE/14 of November 10, 2014, forwarded to the Attorney General's Office on December 17, 2014[39];
3) appeal no. 72/RG/SP/15 of June 21, 2015, sent to the Attorney General's Office on July 14, 2015[40].

The above-mentioned fear is further fuelled by the transformation of political and social life in Cameroon and Congo, together with all the other French-speaking black African states, in the 1990s.

The Congolese administration still has the authoritarian legacy of the post-independence period. Today's administrative authorities (for the most part) stem from the period between independence (1960) and the establishment of democracy by the Sovereign National Conference of 1992. As a result, they find it hard to accept the existence or presence of a judge charged with sanctioning their actions. This is why Dean MOUDOUDOU Placide wrote that *"(...) the administration exercises public power in the name of the State, and it is difficult to imagine that it could be called to account for its actions, even if only from the point of view of legality, or for the activities of its agents, before a third party, who is moreover independent and impartial as a judge must be (...)"* [22]. In other words, the idea of subjecting the Administration, which works in the public interest, to jurisdictional control appears at first sight to be unnatural. Illustrations to this effect are legion.

2.2.2. Manifestations of the Administration's Distrust of the Administrative Judge

The rejection of the administrative judge is manifested in various ways in and by the Cameroonian and Congolese administrations.

In fact, the question of the Administration's execution of administrative justice decisions is the thorny problem facing the administrative judge, and hence the entire administrative justice system. For example, the sanction at the end of a procedure for excess of power often requires the Administration, in addition in replacing the annulled decision, to carry out *a "theoretical reconstitution of the past"*[41]. This is particularly the case when the annulled decision has halted or modified the course of an administrative situation. Enforcing the decision of the administrative judge *"will then require the administration to reconstitute the past by endeavouring to restore it as it would have unfolded had the annulled decision not intervened"*[42]. This is something that public authorities are not always quick to do, even when a court decision has the force of res judicata. The latter implies a dual obligation: to take all measures to execute the legal decision, and not to undertake anything in contradiction with the said decision[43]. Observation of the Administration's actions reveals refusals and delays in enforcement. This can often be seen as a sign of unwillingness on the part of the defendant administration.

In concreto, in a tacit manner, the Minister in charge of State property and land tenure in Cameroon has issued an act concerning the enforcement of administrative court decisions, which reads as follows: *"(...) Following the practice of directly executing court decisions at the level of the Provincial Estate Services,*

I remind you that all court decisions must first be approved by the Minister of Urban Planning and Housing before they can be enforced (...)"[44]. Another Circular Letter dated 2018[45], was issued by the same authority with the following wording*: "For the harmonious execution of court decisions and in order to prevent any disturbance of public order in the land sector throughout the national territory,*

From now on, I invite you to forward to me within a week any legal decision referred to you prior to its execution (...)". When questioned, an official from this ministerial department[46] attempted an explanation that was difficult to sustain legally, according to which this ministerial decision was a *"management procedure"* for court rulings and not an obsta-

[37] Very often this is due to: - or to the workload of the Attorney General, who has a dual role before both the Court of Appeal (the court of second instance in judicial matters) and the Administrative Court, without neglecting the fact that he is a major player in the chain of maintaining public order and protecting rights and freedoms, - either in compliance with the enunciation of Circular-Letter n °002 of January 29, 2014 from the Minister of Justice relating to the obligation in matters of administrative and/or electoral litigation, which reaffirms this sacrosanct principle of the functioning of the Public Prosecutor's Office, the Public Prosecutor is required to seek instructions from the Minister in charge of Justice by communicating to him a draft of the conclusions he intends to take in the case concerned. In this case, the Public Prosecutor will only be able to return the case to the Administrative Court once he has received the Minister's instructions.

[38] Administrative summary proceedings.

[39] A procedure to stay execution of an administrative act.

[40] A deferred tax payment procedure.

[41] The contribution of the French Council of State to the congress of the international association of high administrative courts on the theme of the execution of decisions of the administrative jurisdiction, 2004, p. 7.

[42] CE, 26 déc. 1925, Rodière, Rec. p. 1065.

[43] Formula used in Ruling no. 53/CS (CA) Benin of September 28, 2000, *Yaovi Antoine AMOUSSOU v/ Ministre des Finances*, Rec., p. 415; Ruling no. 68/CS (CA) Benin of September 28, 2000, *INFOGES and Ecole "LOYOLA" v/ MESRS*, Rec., p. 437.

[44] Circular letter no. 00219/L10/MINUH/A000 of August 10, 2004 on the enforcement of legal decisions.

[45] Circular letter no. 000002 relating to the enforcement of court decisions of May 17, 2018.

[46] Land registrar Wouri "B" during 2018.

cle to the principle of separation of powers. Further reflection raises the question of what the administrative authority means by *"preventing any disturbance of public order"*. It arrogates to itself the monopoly of the preservation of this public order, even though it has been established that the administrative judge is the sentinel of the normative and material activity of the Administration, and therefore in charge of controlling the content and use made by the Administration of the notion of public order.

The administrative judge has the power to modulate the effects of his decision over time, by deferring its execution, when in his opinion his decision is likely to undermine public order.

When all is said and done, isn't it a sacrilege to the memory of MONTESQUIEU, John LOCKE and all those great theorists of the separation of powers, for a minister to demand that before any court decision can be implemented, it must be approved by him?

Similar practices can also be observed in the Congo. This is the case of the National Defense public service, which is surrounded by a multitude of ordinances[47] which prevent the administrative judge from even hearing disputes concerning the reconstitution of the careers of public servants, even though article 83 of the text organizing the Judiciary in the Congo[48] empowers the administrative courts to hear all disputes concerning the reconstitution of the careers of all public servants. Faced with this situation, the Congolese administrative judge finds himself at a loss, and this may well be the reason for the hesitation and confusion in case law in this area, in that the decisions handed down are half and half[49].

In Cameroon, the *CMC v. Ministry of Culture case*[50] - which has made headlines around the world - is a truly pathological case because it reveals an administration convinced of its jurisdictional immunity and therefore of its *"omnipotence"*. An untouchable administration that takes pleasure in the anonymity of the legal entity. The judgment handed down in this case by the Administrative Bench of the Supreme Court was categorically refused by the then Minister of Arts and Culture, Mrs Ama TUTU MUNA. The judgment had been notified to her by bailiff. Such an attitude of indifference and even distrust towards the decisions of the Administrative Judge leads us (perhaps legitimately) to believe that he is no more than *decorum* among the institutions of the State. In this vein, we join Yves GAUDEMET in asking the following question: "*Of what legitimacy can a judge boast who is not, or so poorly, obeyed, especially when this contempt for res judicata is only possible for one category of litigants, that of public persons?"* [13].

What's more, in the contentious administrative procedure itself, the Attorney General's Office, the hand of the Executive Power in the Jurisdictional and *sui generis* party, is located downstream of the investigation of the case, which has been carried out by the Headquarters. The judge cannot override the submissions of the Attorney General[51]. This can be easily understood from a reading of articles 45[52], 46[53] and 47[54] of Law no. 2006/022 of December 29, 2006 cited above. An analysis of the aforementioned Circular-Letter n ° 002 of January 29, 2014 reveals that the bulk of Cameroon's administrative litigation falls into lap of what paralegals call *reporting cases*. Why should administrative litigation, and all administrative litigation, be subject to reporting? What is the Administration afraid of? These questions remain unanswered here, but highlighting them is part of a skilfully orchestrated plot between the Administration and the legislature[55].

In addition, carelessness with regard to the rules of protocol governing precedence at public ceremonies may seem trivial, but it is far from trivial. Indeed, during ceremonies such as the celebration of Unity Day on May 20th in Cameroon, the President of the Court of Appeal and the Attorney General to the said Court are seated in the front row alongside the Governor of the Region[56] concerned, while the President of the Administrative Court[57] is seated in the second row[58]. This situation reflects the atmosphere of mistrust, rejection and even ignorance in which Cameroon's administrative judges operate. As a result, it is easy to understand that the Administration's wish is for its Judge to be subservient to it.

In comparative Law, we have the recent case of the Algerian influencer known as "Doualemn". He was issued a ten-year residence permit on December 26, 2024. On January 7, 2025, the French Minister of the Internal Affairs, Mr. Bruno

[47] Ordinance no. 31/70 of August 18, 1970 laying down the general status of the cadres of the People's National Army; Law no. 70/357 of November 25, 1970 laying down the conditions for promotion of the cadres of the People's National Army.

[48] Law no. 19-99 of August 15, 1999 amending and supplementing certain provisions of Law no. 022-92 of August 20, 1992 on the organization of the judiciary, "(...) The Administrative Court hears (....) all disputes concerning the pecuniary or statutory benefits granted to civil servants and public employees of the various administrations, in particular for the purpose of rectifying inadequate career situations and, where appropriate, awarding the compensation due to them for the loss suffered".

[49] Sometimes the judge asserts his jurisdiction and orders the reconstitution of the career, sometimes he declines it and declares himself incompetent.

[50] Judgment no. 192/2011/CA/CS, which annulled press release no. 0091/MP/CAB of May 03, 2008 and decision no. 0087/MINCULT/CAB of May 08, 2008, which led to the creation of SOCAM.

[51] It should be noted that under the provisions of article 7 of Law no. 2006/022 of December 29, 2006 above, the Attorney General to the Administrative Court is the Attorney General's Office to the Court of Appeal within the jurisdiction of the Administrative Court.

[52] "The rapporteur transmits his report in a confidential envelope to the President of the Court, who forwards a copy to the Attorney General, also in a confidential envelope".

[53] "(1) The file restored to the court registry is forwarded without delay to the Attorney General. (2) The Attorney General proposes a solution in his conclusions and communicates them in a confidential envelope to the President, within thirty (30) days. Within the same time limit, he shall return the file to the court registry".

[54] "The file returned to the court registry is submitted to the President for the setting of the hearing date. This date is notified to the Attorney General and to the members of the court by the registrar-in-chief, who prepares and posts the roll".

[55] The conspiracy is revealed, for example, when the legislator sets a 30-day deadline for the Attorney General to submit the file and his conclusions to the Administrative Court, without any sanctions.

[56] Authority representing the Head of State, presiding over the ceremony.

[57] Not only does the Administrative Court have regional territorial jurisdiction, but the President of this court also has the rank and prerogatives of Head of Court.

[58] We experienced this situation during the celebration of May 20, 2016 in Douala.

RETAILLEAU pronounced his expulsion from French territory according to the absolute emergency procedure and withdrew his residence permit. The Urgent Administrative Judge of Paris suspended this expulsion, considering that the person concerned, was not subject to the procedure followed by the Minister but to an ordinary expulsion one. Following this suspension, the Senior Divisional Officer of Hérault imposed an obligation on "Doualemn" to leave French territory accompanied by a ban on returning to France for a period of three years. In administrative detention, he contested these decisions before the Administrative Court of Melun according to the urgent procedure provided for by article L. 921-2 of the code of entry and stay of foreigners and the right of asylum (CESEDA).

Applying the law (article L. 432-12 of CESEDA), the Administrative Court of Melun has cancelled the orders of January 29 and 30, 2025 of the Senior Divisional Officer of Hérault, for error of law. He ordered the administrative authority to issue the applicant a temporary residence permit and to re-examine his situation within three months (in application of the article L. 614-16 of CESEDA). The State must pay to him, the sum of 1,200 euros for legal costs (under article L. 761-1 of the Administrative Justice Code).

However, the Minister of Internal Affairs on a TV show on LCI called "*La Grande Confrontation - Face aux Français*" Thursday, 6th February 2025, presented the facts and this administrative judgment as an evidence of the Government issues concerning the expulsion of the foreigners out of the French territory, without précising that, he is the one whom the action was illegal[59].

The word of an administrative judge has an impact that the abstraction of a law or regulation does not. This is why, while remaining the expression of the State's authority, it must above all be a perfume of fragrant myrrh for the strengthening of the proclaimed rule of law. This, despite the fact that Government Commissioner GAZIER, in his submissions preceding the *Dehaene ruling* of July 7, 1950 by the French Council of State, would have us believe him in these terms: *"when, in a State, the constituent authority is deliberately equivocal, the legislative authority systematically deficient, the governmental authority perpetually hesitant, it is not the judge alone who can rectify the situation"*[60]. This would certainly explain the administrative judge's identity crisis.

3. The Concealed: The Identity Crisis of the Administrative Judge

In response to the above, Barthélémy MERCADAL no doubt warns society and the administration that: *"To judge justice with pride is to wound it and thoughtlessly create a suspicion of illegitimacy towards the judge"*. For, behind the fiction of the judge *as the "mouth of the law"*, there is a political and normative reality to the act of judging. In any case, this task of legitimization or relegitimization falls to the administrative judge only if he correctly reflects his specific role as judge of the Administration[61]. The question the administrative judge must answer is: Who am I?

This question reveals the identity crisis facing this Judge. An identity crisis whose catalyst lies in the fact that the Administrative Judge of the right[62] and left[63] banks of the Sangha River is still genuinely unaware of his identity, and the extinguisher lies in the discovery of this identity.

3.1. A Catalyst for the Crisis: The Administrative Judge's Quest for Identity

"The administration needs its own judge", emphasized French President Jacques Chirac. The administrative judge thus appears as an entity that imposes itself in the institutional edifice. What is the administrative judge's self-perception in Cameroon and Congo? What meaning does he give to his office? These questions will help to clarify the psychology of the administrative judge, so as to better apprehend his or her reflection, whether in Cameroon or Congo.

3.1.1. The Cameroonian Administrative Judge: A Judge with an Undulating *and Hybrid* Identity

The preceding developments have highlighted the crisis of confidence in the administrative jurisdiction as a whole. In view of this opinion, which is rooted in the popular subconscious, administrative jurisdiction is marked by *its "guilty relationship"* with the active administration [26]. Under these conditions, the administrative judge must do extra work to nullify any suspicion of partiality, so that litigants will be inclined to take their case to him[64]. We need to educate the public about the merits and raison d'être of the Administrative Courts in Cameroon.

First of all, it's worth pointing out that Cameroon's[65] administrative judges are trained as private law specialists. While the judges of the Administrative Court were interested in administrative litigation issues[66], the judges of the Administrative Bench are strangers to them.

In truth, the vast majority of magistrates at the Supreme Administrative Jurisdiction are really vest with administrative

[59] Available from: https://www.youtube.com/watch?v=WG0dL5Uo5IY. [Accessed 13 February 2025].

[60] Recueil Lebon. (1950), p. 426.

[61] It should be pointed out that in the Cameroonian and Congolese contexts, the administrative judge does not have the exclusive right to judge the Administration. The judicial judge has the right to judge them.

[62] This is the Cameroonian administrative judge.

[63] This is the Congolese administrative judge.

[64] Since the judge does not act on his own initiative.

[65] Judge of the Administrative Court and Judge of the Administrative Bench of the Supreme Court.

[66] Through training in administrative litigation for future administrative magistrates, organized both by the European Union in cooperation with the Republic of Cameroon as part of the Support Program for the Justice Sector (Agreement signed on April 08, 2009 and scheduled to start and end on April 07, 2010 and April 06, 2014 respectively) and by the Ministry of Justice.

litigation. Even if some of them have experienced it in one way or another, the fact remains that there is a strong dose of innovation. In accordance with the provisions of article 26 of Law no. 2006/016 of December 29, 2006 setting out the organization and functioning of the Supreme Court, some of which were amended and supplemented by Law no. 2017/014 of July 12, 2017, the Chief Justice of the said Court allocates the judges to the various Benches[67] by order. This allocation does not necessarily take into account the substantial elements of academic and professional training.

Under these conditions, it's hard to understand why a senior judge with little knowledge of theoretical and practical, but very often technical, issues have been given the task of assessing the decisions handed down by his junior, who is more knowledgeable. This may explain the tendency for the *praetorium* to open up in the first instance, and to shrink in appeal and cassation. Another face of the system of jurisdictional dualism at the base and monism at the top in which Cameroon's administrative justice system operates.

In reality, the Cameroonian administrative judge is described as "undoyant", in view of his spiritual relationship with the Administration. The cross-fertilized thinking of the members of the administrative jurisdictions is such as to account for the emergence of two distant ideologies. The first reveals a face that is revolutionary in its components: a judge who teaches and a judge who serves the law. The second reveals a conservative figure in its double declination, judge-politician and judge-administrator.

For Dorcas MUKWADE NGANDO[68], the mission of the administrative judge is twofold. Firstly, it is pedagogical, in that the administrative judge in our context has to let administrative authorities know that they have gone wrong, and citizens know what to do about it. In this sense, Jean-Marc SAUVÉ emphasizes that administrative judges have a particular concern for teaching and listening [3]. Administrative judges are meticulous in the drafting of their decisions. They must take great care to give reasons for their decisions[69]. Unlike the judicial judge, who has the air of a prince, imbued with his *imperium* and heavy on reflection, the administrative judge is an extremely light-hearted servant.

On the other hand, ANABA MBO Alexandre[70] believes that the role of the administrative judge is not to sully the administration, but to understand the administration's problems and spare it the necessary time[71].

Without being a politician, the judge is a politician, in that he or she must manage the balance between the general interest and private interests[72]. In the same vein, Etienne RIGAL argues that: "*Unlike politicians, we don't create standards. But law is a verb, words that can be understood in different ways. From the moment he interprets, the judge has a political mission*". If for NONGA Jean-Pierre[73], the administrative judge is the judge who maintains the balance in the administrative process[74], according to Lord Justice NGU NGWA[75], the administrative judge is a pseudo-administrator of high rank who must assess whether the sanctions taken against the Administration are adequate[76]. It is not a question of upsetting the Administration, but rather of correcting it by making it understand that behind public power lies public servitude. As if to say with Lord Justice AWASOM Florence[77] that *the aim of the Administrative Court is not to embarrass the State*.

As a result, it's easier to identify the spirit that drives Cameroon's administrative judge. Ambitious in appearance, he sees himself as a link between private interests and the general interest. Courageous when necessary, he is not, however, a proponent of professional immolation in the name of Herculean heroism. It is on this basis that he draws closer to his Congolese brother.

3.1.2. The Congolese Administrative Judge: A Judicial Judge Caught in the Trap of Administrative Litigation

One of the aims of the unitary jurisdiction system adopted by the Congo in the wake of its accession to international sovereignty *was "to assign all jurisdictional powers to a limited number of hierarchical units made up of multi-skilled magistrates guaranteed by a statute"* [22].

As a reminder, Congolese magistrates are trained in NSAM[78] where they undergo a hybrid training (half administrative and half judicial) to such an extent that it is very

[67] Judicial, Administrative and Audit Benches (See Article 7 of Law no. 2006/016 of December 29, 2006 establishing the organization and functioning of the Supreme Court, some of which were amended and supplemented by that no. 2017/014 of July 12, 2017).

[68] President of the Administrative Court of Littoral.

[69] See in this case Judgment no. 54/FF/16 of April 07, 2016, *case Société CHOCOCAM S.A v Caisse Nationale de Prévoyance Sociale (CNPS)* handed down by the Administrative Court of Littoral.

[70] Late President of the Administrative Court of Centre.

[71] This was certainly the spirit that animated the Reporter in the case of *Dr. FANKOU SIMO Appolin vs. State of Cameroon - Ministry of State Property, Surveys and Land Tenure* (Appeal no. 114/RG/FD/18 of June 1, 2018 filed with the Administrative Court of Littoral) when the latter granted the defendant additional time to produce his statement of defence by Order no. 030/ODS/JR/TA/DLA of September 07, 2018, even though he had already been granted thirty (30) days to produce his statement of defence. he had already been given a thirty (30) day deadline (in accordance with the provisions of article 38 of Law no. 2006/022 of December 29, 2006 to lay down the organization and functioning of the Administrative Courts) notified to him on July 20, 2018, during which time he did not deign to react. The problem is that at the time the aforementioned Order was issued, the defendant had forfeited his right to present his defense (Article 43 of the same Law). The question is: can a party be granted additional time to produce its elements of defense even though it has already forfeited that right? Legally, no.

[72] Article 39 of Law no. 2006/022 of December 29, 2006 requires the defendant (the Administration) to stamp its statement of defense, failing which it is inadmissible. In practice, the Administration never stamps its statement of defense, which is always received.

[73] President of the Administrative Court of North.

[74] He must ensure that the Administration, which is a privileged party in administrative proceedings, feels that there is a rebalancing between it and the constituent: this is the search for balance.

[75] Former President of the Administrative Court of South-West and current Vice-President of the North-West Court of Appeal.

[76] Information gathered during the People Magistrate internship. In the South-West of France, the judges of the Administrative Court often become teachers in an amphitheater during a hearing.

[77] Former President of the Administrative Court of Northwest and current Deputy Secretary General of the Senate.

[78] This is the National School of Administration and Magistracy of Congo.

difficult to qualify them according to whether they are judicial or administrative judges. However, it should be pointed out here that the primacy of subjects such as criminal procedure, criminal law and civil procedure in their training modules makes them predominantly judicial *"polyvalent"* judges. They are more judicial than administrative judges.

Indeed, *"does the ordinary judge have ordinary jurisdiction in all matters?"* [22]. In practice, Congolese judges are more interested in judicial than administrative litigation. It is not uncommon to find that administrative litigation is marginalized by judges in favour of judicial litigation in Congolese courts.

As a result, the Congolese administrative judge is an ordinary judge insofar as his or her primary tasks relate essentially to judicial litigation. This reflects the Congolese administrative judge's multi-faceted conception of himself. This is reflected in the fact that, on many occasions, he has applied the rules of private law to the Administration. This was the *case in Sitou*[79], where the administrative liability of the hospital administration was at stake. It applied articles 1382 and 1383 of the Civil Code.

In our opinion, these sometimes-grotesque legal heresies of the Congolese administrative judge explain the fact that he or she is much more inspired by the judiciary than by administrative law. As a result, few Congolese judges are interested in public law. Even those who are originally trained as publicists, once appointed as judges, tend to focus more on building up judicial litigation to the detriment of administrative litigation, because *"judicial litigation is more fruitful than administrative litigation"*, they say. Overall, Congolese judges believe that private law takes precedence over administrative law.

The mix of their training *"reveals the impossibility of understanding and mastering both private law, which is the judge's main task, and administrative law, which is an accessory activity"* [27]. This is why, in judicial jurisprudence, Congolese judges show originality, but in administrative jurisprudence, there is a reproduction of French solutions applied in similar cases. *The* reason for this is *"a lack of intellectual specialization in administrative litigation"* [27]. Congolese administrative litigation falls within the jurisdiction of the judicial judge. As Dean ONDOA Magloire writes: *"incontestably, the judicial judge is the common law judge of administrative litigation in Africa"* [27]. His *"functional versatility"* [28] linked to the monistic jurisdictional organization, certainly contributes to the Congolese administrative judge's belief that he is more a judicial judge than an administrative judge.

The Congolese administrative judge *"is trained as a privatist and rules, sometimes as an ordinary judge, sometimes as an administrative judge within the administrative chamber of the Supreme Court or, quite simply, in the jurisdictions of the judicial order"* [27]. Despite the structural separation of the chambers of the Supreme Court, the Congolese administrative judge remains a magistrate of the judicial order, and deals with administrative litigation through *"functional duplication"*. He is thus a multi-purpose judge or an administrative-judicial judge, since he does not see himself as a judge of exorbitance, but rather as a judge of substitution.

Moreover, according to the President of the Supreme Court, Placide LENGA, we can only speak of an administrative judge if there is an autonomous administrative order. As the "administrative judge" is merely an ordinary judge officiating in a specialized jurisdiction, there can be no doubt that the Congolese administrative judge is a judicial judge caught in the trap of administrative litigation.

That said, the crisis will only really be over when the Administrative Judge discovers its true identity.

3.2. Extinguishing the Crisis: Discovering the Identity of the Administrative Judge

"Where should we place the center of gravity of an activity that oscillates between the blind application of a law whose origin escapes us, and the enlightened management of conflicts that the abstract norm by definition ignores?" [29]. This is what Pierre BOURETZ had to say about the role of the judge.

ANABA MBO Alexandre almost answers him when he says of the administrative judge that he is *the law, the conscience and the science* [30]. Such precision implies that the administrative judge must be an intelligent judge[80]. If this is the case, he departs from the myth of the judge as oracle of the law[81]. From being a mere *"mechanical legislator"*, the office of the administrative judge must become a *technical legislator*. The fact is, it is up to the administrative judge to serve both the law and to convince the parties by the solution he gives to their conflict. This, of course, without making decisions from the heart. This is why Socrates said: *"No, this is not why the judge sits, to do justice a favor, but to decide what is right. And the oath he has taken is not to favor those who appear to be favored, but to render justice in accordance with the law"*. And Antoine GARAPON adds: *"To judge well, one must hear everything, but hear nothing else, see everything, but see nothing else"* [31]. And as Chancellor D'AGUESSEAU said, the litigant expects *"judgments from the heart"* from his judges, whereas they can only offer him *"judgments from the law"*.

However, the administrative judge is an entity of the legal system, whose ultimate goal is obviously the submission of the State to the law[82]. To achieve this, however, he or she must

[79] High Court of Brazzaville, January 4, 1983, *Congolese Journal of Law*, no. 3, 1988, p. 130.

[80] In the African context in general and the Congolese-Cameroonian context in particular, the sociological and traditional realities of African societies (witchcraft practices, history of land occupation between two ethnic groups, etc.).

[81] Systematized by Montesquieu.

[82] The rule of law is "a State which, in its relations with its subjects and in order to guarantee their individual status, submits to a regime of law, and this insofar as it shackles its action upon them by rules, some of which determine the rights reserved to citizens, others of which set out in advance the ways and means which may be employed in order to achieve the aims of the State", CARRÉ DE MALBERG, Raymond quoted by CHEVALLIER, J. (1999). L'Etat de droit. Mont-

be surrounded by statutory and functional guarantees.

3.2.1. Statutory and Functional Indicators of the Administrative Judge's Identity

The administrative judge is first and foremost a "judge" before being "administrative". Both statutory and functional indicators are likely to lead him serenely along the path to discovering his identity.

From a statutory point of view, the notions of independence, impartiality and integrity form the trilogy of I's that guarantee the litigant that the outcome of the dispute will be the work of a judge within the scope of his or her jurisdictional functions, without influence of any kind, whether extrinsic or intrinsic. Added to this is the enforcement of administrative justice decisions.

The independence of administrative justice refers to two elements: firstly, the management of administrative judges' careers by a body distinct from the Council of Magistracy as set up in Cameroon[83] and Congo, which would not give rise to any prior control by a political authority; and secondly, the management autonomy that must be recognized for the administrative jurisdiction. This, without obliterating the creation of an administrative order distinct from the judicial order from top to bottom[84].

What's more, the judge's social status is also a key factor in determining his independence or dependence. The Cameroonian judge is a senior civil servant, severely selected, who receives an indexed salary which is very often far lower than that of the litigants he judges, a civil servant who finds it difficult to find accommodation when he is reassigned, who makes enormous efforts to remain dignified by appearances. Do we really have the power to deal with this reality? Can we objectively remain independent[85]? Even if a judge's independence must be an independence of spirit, it must be stressed unequivocally that this spirit moves in a flesh which, if it is dependent, then the spirit by a placebo effect has a strong propensity to be so too.

Impartiality is recognized in Article 14 of the International Covenant on Civil and Political Rights of December 16, 1966, and is based on a dual principle. Firstly, it is subjective, in that it excludes any militancy, favouritism or ideological pretensions on the part of the judge. Secondly, it is objective, in that it proscribes any attitude that would lead the parties to presume a certain partiality on the part of the judge, or even a definite partiality [32].

In addition to this, the judge must be serene when hearing cases, and unfounded media criticism of his integrity can undermine his serenity. If he loses this serenity, this independence to be able to decide without fear of reprisals, he will then have to withdraw from the case so that it can be taken up again before another judge, with all the costs and delays that this entails for the citizen and for democracy. So said François ROLLAND[86].

On the thorny issue of the judge's legitimacy, Chief Justice Alexis DIPANDA MOUELLE *distinguishes* between the institutional and functional legitimacy of the judge[87]. In this vein, the administrative judge, more than his status, must crystallize his acceptance by those subject to his jurisdiction and by public opinion, through his office. For the administrative judge, achieving this objective means "*making decisions legible, intelligible and legally certain"* [33] so that they are difficult to challenge. Through syllogistic reasoning, he leads the litigant to legal certainty. Intelligibility, accessibility, clarity and precision are the qualities[88] of a good legal decision. This is why Denis SALAS insists that legitimacy *"is expressed on a daily basis in a professional practice that is willing to reflect on itself in the light of enlightened opinion"*.

"In the name of the general interest, the primary purpose of administrative law is to establish and guarantee the exercise by public authorities of the exorbitant prerogatives of common law which are recognized to them" [26]. For this reason, Cameroonian and Congolese administrative judges must have the means to intervene rapidly and ensure that their decisions are respected.

In functional terms, the administrative judge must be: loyal to the parties, maintain good relations with the media, well-trained, adaptable to information and communication technologies, and wise.

Fairness towards the parties implies the organization of *"a contentious debate without traps or surprises"* [34]. This means that the parties must be given the opportunity to speak again after the public prosecutor's submissions. To this end, the judge must uphold the principle of adversarial proceedings. This is to reinforce the confidence that litigants have in him. To corroborate this, a former President of the Republic, speaking at the opening session of the French Court of Cassation, declared that *"to appreciate how justice is rendered, you have to ask yourself how it is perceived"*.

Administrative judges have to deal with social issues. For this reason, they must maintain good relations with the media. The

chrestien, Coll. Clefs, 3, 16.

[83] Article 37 of the Cameroonian Constitution.

[84] Even so, Jean-Marc SAUVÉ is keen to point out that no single jurisdiction can claim to be the sole saviour or embodiment of the quality of justice, still less build its future on indifference to the other.

[85] Independent of both the public and the executive.

[86] Chief Justice of the Supreme Court of Quebec.

[87] In his aforementioned speech.

[88] These qualities are to be found in the motivation of judicial decisions, which Chief Justice DIPANDA MOUELLE considers to be a *"right of the litigant"*. According to this high-ranking magistrate, this same reasoning has a *"protective and defensive value for the judge, insofar as it is intended to protect him or her from suspicion"*. According to Xavier LAUREOTE, *"A certain formalism is imposed in the drafting of administrative rulings in order to prevent laxity or inconsistency on the part of the judge, and to ward off any iniquity. The obligation to state reasons is one of the formal requirements that must be met by the administrative judge. Introduced by the law of August 16 and 24, 1790, on the organization of the judiciary, the obligation to give reasons for judgments is a legacy of the French Revolution, and reflects a desire to break with the arbitrary justice of the former Regime. More than just a formal requirement, the obligation to give reasons for judgments is both a guarantee of the fairness of the judgment and an instrument for the transparency and efficiency of justice. In the words of René Chapus, it helps "to clarify the state of the law, while at the same time enabling the parties to assess the chances of success of any recourse"*.

media play a vital role as intermediaries between the justice system and litigants. They report what is happening in the courts, and offer their critical reflections on the process. The duty and right to report carries with it the right to criticize the way the courts operate and the judgments they hand down. The right to disagree and criticize is an aspect of the democratic process. In the long term, exercising this right contributes to transparency and confidence in the judicial system. The disappointment is that media men are largely unqualified and obsessed with deadline, attention spans are limited and they have an innate preference for hot reporting over illuminating exposition, and for simplification over nuance [35]. Thus, inaccurate, biased or sensationalist reporting risks distorting citizens' perceptions of the justice system, and undermining their confidence in the rule of law that judges in general, and administrative judges in particular, must uphold. But how can we ensure accurate reporting of court decisions themselves?

The Right Honourable Beverley McLachlin, Chief Justice of Canada, suggests the use of *"information officers, judgment summaries and briefings, (...). In the long run, confusing or misleading reports will undermine public confidence. Faithful reporting is, of course, first and foremost a matter for the journalists themselves, the vast majority of whom are professionals who simply want to report the facts correctly. The law, however, is a complex field. To understand its subtleties requires specialized knowledge and years of experience. What's more, the language of the law is often difficult for the uninitiated to grasp"*. As a result, *"the courts must operate in broad daylight, subject to well-defined judicial exceptions"*.

Moreover, the transition from analog to digital heralds the advent of a new age, with many legal consequences. Thanks to the connection of digital networks (computing and telecommunications) at both global and local levels, communications are taking place remotely, without the use of paper. As a result, administrative courts must adapt. First and foremost, they must adapt their working methods, which would mean dematerializing their work[89]. Secondly, in terms of communication methods. On this point, the Chief Justice of Canada, starting from the idea that, *"the exponential growth of the new media phenomenon heralds a mutation of the group of people who report judicial news"*, believes that *"to be able to cope with the realities of the modern communications revolution, it is crucial that jurists understand these technologies and how they are used - a task that judges and lawyers may not find easy, as they are often accused of 'Luddism'. And once we have a good grasp of these new technologies and their various uses, we need to continue doing what we're doing today - discussing, reflecting and sharing our experiences and best practices"*.

The current Chief Justice of the Supreme Court of Cameroon, Daniel MEKOBE SONE, would like to remind everyone that *"a well-trained magistrate is an error avoided"* [36]. Administrative judges must feel challenged. He must be well trained to avoid judicial errors. Being well-trained here implies that the judge is familiar with national law, Community law and international law, as well as with comparative law. Globalization implies a dynamic interpenetration of rights and legal systems. In fact, we have found that administrative judges are very reluctant to call on external legal standards[90]. This would contribute to the proper rendering of justice. This high magistrate, like a teacher to his colleagues, expressed himself as follows*: "We must seek to improve in the performance of our daily missions and in each link of the judicial chain"*[91].

Administrative judges must also be wise. This wisdom implies that we are not only looking for the jurist or arbitrator in the judge, but also the conciliator, the peacemaker in social relations, or even the animator of a public policy [7]. Indeed, as NOAH Vincent de Paul[92] emphasized *at, "justice must have a human face"*. It is a question of adapting the legal situation to the factual situation. The (administrative) judge must (no longer) be a *"constant and fixed voice of the law"* (C. BECCARIA, 1764), but must speak the law by taking it into consideration and confronting it with human situations. In saying and clarifying the law, the judge must ask himself two fundamental questions*: "What does the text say?"*[93] and *"What does the text mean?"*[94] in order to give what Lord Justice NJUMBE Ernest[95] calls *"the proper answer"*[96] rather than *"the correct answer"*[97]. In this sense, the administrative judge should develop a policy of opening up his *praetorium* more in the contexts highlighted in this analysis. In this way, he should not be locked into the wording of the words used by the litigant, but try as far as possible to modulate them in technical language.

The authority of the administrative judge should therefore be combined with his ability to listen to the social body, because, for him, texts should not be the solution, but rather the means of finding the solution.

3.2.2. The Legal Indicator of the Administrative Judge's Identity

Although the Administrative Tribunals came into being

[89] "Information and communication technologies make it possible to decompartmentalize departmental operations, promote exchanges and pave the way for teamwork", Rapport d'information n° 345 au Sénat (Session extraordinaire de 2001-2002) fait au nom de la Commission des Lois constitutionnelles, de législation, du suffrage universel, du Règlement et d'administration générale par la mission d'information sur l'évolution des métiers de la justice. Appendix to the minutes of the meeting of July 3, 2002.

[90] International law standards and Community law standards.

[91] He points out judicial errors in order to decry them. This is the dogma of judicial infallibility.

[92] Judge at the Administrative Court of East.

[93] It's a question that Cameroon Supreme Court retired Judge ZIBI NSOE Toussaint liked to ask when teaching people magistrates at NSAM in Cameroon.

[94] This question is dear to Professor Bernard-Raymond GUIMDO DONGMO's heart.

[95] Former Chairman of the Common Law Section of the Judicial Chamber of the Supreme Court of Cameroon.

[96] The appropriate response (legal and social).

[97] The correct answer (with legal considerations only).

clandestinely[98], their establishment represents the triumph of the rule of law over the police state[99].

GNEIST's *Rechstaat*, DICEY's *Rule of Law*, French theorists' *Legal principle*, the linguistic and certainly stylistic turns taken by the rule of law reveal an indissociable trilogy: *"The King, the Law, Freedom"*[100]. Administrative action is thus subject to the rule of law[101]. A rule that remains dead unless the judge brings it to life. In the same vein, Bernard-Raymond GUIMDO DONGMO insists that: *what the legislator says is dead law, and it is the judge's duty to bring that law to life.* The first piece of the puzzle is the law[102], the second is the judge[103]. The latter ensures compliance with Hans KELSEN's pyramid structure of legal rules.

The submission of the State[104] to the law[105] - a quasi-exclusive defendant in contentious administrative matters - is made by the administrative judge through one main instrument: a complaint for abuse of power[106].

Jean-Marc SAUVÉ on the question of the relationship between the administrative judge and the rule of law states that: *"By assuming these missions, the administrative judge is one of the key players in the quality of public governance. He can and must contribute to ensuring that public affairs, managed in accordance with the law, are better and more efficiently managed. Respect for the law and effective public action are not mutually exclusive; they are mutually supportive"* [37].

Beyond solemn declarations on the rule of law and the often sophisticated institutional engineering in Cameroon and Congo, the administrative judge appears as their operational dimension, contributing to the internal regulation of society between private interests and general interest. By way of illustration, in a case referred to the administrative judge, the claimant is entitled in his contentious appeal to seek compensation of one billion (1,000,000,000) CFA francs. On the other hand, the State is facing a critical budgetary situation. The administrative judge will therefore have to manage the balance by rendering a decision that is legally, socially and financially acceptable. For if the State is in crisis, the domino effect will undoubtedly be felt by its citizens. If he excessively condemns the State to pay large sums of money, he will be a source of growth in the country's domestic debt.

The administrative judge, in his mission to build and consolidate the rule of law, should contribute to the international influence of his State. Indeed, the flow of international investment and financial assistance depends on the quality of the administrative judge's office. Cameroon and Congo are developing countries, and as such, they are looking to international financial assistance. Since the 1990s, the La Baule conditionality[107] has been an instrument for spreading the rule of law in Africa. International investors are interested in protecting their investments in the host country[108]. It is in this context that these investors consult the annual *Doing Business* reports[109] to measure the degree to which their investments are secure. Thus, we agree with Raymond CARRE DE MALBERG that *"the rule of law is designed in the interest of citizens, and has the special purpose of protecting and defending them against the arbitrariness of state authorities"* [38].

When all is said and done, the administrative judge is one of the guarantors of democracy through electoral litigation, and the cursor of the rule of law through the control of administrative legality, because in truth he must be a reference point for the lost, isolated, uprooted individual that our societies engender, who will seek in confrontation with the law, the right and the just, the ultimate landmark [7]. Alexis DIPANDA MOUELLE was well aware of this in his day, and did not fail to point it out in the following terms: "[…] *The control of the administrative judge is much bolder than that of other judges. More aware of the necessities of administrative action, he is also empowered to take the exact measure of what should not be tolerated"* [39].

4. Conclusion

The Cameroonian and Congolese administrative Courts are in crisis. That's the bottom line. A crisis that can be attributed to them. Didn't Aharon BARAK[110] admit that *"like all human beings, we can make mistakes, and we must have the courage to acknowledge our errors"* [40]*?* The judge's human condition makes him a man to be perfected. His past is also at the root of the criticisms levelled at him today[111]. The public and administrators must allow him to exercise his mission freely, so that not only does he have a clear idea of who he is, but also of what he must do[112].

The administrative judge is unaware that he is a star for Cameroonian and Congolese society, and for this to be perceived,

[98] There has been no popularization of the Administrative Courts, no campaign to inform or educate citizens about their validity and raison d'être.

[99] In which, the Administration is entirely free to make its own determinations.

[100] The King represents the power necessary to any society, but a power limited by the Law, and thus the servant rather than the adversary of Liberty. Read RIVERO, J. (1957). L'Etat moderne peut-il être encore un Etat de droit? Annales Faculté de Droit de Liège, 67.

[101] Formal law, case law rules, as well as rules set by the Administration itself.

[102] *Lato sensu.*

[103] Violations of the law by the Administration must be recorded and sanctioned by a judge.

[104] Taken as public administration.

[105] The rule of law is a state governed by a formally hierarchical and materially liberal legal order. It is a state in which the rule of law is paramount.

[106] It is an appeal "open even without text against any administrative act" which has "the effect of ensuring, in accordance with the general principles of law, respect for legality".

[107] "France's aid will henceforth be conditional on the recipient country's resolute commitment to a prompt democratization process". Read the Speech by President MITTERAND at the Franco-African Summit in La Baule on June 21, 1990.

[108] Anything is normal. Investment does not accommodate the uncontrollable or even elusive nature of risk, fuelled by a lack of guarantees.

[109] Cameroon is ranked 137th and Congo 145th in the *Minority investor protection* category, Retrieved 31 October 2016, from http://francais.doingbusiness.org/rankings.

[110] He is Professor of Law and was President of the Israeli Supreme Court from 1995 to 2006.

[111] He's always been far away.

[112] Administrative Courts are still in their infancy.

he must first break the prism of *"class and caste justice"* that weighs on his office. He must always bear in mind that the norm no longer has a general and universal *a priori* deducible content; it is up to him to constantly update and contextualize its content [7]. It is up to the administrative judge of the 21st century to judge with humanity and proximity, without losing authority, independence and impartiality [5]. The construction of a strong rule of law depends essentially on the administrative judge. Even if, as Yves GAUDEMET puts it: *"the rule of law is not in legislation; it is in minds and morals"* [41].

The Cameroonian and Congolese administrative judge must take on board the thought of Attorney General D'AGUESSEAU: *"As simple as truth, as wise as the law, as disinterested as justice, the judge must know that he has not been invested with the sacred character of magistrate to please men, but to serve them"*. This thinking is in line with that of CHAMMARD BOYER Georges: *"the contemporary justification of justice makes it inseparable from the rule of law which is ours, that is, from the democratic state. While the latter rightly requires magistrates to be aware of their duties and aware of their responsibilities, it also requires citizens not to abuse deliberate attacks on justice as a fundamental institution of a free society"* [42]. It is therefore absolutely essential that Cameroonian and Congolese administrative judges should be bold enough to act as a bulwark against administrative arbitrariness. The independence conferred on them by the law must be strengthened to make them more effective.

In keeping with the effectiveness of the administrative judge's office, it is imperative that our administrations accept to submit to the judge[113]. According to Dean Jean Marie BRETON, *"the absence of powers of compulsion and injunction in respect of public bodies, the administration's traditional immunity from enforcement, and the fact that the enforcement of res judicata is left de facto to its own good will, are all obstacles to the judge's being able to act effectively most of the time, (...)"* [23].

Abbreviations

AB/SC	Administrative Bench of the Supreme Court of Cameroon
ACL	Administrative Court of Littoral
CIA	Central Intelligence Agency
Coll.	Collection
CPDM	Cameroon's People Democratic Movement
FBI	Federal Bureau of Investigation
KGB	Komitet Gossoudarstvenno ïBezopasnosti
LGDJ	Librairie Générale de Droit et de Jurisprudence
NSAM	National School of Administration and Magistracy
PUF	Presses Universitaires de France
UNESCO	United Nations Educational, Scientific and Cultural Organization
USSR	Union of Soviet Socialist Republics

[113] Let the advent of the latter not be perceived as a devastating worm in its fruit: its authority. But let the judge be a welcome addition to the administration. Similarly, the effectiveness of administrative justice also depends on the administrative authority's acceptance of the detachment that exists between it and its decision. This was made clear by the Cameroonian administrative judge in the *case OBAM ETEME Joseph v. State of Cameroon*, in which he stated that: "the action for excess of power does not constitute a lawsuit between individuals, but a lawsuit against an administrative act", Judgment n°98/CFJ/CAY of January 27, 1970, *Obam Eteme Joseph v. State of Cameroon.* The Dean MOUDOUDOU Placide therefore maintains that the administrative authority must be *"accustomed to accepting the idea that their options may be questioned or even appreciated (...)"*.

Conflicts of Interest

The authors declare no conflicts of interest.

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[2] Gérard CORNU defines society as "a group of members of a nation or State, considered as the subject and support of a collective interest" *in* Vocabulaire juridique [legal vocabulary]. (2009). PUF, p. 870.

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[14] Read ANDERSEN, R., DELPÉRÉE, F., FAVOREU, L., GAUDEMET, Y., LENOBLE, J., PERROT, R., TERRÉ, F., & VAN COMPERNOLLE, J. (1990). La crise du juge [Judge's crisis]. LGDJ. Collection "La pensée juridique moderne", 170. What's more, the crisis we're talking about here has a negative connotation.

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