Case-Law Policy In Cameroon's Administrative Litigations: A Tool For The Protection Of Citizens Against Administrative Arbitration In Sub-Saharan Africa

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ABSTRACT

The scope of administrative activity subject to the obligation of reparation is at the heart of any system of responsibility. It raises a question relating to the area of responsibility imputed or to be attributed to public authority alone, that is to say, exclusively, to public property and poses, ultimately, the problem of determining the field of direct reparation. According to some authors, this would be a function of the degree of evolution or even of "civilization "of the society considered, since it would widen as the awareness of the rule of law increased. The rule of law is therefore a "responsible" state in the moral and legal sense of the term, because it does not discharge its obligation to make reparation on public officials. Also, most systems generally evolve from irresponsibility towards the consecration of the principle of responsibility and the widening of the field of direct reparation.

FRANCE, since the Blanco judgment and many other European legal systems confirm this observation established, at the beginning of the century, by Louis TROTABAS. Reports presented to the International Congress of Comparative Law, held in The Hague for all the countries, from August 2 to 6, 1932, the author deduced that: "... the evolution is identical. The State, a privileged authority, seems to have originally used this character in favor of its own irresponsibility: the only thing that first appears to be admissible, for the benefit of certain victims of damage attributable to public activity , is the civil servant's personal responsibility, when it can be called into question ... Then appears, in a second stage, a responsibility for the damage caused by the agents ensuring a public activity, when the State comes to assume their own responsibility. This second stage basically only transposes ordinary forms of civil liability, the State's property liability corresponding to its activity under private law, and indirect liability for acts of public officials being an application of the principal's responsibility is right about the acts of its attendant. But this formula can in turn be

exceeded, and we then tend towards a third stage, which definitively realizes public law responsibility. This manifests itself in two very important characters: first, the responsibility of the State extends largely from property acts to acts of public authority; on the other hand, it becomes a direct responsibility, although committed by the agents, as soon as they are considered and no longer as its servants [1] "

It is interesting to note that in the eyes of the author, this " evolution " is made possible, not only by " the multiplication of public services ", but also by " the democratization of the State, which comes to replace in conscience of governed and governors the concept of equality of all before the public charges and, consequently, of responsibility, to the primitive concept of authoritarian and irresponsible Stat[2] ".

With regard to the basis of responsibility, the solution also seems fairly obvious, at least with regard to the exclusion of an improbable basis responsibility for fault on the part of the author of the act or decision in question appears out of place, since the legal standard is perfectly regular both in form and in substance. No threat of cancellation hangs over the offending standard. Therefore, only faultless responsibility seems to be appropriate. Insofar as the harm suffered by the citizens stems from the fact that he bears exceptional charges, thus, finding himself in a delicate situation compared to other individuals the breach of the principle of equality of citizens before public charges does indeed appear incorporated. .

In truth, the development of a system of responsibility presupposes that two major questions, intimately linked, are resolved. In addition to that relating to the advisability of establishing the principle of responsibility, there is another, even more delicate: that of determining the scope of the direct obligation to make reparation.

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Indeed, by providing that the responsibility of public power is neither general nor absolute, the Dispute Tribunal in the judgment Blanco spent the existence of irresponsibility areas important and therefore the option for limited responsibility, that is, for a system that restricts the scope of direct redress. And, even today, this remains, as confirmed by the persistence, under French law, of " five major areas of irresponsibility : the non-detachable damage to international reports by FRANCE; attributable damage from war operations; non-detachable damage to the activity of Parliament or its relations with the Executive; damages originating from the application, in legislative matters, of article 16 of the Constitution ; and damages attributable to a decision of an administrative court which has

[1] A. BRIMO,. «La notion de rationalisation du droit dans la sociologie juridique de Max Weber». p. 23 in : Recueil d'études en hommage à Charles **EISENMANN**, op.cit. 130

[2] P. AMSELEK, « La qualification de contrats de administration par la jurisprudence », AJDA, 1983, p. 6

become final. No doubt, on a strictly theoretical level, the French system is similar to a system of unlimited liability with exceptions; but concretely, limited liability or unlimited liability with exceptions, result in the existence of areas of irresponsibility.

In this sense, subject to the extent of the spaces exempt from the obligation of direct repair, the French system is not distinguished, by nature, from that of its Anglo-Saxon counterparts who, in their minds, are dominated by the saying that "The king can do no wrong ".

direct responsibility of the public power is similar to that of the "pants of Moriba", each of the jurists reducing the field to its level. Because for fear of too easily incurred responsibility, or for the sake of local adaptation, we undertook to restrict the scope of Administrative Law in Africa, thereby rationalizing the French regime of public responsibility

Upon analysis, it seems that the Cameroonian administrative judge has always shown himself to be particularly concerned by such a concern. And that, committed to respond to it, it seems to have placed the exercise of its power to repair administrative damage under the authority of a policy of discretion, discretion, self-limitation of its own normative power vis-à-vis the power public. Jurisdictional strategy for the realization of which it is working to implement the techniques of jurisprudential creation deemed best suited for this purpose, that is to say to allow the most discreet, as measured as possible manifestation of his power. The construction of the case law of the public law regime applicable to the administration in Cameroon thus appears ultimately as the product of the normative activity of a perfectly rational actor. This, as soon as it is agreed that subject " is deemed a to be rational when he pursues ends which are coherent with themselves and when he uses appropriate means for the ends pursued.[3] *".*

Also on these bases, concerning the question of which is the approach followed by the national administrative judge in the exercise of its power of repair, breaking with "this easy eclecticism which gives reason to everyone", only one hypothesis we appeared to be faithful to "the very identity of the data of the reality studied" and to which "one cannot lack impunity with respect"[4] *.*

Key Words: *Case-Law Policy, Admirative Litigation.*

[3] 62 P. FOMBEUR, « Les évolutions jurisprudentielles de la responsabilité sans faute) , AJDA, 1999,n o spécial, p. 100

[4] Sur la notion de préjudice anormal et spécial et son appréciation stricte par les juges, voir, infra, $ no 171 et s. et $ no 384 et s.

RÉSUMÉ

Le champ de l'activité administrative soumise à l'obligation de réparation est au cœur de tout système de responsabilité. Il soulève une question relative au domaine de la responsabilité imputée ou à imputer uniquement à l'autorité publique, c'est-à-dire exclusivement au patrimoine public, et pose, en fin de compte, le problème de la détermination du champ de la réparation directe. Selon certains auteurs, cela dépendrait du degré d'évolution ou même de « civilisation » de la société concernée, car il s'élargirait à mesure que la conscience de l'État de droit se développe. L'État de droit est donc un État « responsable » au sens moral et juridique du terme, car il ne se décharge pas de son obligation de réparation sur les fonctionnaires publics. De plus, la plupart des systèmes évoluent généralement de l'irresponsabilité vers la consécration du principe de responsabilité et l'élargissement du champ de la réparation directe.

La FRANCE, depuis l'arrêt Blanco et de nombreux autres systèmes juridiques européens, confirme cette observation établie au début du siècle par Louis TROTABAS. Dans les rapports présentés au Congrès international de droit comparé, tenu à La Haye du 2 au 6 août 1932, l'auteur en a déduit que : « ... l'évolution est identique. L'État, autorité privilégiée, semble avoir initialement utilisé ce caractère en faveur de sa propre irresponsabilité : la seule chose d'abord admissible, au bénéfice de certaines victimes de dommages imputables à l'activité publique, est la responsabilité personnelle du fonctionnaire, lorsqu'elle peut être mise en cause... Puis apparaît, dans une seconde étape, une responsabilité pour les dommages causés par les agents assurant une activité publique, lorsque l'État en vient à assumer leur propre responsabilité. Cette deuxième étape ne fait en somme que transposer les formes ordinaires de la responsabilité civile, la responsabilité patrimoniale de l'État correspondant à son activité de droit privé, et la responsabilité indirecte pour les actes des agents publics étant une application de la responsabilité du commettant du fait de son préposé. Mais cette formule peut à son tour être dépassée, et l'on tend alors vers une troisième étape, qui réalise définitivement la responsabilité de droit public. Celle-ci se manifeste par deux caractères très importants : d'abord, la responsabilité de l'État s'étend largement des actes patrimoniaux aux actes d'autorité publique ; ensuite, elle devient une responsabilité directe, bien que commise par les agents, dès lors qu'ils sont considérés non plus comme des serviteurs mais comme ses mandataires. »

Il est intéressant de noter qu'aux yeux de l'auteur, cette « évolution » est rendue possible, non seulement par « la multiplication des services publics », mais aussi par « la démocratisation de l'État, qui vient remplacer dans la conscience des gouvernés et des gouvernants le concept d'égalité de tous devant les charges publiques et, par conséquent, de responsabilité, au concept primitif de l'État autoritaire et irresponsable ».

En ce qui concerne le fondement de la responsabilité, la solution semble également assez évidente, du moins en ce qui concerne l'exclusion d'un fondement improbable de responsabilité pour faute de l'auteur de l'acte ou de la décision en question, qui semble hors de propos, puisque la norme juridique est parfaitement régulière tant sur la forme que sur le fond. Aucune menace d'annulation ne pèse sur la norme incriminée. Par conséquent, seule la responsabilité sans faute semble appropriée. Dans la mesure où le préjudice subi par le citoyen découle du fait qu'il supporte des charges exceptionnelles, se trouvant ainsi dans une situation délicate par rapport aux autres individus, la violation du principe d'égalité des citoyens devant les charges publiques apparaît bien incorporée.

En vérité, le développement d'un système de responsabilité suppose que deux grandes questions, intimement liées, soient résolues. Outre celle relative à l'opportunité de consacrer le principe de responsabilité, il en est une autre, encore plus délicate : celle de déterminer l'étendue de l'obligation directe de réparation.

En effet, en prévoyant que la responsabilité du pouvoir public n'est ni générale ni absolue, le Tribunal des Conflits, dans l'arrêt Blanco, a mis en évidence l'existence de zones d'irresponsabilité importantes et donc l'option pour une responsabilité limitée, c'est-à-dire pour un système qui restreint le champ de la réparation directe. Et, même aujourd'hui, cela demeure, comme le confirme la persistance, en droit français, de « cinq grandes zones d'irresponsabilité : les dommages non détachables des relations internationales de la FRANCE ; les dommages imputables aux opérations de guerre ; les dommages non détachables de l'activité du Parlement ou de ses relations avec l'Exécutif ; les dommages issus de l'application, en matière législative, de l'article 16 de la Constitution ; et les dommages imputables à une décision d'une juridiction administrative devenue définitive ». Sans doute, d'un point de vue strictement théorique, le système français s'apparente à un système de responsabilité illimitée avec exceptions ; mais concrètement, la responsabilité limitée ou illimitée avec exceptions, aboutit à l'existence de zones d'irresponsabilité.

En ce sens, sous réserve de l'étendue des espaces exemptés de l'obligation de réparation directe, le système français ne se distingue pas, par nature, de celui de ses homologues anglo-saxons qui, dans leur esprit, sont dominés par l'adage selon lequel « The king can do no wrong ».

La responsabilité directe du pouvoir public s'apparente à celle des « pantalons de Moriba », chaque juriste réduisant le champ à son niveau. Car, par crainte d'une responsabilité trop facilement encourue, ou par souci d'adaptation locale, on s'est attaché à restreindre le champ du Droit Administratif en Afrique, rationnalisant ainsi le régime français de la responsabilité publique.

À l'analyse, il semble que le juge administratif camerounais ait toujours manifesté une préoccupation particulière à cet égard. Et que, s'engageant à y répondre, il semble avoir placé

l'exercice de son pouvoir de réparation des dommages administratifs sous l'autorité d'une politique de discrétion, d'auto-limitation de son propre pouvoir normatif vis-à-vis du pouvoir public. Stratégie juridictionnelle pour la réalisation de laquelle il s'attelle à mettre en œuvre les techniques de création jurisprudentielle jugées les mieux adaptées à cet objectif, c'est-à-dire permettant la manifestation la plus discrète et mesurée possible de son pouvoir. La construction de la jurisprudence du régime de droit public applicable à l'administration au Cameroun apparaît ainsi finalement comme le produit de l'activité normative d'un acteur parfaitement rationnel. Cela, dès lors qu'il est convenu que le sujet « est réputé rationnel lorsqu'il poursuit des fins cohérentes avec elles-mêmes et lorsqu'il utilise des moyens appropriés aux fins poursuivies ».
Également sur ces bases, concernant la question de savoir quelle est l'approche suivie par le juge administratif national dans l'exercice de son pouvoir de réparation, rompant avec « cet éclectisme facile qui donne raison à tout le monde », une seule hypothèse nous est apparue fidèle « à l'identité même des données de la réalité étudiée » et à laquelle « on ne peut manquer impunément ».

Mots-clés: Politique Jurisprudencielle, Contentieux Administratif

INTRODUCTION

It was thus judicious to write that "behind the concept of Case-law policy hides the conviction that, in the mass of the judge's decisions, there is logic and therefore a message, a guideline"[5]. And it is precisely this conviction that the majority doctrine in administrative law does not seem to share unanimously.

. Isn't the judge often criticized for a “reluctant propensity (...) to disharmony in the praetorian function[6], “dysfunctions in case law”[7] . Just as it could be said that in matters of no-fault responsibility, "his approach is, to say the least, inconsistent"[8], leading to “unfair”, “partial”, “contradictory” decisions[9]. It is therefore not surprising that some conclude that there is "an absence of case- law policy " [10], "or more precisely , elusive policy of case law"[11].

Perhaps consideration should be given to reducing these grievances to fairer proportions. First, because many of the supposed “inconsistencies” are not in reality. Rather than revealing the limits of the rationality of the administrative judge, those of the doctrinal

[5] 2 F. RANGEON, L'idéologie de l'intérêt général, Paris, Economica1, 986, p. 9.
[6] 3 Conseil d'Etat, Rapport public sur l'intérêt général, EDCE, 1999, p.253 et s.
[7] Ibidem
[8] J. CHEVALLIER, « L'intérêt général dans L’administration française », art. préc., p . 5.
[9] D. TRUCHET, « L'intérêt général dans la jurisprudence du Conseil d'Etat : retour aux sources et équilibre », n EDCE, 1999, p.3
[10] J. CHEVALLIE « L'intérêt général dans l'Administration française », art. préc., p . 336.
[11] CE, Ass., 14 janvier 1938, Pré

analysis of administrative law in several forms. Either the erroneous interpretation of the Case law[12], that is to say ignorance of the "intimate" determinants of developments in case law[13], or even the underestimation of the weight of the constraint exerted on the Case law by changes in written law[14].

Then, insofar as there are real "grains *of sand in the fluidity of the case law*[15] "or that the administrative judge sometimes shows a" *shaky attitude* "[16], which no attentive analyst of our administrative cases can reasonably doubt, remains that there is no specificity of the national judge there. The same in audible stuttering, the same incomprehensible contortions punctuate the case law discourse of bodies as famous and admired as the French Council of State[17] or the Supreme Court of the United States of America[18], to cite only these two examples. Without necessarily being worth the same kind of un sympathetic qualifiers with which the national judge is often decked out.

Above all, Last but not the least, the uncertainties of the administrative case law in a more or less important number of matters does not allow concluding *ipso facto*, on the basis of certain investigations, in an absence of general guideline guiding the case- law production, an absence of a shorter case- law policy.

I. CASE- LAW POLICY OF RECONCILIATION OF ADMINISTRATION AND PROTECTION OF RIGHTS OF INDIVIDUALS

Indeed, according to **Professor Maurice Hauriou**, it seems, the expression, a Case-law policy is above all a policy[19]. By this we mean by the most orthodox approach and notwithstanding some apocryphal conception[20], a

[12] CE, Ass., 2l janvier l944,Préc

[13] C.E, Sect, 22 fevrier 1963 Commune de Gavarnie, Rec. CE, p. I 13 ; AJDA, 1963,p.208, chron' M' Gentot et J. Founé; RDP, 1963, p. 1019, note M. Waline

[14] CE, 13 mai 1987, M. Aldebert, Dr. adm., 19g7, no 3g0 ; JCp, l9gg, G, rr,no 20960,note B. pacteau; ppDA, 1988, p. 950, note H. Rihal

[15] Selon I 'expression employée par G. MORANGE, in < L'irresponsabilité de l'Etat législateur >>, D., 1962, chron., p. 166

[16] J. CHEVALLIER, < L'intérêt général dans l'Administration français>e, art. préc.,p .327.

[17] Critiques rapportées par G. MORANGE, in < L'irresponsabilité de l'Etat législateur->, chron. préc.p, . 167

[18] Une telle inadéquation entre le but affirmé du texte de loi et son objectif réel ne va pas sans rappeler le risque de détournement de pouvoir. En effet, dans le cas où l'intérêt général invoqué ne serait pas réel car masquerai la protection de certains intérêts privés, le juge administratif se reconnaît compétent, à la fois pour annuler l'acte en cause, mais aussi pour accorder une indemnité à I 'administré lésé par le texte sur le fondement de la responsabilité pour faute, dans le cas où une demande en ce sens aurait été formulée. Voir, par ex., CE, 9 mars 1951, Société des concerts du conservatoire, Rec. CE, p. l5l ; GAJA, Paris Dalloz, l3 éd.,2001, p.440 - CE, 29 mars1 957, Société des autocars Orlandi Rec. CE, p.229.

[19] Jurisprudence inaugurée par l'arrêt du Conseil d'Etat, en date du 30 novembre 1923, Couitéas, Rec. CE, p. 789 ;D., 1923.3.59, concl. Rivet ; RDP, 1924,p.75, concl., et p. 208, note G. Jèze ; S., 1923.3.57,c oncl. et note M. Hauriou

[20] CE, Ass., 7 mai 1971, Ministre de l'Economie et des Finances et Vilte de Bordeaux c/ sieur Sastre, Rec. CE, p. 334, concl. Gentot ; JCP, 1972, G,I, n" 2246, note D. Loschak ; RDP, 1972, p.443, note M. Waline ; Gaz. Pal., 1972.1.172, note J. Mégret - CE, Ass., 20 mars 1974, Ministre de l'Aménagement du territoire, de l'équipement, du Logement et du Tourisme c/ sieur

program, framework, line or principle of action[21], it still looks like a "strategy"[22]. It was thus judicious to write that "behind the concept of Case-law policy hides the conviction that, in the mass of the judge's decisions, there is logic and therefore a message, a guideline"[23]. And it is precisely this conviction that the majority doctrine in administrative law does not seem to share unanimously.

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Novarra, Rec. CE, p. 200, concl. Rougevin-Baville ; AJDA, 1974,p.303, chron.M . France t M. Boyon ;D.,1974, p.481, noteJ .-P.G illi; JCP, 1974,G,I,n" 1752,n oteG . Liet-Veaux;RDP, 1974,p.924,note J. de Soto

[21] J. CHEVALLIER, < L'intérêt général dans l'Administration française), RISA, 1975, p.326

[22] D. TRUCHET, Les fonctions de la notion d'intérêt général dans la jurisprudence du Conseil d'Etat, Paris LGDJ, Coll. Bib. Dr. Pub.t. 125,1977, p. I10

[23] 2 F. RANGEON, L'idéologie de l'intérêt général, Paris, Economica1, 986, p. 9.

[24] 3 Conseil d'Etat, Rapport public sur l'intérêt général, EDCE, 1999, p.253 et s.

[25] Ibidem

[26] J. CHEVALLIER, « L'intérêt général dans L'administration française », art. préc., p . 5.

[27] D. TRUCHET, « L'intérêt général dans la jurisprudence du Conseil d'Etat : retour aux sources et équilibre », n EDCE, 1999, p.3

[28] J. CHEVALLIE « L'intérêt général dans l'Administration française », art. préc., p . 336.

[29] CE, Ass., 14 janvier 1938, Pré

[30] CE, Ass., 2l janvier l944,Préc

[31] C.E, Sect, 22 fevrier 1963 Commune de Gavarnie, Rec. CE, p. I 13 ; AJDA, 1963,p.208, chron' M' Gentot et J. Founé; RDP, 1963, p. 1019, note M. Waline

[32] CE, 13 mai 1987, M. Aldebert, Dr. adm., 19g7, no 3g0 ; JCp, l9gg, G, rr,no 20960,note B. pacteau; ppDA, 1988, p. 950, note H. Rihal

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[34] J. CHEVALLIER, < L'intérêt général dans l'Administration français>e, art. préc.,p .327.

contortions punctuate the case law discourse of bodies as famous and admired as the French Council of State[35] or the Supreme Court of the United States of America[36], to cite only these two examples. Without necessarily being worth the same kind of un sympathetic qualifiers with which the national judge is often decked out.

Above all, Last but not the least, the uncertainties of the administrative case law in a more or less important number of matters does not allow concluding *ipso facto*, on the basis of certain investigations, in an absence of general guideline guiding the case- law production, an absence of a shorter case- law policy.

Faced with the need to compensate for damages suffered by citizens, due to regular standard-setting action, which do not normally fall to them, administrative case law has instinctively turned to faultless responsibility. Such a position is easily explained in the sense that, *" faultless responsibility thus constitutes a means for the administration to pursue activities of general interest in a socially more acceptable manner as soon as compensation proves possible when special interests are unduly injured*[37] ". Judge therefore engaged in a compromise between preserving the latitude of action of the State and the right for the Administered to claim compensation for their loss. For this, it opts, on the one hand, for a refusal to recognize the slightest fault at the expense of the State and, on the other hand, for a certain development of the mechanisms for protecting the rights of individuals.

The regime of responsibility due to regular standard-setting action therefore results from a natural choice of an absence of fault on the part of the State (A), at the same time as it testifies to an apparent choice of protection individuals (B).

A. PRESERVATION OF THE PREROGATIVES OF PUBLIC AUTHORITIES

Although it is not completely indifferent to the cause of rights and freedoms, the case-laws policy of the Cameroonian administrative judge seems to have been, until today, essentially dominated by the concern to spare the public power as much as possible in the exercise of his prerogative[38].

[35] Critiques rapportées par G. MORANGE, in < L'irresponsabilité de l'Etat législateur->, chron. préc.p, . 167

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[37] CE, Sect, 25 janvier 1963, Ministre de l'Intérieur c/ sieur Bovero, Rec. CE, p' 53 ; AJDA, l963'p' 94' chron' M. Gentot et J. Èouné ; JCP, 1963, G,II, no l3326,note G. Vedel

[38] Sur ce phénomène, voir, H.-F. KOECHLIN La responsabilité de l'Etat en dehors des contrats de L'An

Admittedly, in principle, the administrative judge does not have the same posture as that of his counterpart in the judiciary. The second "must impose itself as a course of action to consider as strictly equal between them the parties present before him[39]. While the first, we cannot lose sight of it, "has the duty to ensure the defense of the interests of individuals while respecting the powers and privileges of the administration which are the means of the missions incumbent upon it in the general interest"[40]. Just that here, in the search for the "ideal of balance"[41] to find in the taking into account of these two orders of considerations, and whose quest "takes on an importance of first order in Africa because of the consubstantial imbalance linked, not only to the idea of the prerogatives of the administration , but also to the aggravation that postulates the ideology of national construction "[42], the Cameroonian judge established a very asymmetrical relationship; strongly tilting the cursor on the side of the second weighing pan.

individuals"[43]. And even today, he sometimes finds himself reproached for a "somewhat outdated and more superstitious than reasonable deference to the decree of the highest state authority[44]. »

Lack of audacity and courage"[45] or "elementary prudence"[46]. Undoubtedly, "we can, without encountering a logical impossibility, portray in the colors of hell or paradise (...) the hypothesis that we are examining"[47], as the border here is blurred between vice and virtue[48].

But in fact, above all, everyone clearly perceives that the singular posture of the administrative judge is not without reason. Related in particular to its political and institutional environment[49], the preponderance of the executive within it and the immense correlative weakness of its own authority. In other words, those from the pen of Mr. Célestin Keutcha in this case, "This attitude, which consists in seeking at all costs to justify the behavior of the administration, is generally explained by the will of the Court not to "annoy" the political actions of the executive "[50].

VIII à I873, Paris, LGDJ, Coll. Bib. Dr. Pub., t.12, 1954, p. 38 et s'

[39] CE, l3 juillet 1923, Fleury et Hauguel, Rec. CE, p.576

[40] CE, 29 awil1921, Soc. Premier et Henry, S, 1923, 341

[41] CE, 14 novembre 1923, Chambre syndicale des marchands de reconnaissances des monts-de-piété, Rec. CE, p.726

[42] Concl. sur, CE. Ass.. 14 janvier 1938, société anonyme des produits laitiers La Fleurette, D., 1938.3.44

[43] Arrêt précité.

[44] Arrêt n° 4/CFJ/AP du 28 octobre 1970, Société des Grands Travaux de l'Est c/ Etat du Cameroun.

[45] BILONG (S), Article précité, p.95.

[46] Loi n°64/LF/1 du 26 juin 1964 portant répression des activités terroristes.

[47] Arrêt n°5/CFJ/AP du 28 janvier 1970, Société forestière de la Sanaga c/ Etat du Cameroun

[48] BINYOUM (J), « Bilan de vingt ans de jurisprudence administrative de la Cour Suprême, première partie, 1957-1965, R.C.D, 1978, n° 15 et 16, p.25.

[49] ONDOA (M), La protection des dépenses d'indemnisation en droit administratif Camerounais... op cit. p.101.

[50] Selon I 'expression utilisée par C. CORMIER, in Le préjudice en droit administratif français. Etude sur la responsabilité extracontractuelle des personnes

Any citizen undergoing a charge which does not normally fall upon him is entitled to claim compensation from the State for his loss. However, in the event that the act giving rise to the damage is considered to be lawful, the liability of the public body may only be engaged in the absence of fault. Indeed, whether it is constituted by a text of law, an international convention or even a simple administrative decision, insofar as the act complained of cannot be recognized as illegal, it cannot, a fortiori, be used for liability for the fault of its author.

Thus, the search for the responsibility of the public person as the author of a regular legal act will necessarily be done on a non-faulty basis, that is, that its intervention proves to be legitimate because of the aims pursuedor that it appears as an expression of sovereignty

State intervention, source of abnormal and special had[51], can take two distinct forms, even if the consequence is identical. The damage suffered by the individual may, first of all, have as its origin a positive intervention by an organ of the State, i.e. the enactment of an act. But the damage can also result from a lack of intervention, understood as the impossibility or the refusal to act of the administration. In both cases, the responsibility to be sought will be no-fault responsibility, the act or inaction being able to be legitimized.

Finally, on the basis of the same reasoning, the administrative judge will conclude that there is no fault if the administration is unable to enforce the regulations in force, regulations that it will in most cases have itself enacted, making it weigh a simple obligation of means. Here again, the injured individual may nevertheless claim compensation on the basis of the breach of equality before the public charges[52].

The questioning of the responsibility of the organs of the State because of their regular normative action is therefore a faultless responsibility, this being legitimized, either by the general interest induced by the burden imposed on the individual, or by legal circumstances (reasons of public policy or obligation of means) guiding the refusal as the impossibility of intervening

a relationship of conformity between general interest and the legality of the act. concept. ".

In the French political tradition, the general interest is mainly registered in the voluntary filiation. The State is therefore seen as the natural and legitimate guarantor of the common interest, with the responsibility for defining and implementing this concept. In the words of J. Chevallier, " *the general interest is*

publiques, Paris, LGDJ, Coll. Bib. Dr. Pub.,t. 228, 2002, p. 320

[51] ONDOA (M) La protection des dépenses d'indemnisation en droit administratif camerounais, Thèse de Doctorat de 3e cycle en droit public, Université de Yaoundé, FDSE, 1990, p.100

[52] CHAPUS (R), Droit administratif général, Tome I, 14e édition, Montchrestien, Paris 2000, p.1337.

not only the addition of a series of particular interests: it introduces an element of coherence and rationality which is enough to make it something other than the sum of its components".

The question of compatibility between the general interest and private interests can be partly resolved by taking up the analysis made by D. Truchet for whom, *"administrative law was built on a postulate of exclusion and superiority: the administration cannot act exclusively with the aim of satisfying private interests, the general interest is superior to these* ". Except that, even when we decide between the reconciliation of private interests and a transcendent concept, the conception of the general interest can be misleading. Indeed, it can designate needs common to the whole community but also those of only part of the community, or even of a limited number of individuals.

The concept of general interest is therefore complex to define but has a capital functional unit since it is this which conditions the action of the State. Indeed, the legitimacy of power does not rest on its origin but on the object sought, namely the protection of the common interest. The law commands obedience because it conforms to the principles of justice and good, it thus draws its strength from its content. We no longer obey rulers as individuals but as holders of the necessary authority stemming from precise legal rules. It is on this premise that the notion of general interest will appear as a pillar notion in terms of liability for fault. The burden imposed on the individual, and cause of the breach of equality, will be legitimate because guided by the general interest. The author of the act will not be guilty of any fault, but the abnormal and special damage created by ricochet must nevertheless be compensated.

B. THE GENERAL INTEREST: A PILLAR CONCEPT

The creation of the Praetorian State responsibility as a result of regular normative action, following the interpretation of the texts confirms the silence of their authors, highlights the notion of breach of equality before public office. This arises from particular charges imposed on certain members of the community as a result of state activity and generating for them a damage qualified as abnormal and special.

However, this principle only works if the burden imposed on the citizen is imposed on regular grounds. It is at this stage that we will find the notion of general interest and its importance. As J. Chevallier points out, the general interest does not act as a limit to administrative action but as a legitimization mechanism: the reference to the general interest allows the State to present itself as the embodiment of the popular will and to base its authority on the consent of the citizens". Thus, in the decisions in principle constructing this responsibility as a result of standard-setting action, the judge will recognize, at least apparently, the regularity of State intervention by referring to the general interest.

Such an illustration of recourse to the concept of general interest is in fact found from the birth of the responsibility for breach of equality before public office. The administrative judge will therefore first of all rely on the concept of general interest during the Assembly judgment “Société anonyme des produits laitiers la Fleurette” rendered on January 14, 1938. The company of dairy products “La Fleurette "Had suffered prejudice following the vote of the law of June 9, 1934, relating to the protection of dairy products, which prohibited the manufacture and trade of all products intended for the same uses as cream and not derived exclusively from milk. Its prejudice came from the fact that, by this text, the company had been obliged to stop the manufacture of the product called "Gradine ", composed of milk, peanut oil and egg yolks. In this case, the Council of State will interpret the will of the legislator as authorizing compensation for the individual injured by the new regulations. But above all, for what interests us here, he will consider that the burden must be logically borne by the community with reference to the concept of general interest. Indeed, for the High Court, “this charge, created in a general interest, must be borne by the community; it follows from there that the La Fleurette Company is justified in requesting that the State be ordered to pay it compensation in compensation for the damage suffered by it”.

The administrative judge will then hold the same reasoning on the occasion of the Assembly judgment which will constitute the first confirmation of the “La Fletrette ” principle , namely the “Sieurs Caucheteux and Desmont ” case. In the present case, the case concerned article 17 of the law of July 9, 1934, relating to the organization and defense of the wheat market, which had the effect of reducing the percentage of products other than malt barley and hops for the manufacture of beer, and which thereby caused injury to the Caucheteux and Desmont manufacturers of glucose. The State Council then held that "nothing (..) Not to suggest that the legislature intended to bear the load concerned that their responsibility not normally; that this burden created in a general interest, must be borne by the community”.

The principle of the "La Fleurette" judgment having served as an origin for an extension of liability for breach of equality before public charges, it is normal to find the concept of general interest in matters of damage caused either times by a law, but by a regulatory act. This was done in the principle judgment "Commune de Gavarnie c/sieur Benne" of February 22, 1963. It was a decree of the mayor of the commune regulating traffic on ordinary vicinal roads and having caused sieur Tipper, owner of a souvenir shop located on the edge of a pedestrian-forbidden path, an abnormal and special damage due to the impossibility for him to carry on his business normally. For the Council of State, the municipal ridge was in no

way vitiated by illegality. The requirements of public order justified its implementation since it was a question here of protecting pedestrians by preventing accidents on narrow roads.

Above all, the tiebreaker was characterized by the abnormal and special charge imposed on Mr. Benne. And there again, the Council of State made reference to the concept of general interest: "said prejudice had, in fact, presented a gravity such that the municipal decree of July 30, 1958 had to be regarded as having imposed on Mr. Benne, in the general interest, a charge not normally incumbent upon it ". It is the first time that compensation has been awarded to compensate for damage resulting from statutory decisions taken in the general interest.

This position will be reaffirmed on the occasion of the "M. Aldebert" judgment of 13 May 1987. The case concerned an order by the mayor of the commune of Saint-Georges-sur-Loire prohibiting certain heavy goods vehicles and vehicles transporting dangerous goods to cross this commune by the RN 23 and providing, consequently, a diversion route by the A 11 motorway. Mr. Aldebert, who operated a truck driver's restaurant on the edge of the RN 23, then sought compensation for his loss, consisting of the loss of his clientele, the majority of truck drivers who had previously taken the national road. The Council of State, reversing the judgment of the administrative court of Nantes, will welcome the request for compensation from Mr. Aldebert on the grounds that (the measures legally taken, in the general interest, by the police authorities may give rise to the right reparation on the basis of the principle of equality before public offices for the benefit of persons who, by reason of their application, suffer abnormal and special harm ".

For the judge, the concept of general interest is therefore perceived as an essential element legitimizing state intervention. The resulting charge for the individual is regular but does not imply the exclusion of all liability, since the citizen can always invoke the breach of equality before public charges. Nevertheless,.

The compensation of the individual, victim of a breach of equality before the public charges, will prove to be difficult because of the particular use made by the administrative judge of the concept of general interest. Indeed, after having given it a central place, the judge will gradually break away from the concept in reaction to the numerous criticisms relating to the protected interests, even going so far as to reverse the trend that he himself had initiated some years ago. Thus, the existence of a general interest may be a factor in excluding compensation. The legitimization of state intervention in the name of the general interest will indeed be pushed very far - too far? - since in certain cases its evocation will be enough to reject any responsibility..

. The explanation for such behavior could be sought in the role of arbitrator held by the

legislator[53] . In fact, the State is a priori the only body capable of defining solutions of collective interest, "the outcome of a process of processing social demands focused on the search for compromise and conciliation[54]. However, it is subject to many pressures due to the divergent interest groups that make up society. These conflicting interests make it very difficult to define an abstract and objective "common good ". It is this perverse effect which is highlighted by very critical observers in the aftermath of the decisions in principle relating to liability under the law. State power tends to be exercised inevitably in the interests of the dominant groups, groups capable of creating strong pressure at the level of the state apparatus. Such errors were mentioned by President Odent when he wrote about the "La Fleurette" and " Caucheteux and Desmont " judgments : " In the first two of these cases (...) they were legislative provisions torn from assemblies too inclined to yield to the pressures of certain particular interests " [55].

Consequently, although the definition of the general interest to be protected, given by the Council of State, could be the object of criticism, the condemnation of the State was at the very least logical enough because it was necessary to punish these

The day after the "La Fleurette " judgment , the administrative judge will measure the extent of the change he initiated and thereby its financial consequences. Indeed, to allow compensation for the damage resulting from a charge imposed in the name of the general interest, amounts to recognizing faultless liability in a fairly systematic way, since the provisions inserted in a law are almost always of general and impersonal scope. The multiplication at the time of interventionist and interventionist legislation would therefore multiply the cases of compensation[56] .

To do so, the administrative judge will repeat the reasoning which was his before the " La Fleurette " Case law , when he interpreted the legislator's silence as a formal manifestation of a refusal of compensation, taking into account the interest of the measures adopted which effectively excluded any reparation. At the time, he thus rejected the claims for compensation presented following the establishment of the industrial alcohol monopoly, because the establishment of this monopoly was essential for national defense. [57]. Similarly, no compensation had been granted to the

[53] AMSELEK (P), « La responsabilité sans faute des personnes publiques dans la jurisprudence administrative », in Mélanges CHARLES EISENMANN, Cujas, Paris 1974, p.248

[54] BILONG (S), « L'insaisissable responsabilité sans faute de la puissance publique en droit camerounais », Annales de la FSJP de l'Université de Dschang, Tome I, volume 1, 1997, p.93.

[55] CE, 30 novembre 1923, Couitéas, GAJA, n°45, Concl. Rivet

[56] CE, 12 juillet 1929, chemins de fer de l'Etat, Recueil Lebon, p.7.

[57] CE, 14 janvier 1938, société anonyme des produits laitiers « La fleurette », G.A, n°59.

interested parties following the law of 16 March l9l5 which had prohibited the manufacture of absinthe and this in the name of the essential interest of hygiene[58], like the claim for compensation for the damage suffered, by the merchants of reconnaissance of the pawnshops, after the prohibition on the trade in such reconnaissance by the law of October 16, 1919, had been rejected because of the protection of public morals pursued by the text[59].

In these species, as noted by the government commissioner Roujoul[60], " *you have researched what may have been the intention of the legislator: you have judged that he had intended to derogate from the principle of compensation for damage, to take into account only considerations of a financial nature or notions hygiene, morality or national defense* ".

The general interest defended by the text will therefore become an argument allowing the judge to refuse compensation. How then can we find our way between the hypotheses where the burden imposed in the general interest partially legitimizes compensation, and those where the general interest pursued by the measure exonerates its author from all liability? It seems in fact that as regards the characteristics of the office, the concept of specialty is the real element making it possible to envisage compensation rather than that of the protection of a general interest as was the case the day after "La Fleurette" stop. But above all, and this is an essential aspect of the problem, the doctrine was led, in order to be able to clearly explain the Case law of the Council of State, to distinguish between the general interest in the classical sense of the term and the interest described as " preeminent " [61].

This somewhat surprising distinction can be clarified by the words of B. Jeanneau, for whom the administrative judge " ended up considering that only legislative measures should be held responsible by the State, which, although taken in the general interest, benefit more specifically a particular category. In other words, a distinction should be made between the general interest, the interest of all, and the general interest, the collective interest of a given social or economic category. " [62]. Thus, the overriding general interest as the interest of all, legitimizes the exclusion of State responsibility. The protection of the higher interests of society

No doubt he sometimes adopts a shocking attitude when, in Cameroon, he refuses to carry out the review of the constitutionality of laws by way of exception, on the grounds that it would not be provided for by the

[58] CE, 02 mai 1958, Distillerie de Magnac-Laval, AJDA, 1958, II, p.282. Voir aussi CE, 8 janvier 1965, Société des Etablissements Aupinel, Rec, 15

[59] Arrêt n°51/CFJ/SCAY du 25 mars 1969, Dame Ngue André c/ Commune de plein exercice de Mbalmayo.

[60] Arrêt n°59/CFJ/SCAY du 25 mars 1969, Ngomha Salomon c/ C.P.E de Douala.

[61] EISENMANN (CH), « Sur le degré d'originalité de la responsabilité extracontractuelle des personnes publiques », J.C.P, 1949, p.741.

[62] C'est la théorie du « défaut d'entretien normal ».

Constitution[63]. Likewise, should it *" gradually clear rules ... whose meaning would be clearly perceived and the application concrete and obvious ; breaking with the formulas drawn from the French administrative Case law, the judge must endeavor to find formulations adapted and especially corresponding to the application which he wishes to make* ». Because its Case law is characterized " *by certain defects; in particular, the link between the statement of a rule widely borrowed from French law and its concrete application, adapted to a specific reality, does not always seem obvious. More precisely, the reasoning borrowed, pertaining solely to the deductive method, sometimes fishes for lack of logical rigor insofar as the sequences are not always perfect* " [64]. These remarks sum up one of the few most valid doctrinal criticisms that have been made of the African judge. It does not mean, however, that the latter lacks conviction and only responds to these civil law habits. This appears from the decisions it renders.

In fact, the very existence of this line cannot, seriously, be called into question. The preceding developments prove this at leisure. They are moreover confirmed by Mr. BOCKEL: "*there is, writes the author, starting from the Senegalese example, an effort to define a jurisprudential policy on the principle of which nothing is to be said, well at opposite; the content could perhaps be discussed; but that is not what we are talking about here* [65] ". Pushing the reflection further, he concludes, following a close analysis of certain judgments, that these *"demonstrate a laudable concern to adapt French principles to national realities; in view of both the weakness of the administration's resources and the scale of the difficulties it encounters due to its hostile nature, a poorly policed population, and a staff still largely insufficiently aware of public duties cannot be engaged as widely as in FRANCE. A threshold must be set, and it is to the honor of judges to try to define its level* [66] *".* Less than an honor, the definition of a jurisprudential policy is part of the normal order of things. The opposite would be surprising. This observation condemns the image of the subconscious and carefree that the African judge shapes most of the doctrinal criticisms of his Case law and, more specifically, that known as "*case law mimicry* ".

The definition of a jurisprudential policy in Africa incorporates many parameters, the most important of which are extra-legal. Beyond issues related to the independence of the judiciary or in the training of judges, it does indeed involve the temperament, the personality of the individuals responsible for asserting the law and, thereby, their convictions. The problem is important and perhaps explains the relative homogeneity of orientation of Cameroonian

[63] PREVOST (J-F), « La notion de collaborateur occasionnel et bénévole du service public », RDP 1980, pp.1070 à 1097.
[64] CE, 21 juin 1895, Cames, GAJA, n°6.
[65] VEDEL (G), DELVOVE (P), Droit administratif, PUF, 8e édition 1984, p.505.
[66] CE, 22 novembre 1946, commune de Saint-Priest-La plaine, GAJA, n°60.

law. That despite the diversity of policies carried out with regard to the recruitment of judges, public responsibility has, more or less, the same structure, ready for reflection; let it be deeper and denser.

These disturbing coincidences are explained by the tendency, common in Cameroon, to appoint, within and at the head of the jurisdictional structures, men of power. Without neglecting the legal constraints, as well as adherence to the ambient options, this observation reveals the existence of political and ideological solidarity between the judge of the administration and the leaders of the latter that is to say, the political power.

As a result, the problem of defining a jurisprudential policy transcends that of the technical training of judges. It becomes a question of Man, of individual convictions and of the personal equation of the individual of the administrative judge. Because, beyond the judge, he challenges the man who hides behind the magistrate; and before the latter, he proceeded from a critical mind, in the etymological sense: ability to choose, weigh, discern. This quality of common sense and sense of fairness or justice requires a margin of distancing, of resistance to movements of opinion, of daring, but above all of intellectual or moral integrity. Mr. ROUSSET thinks it which enumerates, among the factors of failure of the jurisdictional mechanisms, " *the manner in which those who are responsible for it, magistrates, staff of the registers, lawyers, assume their responsibilities; and we already see that it is much more difficult to remedy these shortcomings because they are a matter of professional competence, even of professional conscience and sometimes also, alas, of integrity* [67] ". It is a question of height that is to say of man. Poorly served by his training, his versatility and his boundless loyalty to the political and legal options of power, the African judge refuses to dare, thus watering down his role in the eyes of the litigants. This is accentuated by the existence of bridges between the jurisdictional and political function[68]. Responsible for his appointment to power, he expects a gain. It can therefore neither humiliate it nor hinder its action.

what level and within what limits should the defense of rights be placed, so that development actions, too, urgent, are not blocked[69]?

Without being so explicitly posed, the question raised, around it, the constitution of two camps: one is faithful to a maximum conception of the ideology of national construction that expressed Alphonse BONI. The success " of national construction ," wrote this former Minister and President of the Ivorian Supreme Court, *can only be assured if no obstacle hinders the work of the government in its pursuit of the achievement of*

[67] CE, 28 mars 1919, Regnault-Desroziers, GAJA, n°36, à propos de l'explosion en région parisienne d'un dépôt de munitions pendant la première guerre.
[68] CE, 24 juin 1949, Lecomte et Daramy, GAJA n°64.
[69] CE, 27 juillet 1951, Dame Auberge, D. 1952.108. Concl Gazier.

the general interest.[70] ". Ultimately, the author seems to conclude, there would be incompatibility between the needs of economic and social development with any jurisdictional control of the administration. In contrast, there is the other camp, whose arguments, formerly initiated by Mr. KEBA MBAYE, ardent defender of Human Rights were systematized by Mr. KAMTO[71]. Convinced of the need for maximum protection of the rights of citizens, whatever the circumstances and the price, the first wrote: "*We must not wait for underdevelopment to be stopped (if ever it will be) before we can resume the principles which found the dignity of Man ...* [72] "

This debate remains, in any case, very theoretical. Brought back into the realm of public responsibility, it does not translate into the definition of a concrete standard for the functioning of an administration in charge of the problems of promoting economic and social development. The judge would certainly have liked to have received precise information on these questions. He must resolve to imagine solutions for himself and thereby expose himself either to criticism of an intolerant and impatient doctrine, or to the discontent of an administration too hasty with his privileges. Under these conditions, the definition of a Case-law policy becomes a question of measurement which is compounded with technical difficulties.

The understanding of case- law policy also depends on how the judge perceives his role in society and the functions assigned or to be assigned to public responsibility. In this perspective, French law, one of the most refined in the matter, teaches that public responsibility ensures, in legal terms, three essential functions: reparation, sanction and control. This observation which is authorized by an illustrious patronage, that of E**ISENMANN**[73], convinced, although it remains at times and in specific points, discussed in certain branches of the law.

itself to pecuniary compensation or in kind of damages[74]

Because for administration, reparation can take the color of a sanction, in the sense of punishment. It is a punishment, although this sanctioning function is one of the most discussed in the legal fields other than Criminal Law.[75]. At the root of the debate is the idea that the restorative function is detachable from guilt. The hypotheses of faultless liability prove this to the extent that, to admit the idea of sanction is implicitly to suppose the existence of a breached obligation. And if the idea of a penalty remedy is

[70] CE 13 juillet 1967, Département de la Moselle, AJDA, 1968.4.19, note Moreau.

[71] LAVROFF (D.G), « Le collaborateur bénévole de l'Administration », A.J.D.A, 1939, p.122.

[72] PREVOST (J-F), « La notion de collaborateur occasionnel et bénévole du service public », R.D.P, 1980, P.1074.

[73] Ibid

[74] Conclusions sur CE, 1er juillet 1977, Commune de Coggia, A.J.D.A, 1978, P.287.

[75] Arrêt n°237/CCA du 10 juillet 1953, Ndounda Thomas c/ Territoire. Dans le même sens, arrêt n°675/CCA du 06 septembre 1957, Kpwang Essiane c/ Etat du Cameroun

accepted in Private Law, it arouses resistance from EISENMANN[76] and M MORANGE[77] whose theses are drawn from almost identical considerations. In fact, according to these authors, " *public responsibility is never really liability for fault* ... [78] "moreover, the public community," *cannot commit faults* ". This would remove any criminal coloring from liability for fault of the public service, only taken into account. For these reasons, public responsibility cannot fulfill a repressive and therefore preventive function. This thesis is today contradicted by the case law which is part of the doctrine. Consequently, reparation is akin to a penalty imposed on a public person in retaliation for objectively or subjectively unlawful behavior. And "*civil liability can be ... one of the expressions of the desire to link reparation, sanction and prevention*. Because, if to sanction is to repress *a posteriori*, it is also to prohibit, dissuade and therefore prevent. Therefore, responsibility modulates legal trade and takes on the value of a call to caution. Thus appears its preventive and even educational aspect.

This supposes that the administration shows humility and accepts that the plays fully its role of arbitrator. This requirement clashes with "self-esteem" adorned with the mission of economic and social development, its African meaning. This places the judge before a dilemma which detects the extent of the liability control to be carried out.

Indeed if, all these functions, restorative and sanctioning, suppose function of control, condition without which the obligation to repair could not exist nor be explained. It remains, in the African context, to situate it in terms of intensity, depth and density, taking into accounts the reluctance of the administration to submit to it. It is a question of finding a middle way between the irresponsibility which the ideology of national construction would accommodate and the responsibility which any full control of administrative activity requires. Beyond that, the task presupposes revealing a threshold which is sometimes tolerable and normal which would explain,

Canadian, respects this option. Only, however, they admit important areas, not of irresponsibility of power but of agents' responsibility, since the administration discharges personnel. The tendency to limit, to varying degrees and according to disputes, the field of direct responsibility of the public authorities is almost universal.

There are hypotheses where the norm at the origin of the damage will not constitute a fault before the administrative judge, insofar as this will be the expression of a sovereignty: it is

[76] Arrêt n°33/CFJ/CAY du 30 avril 1968, Dame Essola Jacqueline c/ République fédérale du Cameroun.

[77] C. CORTUIER le préjudice en droit administratif français. Etude sur la responsabilité extracontractuelle des personnes publiques, Paris L,GDJ, Coll. Bib. Dr. Pub.,t .228,2002, p. 210

[78] C. BLAEVOET, < De l'anormal devant les hautes juridictions civile et administrative >, JCP, 1946, G, I, no 560

the case, on the one hand, of the law because its author is deemed never to do wrong and, on the other hand, of the irresponsibility of the State because of the repression of terrorism

By reference to constitutional and legal history, the administrative judge has always been reluctant to admit the possibility of a faulty behavior on the part of the legislator who was originally omnipotent; the law prevented any criticism of it the exclusion of responsibility for the public service of justice

From the outset, a very special place was recognized in the legislative act with reference to the concept of sovereignty. The holder of legislative power is sovereign, infallible and therefore irresponsible. But this observation will change over time, especially with the French Revolution, somewhat relativizing this omnipotence. and franchises and to repress any injustice". He then benefited from a presumption of infallibility expressed by the famous adage "the King cannot do wrong ". The mission of the monarch was legitimized by its divine origin in such a way that individuals had no right towards the King and that all his acts escaped jurisdictional control. Very logically, the monarch could not be both sovereign and responsible. Its sovereignty was the characteristic of a power which has nothing above it.

The administrative chamber of the Federal Court of Justice rejected the SGTE's appeal as unfounded on the grounds *" that it is generally accepted that the principles contained in the preamble to the Constitution, such as the principle of the non-retroactivity of laws, have the value of general principles of law, that is to say, not superior to, but equal to, that of ordinary law. That as a result the legislator can derogate from it expressly, what the legislator actually did ; that even supposing that the principle of the non-retroactivity of laws is a constitutional rule and that the law (concerned) has, for+ having disregarded it, be unconstitutional, in the absence of a review of the constitutionality of laws by way of exception, it does not belong…. It is up to the administrative judge to cancel it, or even dismiss its application"*. This solution will be confirmed on appeal by the plenary assembly.

The principle of the sovereignty of the law extends to the legislative bodies themselves. Thus, the acts carried out by them cannot be subject to judicial review. This clearly emerges from the Claude Halle case : *" Considering that the principle of the sovereignty of the law is considered to extend to the legislative bodies themselves, that it is opposed to the acts carried out by them may be subject to judicial review which the said Court found to be incompetent to know on this count "*.

The same jurisdictional immunity extends to acts emanating from administrative services, contrary to the opinion expressed by Professor ROGER GABRIEL NLEP. The eminent jurist recalls that if the laws are covered from jurisdictional immunity vis-à-vis the judge

of the excess of power, the acts emanating from the administrative services could not claim such immunity, and are therefore therefore voidable by the administrative judge

The State Court declared it incompetent:

“ Considering as regards the competence on the one hand that it is in principle that the administrative courts are incompetent to hear actions directed against the acts as well of the legislative assemblies as their administrative bodies in particular their offices ; on the other hand, that no text has made exceptions to this principle with regard to the claims of members of the Legislative Assembly concerning their parliamentary allowances ; that especially this derogation in the matter results neither from article 1 of the decree of 04 June 1959 on the organization of the State Court, nor article 3 of ordinance n ° 39 of 16 April 1960 relating to the functioning of powers public kept in force by Article 25 of the law of 1 st November 1961”.

It appears from this judgment that acts emanating from both the Legislative Assemblies and their administrative bodies are not subject to appeal for excess of power.

The problem of jurisdictional immunity applied to acts of the” *government legislator”* remains unresolved, however. Building on the study conducted by Mr. Eric BOEHLER; Professor Henry JACQUOT considers that these orders which have legislative value, in spite of the obligation of ratification cannot be referred to the censorship of the administrative judge. But in the absence of a definitive jurisprudential position on the question, doctrinal controversies will always have free rein.

The repudiation of the faultless responsibility of the State because of the laws is a constant in Cameroonian administrative law. The legislator himself does not seem to escape this logic.

The very infamous law n ° 64 / LF / 1 of June 26, 1964, consecrates a vast area of state irresponsibility. Article 1 st of that Act provides:

“ *Any action directed against the Federal Republic, the federated states and other public authorities with the aim of obtaining compensation for damage of all kinds caused by terrorist activities or by the suppression of terrorism is inadmissible, notwithstanding any legislative provision to the contrary.* "

Reading this article, it appears that terrorist activities and their consequences escape the censorship of the administrative judge.

We know that this law was adopted to thwart the action of terrorists. However, it was implementing energetic measures which very often caused special and serious harm to citizens. By devoting the related actions inadmissible before the judge, the legislator posed the irresponsibility of the State because of the breach of equality before public office.

" Is inadmissible notwithstanding any contrary legislative provision, any action against the Federal Republic, the States and other public authorities in order to obtain damages of any kind caused by terrorist activities or the suppression of terrorism " ;

"Whereas, therefore, the appeal of the Sanaga forestry company must be declared inadmissible".

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If the acts of the" *governmental legislator"* gave rise to controversy, such was not the case of the acts emanating from the judicial authorities where the administrative judge adopted a clear position.

The situation as it stands in France is not the same as in Cameroon. In France, under the principle of the separation of powers, it was difficult to bring into play the responsibility of the public service of justice.

The justiciable of the acts taken by the judicial authorities varies according to whether they relate to the organization or the functioning of the public service of justice. This distinction dominates the arrangement of litigation in the public service of judicial justice, this litigation belonging to the administrative jurisdiction if it is that of the organization of the service and to the courts of justice, if it concerns its functioning. This is so by virtue of case law which the Tribunal des Conflits clarified and reinforced in 1952 by its judgment known as the prefect of Guyana.

No doubt put off by the rigors of the climate and living conditions, no magistrate had applied for a post in Guyana and, for a few months, the Guyanese courts could not function. Finding themselves injured by such a situation, the ministerial officers of Guyana brought an action before the civil courts for compensation against the State. The Prefect raised the conflict and the Disputes Tribunal considered that the acts complained of were *"relating not to the exercise of the judicial function "but" to the very organization of the public service of justice"* and fell within the administrative jurisdiction. *" Considering that the acts complained of relate, not to the exercise of the judicial function, but to the very organization of the public service of justice ; that the applicants' action results in the failure to establish the courts of first instance and appeal within the jurisdiction of Guyana, resulting from the fact that the government did not effectively provide these jurisdictions with magistrates that they normally included ; that it involves the responsibility of the public service regardless of any assessment to be made on the very operation of judicial services ; that it is therefore for the administrative court to know and that it is right that the prefect raised the conflict in the proceedings".*

As Professor René CHAPUS points out, this distinction shows that the distribution of jurisdiction between the two orders of jurisdiction is based on a material and not an organic criterion. The qualification of the

disputed act depends on what it is in itself and not on the personal quality of its author.

This solution was transposed to Cameroon by the Tagny Mathieu judgment. Thus, acts relating to the functioning of the public service of justice, or which have taken place during a judicial procedure can only be assessed either in themselves or in their consequences, by the judicial authority. The facts of this landmark judgment are worth recalling :

Mr. Tagny Mathieu, a doctor by profession, was detained in Yaoundé prison from May 31, 1955 to March 03, 1956 for subversive maneuvers on the basis of simple suspicion. He lodged an appeal with the Administrative Litigation Council requesting that the State of Cameroon be condemned in the main to pay him the sum of FCFA 336,000 representing his balance for the period of detention and, in the alternative, to pay him compensation as well amount in compensation for the damage that his imprisonment caused him.

By judgment n° 673/CCA of December 13, 1957, the Administrative Litigation Council dismissed it as reasons given that *" the Litigation Council is incompetent to hear this appeal considered as constituting a claim for compensation for the compensation of the damage which resulted for the applicant from his imprisonment by a judicial authority ; that indeed, the administrative jurisdictions are incompetent to know actions based on a fault in the functioning of the service of justice, fault which, moreover does not give in principle no right to compensation ".* It was against this judgment that Mr. Tagny appealed for annulment before the Council of State which, by judgment n ° 44-225 of June 26, 1962 declared himself incompetent on the grounds that :

" Under the terms of article 33 relating to the judicial convention concluded between the Republic of Cameroon and France, on November 13, 1960 ratified under the authorization given by the law of November 27, 1960 and published in the newspaper of the French Republic of 09 August 1961 pursuant to the Decree of 31 last July, the Council of State and the Supreme Court ceased to be competent, as of 01 st January 1960 with regard to appeals against decisions of the Cameroonian courts ; it is clear from the said article that the Council of State is no longer competent to rule on appeals brought against the decisions of the Council for Administrative Litigation".

The Federal Court of Justice, hearing the case file, also declared itself incompetent : "*Whereas acts taken in the course of legal proceedings can only be assessed either in themselves or in their consequences", by the judicial authority,*

"That the facts for which the applicant claims compensation are intimately linked to the investigation of subversive maneuvers which were alleged against him and of which the administration could have rightly, having regard

to the political circumstances of the time believe itself to be the victim, facts, which cannot be separated from the procedure followed before the judicial judge with a view to establishing the truth, cannot therefore be referred to the administrative court".

Likewise, the Federal Court of Justice declared itself incompetent when the action related to the functioning of the courts. In the latter case, it excuses the separation of powers. The Lady Aoua Hadja species is revealing in this respect :

Following her divorce, the applicant applied to the Ngaoundéré court for the purpose of obtaining from her ex-husband the restitution of the sum of 450,000 FCFA and fifteen oxen worth 30,000 FCFA each. For reasons she was unaware of, the court had simply closed the case. His multiple approaches to the president of the court and the attorney general of Garoua were in vain. Convinced that all had participated in the stifling of the affair, she seized the administrative chamber of an action for compensation against the State. The applicant asked the administrative judge to award her compensation of 900,000 FCFA in damages and 1,000,000 FCFA as restitution as compensation for the damage suffered.

The administrative judge dismissed it on the grounds : *" It appears from the file that Lady Aoua Hadja complains that the judicial authorities have categorically refused to receive her action ;*

" Such a complaint which calls into question the functioning of the judicial service cannot be interpreted as a violation of the law by the State ; moreover, the principle of the separation of powers prohibits the administrative judge from ruling on actions which call into question the functioning of the courts of justice ;

"That it consequently falls to the Court to declare itself incompetent to hear the appeal of Dame Aoua Hadja"[79].

These judgments closely linked to the political climate of the time[80] were confirmed in 1980. Two cases with identical facts illustrate this continuity in the case-law :

Suspected of complicity in the embezzlement of a sum of 44,930,000 FCFA committed to the detriment of the State, the Sieurs Mondoubou Théodore
and Yombi Alphonse Bernard, on duty at the Ministry of Posts and Telecommunications, had been on complaint from the Director of Posts, apprehended

The latter rejected them on the basis of the separation of powers : *" Whereas the principle of the separation of executive and jurisdictional powers, which has resulted in prohibiting the courts from hearing disputes arising from administrative activity, also has the corollary of removing from the knowledge of the*

[79] Judgment No 213/A/CFJ/CAY of August 18, 1972, Dame Aoua Hadja v / Federal Republic of Cameroon.
[80] Climate marked by " the institutionalization of the legality of exception ".

administrative judge all acts participating in the exercise of the judicial function.

That it follows that all the acts intervened during a judicial procedure can be assessed either in themselves, or in their consequence only by the judicial authority (CFJ, case Tagny Mathieu against State of Cameroon, Judgment n ° 19 of March 16, 1967);

That thus, without stopping at the numerous developments of the applicant's conclusions, there is reason to declare that he is incompetent"[81].

The judge in these cases thus explicitly refers to the Tagny Mathieu judgment, to exclude acts relating to the functioning of the courts and those intervened in the course of judicial proceedings from the jurisdiction of the administrative judge. It therefore refers the applicants to better appeal to the courts..

African rights adopt varying solutions to questions relating to the responsibility of municipalities and the State because of the damage caused by assemblies and assemblies, whether armed or not[82]. Cameroon has consecrated the regime of irresponsibility or politico-administrative reparation. All things considered, this legislative ordinance has no analogy except Cameroonian law no. 64/LF/16 of June 26, 1964 which, thanks to the concept of "*terrorist activities*", made special legislation on assemblies or rallies and irresponsible public authorities because of the damage related thereto.

This is the case in many cases[83], the administrative authorities, in the legitimate concern of ensuring the safety of the inhabitants, were led to take preventive measures which had the consequences of causing serious prejudice to certain categories of people. The combined action of the terrorists on the one hand and the administrative authorities on the other gave rise to a voluminous dispute pending before the administrative courts, with extremely significant financial repercussions. If these appeals had succeeded, they would have deeply affected the country's public finances.

Indeed, for a young state that had access to the Independence, to grant such approach was not only financially asphyxiate, but also to contribute to the financing of terrorist activities by the compensation channel , therefore to their increase ; what would have resulted from undermining the authority of the leaders, would thus destabilize the State. Drawing the conclusion that these individuals, successively described as " combat groups ", "armed rallies ", " terrorist groups within a rebel army ", aimed to overthrow the

[81] Judgment No. 43/CS/ CA/79-80 of June 26, 1980, Mondoubou Théodore v. State of Cameroon, and Judgment No. 44/ CS/CA of June 26, 1980, Yombi Alphonse Bernard v / State of Cameroon .

[82] V. M. ONDOA, Le Droit de la responsabilité publique dans les Etats en développement, op.cit., 472.

[83] Judgment No. 346 / TE OF 8.8.1964 Dame Veuve ZAGORIAN c / State of Cameroon Oriental : Judgment No. 349 / TE of August 8, 1964. Dame Veuve TSOFLIAS C / State of Cameroon .

legitimate government[84] the Cameroonian legislator adopted Law No. 64 / LF / 16 of June 26, 1964, relating to the reparation of damage caused by the terrorists. This text constitutes a huge open breach in the block of administrative responsibility, because it devotes a vast field of irresponsibility of the State.

Article 1 (1) stipulates indeed : " is inadmissible, notwithstanding any legislative provisions to the contrary, any action directed against the Federal Republic, the federal states and other public authorities with the aim of obtaining compensation for damages of all kinds occasioned by terrorist activities for the suppression of terrorism ". This text sets out the following principles : The law provides in effect : " the President of the Federal Republic may grant to the victims of the terrorist or its repression, particularly worthy of interest or likely to make a special contribution to the economic or social development of the country, relief, in the limit of appropriations opened for this purpose or aid in any other form whatsoever ".

The decision of the Head of State enjoys total jurisdictional immunity, since it is not subject to litigation. Such a nature conferred on this decision strangely recalls the notion of "political *motive*" long abandoned in France. This law had a retroactive effect, since it applies to proceedings that were already pending before administrative tribunals[85].

The Supreme Court, since 1972 when it took shape, appears to be the very first jurisdiction to have achieved the feat of constructing a definition. It established a constant position taking into account the political criterion in the definition of the act of government. On reading the case law, the decisions involved in establishing this criterion make different use of it in its formulation. But one cannot deny or ignore the synonymy and the intention to translate the same reality, namely the use of the political element as justification.

We can read for the very first time, in *the KOUANG Guillaume case*, the definition posed by the judge, as follows: "Whereas *(...) we are talking about acts of government when the claim relates to a political question of which the decision rests exclusively with the government ;* "

This rule was explicitly taken up in *the ESSOMBA Marc-Antoine case*[86], then implicitly in *the MONKAM TIENTCHEU David case*[87]. In the latter case, it must be admitted that the fact

[84] Judgment no 345 / TE / of 8.8. 1964 ; Mr. PAPAMIRMINGIS Jacovis c / Federated State of eastern Cameroon.

[85] Judgment No. 3 / CFJ / AP of 03/15/1967 : Société forestière de la Sanaga v / State of Cameroon Oriental.

[86] ***" Whereas, however, (...) we speak of an act of government when the complaint relates to a political question whose decision belongs exclusively to the government ;"*** .

[87] ***" Considering that as regards an act of government, the Administrative Chamber , in its judgments N ° 66 / ADD / CS / CA / 79-80 of May 31 and November 29, 1979 had already had to retain its jurisdiction, considering that, the designation of a traditional chief is a purely customary matter".***

that the judge cited in his presentation on the act of government, the reference to the decisions previously rendered, marks his undisputed adherence to the rule posed in the matter.

In addition to the three fundamental decisions on the question of the act of government, there is another, namely the *ESSOUGOU Benoît v. State of Cameroon judgment,* the content of which presents a formulation on the political criterion, which differs from that previously observed. The judge sets out the following rule here :

"*Whereas indeed by act of government is meant acts having an essentially political character, the decision of which belongs exclusively to the Government;* "

A sort of overshoot can be observed in the use of the political criterion here by the judge, in that, it is no longer only the content of the act or decision of the Government which is political or which relates to a question Politics. The development is rightly marked by the fact that the political criterion becomes consubstantial with the existence of the act, it is no longer limited to its object, but goes back to its nature, its reason for being.

However, such an interpretation does not detract from the fact that in either case, we are still using the political criterion to define the act of government. For this reason, we cannot share the opinion of part of the Cameroonian doctrine which sees rather in this situation a rupture, by *the ESSOUGOU Benoît case,* of the consistency of the case law established by *the KOUANG Guillaume and ESSOMBA Marc-Antoine cases.* . This doctrine considers that the judgment rendered on April 24, 1980 and confirmed on appeal by the Plenary Assembly of the Supreme Court[88], appears as " *the disruptive isolated case having temporarily broken the clarity previously maintained by the administrative court when it was confronted with challenges relating to administrative acts of appointment of traditional chiefs"*[89].

However, it is clear that in this case the judge simply changed his expression in the use of the political motive test. Is it not, moreover, in this sense that the French administrative judge of the Council of State also proceeded to the use of political motive, when respectively in *the LAFFITTE and DUC D'AUMALE judgments*[90] he used the expressions "*political question*" and "*political acts*" without distinction to define the act of government.

Also, the point of view of Professor Maurice KAMTO can be brought into question. In fact, he considers that the concept of

[88] CS / AP, Judgment No. 18 / A of March 19, 1981, State of Cameroon (Ministry of Public Health), Dr ESSOUGOU Benoît v / State of Cameroon (Ministry of Public Health).

[89] ABA'A OYONO (J-C), *La compétence de la juridiction administrative en droit camerounais, op.cit.*, p.380.

[90] CE, 1er mai 1822, *LAFFITTE* : *« … la réclamation du sieur LAFFITTE tient à une question politique dont la décision appartient exclusivement au Gouvernement ».* CE, 9 mai 1867, *DUC D'AUMALE* : *« Il s'agit d'actes politiques qui ne sont pas de nature à nous être déférés pour excès de pouvoir en nature conseil d'Etat par la voie contentieuse ».* Ces décisions sont citées par RIVERO (J), WALINE (J), *Droit administratif, op.cit.*, p.280.

act of government in Cameroonian law has passed into the case law analyzed, first by a "*rejection of the political motive* ", with regard to *the cases of KOUANG Guillaume, ESSOMBA Marc-Antoine* and *MONKAM TIENTCHEU David*, then for a "*return to political motive"* in *the ESSOUGOU Benoît case* confirmed on appeal[91]. However, it must be noted that each time the judge in all these cases gives a definition of the act of government, whatever the formula used, there is always the term" *political"* which appears explicitly. One cannot therefore adhere, as this doctrine thinks, to the opinion of "*an unfortunate turnaround* " compared to " *an established position* ". Quite simply, the judge maintains consistency, stability on the political criterion of the act of government. However, this criterion is quite broad and favorable to attacks on the rule of law.

Through this analysis of the political acts that constitute the acts of government, in the exercise of political power, one can envisage a fear : the political criterion retained, is likely to integrate any act in the category of acts of government[92]. This situation let's see in a dangerous way, for the freedom of the citizens, the idea of the reason of State.

The political criterion adopted by the administrative judge of the Supreme Court can *a priori* invade everything, in fact, it lacks precision and seems rather vague. Nevertheless, it must be recognized that the Case law has tried to orient the meaning to be taken into account in the definition of acts of government on the basis of the political criterion. It considers that acts of government are taken or adopted in matters of government.

II. A CASE-LAW POLICY FOR THE PROTECTION OF INDIVIDUALS

The exclusion of responsibility for fault of the State for the fact, either of the application of a regular internal legal norm, or of the refusal or the impossibility to intervene, should not however be synonymous with absence compensation for the harm suffered by the citizen. The State acted in the name of the general interest, an essential concept with regard to the activity of the public power since it is perceived as a factor of legitimation, but can one in the name of this interest refuse any right to reparation to the injured individual?

The search for responsibility will be made on the basis of the breach of equality before public offices. This particular faultless liability regime, created from scratch by case law, will be applied to many hypotheses such as damage caused by laws, treaties but also individual administrative regulations and measures or in the event of refusal of 'to act. This foundation testifies to the will of the judge to ensure real protection for the citizens, since the compensation for the damage will be made by the granting of compensation, paid by the

[91] KAMTO (M), « Actes de gouvernement et droits de l'homme au Cameroun », article, *op.cit*., pp. 9-10.
[92] GAUDEMET (Y), *Traité de droit administratif*, Tome 1, *op.cit.*, p.590.

community, chargeable to its budget and fed by the contributions of the citizens. The sum will thus be distributed over all taxpayers ensuring de facto equality before public charges. We will therefore see that this specific faultless liability regime provides effective protection for individuals, precisely because of its foundation, but also because of its implementation criteria (Section l).

At the same time, the protection of citizens will also appear through a more global phenomenon, namely the tendency of the administrative judge to extend faultless responsibility to new areas. Gradually, the fault, seen as a condition of a full litigation appeal, will give way to equality before public charges. This trend is part of a socialization of administrative responsibility. Thanks to the retreat of the idea of sanctioning public persons, the judge will focus on the victim, on his need for reparation and will thus have less embarrassment to recognize a responsibility of the State services. Protection not administered will be more effective, socialization acting as a legitimizing factor of increased responsibilities assumptions s age fault .

A. PROTECTION THROUGH THE APPLICATION OF A SPECIFIC REGIME

The exercise of full litigation in the event of damage arising from the consequences of standard-setting action is accepted by the administrative judge on the basis of equality of citizens before public charges. This principle is acquired and does not fail to be reaffirmed in decisions, even if in the end, compensation is not always awarded. In addition to this legal source, there is a somewhat vague concept used by the courts in an underlying way to refine their analysis of the cases submitted. It is about equity. Its use responds to a need to repair the rupture therefore to turn in priority towards the victims, rather than towards the public authorities. Thus, the protection of individuals who are victims of damage due to the application of a lawful act or a refusal to act is materialized by the formal recognition of state responsibility for breach of equality before public office. , at the same time as fairness guides the judge in a more punctual way.

However, stating a principle and finding a legal basis for it is not enough. Indeed, in order to claim compensation in the context of liability for breach of equality before public charges, the applicant must also demonstrate that his damage is of a normal and special nature. These notions of abnormality and specialty will then play an essential role, to such an extent that one may wonder, if they are not the ones that constitute the real criteria of responsibility rather than the breach of equality

The real justification for faultless liability due to standard-setting action remains the principle of equality before public office (a). However, after reading certain decisions, it turns out to be possible to say that the administrative judge is sometimes indirectly influenced by the notion of fairness, which then becomes an (unofficial source of

inspiration " [93] (b). The combination of the two concepts will allow a more empirical approach to the various damages subject to compensation and thus better protection for litigants.

The Federal Court of Justice has expressly enshrined the faultless responsibility of the administration, in the event of breach of the equality of citizens before public charges (1) and risk (2).

1. **Equality before public office as a legal basis**

The principle of equality of citizens before public office is a corollary of that of equality of men, the origin of which dates back to Article 13 of the Declaration of Human and Citizen Rights of 1789[94] . Indeed, it may happen that a regular action by the Administration responding to the needs of the general interest constitutes for an individual a charge exceeding what is normal to bear. In the name of this general interest, some people have suffered damage that the rest of the population has not suffered. To their detriment, there is a breach of equality before public offices[95] . The principle of equality before public office therefore explains and justifies that compensation be owed to them: The payment of compensation will restore broken equality [96]. The right to compensation is however not conditioned by the mere realization of the damage. It has to be both abnormal and special. Special, that is to say reaching only certain members of the community, failing which, there would be no breach of equality for all before public office. Abnormal, that is to say reaching a certain degree of importance, because the members of the community must bear without compensation the ordinary inconveniences and inconveniences of life in society[97]

First of all, one of the prerogatives of the administration is the refusal to execute, in the general interest, the jurisdictional sentences when the execution of this presents a serious attack to the principle of the equality of the citizens before the public office, even if there is no irregularity[98] . This idea was expressed for the first time by the Council of State in the famous Couitéas judgment[99] which, while admitting the possibility of non-execution of a court decision on grounds drawn from the pressing need to maintain public order,

[93] Selon l'expression utilisée par C. CORNIER, in le préjudice en droit administratif français. Etude sur la responsabilité extracontractuelle des personnes publiques, Paris, LGDJ, Coll. Bib. Dr. Pub., T. 228, 2002, P. 320

[94] ONDOA (M) la protection des dépenses d'indemnisation en droit administratif camerounais, thèse de Doctorat de 3e cycle en droit public, Université de Yaoundé, FDSE, 1990, P. 100.

[95] RIVERO(J), WALINE (J), Droit administratif...op cit P. 420.

[96] CHAPUS ®, Droit administratif général, Tome I, 14e édition, Montchrestien, Paris 2000, p. 1337.

[97] AMSELEK (P), « La responsabilité sans faute des personnes publiques dans la jurisprudence administrative », in mélanges Charles Eisenmann, Cujas, Paris 1974, P. 248.

[98] BILONG (S), « L'insaisissable responsabilité sans faute de la puissance publique en droit camerounais », Annales de la FSJP de l'Université de Dschang, Tome I, volume 1, 1997, p.93.

[99] CE, 30 novembre 1923, Couitéas, GAJA, n°45, Concl. Rivet.

recognizes the right to compensation for the benefit of those injured by the actions of the administrative authorities.

On the other hand, insofar as legislative activity escapes all censorship by the administrative judge, it cannot generate State responsibility for fault[100] . However, the law and the measures taken to apply it are likely to cause harm to individuals. The irresponsibility of the legislator state long received as a dogma[101] is defeated in breach since the Council of State accepts compensation by application of the principle of equality before public charges, on account of new and unforeseen charges imposed on the contracting partner by the legislator[102] . It is this development which led to the famous Société des Produits Daitiers " *La fleurette* " judgment.[103]. This stop, if it was considered isolated for a time, was later confirmed by that of the Magnac Laval Distillery[104] .

As we can see, in France, the judge continually extends the hypotheses of faultless liability based on the breach of the equality of citizens before public office.

In Cameroon, the Federal Court of Justice has confined the field of no-fault liability based on the breach of equality before public charges to damages caused by public works. It had first accepted the principle of such responsibility (a), before expressly devoting it (b).

2. Acceptance of the principle of State responsibility in the event of a breach of equality before public office

This acceptance follows from the reading of the Dame Ngué judgment : " *Considering that a loss suffered by an individual as a result of the execution of works of general interest, opens the right to compensation only if it is exceptional, c is to say is of particular gravity, that in this case in fact, there is a breach of the principle of equality of all citizens before public office, which is sufficient to engage the responsibility of the public authority in outside of any idea of fault* " [105].

In this case, the applicant considers that an urban street went on his property, he destroyed a plantation of corn and a pit skeptic, damage for which it seeks compensation before the administrative judge. The judge therefore accepts the principle of reparation, but he makes it subject to a condition, namely that the damage is exceptional, that is to say that it is of particular gravity.

[100] BILONG (S), op.cit. p.93
[101] VEDEL (G) et DELVOLVE (P), Droit administratif, PUF, Paris 1984, p.547.
[102] CE, 12 juillet 1929, chemins de fer de l'Etat, Recueil Lebon, p.7.
[103] CE, 14 janvier 1938, société anonyme des produits laitiers « La fleurette », G.A, n°59.
[104] CE, 02 mai 1958, Distillerie de Magnac-Laval, AJDA, 1958, II, p.282. Voir aussi CE, 8 janvier 1965, Société des Etablissements Aupinel, Rec, 15.
[105] Arrêt n°51/CFJ/SCAY du 25 mars 1969, Dame Ngue André c/ Commune de plein exercice de Mbalmayo

This is one of the reasons why Dame Ngué will not be entitled to compensation.

The merit of this decision, as rightly pointed out by Mr. Bilong Salomon, lies in the fact that the judge here at least accepts the principle of State responsibility in the absence of any fault.

The Federal Court of Justice, if it accepts the principle of faultless liability based on the breach of equality before public office in the Dame Ngué case, will expressly dedicate it to the Ngomha Salomon case.

The breach of equality before public office will be explicitly admitted as the basis of faultless liability in Cameroonian administrative law, in the Ngomha Salomon case. The facts are known.

Following the demolition of his huts and kitchen located in the New Bell district of Douala, Mr. Ngomha Salomon brought an action against the full-service municipality of Douala, for the purpose of hearing the latter ordered to pay him the sum of 730,250 francs as compensation for the damage he claims to have suffered.

The municipality, which objects to this request, submits that the destruction of the applicant's cabin and kitchen was carried out in the context of the application of the town planning plan, that is to say due to the 'execution of works of general interest.

" *Considering that the principle of equality before public offices means that the responsibility of the public authorities is engaged, without any idea of fault, due to the execution of works of general interest, when it results for an individual exceptional damage ;*

Considering that it is common ground that the application of the town planning plan has seriously affected the property rights of Mr. Ngomha Salomon;
that a sacrifice has thus been imposed on him which exceeds his normal participation in public office, and thereby entitles him to pecuniary compensation "[106].

The breach of the equality of citizens before public charges therefore engages the responsibility of the State in the event of abnormal damage caused by the execution of public works. It constitutes with risk the foundations of faultless liability of the public authorities.

B- RESPONSIBILITY FOR RISK

Anyone who on the occasion of an activity which is profitable to him creates a risk of damage to others, must respond if the risk materializes. Having the profit, he must assume the risk. This is what Mr. EISENMANN calls *"the correlation between benefits and burdens"* [107] . French administrative Case law

[106] Arrêt n°59/CFJ/SCAY du 25 mars 1969, Ngomha Salomon c/ C.P.E de Douala
[107] EISENMANN (CH), « Sur le degré d'originalité de la responsabilité extracontractuelle des personnes publiques », J.C.P, 1949, p.741

traditionally recognizes three areas of faultless liability based on risk : these are public works, dangerous things and activities, and accidents occurring to employees of the Administration.

Damage caused by public works is the oldest and one of the most important areas for applying faultless liability. The liability system applicable to the damage in question combines risk and fault. Thus, damage caused to third parties is the responsibility for risk, provided however that it is abnormal, while damage caused to users falls under the fault system. But case law accepts that there is a presumption of fault, that is to say that it considers that it is up to the administration to prove that it has maintained the work normally.[108] .

Case law also admits faultless liability, based on risk, for accidents occurring to employees of the Administration[109] . The Council of State first came up with this solution for permanent employees[110] . But this hypothesis has practically been emptied of its substance since the development of pension legislation : The benefit of a pension which constitutes a lump sum compensation excludes any possibility of claiming compensation on the basis of risk [111] . It is therefore mainly for volunteer employees[112] or required[113] of the public service that this type of liability for risk applies.

Finally, case law accepts faultless liability on the basis of the exceptional risk arising from dangerous things or activities in three cases : these are explosives and ammunition[114], the use of firearms[115] . However, this case law only applies if the victim is a third party and not the person targeted by the police operation.[116] . Finally, these are activities involving risks such as the treatment of the mentally ill with the possibility of discharge.[117] .

In Cameroon, the faultless administration of risk-based administration was introduced at the time of the Administrative Litigation Council. It mainly concerned occasional employees of the Administration (a) . It will subsequently be extended by the Federal Court of Justice to the existence and operation of the services (b).

1. The initial limitation by the colonial courts of faultless responsibility based on risk to the occasional employee of the administration

The notion of occasional collaborator is a concept that is difficult to control. This is due to

[108] C'est la théorie du « défaut d'entretien normal ».
[109] PREVOST (J-F), « La notion de collaborateur occasionnel et bénévole du service public », RDP 1980, pp.1070 à 1097
[110] CE, 21 juin 1895, Cames, GAJA, n°6
[111] VEDEL (G), DELVOVE (P), Droit administratif, PUF, 8e édition 1984, p.505.
[112] CE, 22 novembre 1946, commune de Saint-Priest-La plaine, GAJA, n°60
[113] CE, 15 février 1946, ville de Senlis, p.50 S. 1946.3.46.
[114] CE, 28 mars 1919, Regnault-Desroziers, GAJA, n°36, à propos de l'explosion en région parisienne d'un dépôt de munitions pendant la première guerre
[115] CE, 24 juin 1949, Lecomte et Daramy, GAJA n°64.
[116] CE, 27 juillet 1951, Dame Auberge, D. 1952.108. Concl Gazier.
[117] CE 13 juillet 1967, Département de la Moselle, AJDA, 1968.4.19, note Moreau

the fact that this type of collaborator is placed outside all legal categories, because he can, while remaining a private individual, be considered as a kind of public agent.[118] This hybrid nature, this functional duplication, have long contributed to preventing the concept from being clarified and stabilized.[119] However, the notion of occasional and voluntary collaborator became more and more growing. Two types of factors have militated in favor of the extension of this notion.

The Administration, guardian of the general interest, has found itself overwhelmed by tasks which it thinks belong to it by nature and which have become more and more numerous and varied. This extension was also done in the context of a strengthening of the concept of public service whose guiding principles, and mainly that of continuity, gave rise to problems and revealed the inevitable shortcomings and failings of the administrative authorities.[120] It is therefore to meet a need that resulted from rigorous and consistent principles that the notion of occasional and voluntary collaborator developed[121] .

But it was also driven by moral data that this development took place. The government commissioner MORISOT said in effect in the section of the Council of State : *" It is quite certain that the main reason which led you to extend the concept of voluntary collaborator of the service is moral. You wanted the person who devoted himself to save others not to bear, without reparation, the damage he suffered on this occasion. In a world where solidarity manifests itself more willingly to claim than to serve, you did not want to discourage those who think that they also have duties. "* [122]

The principle of faultless liability for voluntary collaborators was established in the Ndounda Thomas case of July 10, 1953.

Mr. Manga Dominique, a local official, on duty at the Yaoundé administrative garage, went on the morning of March 20, 1951 to his place of work at the wheel of a car belonging to the Administration of the Territory. Victim of a mechanical breakdown, he then asked the people passing by on the track to volunteer his service to push the car to start the engine. Following this maneuver, the vehicle, which was at the top of a slope, backed away suddenly, causing injuries to the applicant, who was helping the maneuver.

Mr. Manga to defend himself, claims that anticipating the car backing down, he had warned the people participating in the maneuver and had advised them to place a chock under a wheel of the car.

The problem which arose in the Council was the following : an individual voluntarily

[118] LAVROFF (D.G), « Le collaborateur bénévole de l'Administration », A.J.D.A, 1939, p.122.
[119] PREVOST (J-F), « La notion de collaborateur occasionnel et bénévole du service public », R.D.P, 1980, P.1074.
[120] Ibid
[121] Ibid.
[122] Conclusions sur CE, 1er juillet 1977, Commune de Coggia, A.J.D.A, 1978, P.287.

assists the Administration. In his collaboration with the service, he was the victim of an accident without fault on his part and without fault of the Administration. Should it not then be compensated since the Administration, which benefited from its assistance, must bear the risks inherent in it?

The case law gives a fully affirmative answer to this question. Also, the Administrative Litigation Council did not accept the arguments of Mr. Manga *:*

"Considering that Mr. Ndounda lent his assistance voluntarily; that it was therefore for Manga to take the necessary measures to avoid any accident;

That, moreover, he does not allege that the order to place a hold was addressed to the victim; that thus, it should be said that the applicant did not commit any recklessness and that the responsibility for the accident falls entirely on the driver" ;

"Considering *that under constant case law of the Council of State, the accident engages the responsibility of the State as long as the victim has not committed a fault and that no case of force majeure is alleged "* [123] .

The judge subordinates the application of the responsibility without fault of the Administration for the damage caused to the occasional collaborators with certain conditions : the assistance of the victim to the operation of the service must be requested ; the employee must be a person external to the Administration ; the activity in which the person participated must be a public service activity. The Ndounda Thomas case is an exception to this rule. The victim had simply helped to start a car belonging to the Administration. No service in the organic sense of the word was at stake. Finally, the victim must have committed no fault and that no case of force majeure is alleged.

However, it should be noted that nowhere in these decisions does the judge invoke the concept of risk. But we get there by examining the facts and analyzing the reasons.

If we owe to the Administrative Litigation Council the introduction of faultless liability based on risk in Cameroonian administrative law, it must be recognized that it was the Federal Court of Justice, which extended the scope of application of this responsibility.

2.The extension by the Federal Court of Justice of responsibility without fault based on the risk due to the existence and functioning of a public service

The scope of fault-free liability based on risk was extended by the Federal Court of Justice. The high court thus engaged the liability without fault of the State based on the risk when the damage resulted from the existence and the functioning of a public service. This hypothesis was confirmed by the illustrious jurisdiction in

[123] Arrêt n°237/CCA du 10 juillet 1953, Ndounda Thomas c/ Territoire. Dans le même sens, arrêt n°675/CCA du 06 septembre 1957, Kpwang Essiane c/ Etat du Cameroun

the Dame Essola Jacqueline case, the facts of which are summarized as follows :

By principal and additive requests dated November 16, 1961 and March 11, 1966 respectively registered at the registry of the administrative litigation section of Yaoundé on November 29, 1961 under No. 123, and March 12, 1966 under No. 220, the Lady Essola Jacqueline has seized the administrative court of an action for compensation against the Federal Republic of Cameroon by which she requests that the latter be ordered to pay him the sum of 500,000 FCFA in compensation for the damage suffered by her following a traffic accident on November 11, 1960.

In support of her appeal, Lady Essola Jacqueline alleges that the named Essono André who was driving while intoxicated committed a speeding which was the cause of the accident.

This case was going to be the ideal opportunity for the judge, to fix minds on the theory of risk :

“ Considering moreover that the theory of the responsibility of the State based on the risk resulting from the existence and the operation of a public service, since it requires a special, abnormal damage, is not applicable in the case, the damage alleged by the Lady Essola Jacqueline not having this character ”.

"Considering that from all of the above, it follows that the request of Lady Essola Jacqueline must be rejected as ill-founded ".

Contrary reasoning suggests that if the damage alleged by the applicant was of this nature, the State's faultless liability related to the risk could have been engaged.

In order to admit faultless liability on the basis of the breach of equality before public offices, the applicant must have suffered damage which, according to the formula used in many judgments, “cannot be regarded as a burden incumbent upon him normally[124]”. The private individual will thus have to justify a charge exceeding that which he normally has to bear, we then speak of “abnormal” damage, often attached to the adjective “special " [125]. The definition of this damage will obviously come from case law, the specific regime of liability without fault due to regular regulatory action being, a Praetorian creation. The damage is therefore compensable provided that it is not only special but also of sufficient seriousness. These conditions appear to be

[124] Voir, notamment : CE, Ass. 14 janvier 1938, Sté anonyme des produits laitiers La Fleurette

[125] Pour une affirmation par le juge administratif de la nécessité d'un préjudice anormal et spécial, voir, par ex. : CE, 13 mai 1987, M. Aldebert, préc., concernant un arrêté réglementaire - CAA Marseille,2 4 février 1998, Ministre de la Culture et de la Communication, RFDA, 1998, p. I133, obs. H. Le Berre, s'agissant de la loi du 27 septembre19 4l portant réglementation des fouilles archéologiques - CAA Marseille,2 3 novembre1 999,M . Peretti, req. no 97MA0082, à propos de la loi de validation du 26 juillet l99l portant diverses dispositions relatives à la fonction publique.

cumulative[126] and the administrative judge does not fail to recall this obligation for the prejudice of combining abnormality and specialty[127] This is easily explained by the fact that, although complementary, these two characteristics appear to be distinct. As C. Cormier remarks, "*the abnormality concerns the damage itself while the specialty (...) relates to the circle of people who can claim compensation*"[128].

In order to delimit the concept of *" damage which should not normally be borne by the defendant "* and which can thus be the subject of compensation, it is necessary to endeavor to define clearly what is contained in the concepts of abnormality (1), on the other hand, and specialty on the other hand.

In the litigation for damages public works caused to the third party and the damage born of s decisions regular , the injury must be " anomalous ", " special and serious " for after the stops , because these diets are based directly on breach of equality before public offices [129]. However, if like us, we justify all public responsibility by this rule of equality before public charges stipulated in the social pact, We must question the generalization of these requirements concerning damage for all cases of responsibility. An incidence question then arises as soon as the problem is examined: is the requirement multiple or does it only amount to establishing the anomaly of the damage ?

The definition of anomalous damage is not easy. There are many ways to appreciate what goes beyond the norm. The damage exceeds the measure, becomes damage when it reaches a right. But how do you assess the overshoot? The anomaly is a functional concept that is found in many disputes. More than a foundation, the anomaly is a “standard ". To use the words of C. Blaevoet and attempt to delimit the very notion of abnormality, we can observe that the word “abnormal " has several meanings. Is abnormal " on the one hand what does not comply with the norm, the rule, the statute, the law (...) on the other hand, everything which does not comply with current practice , in the common sense (...) finally, everything that exceeds the common measure in the importance of the company or the gravity of the facts or

[126] Cette double exigence a d'ailleurs fait l'objet d'une consécration par le Conseil constitutionnel, celui-ci ayant affirmé, dans une décision rendue le 4 juillet 1989, ((...) qu'il est loisible aux intéressés, pour le cas où l'application de la loi présentement examinée leur occasionneraient un préjudice anormal et spécial, d'en demander réparation sur le fondement du principe constitutionnelle de l'égalité de tous devant les charges publiques » (cf. CC, no 89-254 DC, Loi modifiant la loi no 86-912 du 6 août 1986 relative aux modalités d'application des privatisations, Rec. CC, p.4l).

[127] La rédaction de certains arrêts indique clairement le caractère cumulatif des conditions d'anormalité et de spécialité du préjudice. Voir, par ex. : CE, Ass. 30 mars1 966, Cie générale d'énergie radioélectrique, Rec.- CE, p. 257 ; AJDA, 1966, p. 350

[128] . CORMIER, Le préjudice en droit administratif français. Etude sur la responsabilité extracontractuelle des personnes publiques, Paris, LGDJ, Coll. Bib. Dr. Pub. T .228, 2002, p. 210

[129] Voir M. DEGUERGUE, Jurisprudence et doctrine dans l’élaboration du droit de la responsabilité administrative, L.G.D.J. 1994, P. 643

repercussions " [130]. Thus, abnormality of the damage means the designation of its importance, its gravity.

Throughout its Case law, the administrative judge will diversify the expressions to account for this criterion. Thus, in matters of damage caused by a law, the " La Fleurette " judgment speaks of a charge which does not normally fall on the applicant company, the

" Caucheteux and Desmonts " judgment [131]" suff iciently serious harm " . For the refusal to execute a court decision, "the resulting damage cannot, if it exceeds a certain duration, be a burden normally incumbent on the person concerned ". In matters of regulatory decision, the granting of compensation is subject to the " Commune de Gavarnie " judgment , provided that it is " established that the damage has , in fact, presented a seriousness such as the decree News had to be regarded as a aving i MPOSE Sieur Bern load does not normally fall upon him ' . The damage has finally been called "exceptional"[132].

the damage belongs to him, it is to him that the power to change the concept in a direction more or less favorable to the victim, insofar as no seriousness threshold is predefined.

U In order to better appreciate the existence of e the abnormality of the damage, the judge will then proceed to a set of findings[133] and focus on the repercussions of the regular act on the situation of the victim. To achieve this, it may have to resort to an analysis of all of the applicant's activities in order to measure the extent of the damage to his assets. The amount of the sums involved is therefore taken into account but is not sufficient. Thus, damage involving a sum é lifting may not be considered as abnormal if it leaves the bulk of the business of the person concerned, n e removing a portion accessory to e its business and does not prevent the prosecution of other business[134]. Rather, the obligation to cease t ny activity qualifies for re Repair[135].

Sometimes, the absence of gravity can emerge from the comparison of the damage caused against the benefits that the harmful measure itself has provided. Thus, the victim must not be able to justify a profit or any other advantage as a result of the act in

[130] C. BLAEVOET, « De l'anormal devant les hautes juridictions civile et administrative », JCP, 1946, G, I, no 560

[131] CE, Ass., 21 janvier 1944, Sieurs Caucheteux et Desmont

[132] CE, 8 mai 1961, Bonifay, Rec. CE, p. 117. 1

[133] Pour une étude des critères temporels et financiers, utilisés par le juge administratif pour évaluer l'anormalité du préjudice, voir infra, $ no 408 et s.

[134] CE, 17 févier 1939, Sté coopérative militaire d'Alsace, Rec. CE, p.97.La Haute juridiction considère en l'espèce qu'une société, autorisée à vendre divers produits, dont les boissons alcoolisées dans les camps militaires, ne saurait se plaindre des conséquences d'une loi réservant la vente des boissons alcoolisées aux seuls cantiniers.

[135] CE, Ass., 14 janvier 1938, La Fleurette, préc. - CE, Ass., 2 janvier 1944, Caucheteux et Desmonts, préc. CE, sect., 22 févier 1963, Commune de Gavarnie, Rec. C.E, p. 113 ; AJDA, 1963, p. 208, chron. M. Gentot et J. Fourré ; RDP, 1963, p. 1019 note M. Waline

question. Otherwise, the damage totally or partially compensated by a profit is considered as no longer having the serious nature required for the implementation of faultless liability. This was the case, for example, in the " Vanier " case [136], the abolition of a television program two years before the initially planned term seemed far-reaching compared to the effective duration of this program (8 years). Similarly, in the case of " Consorts Olivier "[137], the damage invoked by the applicants was not considered to be of a sufficiently serious nature, insofar as the losses of some stocks of unsold plants, following the decree of September 30, 953 came to regulate the sale and planting of certain grape varieties, was easily compensated by the benefits garnered due to all the texts on the consolidation of the wine market.

Finally, it should be emphasized that the damage must not be linked to a hazard normally assumed by the victim. This condition, formulated in l962[138] in France concerning a refusal to authorize the export of war material, will be applied to the many hypotheses covered by the responsibility born from the "Couitéas" case law[139]. According to expression employee by the State Council in judgment "Society Sons of Henri Ramel"[140] , the damage is not abnormal when it is the realization" of a risk to which they (the applicants) would have knowingly been exposed ". Thus, the extent of the damage must not only be assessed in relation to the gravity of its effects, but also in relation to the normality of its cause [141]. The e damage must

[136] CE, sect., 27 janvier 1961, préc

[137] CE, 26 octobre1 962, Consorts Olivier, RDP, 1963, p. 79, concl. Heumann

[138] CE, 29 juin 1962, Sté « Manufacture de machines du Haut-Rhin », Rec. CE, p. 432, concl. Ordonneau ; AJDA, 1962, p.580. Selon la législation en vigueur, la fabrication de matériel de guerre pour l'étranger était soumise à une autorisation administrative pour l'acceptation de la commande et une autorisation pour l'exportation de matériel fabriqué. Or, à la suite de la crise de Suez, l'autorisation administrative d'exportation du matériel vers la Syrie fut refusée à la société requérante Le Conseil d'Etat va rejeter toute indemnisation de la société requérante au motif qu'elle « ne pouvait ignorer l'aléa que comportait la passation d'un tel contrat, elle devait normalement envisager l'éventualité où, pour des motifs légitimes (...) l'autorisation lui serait refusée ».

[139] Voir, par ex., CE, lo juillet 1996, Meunier, req. no 143847 : Le préjudice résultant d'une situation à laquelle le particulier s'est sciemment exposé ne lui ouvre pas droit à réparation. Dans le même sens, TA Paris, 14 octobre 1997, Sté Effige, Juris-Data, n" 051329: <Eu égard, notamment à la nature particulière du projet de construction et d'exploitation du stade à Melun-Sénart, les sociétés requérantes ne pouvaient ignorer le risque d'un éventuel abandon du projet. Dès lors, ayant assumé ce risque en connaissance de cause, elles ne sauraient, demander à, ce titre, réparation des conséquences dommageables de la décision du Premier ministre ».

[140] CE, sect., 7 décembre1 979, Sté « les fils de Henri Ramel », Rec. CE, p. 456;D., 1980, p. 303, concl. B. Genevois ; JCP, 1981, G, II, no 19500, note B. Pacteau

[141] S'appuyant principalement sur cette idée, C. BROYELLE développe alors, s'agissant de la responsabilité du fait des lois, une définition de l'anormalité de la charge pesant sur le particulier, totalement détachée des notions de gravité et de spécialité. Pour l'auteur, « ce n'est pas en raison de ses caractères propres, notamment de sa gravité et de sa spécialité, que la charge paraît au juge comme anormale, mais au regard de l'objectif de la loi. Pour un juge chargé d'une mission d'application de la loi, l'anormalité s'entend avant tout comme ce qui n'est pas « conforme aux règles ou aux lois reconnus >. L'anormalité de la charge provient de ce que celle-ci ne constitue pas un effet normal de la loi. La charge

be sufficiently grave but it also does not result from exposure of the victim to the vagaries of aced normally remain dependent[142].

In order for the faultless liability of the public authority to be recognized, the damage must therefore be abnormal. If contrary, the automatic exclusion of compensation is formulated man clear by the judge, " it is not established that the (measurement) have caused (the applicant) injury sufficiently serious for that it is justified in asking for compensation"[143] or " the damage suffered (...) has not presented the e gravity of which, in the absence of fault of the administration, may only have the effect (...) Right to compensation [144] but the condition of abnormality is not everything; the damage must also be special.

The harm is said to be special as far as it is peculiar to an individual or to a well-defined category of individual[145] .

"*Whereas the council can…. assess the damage equipment suffered by the applicant because of the journey he made on the orders of authority administrative. That by doing so… the council assesses a special and certain damage caused to the applicant for the common good"*. The principle of equality before public office opposes only discrimination between citizens placed in the same situation. This is not violated if they are all affected by the same charge. E No matter responsibility, the same reasoning is applied to the extent that the damage cannot be repaired if it appears as discrimination between the victim and the people who, placed in the same situation, do suffer not. It is this need that is con specialty edition and the judge Administrative does not hesitate to remind its importance so explicit [146] . Therefore, it remains to know, in the image of what we just did for the character of abnormality, what is actually the character of e specialty.

mayor's decree, to see its activity considerably reduced. Finally, in the "Société Boulenger " judgment[147], the specialty relates to the very object of the measure since it was an individual measure putting pressure on society, and only it, in order to cede it to a workers' cooperative.

The problem will be further complicated when the damage affects a whole group of citizens. When the damage reaches the entire

est « anormale », elle s'est produite < en dehors > de la nonne. Cette « anormalité » s'apprécie non pas du côté du dommage mais du côté de la règle, de la loi >> (cf. La responsabilité de l'Etat du fait des lois, Paris, LGDJ, Coll. Bib. Dr. Pub., t.236, 2003, p.52).

[142] En ce qui concerne l'appréciation faite par le juge administratif de l'existence d'un aléa.

[143] CE, sect., 23 novembre 1945, Sieur Rougie, prec

[144] CE, sect.,27 Javier 1961, Vannier, préc

[145] Voir Arrêt no 78/CCA du 21 déc. 1951 ; Sieur THINE C/Administration du territoire.

[146] CE, 7 juillet 1950, Ménoreau, Rec. CE, p. 448: « le caractère de spécialité est nécessaire pour que soit éventuellement reconnu aux intéressés un droit à la réparation des dommages résultant de l'intervention du législateur »

[147] CE, 2 novembre 1947, Sté Boulenger, Rec. CE, p. 435. Ici, une seule entreprise a subi la pression gouvernementale pour être cédée à une coopérative ouvrière

population, it is certain that we cannot speak of a specialty. The solution is the same when an entire region or an activity is targeted. restricted[148]".

We will see that both the criterion of abnormality and that of specialty have a certain link with the principle of equality before public office they both express proof that equality has been broken and therefore, on this point, that the damage deserves to be compensated. Nevertheless, we will note that the criterion of abnormality seems to evoke, by itself, the existence of an exceptional charge, to the point that some authors have questioned the possibility that it is the real basis of responsibility for the fact regular normative action

Abnormal and special prejudice will be considered as a functional concept to which the judge refers to establish the breach of the equality of citizens before public office. Indeed, it is the characteristics of the damage that will serve as a benchmark in order to determine whether liability without fault deserves or not to be recognized, and thereby the compensation to be awarded26. This primordial role comes from the fact that, very early, we associated abnormal and special prejudice and breach of equality. Some authors do not hesitate to evoke this link explicitly, like P. DueD [149]

has suffered damage (...) she must also be the only one to bear it among the other people placed in the same situation" [150]. This is where the link with the specialty of harm appears since it only exists when the victim finds himself isolated from other people, due to the harmful measure itself, that is to say when 'she is the only one, among the other people in the same situation, to bear the burden induced by the regular act. The criterion is therefore not arithmetic but differential. Thus, the inequality will appear at the same time as the specialty in the fact of being in a discriminatory situation compared to others likely to be affected by the decision. This is what guided the reasoning of the judges on the occasion of the various decisions of principle rendered in matters of damage due to laws.[151], regulatory measures[152] or individual[153].

[148] M. ROUGEVIN-BAVILLE, « Responsabilisé Sans faut », Encyclopédie Dalloz,1992,p.1 à 36

[149] P. DUEZ, La responsabilité de la puissance publique (en dehors du contrat), Paris, Dalloz, 2em éd., 1938, p.

[150] P. DELVOLVE (P.), Le principe d'égalité devant les charges publiques, Paris, LGDJ, 1969, Coll. Bib. Dr. Pub. t. 88, p.271

[151] Dans l'arrêt de principe, « La Fleurette », le préjudice est considéré comme spécial car la société était la seule à remplir les conditions d'application de la loi interdisant la vente et la fabrication de produits crémeux ne provenant pas exclusivement du lait, mais en plus la rupture d'égalité était caractérisée du fait que la mesure isolait le requérant par rapport à l'ensemble des fabricants de crème (cf. CE, Ass., 14 janvier 1938, préc.).

[152] Dans l'arrêt « Commune de Gavamie », la situation de fait suite à la mesure de police va faire apparaître une inégalité à l'encontre du sieur Benne, l'isolant par

The link appears even more evident since the judge agreed to recognize the specialty nature of the damage even in cases where there is a plurality of victims, on the grounds that one succeeds in isolating some of them in a sub - group[154] . Specialty and breach of equality come together here in the field of the comparison of situations between the different people concerned, since as P. Delvolvé emphasizes, *"the criteria used to determine the group according to which the comparison can be made, correspond to those which, in legality, make it possible to define the differences in situation on the basis of which discrimination is admissible*"[155]. Consequently, the criterion of specialty of damage corresponds well to the principle of equality before public charges, because if the situation " is the same for all, there is no inequality (on the other hand) if the damage does not reaches that a part of the people being in the same conditions, it breaks the equality; he is special. It needs to be repaired" [156] .

With regard to the abnormality of the damage, the assertion of a link with the principle of equality before public offices may appear surprising insofar as, for equality to be broken, it is sufficient that certain citizens undergo a burden that others placed

In all cases where the faultless responsibility of the public authority due to its regular normative action is likely to be recognized, the administrative judge emphasizes the abnormal nature of the damage suffered. The formulas used may differ: sometimes "*charge which does not normally fall on the person concerned"* [157], sometimes "special charge, compared to the normal charges incumbent on (...) [158] or "exceptional risk"[159].

So for G.-C. Henriot, the abnormality consists in the " *destruction of an absolute right that the victim can legitimately claim"*[160] it up so the litigant in a situation particular, the ' isolation from other administered resulting in a special loss. According to him, an original liability regime would flow from this analysis, based entirely on the concept of abnormal damage

rapport à l'ensemble des commerçants susceptibles de se voir appliquer le texte (cf. CE, sect., 22 févier 1963, préc.).

[153] CE, sect., 28 octobre lg4g, Sté des Ateliers du Cap Janet, Rec. CE, p. 450 ; JCP, 1950, G, II, no 5861, concl. J. Delvolvé. En l'espèce, l'ensemble des chefs d'entreprise pouvait se voir refuser une autorisation de licenciement, mais un seul parmi ceux-là (le requérant), avait fait l'objet d'une mesure d'application donc était traité inégalement par rapport aux autres personnes placées dans la même situation

[154] Pour une étude de cette jurisprudence, voir infra, $ no 397 et s.

[155] P. DELVOLYE, Le principe d'égalité devant les charges publiques, op.cit., p.27.

[156] *ldem*, p. 641

[157] Voir, par ex. : CE, 30 novembre 1923, Couitéas, Rec. CE, p. 789 ; D., 1923.3.59, concl. Rivet ; RDP, 1924, p. 75, concl., et p. 208, note G. Jèze; S., 1923.3-57, concl. et note M. Hauriou - CE, Ass., 14 janvier 1938, La Fleurette, préc. - CE, Ass., 2l janvier 1944, Sieurs Caucheteux et Desmonts, préc. - CE, sect., 22 févier 1963, Commune de Gavarnie, préc

[158] CE, sect., 25 janvier 1963, Ministre de l'Intérieur c/ sieur Bovero, préc

[159] CE, 8 mai 1961, Bonifay, préc

[160] .-C. HENRIOT, Le dommage anormal. Contribution à l'étude d'une responsabilité de structure, Paris, Ed. Cujas, 1960, p.70.

defined precisely as, *" the damage caused by the exercise of a legitimate activity being analyzed for the victim in the impossibility to enjoy one or more advantages attached to an absolute right, and constituting an infringement whose duration, permanence or generalization lead to the destruction of this right*"[161] . Following the same reasoning, P. Amselek[162] affirms also the abnormal damage is the basis of the law of responsibility administrative faultless. He says in effect that " *the idea of equality before the charges public is invoked by an administrative judge in certain judgments (...) not as a basis of liability of the public authority concerned, but to justify its decision to oblige this community to repair the abnormal damage caused, without any fault, to one of its members: if the judge makes bear with the patrimony of the public community the burden of the abnormal damage occurred in all regularity to the victim, it is inspired by the principle of equality of citizens before public office. The principle of equality, in this case, is therefore not strictly speaking the basis of the administration's liability, but more exactly the theoretical justification for the admission of an administration's liability for damage abnormal".*

Finally, C. Broyelle, going back to the very origin of responsibility for acts of law, that is to say under the terms of the *"La Fleurette"* judgment, builds up reasoning at the end of which, according to her, the Conseil State would not have based itself directly on the principle of equality before the public charges, " neither as an exclusive condition of engagement of the responsibility, nor even as an instrument of measurement of the compensable damage"[163]. According to the author, the right to compensation is recognized because of the existence of abnormal prejudice. This money is defined, according to a dogmatic standard[164] , such as the damage which it is not desirable to leave to be borne by the person concerned"[165]. As the condition of responsibility in triggering the abnormal injury takes then a double meaning: first, " the damage is" abnormal "in that it occurred" *near " the effects normal of law, those arising directly from the will of the legislator* ", on the other hand, the damage is abnormal for the judge in the sense that it

[161] Idem, p.7l.

[162] P. AMSELEK, « La responsabilité sans faute des personnes publiques d'après la jurisprudence administrative », in Recueil d'études offert en l'honneur du professeur Ch. Eisenmann, Paris, 1975,p.255

[163] C. BROYELLE, La responsabilité de l'Etat du fait des lois, op.cit., p.76. L'auteur va même jusqu'à qualifier, l'égalité devant les charges publiques, de « fondement artificiel du principe de responsabilité du fait des lois » (Idem, p.23).

[164] L'auteur fait ici référence à la distinction développée par S. RIALS entre, standard dogmatique, lequel « vise à mettre en œuvre un jugement sur la réalité » et standard descriptifs, visant à assurer la diffusion de ce qui est d'ordinaire » (cf. Le juge administratif français et la technique du standard (essai sur le traitement juridictionnel de l'idée de normalité), Paris, LGDJ, Coll. Bib. Dr. Pub., t. 135, 1980, p. 143).

[165] C. BROYELLE, La responsabilité de l'Etat du fait des lois, op.cit., p.77-78.

is " *undesirable for reasons of equity to leave him the burden of the applicant* "[166].

It therefore appears that abnormal prejudice may constitute the direct basis for faultless administrative responsibility, provided that it is considered to be the consequence of a charge which does not normally fall on the person concerned. Indeed, "*the obligation to repair (...) sanctions injustices suffered (...), for the administrative judge the abnormal damage is, not pa s damage which should not have happened, but simply damage which does not have to be supported by the person who was the victim"* [167]. The damage is therefore repaired only because the harmful situation appears abnormal, that is to say "exceeds *the disadvantages that everyone must normally bear in return for the benefits that result from the operation of public services or, more generally, life in society* [168]„

Nevertheless, it is to be cautious about the importance to recognize in the abnormality of harm, the judge Administrative not hesitating to reaffirm the cumulative nature of the conditions of abnormality and specialty[169], as to exclude the verification of the existence of one criterion in the event of failure of the other. Thus, the specialty of injury appears to be just as necessary as its abnormality, especially since many judgments refuse any compensation for the sole reason of lack of specialty [170]. Moreover, as the said Mr. Deguergue, the definition of unusual damage remains obscure as to the situation of the victim. It would then be "hazardous to base a regime of liability on damage, the characterization of which does not exist objectively " [171]. It seems that the abnormality of the damage continues to be a functional concept, as measure of

[166] ldem, p.78.

[167] P. AMSELEK, « La responsabilité sans faute des personnes publiques d'après la jurisprudence Administrative », art. préc., p. 249

[168] C. CORMIER, Le préjudice en droit administratif français. Etude sur la responsabilité extracontractuelle des personnes publiques, op.cit., p. 366

[169] Voir, notamment. C8, 27 janvier 1961, Vannier, Rec. CE, p.60, concl. Kahn: « à supposer qu'il ait été spécial (le dommage) n'a pas présenté le caractère de gravité qui, en l'absence de faute de l'administration, pourrait seul avoir pour effet d'ouvrir droit à indemnité) - CE, 13 mai 1987, M. Aldebert, Dr. adm., 1987, no 380 ; JCP, 1988, G, II, no 20960, note B. Pacteau; RFDA, 1988, p. 950, note H. Rihal: « le préjudice qu'a subi M. Aldebert a revêtu, dans les circonstances de l'espèce, un caractère anormal et spécial de nature à lui ouvrir droit à réparation) - CAA Marseille, 24 février 1998, Ministre de la Culture et de la Communication, RFDA, 1998, p. 1 133, obs. H. Le Berre : (...) la durée d'interruption du chantier du fait des mesures prescrites (...) est suffisamment longue pour rompre au détriment du propriétaire l'égalité devant les charges publiques et constituer un préjudice anormal et spécial dont il est fondé à demander réparation à l'Etat) - CAA Marseille, 23 novembre 1999, M. Peretti, req. No 97MA00827 : « l'intéressé justifie d'un préjudice anormal et spécial »

[170] Voir, par ex.: CE, Ass., lo févier 1961, Ministre de l'Intérieur c/ Chauche, préc., à propos d'un refus de concours de la force publique pour l'exécution d'une ordonnance d'expulsion - CE, 25 mars 1988, Sté Sapvin, Rec. CE, p. 134, à propos de la responsabilité du fait d'un traité international.

[171] DEGUERGUE, Jurisprudence et doctrine dans l'élaboration du droit de la responsabilité administrative, Paris, LGDJ, Coll. Bib. Dr. Pub., t. 171, 1994, p.645

accountability that of compensation and evaluate alongside the obligation specialty. These two criteria will not fail to recall that this faultless liability regime due to regular standard-setting action is a priori favorable regime for victims[172] , since unlike regimes based on fault; the judge focuses his attention on the situation suffered by the injured individua

The emergence of responsibility as a result of regular standard-setting action, on the basis of the breach of equality before public offices, will testify to a development in favor of greater attention towards the victim. Indeed, the judge will take into account the situation of the injured person as much as that of the public person in order to allow more systematic compensation for the damage. We are then witnessing a new phenomenon: the sphere of faultless responsibility tends to widen at the same time as a real evolution towards certain socialization begins[173] . This movement is linked to the idea that any damage attributable to an act (wrongful or not) of a public person can lead to compensation[174]

This primacy of the idea of reparation over that of sanction is made concrete by the administrative judge who, in the course of his case law, insists on the need to take into account the situation of the victim. It was he who almost created out of this liability to standard setting regular, he read so belongs now to determine the implementing rules. The responsibility put in place can then be described as "affective", in the sense that it turns to the victim and tries to determine his rights with precision

But the idea of attaching decisive importance to reparation also comes from the specificity of liability for breach of equality. Indeed, the doctrine envisages it as the "price *to pay* " [175]

Firstly, we move, according to the established formula, from the police state to the welfare state, leading to a major push of public law to the detriment of private law. Legal relationships are publicized and socialized since "*the public power, armed with its*

[172] Voir infra, $ no 384 et s. à propos de la politique jurisprudentielle d'interprétation restrictive des caractères d'anormalité et de spécialité du préjudice, rendant difficile l'indemnisation sur le fondement de la responsabilité sans faute.

[173] Ainsi, selon R. SAVATIER, in Du droit civil au droit public à travers les personnes, les biens, et la responsabilité civile, Paris LGDJ, 2em éd., 1950, p. 90 : « la responsabilité, aujourd'hui, ne part plus du responsable, elle part de la victime systématiquement créancière, elle est complètement désaxée».

[174] Voir à ce sujet, D. TRUCHET, « Tout dommage oblige la personne publique à laquelle il est imputable, à le réparer. A propos et autour de la responsabilité hospitalière », RDSS, 1993, no l, p.I.

[175] Selon l'expression employée par C. EISENMANN, in « Sur le degré d'originalité du régime de responsabilité extracontractuelle des personnes (collectivités) publiques), JCP, 1949, G,I, no 751 .

prerogatives and privileges (penetrates) over all areas of law to occupy them sustainably" [176] .

The essential consequence of this movement will be the rediscovery of the law as a value founded on the human person, he who had " become an ordinary instrument in the service of the State, had to find its first foundation which was also his in the Declaration of 1789: the protection of the individual against power" 177 . But this momentum of socialization will not penetrate all branches of French law in the same way. In fact, administrative law will take a long time to participate in this revolution because it presents itself as an auxiliary of state power. Obeying a mission of protection of the general interest, this right tended to show a certain benevolence towards the administration, contributing to the dogmatism of the general interest and lowering the citizen to the simple rank of subject carrying special interests. As Y. MADIOT notes, the same expression of " prerogatives of public power " permitting to the administration to uphold the general interest in conflict with private interests, was quite characteristic of the supremacy of the State .

From the point of view of function it is possible, according to a classification inaugurated by C. EISENMANN, to distinguish three kinds of responsibility. The first constitutes a sanction since it can be summed up as "*a measure generally considered painful that incurs those who break a rule they should have followed, the cost of breaking a rule, of prohibited conduct, illegal* "[178]

Liability as a result of regular standard-setting action does not constitute a sanctioning or even moralizing regime, insofar as it is in no way based on faulty behavior by the State. Indeed, for there to be sanction of the author of the act within the framework of a sanctioning regime, it must necessarily that before, this one has been resorted guilty of reprehensible behavior. You have to make a judgment on your activity and highlight the faulty nature of certain acts or behaviors. The model here is therefore the system of liability for fault laid down by the legislator with a certain aim: to avoid the commission of offenses for the future by ensuring general respect for the rule. This model therefore does not correspond in any way to the idea of responsibility for breach of equality before public office, all the more so since many authors refuse to recognize any function of sanctioning administrative responsibility, the fault identified being always that of any

[176] Y. MADIOT, « De l'évolution sociale à l'évolution individualiste du droit contemporain », in Les orientations sociales du droit contemporain, Ecrits en l'honneur de J. Sovatier, Paris, PIJF,1992, p. 353.
[177] Y. MADIOT, « De l'évolution sociale à l'évolution individualiste du droit contemporain », art. préc. p. 355

[178] C. EINSENMANN, « Sur le degré d'originalité du régime de responsabilité extracontractuelle des personnes (collectivités) publiques », art. préc.

public official and never that of the public person himself who does not have the necessary legal personality[179] .

There remains the last function: the price- to-pay responsibility which this time applies, not only in matters of regular state acts, but also in the case of annoying activities such as the normal inconvenience of the neighborhood. Here, the damage suffered by the victim is not due to faulty behavior on the part of the State but only to the taking of a legal decision or even to a non-faulty abstention from the administration. Nevertheless, e breach of equality before public burdens was caused generating u n unusual and special damage compensable.

In a study on the litigation of responsibility[180] , **Mr. DEGUERGUE** notes an evolution in the law of administrative responsibility, and questions in particular the fact that it appears to be more and more the subject of political case law confirming the superiority of the rights of administered. In fact, according to the author, administrative responsibility has long been dominated by a jurisprudential policy aimed at achieving the perfect balance between the divergent interests of the public person and those under administration. Thus, from the beginning of the administrative acts, certain political case law to recognize him both a function "from penalty in that censorship acts illegal and harmful misconduct of public persons, (but also) restitutive in that it re-establishes equality before public charges, broken to the detriment of a citizen by (...) a legal act or action"[181] . However, today, this

[179] Pour une étude détaillée de la doctrine publiciste à ce sujet, voir, M. PAILLET, La faute du service public en droit administratif français, Paris, LGDJ, Coll. Bib. Dr. Pub., t. 86, 1980, p 215 et s. L'auteur y expose notamment les positions de M. HAURIOU pour qui « l'Etat puissance publique ne peut être que bien difficilement considéré comme capable d'accomplir un acte contraire au droit », L. DUGUIT selon lequel « la réalité c'est la faute d'un agent et la seule question qui se pose est celle de savoir si les conséquences de cette faute seront supportées par le patrimoine public ou par le patrimoine de l'agent », M. WALINE qui souligne que « la responsabilité de l'Etat et des autres collectivités administratives est toujours une responsabilité de personne morale (...) du fait d'autrui qui repose sur une obligation de garantie » ou encore R. CHAPUS pour qui « il ne peut y avoir de fait ou de faute que d'individus, c'est-à-dire d'hommes, et en l'espèce d'agents publics ». Puis, tentant une comparaison avec la reconnaissance de la responsabilité pénale des personnes morales, l'auteur prend le contre-pied de la doctrine classique en affirmant que l'expression faute du service public a été stigmatisée et refoulée au rang d'une simple métaphore, d'une expression dénuée de portée, puisque la logique interdit de penser qu'une collectivité publique puisse commettre une faute. Mais ce faisant, ces auteurs n'ont-ils pas méconnu la portée des décisions jurisprudentielles, n'ont-ils pas finalement trahi la pensée du juge en refusant de prendre au sérieux les formules utilisées par celui-ci ? ».

[180] M. DEGUERGUE, « Le contentieux de la responsabilité: politique jurisprudentielle et jurisprudence politique D, AJDA, 1995, no spécial, p.2ll.

[181] *Idem*, p.2ll. Upon analysis, it seems that the Cameroonian administrative judge has always shown himself to be particularly concerned by such a concern. And that, committed to respond to it, it seems to have placed the exercise of its power to repair administrative damage under the authority of a policy of discretion, discretion, self-limitation of its own normative power vis-à-vis the power public. Jurisdictional strategy for the realization of which it is working to implement the techniques of

jurisprudential policy no longer coincides with the development of the law of liability in the sense that it inevitably turns towards a generalization of the right to compensation for victims.

Thus, because of the independent nature of administrative law, the assertion of liability for breach of equality before public burdens can be understood as "an act of insubordination in private law (therefore) purely politics[182] .

In addition, the judge will have manpower allowing it to perpetuate this political case law turned to the administration, in the sense that the involvement of no fault of the public authorities responsibility goes to take of a series of " *legal standard* » [183] that it will be for the judge to interpret. Like the abnormal and special prejudice or the causal link, the judge can indeed shape the extent of the recognition of the right to compensation. To him only return the possibility of using the functional concepts, scalable, leaving wide discretion depending on circumstances.

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However purposes, it should be cautious to the extent where this case law can wear defects of his qualities. In fact, the excessive flexibility of the legal categories used by the judge may reveal the risk of seeing them used as teleological concepts, leading the courts to make considerations of expediency prevail over legal reasoning [184] .

CONCLUSION

Upon analysis, it seems that the Cameroonian administrative judge has always shown himself to be particularly concerned by such a concern. And that, committed to respond to it, it seems to have placed the exercise of its power to repair administrative damage under the authority of a policy of discretion, discretion, self-limitation of its own normative power vis-à-vis the power public. Jurisdictional strategy for the realization of which it is working to implement the techniques of jurisprudential creation deemed best suited for this purpose, that is to say to allow the most discreet, as measured as possible manifestation of his power

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[182] M. DEGUERGUE, « Le contentieux de la responsabilité : politique jurisprudentielle et jurisprudence politique », art. préc., p.220

[183] A ce sujet voir, S. RIALS, Le juge administratif français et la technique du standard, Paris, LGDJ, Coll. Bib. Dr. Pub., t. 135, 1980,564 p.

[184] Voir, D. LOSCHAK, Là rôle politique du juge administratif français, Paris, LGDJ, Coll. Bib. Dr. pub. t. 107, 1992, p. 123 et s., concernant les dangers d'une trop grande marge d'interprétation laissée au juge administratif. L'auteur démontre notamment que la jurisprudence politique n'est pas forcément toujours synonyme d'une meilleure protection des administrés, mais peut aussi servir à éviter la mise en jeu trop systématique de la responsabilité étatique.