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THE SCOPE OF ADMINISTRATIVE JURISDICTION OF THE COURTS IN FRANCE AND ITS DIFFERENCES COMPARED TO ALBANIA

Abstract:

My contribution to the present conference, shall address in this topic : "The scope of administrative jurisdiction of the courts in France and its differences compared to Albania".The article discusses the history, characteristics and scope of the jurisdiction of the administrative court in France, in comparison with the system of justice administration in Albania.
-The first part of the report gives a concise picture of the historical evolution administrative justice in France.
-The second part focuses on the main aspects of the structure and organization of administrative justice in France, with particular reference to the evolution of role of the Conseil d'État, provide consulting and administrative law.
-The third part addresses the issue concerning the criteria for the allocation among jurisdictions civil and administrative in doing this, it explores the complex itinerary is followed by the Court of conflicts, magisterial organ in charge of France to the questions relating to jurisdiction .
-The fourth part involves the central object of the intervention: the scope of the jurisdiction of administrative courts in France, that the areas in which the administrative judge and the country has jurisdiction. The analysis will make a comparison with the Albanian system.
Vision historical, social, political and constitutional development of the realities of the countries taken into account from the comparative study.
CONCLUSIONS
-With regard to the system of law and administrative process, France stands Albania is not in the conclusions in the premises.
Both states are "on the administrative arrangements" in which there is a large body of rules of public law distinct from the common law.
It is no coincidence, because in both national realities, the rule tends to be present and involved in many areas of social, welfare and economic conditions; which explains the existence of a special law for public administrations. In both countries, the role of the administrative judge is therefore evolving and increasingly requiring the ability to handle the difficult dialectic between authority and freedom.

Keywords:

administrative jurisdiction, court of conflicts , administrative judge, role of the Conseil d'État, allocation of jurisdiction, public administrations

JEL Classification: K23

1. THE SYSTEM OF GOVERNMENT AND EVOLUTION OF ADMINISTRATIVE JUSTICE IN FRANCE.

[1]The French Constitution contains no explicit provision on administrative jurisdiction. It does, however, mention the Conseil d'État (Council of State), which represents the pinnacle of that jurisdiction, which relies advisory duties, in favor of the government in the preparation of legal texts.

The day after the French Revolution you consider that the judicial review of the public administration should take place functionally

in full respect of the principles set out in Article. 16 of the Declaration by des Droits de l'Homme et du Citoyen of 1789(Declaration of the Rights of Man and Citizen), according to which a company liberal must first of all recognize the fundamental rights and, with them, the clear separation of state powers (Toute la Société dans laquelle garantie des Droits n'est pas assurée, ni la séparation des pouvoirs déterminée, n'a point de Constitution).

The principle of separation of powers, identifies three public functions - legislation, administration and jurisdiction - each of which is assigned to three distinct powers of State, understood as complex organs or organ-state position of independence and here and away from other powers: legislative power, executive power, the power judicial.

The separation would have entailed a cross-check between the powers of the State, the best guarantee of maintaining a stable equilibrium, and would have thus avoided that one of the powers to finish to prevail over others in avoidable with authoritarian tendencies and compression of fundamental human rights and individual freedoms, in particular the principle of equality. For this reason, the liberal perspective negatively considers the possibility for to influence the decisions of the judges, because this would have meant a structural as intolerable prevalence of the judiciary on the executive.

This concern, however, created a paradox that, for over a century, marked the destinies of administrative justice in France, as in other European countries continental in which it was developing the concept of the rule of law. If it was not acceptable that a court could affect the impartial third party acts of the administrative authorities, on the contrary appeared eligible for the creation of a judicial order internal administration.

[1] The point is emphasized by Constitutional Council, Decision no. 89-261 of 28 July 1989

In this way, it is clear, we create the conditions to ensure that the bodies responsible for administrative justice were certainly special respect to the judiciary ordinary, but not fully independent, or at least far enough away from the executive.

For this reason, the legislature at the time, to inherit the spirit of the French Revolution, deemed it preferable to set up a special judge qualified to judge the work of the administration and, therefore, authorized to go beyond the boundaries of natural competence and typical of judicial power ordinary.

So, regardless of the constitutional provisions, immediately after the Revolution the administrative justice has risen in France in principle consolidated order Legal[2].

This happens with some of the laws adopted between 1790 and 1795, which are fundamental for the construction order administrative court in France as a privileged forum of administrationIn particular, such laws are: Act of August 16 to 24, 1790, relating to judicial organization, escaped the administrative disputes to the jurisdiction of the ordinary courts (called judiciaires);

-Law 7-14 October 1790 which escaped the courts of appeals to cognition incompetence of the administrative authorities;

- Law of 27 November 1790 which abolished the functions of Cassation until then held by the Conseil d'État, which consists in "Conseil des parties," and attributed to a Court of Cassation independent of the executive;

- Law of 16 fructidor Year III (3 September 1795) which forbade the courts to take knowledge of acts of directors, of whatever species they were. Gained power in 1799, Napoleon Bonaparte strengthened the process of centralization of. With the law of 28 rainy year VIII (17 February 1800), established the prefectures, the organs through which the state operated and controlled remotely the periphery. Along with the Prefectures, the law established the Conseils de préfecture (Councils prefecture), the administrative-jurisdictional [3], with jurisdiction limited to the initial

litigation of direct taxation, public procurement, complaints of individuals against

[2] With the historic decision n. 80-119 of 22 July 1980, the Constitutional Council has also stated that the independence of the administrative judge is a principle, however, be obtained by the Constitution, is not likely to be questioned by the legislative and executive powers (see., In more detail below). See. Too, Constitutional Council, Decision no. 86-224 of 23 January 1987.

[3] September 1926 and replaced by the boards of inter-prefecture. The latter were subsequently processed by the decree n. 53-934 of 30 September 1953, in the administrative courts (see. Below).

government contractors, the national domainA few years earlier, the art. 52 of the Constitution of the year III (1795) had confirmed the Conseil d'État (Council of State), a body under the direction of the consuls, who was entrusted with, among others, the task of resolving contentious issues also consequent to the performance of public administrations.

The turning point came with the decret July 11, 1806, which, within the Conseil d'État, created the Commission du contentieuex (Commission of the litigation), with the following functions: -- Judge di'appello against decisions made by them justice ministers and tips prefecture;

- Can only judge on complaints of incompetence or abuse of power;
- A court of appeal against decisions made by the administrative courts Specialized which, in particular, the Court of Auditors, the newly created and tasked with accounting jurisdiction Thanks to these structural reforms, Napoleon Bonaparte realize its plan to establish a "demi-corps Administrative, demi-judiciaire, here réglera of l'emploi dans cette portion of arbitraire nécessaire the administration del'État" (a body part administrative and judicial in part to regulate the use of that portion of discretion, which is necessary for the administration of the State).

It 'easy to see that the Commission's litigation constituted a body which, for the exercise of jurisdiction, did not respond fully to the principle of separation of powers. From a subjective fact, its members were appointed discretionary and dismissed by the First Consul, and, later, by the Emperor in person[4]; under the profile objective, the Council itself was subject to the system of justice cd. considered (justice retenue): in practice, the question at issue, the Commission rendered an opinion that assumed the role of judicial decision only if its contents had been accepted by the Head of State.

The system established under the Consulate and the First Empire (1799-1814 / 1815) did not undergo major changes until 1870, the year of advent of the Third Republic. After the fall of the Second Empire (1852-1870), in fact, appeared in an overbearing need to separate the administrative justice by the active.

For this reason, the law May 24, 1872, was created the Tribunal des conflits and, more important aspect major, was restored contentious section of the Conseil d'État by function

[4] Pelet DE LA LOZÈRE, Opinions de Napoleon sur divers and sujets de politique d'administratin, Paris, 1833 pp. 190 ff.

decide not as a judicial body considered internal to the executive but of justice déléguée (Justice delegated) [5] . It was a sea change which involves leaving of doctrine, then dominant-court administration and the creation of an order judiciary, represented by the Conseil d'État, separate and distinct from both the executive both by the ordinary courts, specifically responsible for the settlement of disputes about the Directors[6].

From that moment, the Conseil d'État would pronounced with real decisions.As a result, the explosion of administrative disputes, resulting in numerous measures of requisition and purge undertaken during the Second World War, imposed the development of a new organizational model, in which the centers dispensers had jurisdiction over the territory. The Conseil d'État was not alone most Enlarged to cope with the massive litigation that was taking shape. Therefore, with ildecreto n. 53-934 of 30 September 1953, the Boards of prefecture (now in the meantime interdepartmental) were transformed into Tribunaux administratifs (TA), courts of law common administrative disputes in the first instance. The Council of State became the court of appeals of decisions of the TA but retained jurisdiction as a court of first and only instance for some particular business as well as the role of the court of cassation in special administrative jurisdiction ..Therefore constituted legally elected bodies of administrative justice, the cornerstone of a defense of the autonomy of the latter was placed, with the historic decision n. 80-119 of 22 July 1980, the Constitutional Council that the independence of the judiciary is a fundamental principle of administrative, constitutional relevance.

The progressive increase in the number of appeals has led the legislature, with the Law of 31 December 1987 to create the adminitratives Cours d'appel (CAA), the court of second instance against the decisions of administrative tribunals.

The developments of the last thirty years experience confirms the demarcation between administrative justice and active administration. Currently the order of the administrative courts is clearly distinct from the government and benefits from a significant number of guarantees of status, shaped and substantially equivalent to those in the organization of the ordinary courts.

[5] Art. 41 Constitution of the year VIII.

[6] The evolution of the French system of administrative justice st. M. WALINE, Traité de droit Administrative elementary, Paris, 1952 rec. Sirey 1952.

2- THE MAIN ASPECTS OF THE STRUCTURE AND ORGANIZATION OF THE ADMINISTRATIVE COURTS IN FRANCE.

In France, therefore, the administrative jurisdiction is separate from the ordinary and is carried out by the order of the administrative courts, distinct from that of the ordinary courts (judges judiciaires).

At the top of the administrative jurisdiction is, as mentioned above, the Conseil d'État, whose president is the law of the Prime Minister. The vice president, in fact, the de facto president, is the first official state: with this title, is the President of the Republic of the needs of all the bodies and organs of public administration, stating on behalf of the civil service, the judiciary , of public enterprises. It should be remarked that the dual function, into French, assumes the Conseil d'État, is the highest body of legal and administrative advice of the Government is the top of the administrative jurisdiction.His influence on the legislative power is also "programmatic" in that it indicates, on its own initiative, the legislative, regulatory or administrative provisions which are necessary in the public interest (art. L112-3 CJA).

It is the court of cassation, in charge of verifying compliance with the law by the administrative courts of first and second instance (the Cour administrative d'appel and Administrative Tribunal), of special courts (such as the Cour des comptes) or sections disciplinary National Councils of professional bodies.

Rate, in addition to, in first and last instance, appeals against decrees and acts of the governing bodies with national jurisdiction, as well as in the field of regional elections and elections of the representatives of the French Parliament. In addition, it is responsible for the appeal in litigation regarding the cantonal and municipal elections and in the matter of expulsions (accompaniment border). As part of its function nomophylactic, the “ Conseil d'État” held an "advisory" in favor of the territorial judges who may request the opinion on legal issues that present difficulties in interpretation or are particularly important for their novelty or because it appeals relating to serial (art. Reads 12 December 31, 1987).

As mentioned above - in a similar way to the Supreme Court to the jurisdiction of the judge

juidiciaire – the" Conseil d'État' has reserved the power to refer the question of constitutionality to the Constitutional Court, pursuant to art. 61-1 Cost[7]. FR.

The Norm - inserted in the Constitution by the French law of constitutional revision n. 2008-724 of 23 July 2008, entered into force on 1 March 2010 - allows on individuals to challenge the constitutionality of a provision of law enacted and in force, through the preliminary ruling in retrospect, that remedy is in addition to postponement main ex ante, already provided for by art. 61The new constitutional provision has been applied in practice of the Organic Law 2009-1523 of 10 December 2009[8] which introduced in the field of accident constitutionality, the so-called "dual filter". The ordinary courts or administrative law judge, each part of the judgment on which it is called upon to decide, if it considers that a legislative provisions in force, relevant to the resolution of the case at issue, present potential prejudice to the rights and freedoms guaranteed by the Constitution, can ask the matter to the Court of Cassation or the Conseil d'État. The latter, in turn, is decide on the merits of the matter and submit it to the Constitutional Council if, court that, in the French political system corresponds to our Court constitutional. In fact, the Conseil d'État is also reserved ruling on the appeal by way of interpretation to the Court of Justice of the EU. In the French system of administrative justice, the court of first instance is entrusted to forty-Administrative Courts, set up - as mentioned above - with decree n. 53-934 of 30 September 1953, replacing the repealed Tips inter-prefecture.

[7] Article 61-1 const. fr. When, in the course of proceedings pending before a court, it is argued that a provision legislation infringes the rights and freedoms guaranteed by the Constitution, the Constitutional Council ect….

8 More specifically, the aforementioned Organic Law 2009-1523 states that, as of 1 March 2010, in being initiated processes at national jurisdiction, a law may be submitted to the judgment of constitutionality, if you come across profiles of unconstitutionality that could cause a violation of rights and fundamental freedoms protected by the Constitution. To submit the matter to the Council constitutional, the national court must conduct a preliminary examination on the profiles of unconstitutionality in order to assess the existence of a minimum of consistence.. To prevent the Constitutional Court is asked to rule on several occasions on the same issues, it is also expected that the judgment of constitutionality has an effect erga omnes and ex nunc repeal. For further reading, read, VR, FOREIGN France enacted a comprehensive law to establish a question of priority constitutionnalité, in www.dpce.it. (Journal of Comparative Public Law European online

The judges of administrative courts constitute the "ordinary courts" in the first instance for claims against the government. They are also the only instance of judges for the substances listed exhaustively by the decree n. 2003-543 of 24 June 2003, considered "minor" (actions for compensation of less than 10,000 Euros, the actions on the property tax [taxe fonçière)ect.

The labor historian and the role of the Conseil d'Etat in France paved the way for a system of administrative justice characterized by a strong link between legislation, administration and jurisdiction, as to merit the appearance of jurislation, not easily replicable elsewhere.

The award of advisory functions and the broad participation to the stage, so to speak, "investigation" of the legislative function (as we have seen above, at all levels: constitutional, legislative, regulatory, coding, ordinance) from the Conseil d'État, which also represents the apex of the administrative judicial function, can be explained by the origins of this organ, partly administrative and partly judicial review, which aims to enable the protection against the unlawful actions of the public without jeopardizing the principle of separation of powers. This, in the intentions of the legislator constituent fonderebbe a virtuous circle of continuity that finds its fulcrum in the contribution of the technical advisory Conseil d'État whose work should ensure a particular level of quality of legislation, in terms of clarity, consistency and completeness. The quality of standardization would be able to facilitate the subsumption, that is the proper technique to frame the factual context within the preview abstract, with obvious benefits on ordinary case law and, ultimately, on legal certainty. The interconnection between administrative justice and administration helps to understand some peculiarity of the French system, such as the fact that the state is normally represented in court by one of its officials; the presence in the process of the rapporteur public, hybrid figure among the prosecutor, judge and representative of the objective law; particular the persistence of the general principle of presumption of legality of acts administration.
The circularity of the system ensures that the administrative justice in France a particular "social trust" and an authority beyond question that makes it particularly effective and readily performed, so much so that the applications for Complying with administrative judged are the exception. The dialectical relationship between legislation, administration and jurisdiction also explains the synthetic form and basically elliptical pronunciations of the French administrative courts. The pattern of judgments is, in fact, similar to that of the decree of

public authorities, in which the motivation is reduced to a brief statement of the fact and of law, by "seen" and "seen".

You can still go back to the reasons for the decision, thanks to the combination of the conclusions of the rapporteur public (which are written in a simple and constitute a "legend").

The correctness of the judgment is then secured over the mode of formation "progressive" in the same organization and the prodromal phase proper decision-making by formal guarantees, such as the widespread and detailed justification of the judicial decision.

The judgments are inevitably affected by a relationship, if not strictly hierarchical, at least highly "structured" between the different actors of administrative justice. The judges of administrative courts and administrative courts of appeal, rather than play a creative role, they tend to assume an orientation "application" of the arrests of the Conseil d'État, which, in turn, through the provision of advice

3. THE CRITERIA FOR THE ALLOCATION OF ADMINISTRATIVE COURTS IN FRANCE.

The division of jurisdiction between administrative courts and ordinary courts, not is based on the nature of the legal question, legitimate interest or right subjective[8], as is the case in Italy, but on the quality of the people involved. If one of this is a public authority, an expression as such, directly or indirectly, to the public authorities, the relevant dispute pertain to the judge administrative.

The French legislative system is based on the criterion of dual jurisdiction, administrative and routine, based on the principle that juger the administration publique n'est jamais comme des affaires juger privées (judging matters of public administration is different from judging private business).

In France, the Supreme Court is at the apex of the judicial system of the ordinary, but, unlike Albania, has the task of resolving conflicts of jurisdiction, function entrusted to a special organ, the Tribunal des conflits, a mixed composition, counselors State and

counselors of the Supreme Court[7].

Already provided for by art. 89 of the Constitution of 1848, to settle conflicts of jurisdiction between the administrative authority and the judicial authority, however, has been rare application, to be suppressed with the advent of the Second Empire (1852-1870). It was re-established by the Law of 24 May 1872, that established his competence to four hypotheses:

- positive conflicts: the administration denies that there is an issue of jurisdiction of the ordinary courts;
- negative conflicts: the two orders judicial, administrative and ordinary, you both declare deprived of jurisdiction over the dispute.

These types of conflicts are now almost extinct, being overtaken by the process of conflict postponement;

- Conflicts of Decision[9]: when the ordinary judge and the judge administrative, in the same case - without denying its own jurisdiction, but rather affirming - emit two conflicting decisions that they make up an effective denial of justice;\
- Conflicts which they distinguish two types: estimate a potential negative conflict:
- Conflict is mandatory, the Court seized by the court, one of the two orders, which questions the jurisdiction of a particular deal for the other order which the court has already declared incompetent; postponement of preventive optional, when the Court of Cassation or the Council of State decided to bring the matter before the Court in advance of conflicts to resolve a problematic question of jurisdiction as to any particular dispute.

Starting from the historic arrêt Blanco (Trib. Confl. February 8, 1873) – with good reason considered by authoritative doctrine dell'epoca[8], the "cornerstone" of the right modern administrative - the criterion for distinguishing part on two assumptions: a public service activity; the management of those activities by a public entity.

According to this perspective, there is a "common law" which regulates the

[8]The President of the Court of conflicts of law is' identified in the Minister of Justice. The Court of conflicts is composed of eight judges, appointed for renewable three-year, four in the Conseil d'État and four of the Supreme Court of Cassation (three directors elected by the State in ordinary service advisers in ordinary service, three members of the Supreme Court of Cassation nominated by their colleagues, as well as two members and two alternates elected by the majority of the other judges already appointed.

[9]Tribunal des conflits July 30, 1873, Pelletier, concl. David, R. 1er suppl 117 With this another historic arrêt the Court of conflicts introduced the distinction between the two categories of faute personnelle and faute de service.

relationships between individuals, and a "special right," the administrative law, which invests specifically the relationship between the State and individuals and that tends to balance the public interests of their administrative functions with those of the individual. The affirmation of the doctrine of the special court administration, distinguished by the judiciary ordinary, had convinced the Court of conflicts to give the administrative judge also sensitive issues relating to liability for the administration faute de service[10]; question of liability cases resulting from actions contrary to the law made by a public official, and yet, due not to him but to the administration of belonging because they are intimately connected with the exercise of public law. In Francia, dunque, il giudice amministrativo è il giudice ordinario della pubblica amministrazione, ossia il giudice delle controversie nelle quali, di norma, sia coinvolta una pubblica amministrazione nell'esercizio di un servizio pubblico.

The case decided by the Tribunal des conflits French, February 8, 1873, was as follows: a five year old girl, Agnes Blanco, in the street that separates two warehouses of the factory Bacalan tobacco company in Bordeaux, was hit by a wagon of its factories and, as a result of the reversal of the himself, suffered amputation of a leg. The girl's father sued before the Civil Court of Bordeaux is the four workers who led the load is the French State, which civil jointly and severally liable to the fact of its employees, in order to obtain the recognition of responsabilité pour faute and consequent damages. As the prefect of the Gironde, in his capacity as representative of the State, declined the jurisdiction of the Civil Court of Bordeaux, was relieved of jurisdiction regulation (arrêté de conflit) before the Court of conflicts. The Court of conflicts, February 8, 1873, he made his Decision establishing, in particular, that: "The responsabilité qui peut incomber à l'Etat pour les dommages Causes aux particuliers par le fait qu'il emploie des personnes dans les services publics divers n'est pas régie par les principes établis, dans les art. 1382 et suivant C. civ., Pour les rapports de particulier à particulier. Cette responsabilité, here n'est ni ni générale absolue, a ses règles spéciales here varient suivant les besoins du service the nécessité et les droits de concilier avec les droits de l'Etat Prives. C'est, lors des, à l'autorité administrative, et aux tribunaux not ordinaires, qu'il appartient de l'apprecier. "(The liability incurred by the State for damage caused to individuals by the persons to which it applies in different public services, it is not governed by the principles

laid down in art. 1382 and following of the Civil Code, to relations between individuals. Such responsibility, which is neither general nor absolute, has its own special rules, which vary according to the needs of the service and the need to reconcile the rights of the state with those of the private sector. Responsibility, therefore, the administrative judge and not to the ordinary courts assess this responsibility.). Sull 'arrêt Blanco, R. CHAPUS is rye, Droit Administrative général, 1992.

Tribunal des conflits July 30, 1873, Pelletier, concl. David, R. 1er suppl 117 With this another historic arrêt the Court of conflicts introduced the distinction between the two categories of faute personnelle and faute de service. The first is related to the personal liability resulting from an unlawful activity carried out by the agent in the performance of his public functions and estimated by the ordinary courts; the second, the responsibility for the administration made its official, but this is not attributable to the activities carried out because it is intimately linked to the exercise of the function; in the latter case, the consequences, in terms of responsibility.

In 1912, for the first time, the Conseil d'État noted that certain public services beginning to be open to the public; administrations who ran public services stipulated common law contracts with private entities for the performance of certain aspects of the public service, in relation to which the dispute was attributed to the ordinary courts, being placed rules of the Civil Code .

In 1921, appeared on the scene the industrial and commercial public services, which are managed by public entities but always with criteria and procedures typical of companies private[12]; for this reason, even to such services applied to the rules of law Private resulting in attraction of related disputes to the jurisdiction of the ordinary courts (privatization of the management arrangements).

From 1938, the spread of the phenomenon of public services directly managed by private entities (privatization managers)[9].

For these cases, even more so than the first, there was no doubt in entrusting its litigation in the ordinary courts, given the substantially complete submission of the parties involved and all stages of the service disciplines privatistiche[13]. Keep in mind that, at that time, the entry of private in public services responded primarily to the purpose of givingimpetus to

[12]Tribunal des conflits, January 22, 1921, soc.

the languishing free market, serious crisis due to massive state intervention in the economy during and after the First World War.

Therefore, as a result of the phenomenon of privatization on both how to manage both the managers themselves, there has long been public services entirely subject to the rules of private law. This means that,even in France, the selection criterion of jurisdiction cannot be identified simply on the basis of the public nature of the service; must now consider that the public administrative services (SPA) can be used, under certain conditions, to acts of private law; At the same time, private entities that provide public services industrial and commercial can sometimes take real administrative decisions.

The Conseil d'État, in an important decision by the 196,331, took note of the historical evolution of its concept, pointed out that the existence of a public service is conditioned by the joint presence of three requirements: - Functional element, consisting in the public interest nature of performed by an entity; - Organic element, relative to the more or less visible to a subject public in positions of leadership or at least control of the service; - Material element, which requires the submission of a public service special legal regime, justified by objectives of general interest that service plays; for a better understanding of this third requirement is Importantly, the special scheme is built around the concept according to which the holders of puissance publique necessarily have prerogatives essential for the realization of the public interest: their presence is, indeed, a clear indication of public service, while their absence leads to exclude it.

As of the end of the seventies, it was assisted by a gradual separation between public service and prerogatives of public authority. For the reasons just stated above, there are now public services without any prerogative of public power. The Conseil d'État, with the arrêt APREI 2007, he consecrated the general removal of the special arrangements by the public services regime whose existence is no longer presumed but rather is based on a declared intention of the legislature.

This has obviously impacted on the scope of the jurisdiction of the French administrative court, which was originally very clear and well-defined.

In an attempt to clarify - in a framework that dall'arrêt Blanco, was in time rendered complex precisely the result of the swirling changes in the concept of public service - the Conseil consitutionnel, with the decision of 23 January 1987, gave constitutional protection to a part of the well-circumscribed jurisdiction of administrative courts, precisely what

concerns the annulment or alteration of administrative decisions taken in the exercise of the prerogatives of public authority by authority exercising executive power, their agents, local authorities of the Republic or public bodies, subject to other administrative authorities or their controllo33. The administrative jurisdiction, constitutionally guaranteed, must comprise two elements: a subjective, relative to the author of the act (expression authorities of executive power) and the other objective on the content of the index of public power. The Conseil consitutionnel seems, with this decision, reactivate the old meaning of puissance publique that had preceded, in the nineteenth century, the broader service pubblico[10]. With this in no way disavowed the continuing jurisdiction administrative public services, if they are subject to the special regime public law, but held that the only jurisdiction on the dispute over the public function traditionally understood, enjoys constitutional cover. The other areas of administrative litigation do not receive the same consideration by the Constitution and are the result of discretionary decisions of the legislature. Consider, for example, to following types of litigation: from responsibility for illegitimate exercise of governmental authority; relating to public contracts; by way of exception, for the unlawful decisions of authorities administrative; relating to decisions made by private individuals in the exercise of a public function.

The French legislature, however, has remained faithful to the subjective criterion to determine the administrative jurisdiction, whose characteristic is basically that of being a full knowledge in respect of all the shares in which it is in any case involving a government, even if the dispute is attributable to activities materials and private law put in place by the latter.

A similar attempt has also been traveled in Albania. It should be noted that, with the 49/2012 Law 31, the legislature gave input into our system to the jurisdiction "blocks of materials"; certain key sectors in the public interest and the national economy - among them, procedures for awarding public contracts, planning and construction, public services - were assigned to the exclusive jurisdiction and full of administrative courts, including with regard to not only damages but also monitors the processes.

[10] Court Constitucional, rulings 6 Jujy 2004, n. 204; 11 May 2006, n. 191.

The Constitutional Court, it should be noted, rejects this attempt, aimed at giving the administrative jurisdiction of a new content, and reaffirmed the principle of apportionment formalized by the Italian Constitution, based on the dichotomy of subjective rights and legitimate -Interest under which the administrative judge is the natural judge of disputes and the events associated with the exercise of authoritative power.

It 'still remained a tendency to expand, within the limits of the indications of the Constitutional Court, the areas of exclusive jurisdiction, extended to individual rights, which now involves neuralgic really matters for politics and the country's economy and, therefore, ends up represent the real new frontier of administrative justice in Albania.

It should however be clarified that, even in France, where the criterion of allotment appears ultimately more linear than the Italian, the jurisdiction of the administrative court backs off front of the pathological phenomenon of so-called voie de fait (an assault). These are regarded as exceptionally serious violation perpetrated by a government damage to private property or fundamental freedoms, such as to be no longer recognized as lawful manifestation of power from a competent amministrativa[11]. In such cases, the administrative judge can only note the voie de fait, where the civil courts have full jurisdiction also with respect to the

compensation danno[12].

4 THE SCOPE OF THE JURISDICTION OF ADMINISTRATIVE COURTS IN FRANCE: A COMPARATIVE ANALYSIS WITH THE ALBANIAN SYSTEM.

In the French system, the legislature - without remaining attached with the precise distinction the arrest of 23 January 1987 of the Constitutional Council - has the widest discretion to change the boundaries that separate areas of the power of administrations from that of the judges and, within the latter, between administrative courts and judges ordinari[13]. The legislature, in three cases, has preferred to attribute specifically dispute the jurisdiction of the ordinary courts, this in relation to the particular

[11] La presenza di circostanze eccezionali può consentire di derubricare le vie di fatto in una illegalità “semplice”, rilevabile in questo caso dal giudice amministrativo:
[12] Tribunal des conflicts, 27 marzo 1952, ame de la Murette, R. 626.
[13] *Tribunal des conflits, April 23, 2007 - Arrêt ONF; the criterion for the allocation of jurisdiction goes back in time..*

importance attached to the disputed rights. This concerns the following cases:

1. The first relates to personal liberties.
2. The second case relates to age and ability of people .
3. The third case concerns the right of ownership .

Let's look at this point, a summary of the scope of administrative jurisdiction in France.

The French administrative courts exercising jurisdiction over tax dispute that, in our system, is donated to the specialized tax court and the Court of Cassation. Taxation in France is considered one of the most meaningful events of the authority of the public authorities. The tax is a prerequisite for finding the necessary resources to ensure continuity and extent of the welfare state, the engine of the principle of substantive equality With regard to public contracts, the administrative jurisdiction, in France, extends not only to the public procurement but also to the whole phase execution of contracts, including matters relating to liability for infringement litigation and arbitration, hijacked in our system at the ordinary courts.

The dispute over public sector is entirely attributed to the administrative law judge; this choice is the natural consequence of a conception politicoamministrativo French order in which the varied body of public employment is entrusted with the task of managing the complex administrative arrangements, instrumental to the activities of public interest in a manner consistent with the principles of legality and of good performance. Interesting criterion for the allocation of jurisdiction in terms of expropriation for public utility (emprise), a criterion that has many convergences with the procedural rules Albanian.

The dispute regarding the expropriation conforms with the law and regulations, it is based on a legitimate reason in the public interest, such as to render comprehensible for sorting the sacrifice of the private (emprise régulière), is attributed to the administrative judge. The dispute regarding the expropriation hypothesis not supported by a regular title legitimizing the government expropriating, is attributed to the ordinary courts, in Given the known natural role as "guardian of private property." in these cases, the civil courts can only order the quantum of compensation but does not have the power to rule on the legality or otherwise of the expropriation.

In France, the administrative judge has an almost general competence in matters immigration; are therefore including disputes relating to permits for to family reunification, humanitarian grounds or international protection devolved matters in Italy to an ordinary

court, being fully predominant size of safeguarding fundamental rights such as the family, health, life and personal safety. The matter of political asylum, however, is left to a specific organ, the Cour nationale du droit d'asile, that is, to all intents and purposes, a special administrative court. The Court is presided over by a councilor of state appointed by the Vice-President of the Board of Stato[14].

The administrative jurisdiction extends to actions for damages health by medical negligence, medical informed consent from failure, transfusion of blood or blood products, when involving a public health institution .

In the past, there was the question of whether measures of the species should be excluded

from any form of judicial protection, as measures of internal order (mesure .

In France, the division between jurisdictions is fundamentally linked to the subjective element of the presence of a public administration; in Italy, however, it is anchored to the legitimate objective element.

The French solution for the allocation of jurisdiction appeared smoother and safer, so much so that the intervention of the Court of conflicts, even today, is not as frequent as that of the United Section of Hight Court Of Albania .

In both countries, however, we are seeing for years to a radical upheaval of the traditional principles of public law and administrative internal, due to different

factors, however, connected with each other: the crisis of the welfare state, mainly caused by the process of globalization of the economy; pressures towards decentralization autonomy; the strain of European Union European Union. In particular, for the latter, the demands of the free market and the affirmation of the principle of competition - in other words, the priority reasons the economy - have led to a gradual process of "privatization" of public administration. In both countries, the latter tends to lose its original profile authoritative to take the more "corporate-privatization" of the bodies of law pubblico49.

[14] *La Cour nationale du droit d'asile is laid down. L. 731-1 of the Code on the Entry and Stay of Foreigners and Asylum (Code de l'entrée et du séjour des étrangers et du droit d'asile), draws its origins from the Commission des des Recours réfugiés established in turn by the law of 25 July 1952 La Cour nationale du droit d'asile has a complex organization, consisting of 95 rapporteurs, 44 secrétaires d'audience, permanents Magistrats 10, 70 and 58 présidents vacataires assesseurs. Considerable workload: in 2012, 36,362 claims have been submitted, of which, 29,065 determined. For further details, please consult the Bilan d'activité 2012.*

At the same time, it appears more and more the role of the European Court of Human Rights which enshrined the generality of the principle relating to legal certainty and considered as a priority the protection of human rights and fundamental freedoms of the individual..

In Francia è così messa in discussione sia la tradizionale nozione di puissance publique; sia la natura pubblica di un ente, presupposti per fondare la giurisdizione del giudice amministrativo.

In Albania ia is instead entered into crisis the notion of legitimate interest, this is because, according to the principles of the Union, judicial protection is recognized in positions considered substantial by Community law, nothing noting that those same positions are not liable for 'national law.

In both countries, the role of the administrative judge is therefore evolving and increasingly requiring the ability to handle the difficult dialectic between authority and freedom, within a historical process of overlap between legal.

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At the same time, it appears more and more the role of the European Court of Human Rights which enshrined the generality of the principle relating to legal certainty and considered as a priority the protection of human rights and fundamental freedoms of the individual.
In France it is called into question both the traditional notion of puissance publique; the nature of a public entity, the conditions for founding the jurisdiction of administrative courts.
In Albania it is instead entered into crisis the notion of legitimate interest, this is because, according to the principles of the Union, judicial protection is recognized in positions considered substantial by Community law, nothing noting that those same positions are not liable for sorting national.

It should be remembered that the dualism of the courts - administrative and ordinary – is born not to reduce the scope of protection of the citizen, but rather to arricchirla50.
The need priority is to give real content to the protection of the rights and freedoms fundamentals and prepare the right tools to oppose the illegitimate power,
abusive or simply unfair public authorities. It makes no paths that follow, which may depend in practice on several variables, dictated by the national context, as the firmness in the objectives.

5. CONCLUSION

With regard to the system of law and administrative process, France stands out in the conclusions from Albania not in the premises.
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conclusions from Albania not in the premises. Both states are "on the administrative arrangements" in which there is a large body of rules of public law distinct from the common law.

In France as in Albania, the need to separate the administration of the jurisdiction has originally created the conditions for the release of the first from the control of judges (reservoir management). In the long run this would have devalued its one of the objectives "moral" Must haves of the modern liberal state, the effective protection of the rights of the citizen, in response to the referees and the trend abuses of authoritarian monarchies. From here the reasons, common to both countries to establish a judicial order separate and distinct from the ordinary. In both national realities, therefore, the administrative judge, as special judge, was developed to answer the needs of public protection against the unlawful actions of administrative authorities, while safeguarding the principle of separation of powers.

On this basis, the two national legal systems have drawn a different solution to identify the criteria for incardinamento of administrative jurisdiction

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In both countries, however, we are seeing for years to a radical upheaval of the traditional principles of public law and administrative internal, due to different factors, however, connected with each other: the crisis of the welfare state, basically caused by the process of globalization of the economy; pressures towards decentralization autonomy; the strain of European Union . In particular, for the latter aspect, the needs of the free market and the affirmation of the principle of competition - in other words, the priority reasons the economy - have led to a gradual process of "privatization" of public administration. In both countries, the latter tends to lose its original profile authoritative for hire the more "corporate-privatization" of public bodies.

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[15] Il brano è tratto dall' "Avvertenza alla dodicesima edizione (1848)" di A. H. C. de Clérel de Tocqueville, La Democrazia in America, Utet, Torino, 1968.