

## RWANDA

# NATIONAL REPORT FOR THE 10th CONGRES OF SEDNEY ON THE APPLICATION OF ADMINISTRATIVE LAW IN RWANDAN JURISDICTIONS

## 1. JURISDICTION FIELD

### 1.1. List the administrative acts which are subject of control by administrative courts (individual and general acts)?

#### ADMINISTRATIVE ACTS

As regard with material ground, the acts which can be enacted by the administration are as follow:

- the general acts (such an order) which, materially speaking are the true laws characterized by permanence, the general range, objectivity and impersonality;
- the subjective acts, emanating from the competent authorities, creating, modifying or extinguishing a particular legal situation.

-Considered on the background of the obligatory force, the administrative acts may be classified in enforceable and preparatory acts.

-As regard with formal view , administrative acts may be of two types: - unilateral acts, also called executory decisions and multilateral acts or contracts.

This point of view has the merit to once more underline the difference between the private law, where only the contract is allowed as means of action, and public law where, in addition to the contracts, the public authorities unilaterally create rights and obligations.

#### A. Unilateral administrative acts

Given their Characteristics, they may comprise of:

- a. Legal acts: facts done in the intention to produce effects of right, to create a new legal situation, a new subjective right, and reciprocally a new obligation under a responsibility of someone, or even to deny a legal claim.

- b. Acts emanating from the administration

As a recall, by administrations, we think of the governmental departments, the local government organs and the public services in the formal sense including even the concessions.

Unilateral administrative acts don't have the same range. Some are addressed to all indistinctly, while others are particularly binding individuals; some of them are finally of interior nature, with out any interest for citizens. It is thus essential to distinguish some from others.

**An order**

An order is an act taken by an administration while exercising its lawful power as recognized to the executive in general by the Constitution or by other rules hierarchically superiors. An order is, let's stress it, a rule applicable in the future to people or in particular circumstances. It should be noted that the general role of execution of laws is a matter of the Government, while the other organs indicated above can only intervene when they are expressly charged of it by a law.

**The individual acts**

Contrary to the order, the individual acts are related to determined people or situations. They involve a known individual, a group of identified people, an already known situation, therefore a current one. The capacity to take individual measures is not found only any more at the level of the holders of lawful competence but also at all the levels of the public services (administrations).

**The acts of internal nature**

Some of the unilateral acts enacted by the administration do not comprise any interest for citizens.

In theory, these acts do not constitute lawful acts or obligatory decisions for citizens: they are obligatory only for the civil servant, as directives imposed by the chiefs of the administration.

However, the practice shows that such is not the case. Rather than to limit itself to the internal order of the service, some circulars, instructions, etc... span on the fields of the law or the order, creating obligations towards citizens.

It is in particular the case of the instruction, the circular, memorandum etc.

About their conditions of validity, the validity of the act is analyzed owing to the competence (in its varieties) of the author, to the general provisions providing it; compared to its motivation and to required formalities for its enactment, its delegation, the institution of substitution, interim, its legality, its motivation, its publication, to its opposability, to its coming into effect, its abrogation, its withdrawal, etc.

**B. Multilateral administrative acts**

In addition to the way of the unilateral action, the public administration also acts by contractual way, which requires an agreement of wills of two or several parts. Contracts can be concluded either between public people themselves or an administration and individuals. A contract concluded by the administration can be of private law or administrative law.

It is said to be of private law when it was passed "according to the rules and conditions of the private legal trade. The administration does not appear there as a public power and its study concerns the contractual common law".

The administrative contracts are concluded by the administration; they may aim at executing a public service or contain exorbitant clauses of common law. The

administration which is part of this type of contract has prerogatives but is also subjected to detectable unusual obligations in the formation and the execution of the contracts.

The public service contracts have a diversity of objects which deserve to be specified:

1. Markets of public works which relate to construction, installation or on the maintenance of the public buildings.
2. The supply contracts, whose object is the supply of goods.
3. Employment contracts by which the administration resort to the services of private individuals (agents of private law in opposition to the public agents or statutory of administration)

Are generally added to it:

4. Contracts of public loan, by which the private individuals lend money to the State (case for example of the Treasury Bills).
5. The concession of public service, which is a public service contract par excellence
6. Economic contracts by which the administration get from private operators, in return for advantages (tax exemptions, facilities of obtaining protection of market, etc...) a promise of behavior in conformity with a given governmental economic policy

### **WHAT ARE THE CRITERIA OF COMPETENCE FOR A JUDGE IN CHARGE OF CONTROLLING THE ADMINISTRATIVE ACTS?**

The cases of administrative nature in Rwanda are submitted to courts with judiciary nature and regulated pursuant to the private law except when the matter is governed by a specific law.

It should be noted that with regard to the hierarchy of judicial levels (made of four judicial levels: Primary Courts, Intermediate Courts, High court and Supreme court), the administrative questions profit as much from the privilege of jurisdictions as they are initially introduced at the level of the Intermediate Courts.

#### **a. Jurisdiction of the specialized chambers of the Intermediate Courts in administrative Matters**

The specialized chambers of Intermediate Courts hears the following administrative cases:  
1° cases relating to all disputes arising from elections at local administration entities up to District level;

2° all petitions related to decisions or acts taken by local administrative authorities up to the District level, more especially:

-all cases requesting for removal of decisions illegally taken, decisions taken by incompetent persons or persons who act ultravires and which decisions were taken on the last instance;

- cases requesting for removal of administrative decisions or requesting for damages arising from non observance of the general statutes governing Rwanda civil service and public service institutions;

- actions relating to damages based on grounds other than contractual or quasi contractual, if the damage is as a result of an act or omission of the administration or due to acts carried out in public interest;

- actions relating to labour disputes between individuals and the State or its corporations;
- complaints relating to incompatibilities between elected public service posts, non elected posts and other types of employment;
- complaints relating to seizure on public interest, seizure of movable and immovable individual property;
- complaints arising from expropriation in public interest.

3° action for damages arising from extra-contractual liability, inherent to government agents and its parastatals wrongdoings up to the District level;

4° actions relating to administrative contracts, administered under public or private law up to the District level.

They shall also receive oath of the members of the Council and Executive Committee of the District.

Subject to the provisions of the preceding articles, the intermediate court may issue written orders to any administrative organ directing or restraining it from performing certain acts.

The intermediate court may indicate in its written orders that it has granted to an administrative authority the right to choose between paying compensation in kind or in cash.

The intermediate court may also issue certain written instructions related to conduct of a certain public officer, so as to comply with an order; failure to do so may render him/her to pay damages on his/her own.

## **1.2. Criteria of competence of the judge in administrative Cases Jurisdictions**

### **a. Competence of the High Court in jurisdiction of administrative cases**

The High Court has jurisdiction to hear the following administrative related cases:

1° Application to set aside administrative decisions for violation of substantive or procedural rules, for lack of jurisdiction or, exceeding authority, when such decisions have been finally made by Public and administrative authorities from the levels of Province to the President of the Republic;

2° actions seeking nullification of administrative decisions or seeking damages arising from non compliance with the general statute governing public servants and public service institutions;

3° actions based on grounds other than contractual or quasi-contractual acts involving damage caused by the acts or omissions of administration or due to acts carried out in public interest;

4° Actions concerning administrative contracts other than those based on civil law;

5° Actions concerning labour disputes between individuals and the State or its corporations.

6° complaints concerning incompatibility between public service and other types of employment;

7° complaints concerning seizure of movable or immovable property in general public interest.

8° disputes arising out of expropriation of people in public interest.

The High Court examines whether the decisions, contracts or administrative acts within its jurisdiction were done according to law. In case it is done contrary to law, it may nullify and order payment to an aggrieved party any compensation arising out of damage by such acts.

The High Court hears disputes concerning administrative contracts within its competence particularly on their validity, interpretation, enforcement or resiliation.

Subject to the provisions of the preceding articles, the High Court of the Republic may issue written orders to any administrative organ directing or restraining it from performing certain acts.

Without prejudice to the provisions of article 96 of this organic law, the High Court may indicate in its written orders, that it has granted to an administrative authority the right to choose between paying compensation in kind or in cash.

The High Court may also issue certain written instructions related to conduct of a certain public official, so as to comply with such an order, and failure to do so may render him or her to pay damages on his or her own.

The High Court hears on first and last instances appeals against decisions taken in the Council of the Bar Association as well as election petitions arising from the members of the organs of their association.

The High Court hears election petitions of administrative leaders on Provincial and the City of Kigali levels.

## **b. Jurisdiction of the Supreme Court in Administrative cases**

The Supreme Court has exclusive jurisdiction to try, in the first and the final degree, the President of the Republic, the President of the Senate, the President of the Chamber of Deputies, the President of the Supreme Court and the Prime Minister for offences committed during their terms of office, whether such offences relate to the exercise of their public duties or their private matters, regardless of they are still in or have ceased to hold office (art. 44 of the Law to Supreme Court).

The Supreme Court also has the following jurisdiction:

- 1° trying the President of the Republic on charges of high treason or grave and deliberate violation of the Constitution;
- 2° hearing petitions on the constitutionality of organic laws, laws, decree-laws and international treaties and agreements;

- 3° hearing election petitions relating to referendum, presidential and legislative elections;
- 4° resolving, upon request, disputes arising between State organs with regard to their respective functions;
- 5° declaring vacant the office of the President of the Republic in case of the incumbent's death, resignation or conviction and sentence for high treason or grave and deliberate violation of the Constitution;
- 6° administering the oath of office taken by the President of the Republic and the Prime Minister prior to their taking up office;

**N.B. All the administrative acts are subject to the control of the jurisdiction.**

### **1.3. Cas de Jurisprudence illustrant la portée de la compétence du juge administratif**

It was judged that, before constituting a claim to the Intermediate Court for reparation of damages caused by the public market that was illegally attributed, The action must first be submitted at the Court which is competent to rule on administrative lawsuit, in order to counsel the decision that has illegally attributed the public market, failure this, the action for reparation of damages (RADA 0020/05/CS of 15.02.2007, Gervais MUTABAZI/State of Rwanda (Ministry of finance)).

## **2. THE PROCEDURE**

### **2.1. General presentation of administrative jurisdictional procedure**

In administrative jurisdiction, the procedure is that of the common law of jurisdictions, as used in Intermediate Courts by their administrative jurisdiction chambers, in the High Court, and in the Supreme Court.

### **2.2. Is the procedure of administrative jurisdiction directed by parties or by the judge?**

The parties introduce an action in the court and when necessary, they institute an appeal.

The judge directs the proceedings and conducts the trial attitude.

### **2.3. Is there a Prosecution ? What is its role?**

In Rwanda, there is a criminal investigation department, (whose role is to investigate crimes) and the National Service for Public Prosecution, which is charged of pre-trial investigations of crimes cases, institute cases and charge the offenders during trials.

### **2.4. Is the procedure written or verbal?**

It may be either written or verbal. In fact, the documents of case are written, and the trial is done verbally.

## **2.5. Does the judge rule on the cases in unicity or in collegiality?**

On the level of Intermediate Courts, the judge rule on the cases in unicity.

On the High Court level, collegiality is optional according to the case.

On the level of Supreme Court, the judge must rule on the cases in collegiality.

## **2.2. Conditions of the claim to be received by the court**

An action may be filed in a court of first instance by a written or verbal complaint, presented either by the plaintiff him/self self, or by his or her attorney or by any other person duly authorised by him or her.

The written complaint is filed at the Clerk's Office in as many copies as there are defendants, accompanied by the conclusions and the proofs upon which the claim is based as well as the note of the mediators in case it is provided by the law. It may also be sent to the court clerk and those who have competence to sue.

A verbal claim and conclusions accompanied by proofs shall be put in writing by the court clerk.

After payment of court fees, the written or verbal claim is immediately registered in the case register by the registry officer who receives it.

The claim must indicate:

- 1° the day, month and year of filing;
- 2° the names, profession and residence of the plaintiff and if necessary, the names, competence and residence of his or her legal representatives and their respective residences;
- 3° the identity and domicile of the defendant;
- 4° the subject matter and grounds of the claim in brief;
- 5° the jurisdiction of the court to which the case is assigned;
- 6° the signature or fingerprint of the plaintiff or a person having power of attorney to act on his or her behalf to file the claim;
- 7° Matter related to the statement of the mediators in case they are provided by the law.

### **2.2.1. Is it compulsory that the plaintiff justifies his interest for the claim to be received by the court?**

According to Article 2 of the law n° 18/2004 of 20/6/2004 relating to the civil, commercial, labour and administrative procedure, an action cannot be accepted in court unless the plaintiff has the status, interest and capacity to bring the suit.

The interest is here conceived in the large way of all fields of law.

2.3. An action may be filed in a court by a written or verbal complaint, presented either by the plaintiff himself or herself, or by his or her attorney or by any other person duly authorised by him or her.

However, at the level of the Supreme Court, depending on the complexity of the appeal before the Supreme Court, the judge in charge of screening cases may order the appellant to be assisted by counsel.

2.4. The claim may be written or verbal. The written claim is filed at the Clerk's Office. The verbal claim and conclusions accompanied by proofs are put in writing by the court clerk.

2.5. There is a legal institution called « Maison d'Accès à la Justice » (MAJ) or the Bureau for Access to Justice, that is in charge of directing and providing assistance to uninformed people or people without means to have access to justice.

2.6. An appeal against administrative decision does not suspend its execution until the court determines the matter. However, once the case is before the court, a party can ask the president of the court for suspension of the administrative decision being attacked if its execution would cause an irreparable harm.

An application for stay of execution of an administrative decision is made in a separate application from the principal one. It does not require the deposit of court fees.

2.7. On the demand of a party in order to be communicated the documents by the administrative institution that has taken the attacked decision, the judge of administrative jurisdiction can suspend the procedure of jurisdiction and order the communication of those documents.

2.8. There are procedures of urgent applications, provisional resolutions and conservatory measures, which do not rule or prejudice the merits of the principal suit.

### **3. COMPETENCES OF THE JUDGE IN ADMINISTRATIVE JURISDICTIONS**

3.1. The administrative judge controls the respect of the laws in all their hierarchy: constitution, international conventions regularly ratified, the organic laws, the ordinary laws, the presidential Decree, orders, instructions, circulars.

3.2. and 3.3. The judge can be submitted of a bad interpretation of the law or treaties made by the administration whose private individuals would be victim. The procedure in front of the judge proceeds according to the criteria of equality of the party in justice, of independence of the judge and the sovereignty of the law.

3.4. The administrative judge makes a control of the proportionality between the motivation for an administrative decision and the contents of that decision.

3.5. According to the cases submitted to an administrative court, the latter can cancel an administrative decision, reform it; it also modify or reject a query.

3.6. When the judge cancels an administrative decision, all the acts posed within the framework of the implementation of the administrative decision are retroactively null.

3.7. When a court takes an administrative matter decision, it can address injunctions to the administration and to especially order him or prohibit to make an act or a specified operation, and can match its decision of an obligation in the event of inexecution and this, as from a date which it determines.