Third Issue: Exclusive Competence of the High Administrative Court of Croatia –Cases definition

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Introduction: terminological observations

Both administrative and judicial courts differ according to whether they have jurisdiction in principle or whether certain texts give them jurisdiction in a limited number of cases.
The Council of State recognised itself as the court of first instance for matters of ordinary law with the famous Cadot judgment of 13 December 1889. Since 1953, it has no longer had this role, which is now filled by the administrative courts, except for derogations[1].
At present, several bodies share the power to rule in the first instance: in principle, the administrative courts have jurisdiction and certain specialised courts rule in certain types of dispute. Nevertheless, the Council of State has direct jurisdiction in some matters[2].
Texts commonly refer to the Council of State's "jurisdiction in the first and last instance"[3], but some authors feel that "this expression should not be used"[4] and that it would be more accurate to refer to "direct jurisdiction"[5].
Thus the expressions "direct jurisdiction", "jurisdiction in the first instance" and "jurisdiction in the first and last instance" are used indiscriminately, which means that the Council of State's judgments may not be appealed against in a court of appeal or cassation. Although there were originally few courts which had direct jurisdiction, their number grew over time, until the Code of Administrative Justice, which came into force on 1 January 2001, attempted to clarify the situation. In the end, it was the decree of 22 February 2010 that reduced the number of courts with direct jurisdiction by resdistributing powers between the Council of State and the administrative courts.

I. THE DEVELOPMENT OF THE DIRECT JURISDICTION OF THE COUNCIL OF STATE

The Council of State has direct jurisdiction for historical and practical reasons.
When French administrative justice was being developed, the Council of State was initially awarded significant conferred powers until such times as the legitimacy of the administrative courts became established. While in some cases, it was the legislator that wished to remove jurisdiction from the administrative courts, direct jurisdiction was more often than not given to the supreme court by decree[6]. Sometimes jurisduction was awarded permanently, but it was also given temporarily. Residual

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[1] The Council of State was primarily a court of appeal following the 1953 reform, then the law of 31 December 1987 significantly reduced its powers as a court of appeal. Its role as a court of cassation remained has remained unaltered, and that is its main function today.
[2] In her work on the Council of State, (ed. Dalloz, 2005, p. 51), Ms M. A. Latournerie writes "strangely, one single institution holds powers which, in other areas, logic separates: it is at once the court of first and last instance, the court of appeal and the court of cassation". See also J. Massot and J. Marembert, *Le Conseil d'Etat*, La Documentation Française, 1988, p. 110.
[3] This is the terminology used by the decree of 30 September 1953, which continues to be used by the Council of State (aside from some eceptions, e.g. CofS, Division, 7 April 1993, Société d'exploitation immobilière et agricole du Midi).
[4] See R. Chapus, *Droit du Contentieux Administratif*, 12th edition, ed. Montchrestien, 2005, p. 301. The author adds that "this expression could lead lead to a misunderstanding given that jurisdiction in the first and last instance is defined as being expressed in the pronouncement of judgments that may be contested in cassation, which is not the case for judgments made by the Council of State".
[5] The Council of State also uses this expression: e.g. CofS, Division, 25 April 2001, Association Choisir la Vie.
[6] The power to award jurisdiction within the administrative court system is not reserved to the legislator. This is not covered by the "fundamental guarantees granted to citizens for the exercise of their civil liberties" that Article 34 of the constitution places within the legislative domain. As far as these guarantees are concerned, it is important to determine whether or not the administrative court system has jurisdiction, not how this jurisdiction is shared within the system.

power was also given in cases where no administrative courts had jurisdiction to rule. Be that as it may, this jurisdiction is of great qualitative importance.

A. Justification of derogations from the normal rules governing jursidiction

The first question that a court must ask itself is whether it has jurisdiction, and administrative courts decide on this based on the laws in force at the time of their ruling (unless there is a text stipulating otherwise). All rules governing jurisdiction (whether territorial or material jurisdiction or conferred powers) within the administrative court system are matters of public policy[7]. In addition, administrative courts first examine jurisdiction within the administrative court system, and then the jurisdiction of the administrative court system itself[8]. Finally, questions relating to material jurisdiction must be resolved before questions relating to territorial jurisdiction[9], it being understood that derogations from the normal rules governing material jurisdiction are only made to give the Council of State jurisdiction.

It is mainly because of their significance that certain disputes have to be judged by the supreme court: to settle them more quickly, because of the type of decision to be made or to avoid the numerous appeals that would be made if certain disputes were ruled on in a lower court. Where direct jurisdiction in matters relating to misuse of powers is concerned, it may be helpful to accelerate the final decision given that appeals of this type are in the public interest.

It may also happen that a derogation is made from the general rules governing jurisdiction to give the Council of State power to rule in a case. This is usually done for reasons linked to the proper administration of justice[10]. Proper administration of justice may be promoted using several techniques, including derogations from principles. This concept embraces all of the exceptional measures enabling the judicial system to run more smoothly[11].

Of course, as soon as more than one court has power to rule in a case, divergent solutions may be found. This would be incompatible with the unity of case law and the coherence of the court system as a whole, which is why it may be necessary to overcome the anomalies that may result from normal application of the division of powers by appointing a specific court to handle certain disputes.

B. Initial direct jurisdiction and the restrictive interpretation thereof

Since the Council of State was weighed down by a huge number of cases (which shows the trust that the litigants had in it) and could no longer rule on cases within a reasonable timeframe, the decree of 30 September 1953 made administrative courts competent to rule in matters of ordinary law, meaning they could rule in the first instance from that point onwards. This was the first reform of the whole administrative court system since the texts that created it in the 19th century[12]. This decree, and the

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[7] Questions about which court has jurisdiction may therefore be resolved by the court itself as a matter of course, and the parties may discuss such questions at any time, in any stage of proceedings (Division, 16 October 1981, Ministry of Defence v. Lassus and 26 November 1954, Ministry of the Interior v. Van Peborgh, also CofS, 4 October 1964, Trani).

[8] CofS, 8 December 1965, Placenti.

[9] CofS, 12 December 1990, Gille.

[10] Some principles may also have a bearing on the division of powers, such as the rule stating that "the court ruling on the main case should also rule on associated cases", or the rule that prevents references for preliminary rulings from being made between courts of general jurisdiction (CofS, General Assembly, 16 November 1956, Société BAB et BLB). Derogations may also be made from the normal rules governing jurisdiction within the administrative court system to take account of a 'connecting link' between cases, with a view to settling the disputes more quickly and avoiding the risk of contradictory judgments. Such derogations are always made to ensure proper administration of justice.

[11] See J. Robert, *La bonne administration de la justice*, in Actualité juridique de droit administratif (AJDA), 1995, special issue, pp. 117 et seq.

[12] Except for the partial reforms of 1926 and 1934, which related to the old prefectural councils. See M. Combarnous, *La réforme du contentieux administratif : du décret du 30 septembre 1953 à la loi du 31 décembre 1987*, in AJDA, 1995, special issue, p. 175.

decree of 28 November 1953 that complemented it, mainly applied to administrative courts but also specified that the Council of State had the power to rule in the first instance for certain types of case.
The choice of matters reserved to the Council of State was based on a number of simple ideas: on the one hand, the supposed importance of certain cases, or cases that had to be settled urgently, and on the other hand, the need to have a single court for cases where territorial jurisdiction mechanisms would lead to more than one court – or no court at all – being competent to rule on the matter. The Council of State chiefly had direct jurisdiction over appeals on the misuse of powers against individual or statutory decrees and against administrative decisions made by collective organisations with national jurisdiction, as well as appeals against administrative acts with a scope of application extending beyond the jurisdiction of a single administrative court and administrative disputes arising outside of the territories under the jurisdiction of the administrative courts. However, the Council of State also had jurisdiction to rule in cases of opposition to decrees authorising name changes, for instance, which are classed as appeals brought before courts enjoying full jurisdiction[13]. It also has jurisdiction over applications for interpretation and applications for an assessment of the lawfulness of acts on which it may rule in the first instance[14]. The same applies to applications that would generally fall within the jurisdiction of administrative courts but that have a connecting link with disputes over which the Council of State has direct jurisdiction.
To begin with, case law applied a restrictive interpretation when it came to giving direct jurisdiction to the Council of State.
Hence, when appeals on the misuse of powers are made against the decrees (and the ordinances of Article 38 of the 1958 constitution) of the President of the French Republic, the Council of State uses a decree to justify its decision that it has power to rule, yet finds that it cannot rule in the first instance on the full-jurisdiction appeals that may result from the decrees[15].
As regards individual disputes concerning government officials appointed by decree, the Council of State's direct jurisdiction initially covered all such government officials, including the President of the Republic and the Prime Minister. Later, however, this only applied to appointments by decree of the Head of State, made by virtue of Article 13(3) of the constitution and Articles 1 and 2 of the organic ordinance of 28 November 1958. The number of government officials concerned has fallen significantly (decree of 28 January 1969), and besides, the Council of State has only retained direct jurisdiction over individual disputes that are statutory in nature[16].
When the decree of 30 July 1963 gave the Council of State direct jurisdiction over appeals against administrative decisions by collective organisations with national jurisdiction, the measure was initially only applied to professional associations[17]. Insofar as the Council of State then had direct jurisdiction over all collective organisations with national jurisdiction, the measure was applied restrictively at first. Three cumulative conditions had to be fulfilled: the matter at hand had to be an

[13] Decree of 28 November 1953, which confirms a practice dating back two centuries, with case law being consolidated by the law of 8 January 1993.
[14] Decree of 28 November 1953 and CofS, General Assembly, 8 April 1988, Société Gras & Savoye.
[15] F. Scanvic, *Compétence administrative (Répartition des compétences à l'intérieur des juridictions administratives)*, in Répertoire Dalloz de contentieux administratif, Vol. 1, p. 15. Nonetheless, full-jurisdiction appeals against certain decisions by the minister responsible for housing or the minister in charge of industry or appeals relating to economic integration could be lodged directly with the Council of State.
[16] That is, related to the rights, benefits or obligations arising from the civil servant's status. The Council of State therefore has direct jurisdiction over disputes provoked by individual decisions about appointment, remuneration, promotion, discipline and dismissal or resignation. This excludes disputes arising from decisions based on legislation other than statutory regulations (e.g. refusal to award a decoration). However, in some cases, case law is based on the actual position held rather than the nature of the method used for appointment. Besides, the disputes in question are defined broadly, being all individual full-jurisdiction disputes and disputes relating to misuse of powers. As for statutory disputes, these fall under the direct jurisdiction of the Council of State, whether they concern decrees or ministerial orders.
[17] "Professional associations" are not present in any and all organised professions: a law must have granted the profession the power to govern or discipline itself by exercising public powers, and sometimes a certain degree of regulatory power. See R. Odent, *Contentieux Administratif*, Les Cours du Droit, Q 3, p. 797. Under this definition, banks, auditors and journalists are not grouped into professional associations.

appeal on the misuse of powers[18], the decision had to have been made by a collective body[19] and not an individual organisation that was a member of that body and the body had to have national jurisdiction. In practice, the 'national' nature of the powers exercised by these bodies was the most important factor, rather than the fact that they were collective[20].

Disputes concerning the composition of bodies that are representative at national level should be added to this list. Examples include proceedings regarding elections to the Assembly (later renamed to High Council) of French Citizens Abroad (laws of 7 June 1982 and 18 May 1983), proceedings regarding elections to the European Parliament (law of 7 July 1977), the (very few) challenges[21] regarding the appointment of members to the Economic and Social Council (organic ordinance of 28 November 1958), proceedings regarding the election of judges' representatives to the High Council of Administrative Courts and Administrative Courts of Appeal (laws of 6 January 1986 and 9 September 2002) and proceedings regarding the appointment of members to the High Council of the Judiciary (judicial). The Council of State was also given power to rule in the first instance on proceedings relating to elections to the Regional Councils (Article L. 361 of the Electoral Code and tge law of 10 July 1985) and the Corsican Assembly (law of 13 May 1991).

The Council of State's direct jurisdiction was also established with a view to ensuring that a single court would hear certain applications, namely appeals lodged against administrative acts with a scope of application extending beyond the jurisdiction of a single administrative court and disputes arising outside of the territories under the jurisdiction of administrative courts. In both of these cases, case law was restrictive so as not to nullify some of the effects of the 1953 reform[22]. Depending on the matter at hand, the aim in this case is to have a single court with power to rule and/or to avoid differences in case law.

Finally, in some cases an application falling under the jurisdiction of the administrative courts is connected to a case falling under the direct jurisdiction of the Council of State. When this happens, it is logical that the higher court has the power to hear all of the applications[23]. The Council of State's idea of 'connection' was very restrictive at first: it only recognised cases as being connected where the judgment issued on one of the applications "necessarily depended" on the judgment pronounced on

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[18] Which excluded, in principle, (except where there were texts stipulating otherwise) actions brought before courts enjoying full jurisdiction (CofS, 12 June 1992, Galy-Dejean and CofS, 22 November 2000, Mutuelle Inter-Jeunes).

[19] Which excluded government institutions: CofS, 1991, Lepeltier.

[20] This is why several new matters ended up being ruled on by Council of State in the first instance, even though, quantitavely speaking, there were not many cases. Thus the Council of State had direct power to rule on full-jurisdiction appeals against certain decisions by six collective organisations with national jurisdiction: the High Audiovisual Council; the French Securities Regulator; the Insurance, Mutual Insurance Fund and Provident Institution Supervisory Commission; the Energy Regulatory Commission, the Post Office and Electronic Communications Regulatory Authority; the Council for the Prevention of Doping and the National Commission for Information Technology and Freedoms. Also falling under the Council of State's direct jurisdiction were appeals against decisions made by the Central Standing Committee for determining the elements used to calculate state-set agricultural profit (Article 1652-4 of the General Tax Code, and CofS, 26 January 1972, Fédération des Syndicats d'Exploitants Agricoles de l'Orne).

[21] CofS, 23 October 1970, Thalmensy and CofS, General Assembly, 11 May 1973, Sanglier.

[22] A case only falls under the direct jurisdiction of the Council of State if the rules for determining which administrative court has territorial jurisdiction prove to be ineffective (CofS, General Assembly, 2 February 1987, Joxe and Bollon and CofS, Division, 21 October 1988, Eglise de scientologie de Paris and others). The Council of State also has jurisdiction over matters relating to misuse of power if the contested decision was made by a French administrative authority based abroad (CofS, Division, 29 January 1993, Ms Bouilliez and 10 April 1992, Aykan). It has jurisdiction in contractual matters over tenders or contracts signed and executed abroad (CofS, 3 July 1968, Lavigne), in matters relating to damage caused to public works (CofS, 17 November 1965, Société Neptun Transport und Schiffahrt) and for disputes arising outside of territorial waters (CofS, 1 December 1971, widow Benoist).

[23] For the connecting link between cases to come into play and the Council of State to exercise direct jurisdiction, the Council of State must be asked to rule on a case in the first instance (and not in appeal or cassation).

another application[24]. This approach makes it possible to rule on several highly interconnected disputes at once[25].

It should also be noted that the Council of State has lost its direct jurisdiction over some matters as time has gone by, even though this did not result from a clear desire to reduce the court's jurisdiction. Some matters were removed as a result of events (e.g. Algeria becoming independent)[26], others as a result of reforms[27] and still others as a result of powers being transferred to civil courts[28], while in other cases the Council of State had been given direct jurisdiction on a temporary or one-off basis[29].
Nevertheless, the addition of a far greater number of new areas of direct jurisdiction more than made up for the restrictive interpretation of the Council of State's direct jurisdiction and the various matters removed from it. While there were half a dozen areas falling under the Council of State's direct jurisdiction in 1954, this number eventually rose to over twenty.

C. The gradual expansion of direct jurisdiction

The original list of areas over which the Council of State had direct jurisdiction was expanded through legislative or statutory texts and through the increasingly less restrictive interpretation of the Council of State's direct jurisdiction.
This expansion happened in stages. In the ten years between 1982 and 1992, two important developments took place: powers were transferred to local authorities within the framework of decentralisation, and also to decentralised state departments as part of the decentralisation measures that saw prefects given the power to take certain individual decisions that had been taken by the central authorities up to that point[30]. Generally speaking, this should have led to the Council of State having direct jurisdiction over fewer areas and a considerable share of the caseload being transferred to the administrative courts.
However, several legislative or statutory provisions increased the number of areas falling under the Council of State's direct jurisdiction. When laws were introduced (giving the Council of State power to rule in full-jurisdiction appeals, for instance), they applied to a broader range of matters.

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[24] CofS, 13 May 1964, Carrou and CofS, Division, 23 June 1967, Laquière. Furthermore, the existence of a connecting link is determined based on the applicable legal texts on the date of the court's ruling (CofS, 14 March 1990, Office Culturel de Cluny).

[25] CofS, 31 March 1993, Estoup. According to F. Scanvic, op. cit., p. 7, "This method, which is sometimes guided by subjective considerations, has meant that the Council of State does not apply the principle of connecting links too extensively", quoting CofS, 10 February 1995, Bizet.

[26] In 1962, the Council of State lost direct jurisdiction over proceedings related to elections to the Algerian Assembly and that body's deliberations and over mining matters the Organisation of Saharan Regions. It also lost its direct jurisdiction over proceedings relating to the rights of former civil servants in French overseas territories. See R. Chapus, op. cit., p. 302 and J. Baudouin, *Conseil d'Etat*, in Répertoire Dalloz de contentieux administratif, vol 1, p. 23.

[27] For instance, election of the President of the Republic by universal direct suffrage, a method introduced in 1962, removed the need for jurisdiction over matters relating to the list of presidential electors.

[28] This was the case as regards the unification of jurisdiction over proceedings relating to liability for damages of nuclear origin caused by ships carrying out a state mission (law of 29 November 1968). Similarly, proceedings relating to decisions by the Competition Council were brought under the same jurisdiction as proceedings relating to legislation on free prices and freedom of competition (law of 6 July 1987).

[29] This refers to proceedings regarding compensation for former solicitors and the removal of the Council of State's direct jurisdiction over proceedings relating to the suspension of decisions concerning public policy. This latter operation was effected by the decree of 27 January 1983, which put an end to this anomaly that had drastically reduced the jurisdiction of administrative courts in the domain.

[30] Nevertheless, the Council of State still had direct jurisdiction over prefects' appeals to overturn certain decisions by the decentralised authorities, namely those that could seriously compromise the functioning or integrity of a body or work project connected to national defence (laws of 7 January 1983 and 9 January 1986). Similarly, since the decree of 26 February 1992, the Council of State has had direct jurisdiction appeals against (non-judicial) decisions by administrative courts where these relate to authorisation to go to court on behalf of the local authorities. These appeals are classed as proceedings under the court's unlimited jurisdiction. (CofS, General Assembly, 26 June 1992, Ms Lepage-Huglo, Pezet and San Marco).

Furthermore, a great many decrees made under Article 37 of the constitution modified or added to the Council of State's powers to rule in the first instance[31].
But it is the importance attached to certain administrative acts that led to the broad interpretation of the matters falling under the Council of State's direct jurisdiction.
The administrative acts in question include appeals against decrees and ordinances by the President of the Republic[32], appeals against disputes regarding government officials appointed by decrees of the President of the Republic, appeals against ministries' statutory instruments (since 1963) and appeals against decisions taken by ministries as the result of a compulsory opinion by the Council of State (since 1966)[33]. Also included are ministerial circulars and acts signed by an authority that has been authorised to sign on a minister's behalf[34]. Furthermore, the Council of State may rule in the first instance on appeals against refusals to adopt the aforementioned unilateral acts or statutory instruments[35]. The same applies to appeals against a decree's 'silence', referring to the fact that the provisions that should be contained in the decree are missing[36], and also to appeals against refusals to take measures that should have been taken by decree[37]. This broad interpretation of the concept of 'statutory decrees that jusitfy a direct ruling by the Council of State' has certainly made it possible to mitigate problems linked to the interpretation of the scope of application of administrative acts reaching beyond the jurisdiction of a single administrative court, but it has not reduced the number of areas falling under the Council of State's direct jurisdiction – quite the contrary. Besides, it is still the case that the main difficulty lies in determining when an administrative act is statutory in nature.
The expansion of the Council of State's direct jurisdiction is also due in large part to the spread and diversification of collective organisations with national jurisdiction taking administrative decisions (whether statutory or individual) against which appeals may be lodged on the misuse of powers. The bodies affected were not only professional associations (ruling in non-disciplinary matters): all of the numerous similar organisations fell into this category too[38]. Even though case law rejected any court-made expansion of the Council of State's jurisdiction in this area[39], the decree of 26 July 1975 enforced the wider application of the solution developed for professional associations in 1963. The effects of this mechanism went far beyond what had been expected. The number of Independent Administrative Authorities (later known as Independent Public Authorities with a legal personality) grew, as did the number of cases in which decision-making powers were given to a national-level commission. These circumstances expanded the Council of State's direct jurisdiction, but the

[31] Looking only at the two decades following the 1953 decrees, these were modified by a series of decrees adopted on 22 December 1960, 30 July 1963, 12 November 1965, 13 June 1966, 28 January 1969, 30 January 1974 and 13 May 1975, as well as the laws of 7 and 19 July 1977.
[32] The decrees of 28 January 1969 excluded disputes about the individual situation of civil servants appointed by decree by the Prime Minister from the Council of State's direct jurisdiction.
[33] This applies to ministers (including the Prime Minister) and all secretaries of state. It applies to the Prime Minister (acting through orders or circulars) and the President of the Republic (acting through orders). The type of statutory instrument is immaterial – it could be an order, a circular or even just an 'agreement' – when the instrument in question is actually a statutory unilateral act (CofS, Division, 23 June 1995, Ministry of Culture).
[34] CofS, 16 December 1987, Fédération Nationale CFDT Interco.
[35] CofS, 24 January 1962, Société Radio-Filtrex. The Council of State also has direct jurisdiction over cases where a minister explicity or implicitly refuses to enact a regulation (CofS, 27 March 2007, Syndicat des travailleurs du transport) or bring about the enactment of a statutory decree (CofS, 9 November 1977, Larguier).
[36] CofS, 29 April 1987, Association de gestion de la résidence médicale des Sources.
[37] CofS, Division, 23 June 1998, Ms Richard and 18 May 2001, Meyet and Bouget.
[38] For example, the High Commission on the Press Pass for Professional Journalists and the Commission on the Right to a Response (decree of 13 May 1975). Other organisations include the (non-judicial) Commissions on the distribution of compensation abroad, the Joint Committee for Publications and Press Agencies, the National Amenities Committee, the National Commission on Campaign Accounts and Political Funding, the National Commission for Information Technology and Freedoms, the National Commission for Monitoring Security Breaches, the Board of Directors of the Paris Chamber for the Compensation of Financial Instruments, the Banking Commission (for its administrative decisions) and the Committee for the Regulation of Banking, Finance, Credit Establishments and Investment Companies. Appeals against administrative decisions made by the Court of Audit could be added to this list (CofS, Division, 12 June 1993, Ms Gaillard).
[39] CofS, Division, 14 February 1972, Marion de Procé, concerning the Commission on the Press Pass for Professional Journalists.

expansion was not driven by the nature of the cases or a need for proper administration of justice. For example, the wording of texts gave the Council of State power to rule in the first instance on appeals against decisions by national judging panels for competitions or exams[40]. Moreover, while direct jurisdiction had previously been limited, in principle, to appeals on the misuse of powers, it had been extended to cover appeals against such decisions, including full-jurisdiction appeals[41]. The situation of the law became complicated "in that the Council of State was given direct jurisdiction on an ad hoc basis and for single cases, where it had previously only had direct jurisdiction over appeals on misuse of powers. This expanded the Council of State's direct jurisdiction in the matter of full-jurisdiction appeals against decisions by various collective organisations with national jurisdiction"[42].

The Council of State's direct jurisdiction, as established by the decrees of 1953 and subsequent texts, was also expanded due to rules on 'connecting links'. This concept was initially interpreted restrictively, but was later interpreted broadly for reasons that have more to do with practicality than judicial logic[43]. Evaluation now mainly depends on the facts of each individual case and a 'connecting link' is found to exist whenever there is a convergence in the various applications concerning the same case, which must then be judged together, as though they constituted a whole[44]. It does not matter if one application is a full-jurisdiction appeal and the other is an appeal on misuse of powers. Likewise, a connecting link may be found when the same person is challenging several decisions, or when a single decision is contested by several appellants, or even when several people have lodged appeals against separate decisions[45].

Statistically speaking, matters falling under the direct jurisdiction of the Council of State accounted for an average of 10% of the court's activity in the five years before the Administrative Courts of Appeal began their work. However, in the subsequent period, the percentage of cases on matters under the Council of State's direct jurisdiction rose from 20% in 1989 to 28.2% in 1999 (or 3,484 of the 18,330 cases brought). This increase is not so much due to the fact that there were "more contested decrees or other texts with a scope of application going beyond the jurisdiction of a single adminstrative court as to the fact that appeals by foreigners against the refusal of a visa by consular services fell within the jurisdiction (of the Council of State), since no administrative court had

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[40] Case law also led to a broad interpretation of texts, to include appeals against decisions by the Discplinary Committees of recognised sports federations (CofS, Division, 19 December 1980, Hechter) and decisions by the admissions panels of some prestigious higher education institutions (CofS, Division, 30 March 1981, Aubert and others). Non-individual decisions by sports federations' collective organisations with national jurisdiction fall within the Council of State's direct jurisdiction (CofS, 25 April 2001, Association sportive Nancy-Lorraine), while the law of 13 July 1992 gave administrative courts the power to rule on actions for the annulment of individual decisions made by such bodies (CofS, 29 July 1994, Etoile sportive « Aiglons » briviste, and, on the same day, Association sportive roannaise).

[41] Full-jurisdiction appeals can be made against certain decisions by independent government bodies, such as the High Audiovisual Council (laws of 30 September 1986 and 17 January 1989) and the Telecommunications Regulatory Authority. Where they concern penalties imposed by collective organisations with national jurisdiction, the bodies are as follows: the Insurance Supervisory Commission (law of 31 December 1989), the Futures Board (decree of 21 March 1990), the Investment Company Disciplinary Board (laws of 23 November and 2 August 1989), the Pension and Provident Institutions Supervisory Commission, the High Council for the Prevention of Doping, and so on. The jusitification for this is that penalties are often applied in sensitive areas and may be severe.

[42] R. Chapus, op. cit., p. 315. In the end, the Council of State was given jurisdiction regardless of the type of appeal being made (CofS, 1 April 2005, Ms Le Pen).

[43] This new interpretation can be seen in the following judgments: CofS, General Assembly, 7 December 1962, Ms Coursières-Berthezène and CofS, Division, 8 October 1976, Le Blant.

[44] This interpretation is consistent with the wording of Article 22(3) of the Brussels Convention (EEC) of 27 September 1968 on jurisdiction and the enforcement of judgments, which provides that "actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings".

[45] R. Chapus, op. cit., p. 341. See also: CofS, Division, 16 October 1981, Guillaume and Germanaud, CofS, General Assembly, 16 April 1986, Compagnie Luxembourgeoise de Télédiffusion, 2 February 1987, Société T.V.6., CofS, 9 November 1990, Ville de Perpignan.

territorial jurisdiction over such matters"[46]. It should be noted that the visa system has since become stricter and that there are now far more appeals on misuse of powers against decisions to refuse visas.

II. LIMITATION OF THE COUNCIL OF STATE'S DIRECT JURISDICTION

The Council of State's activities in matters relating to its direct jurisdiction became more cumbersome over the years, with all the reforms that were passed. Moreover, it appears that efforts to reduce its role as a court of appeal have led, statistically speaking, to a twofold increase (in percentage terms) in the number of disputes falling under the court's direct jurisdiction in the first instance[47].
Successive expansions also meant that sight was lost of the original justification for giving the Council of State direct jurisdiction, namely, that it would speed up settlement of disputes. Besides, case law in the matter sometimes contained subtleties that might make appellants hesitate to take action, or even refrain from doing so altogether.

A. Restoration to order by the Administrative Justice Code

The Administrative Justice Code came into force on 1 January 2001 and replaced the 1973 Administrative Courts Code, which had become the Code of Administrative Courts and Administrative Courts of Appeal in 1989.
It is a general code and even covers texts applying to the Council of State, so the code's scope includes both the 'keystone' of judicial system and administrative courts with general jurisdiction.
With a view to restoring order, and given the number and diversity of the texts introduced since 1953 (particularly with regard to the distribution of powers in the first instance), the Code splits matters falling under the Council of State's direct jurisdiction into two categories (depending on whether they are legislative or statutory in origin), with a separate series of articles for each category (Articles L 311-2 to 311-5 and R 311-1 and R 311-2 respectively).

1. Clarifications made by the Code

The Code contained ten sections on the Council of State's direct jurisdiction. They recapitulate the appeals that are important enough to justify bringing them before the supreme court, the cases that must be resolved as quickly as possible and the disputes that must be heard by a single court. It is not necessarily a case of giving the Council of State all of the cases that meet one of these three criteria. As circumstances changed, decisions were made to either give the Council of State direct jurisdiction overall or to give it direct jurisdiction over particular cases.
It should be noted that the appeals currently falling under the Council of State's direct jurisdiction "are those aiming to have the contested decisions overturned or reformed on grounds of illegality"[48]. The Administrative Justice Code has therefore asserted the idea that appeals on misuse of powers and objective full-jurisdiction appeals are of the same nature, given that the main concern in both cases is the swiftest possible resolution of a question on legality[49]. This does not cover full-jurisdiction appeals where they concern rights.
This assimilation has put an end to the distinction made since 1953 between cases where the only appeals that the Council of State could hear in first instance were appeals on misuse of powers and cases where the Council of State automatically had jurisdiction, regardless of the nature of the action for annulment[50]. The change guarantees the uniformity of Council of State's direct jurisdiction and makes it easier for appellants to identify the court of first instance.

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[46] M. A. Latournerie, *Réflexions sur l'évolution de la juridiction administrative française*, in Revue Française de droit administratif (RFDA), 2000, p. 924.
[47] Proceedings of this type accounted for an average of 20% of the court's activity from 1995, from a low of 21% in 1997 to a peak of over 28% in 1999.
[48] R. Chapus, *Droit du contentieux administratif*, as mentioned above, p. 305.
[49] Until that point, the Council of State had general jurisdiction (mentioned in the decree of 30 September 1953) for decisions that were subject to appeals on misuse of powers.
[50] Consequently, the Council of State's jurisdiction in this area is no longer limited to appeals on misuse of powers against orders and decrees by the President of the Republic, statutory instruments by ministers, other acts

For appeals against measures taken by collective organisations with national jurisdiction, the Administrative Justice Code (Article L 311-4) refers to full-jurisdiction appeals so that the penalties applied can be contested directly before the Council of State[51].

2. Rationalisation by the Code

While it gave the role of court of first instance for matters of ordinary law to the administrative courts, the Code also established a system facilitating more rational derogation from the rules of material jurisdiction in favour of the Council of State. It reasserts the role of the administrative courts "unless the subject of the dispute or the interests of proper administration of justice mean that the Council of State should be given jurisdiction"[52]. This statement both explains the organisation of the Council of State's powers in the first instance and serves as its legal basis.

Article L 331-1 sets out the principle that the administrative courts' power to rule in the first instance on matters of ordinary law does not extend to matters where "the subject of the dispute or the interests of proper administration of justice mean that the Council of State should be given jurisdiction".

It is easy to explain direct jurisdiction due to the subject of the dispute: this refers to pre-existing laws and the distribution of powers carried out in 1953 and the subsequent period. As mentioned before, many changes were made regarding the Council of State's direct jurisdiction in this domain and direct jurisdiction was gradually expanded through special texts, as well as case law that became less and less restrictive as time passed.

The Code also mentions "the interests of proper and sound administrative justice" in Article L 821-2, giving the concept a legal basis. It mainly concerns the organisation of jurisdiction within the administrative court system, especially conferred powers to rule in the first instance in the administrative court system.

This is not a "conceptual idea, but a functional idea"[53], which can be defined by its usefulness. In a state governed by the rule of law, it is not enough to simply make sure justice is served. Justice must be served correctly and must be 'administered'. This is based on the assumption that requirements relating to rationality in rules governing jurisdiction are as much of a concern as requirements relating to appropriateness. Rationalisation also takes the form of implementing methods to organise a given system with a view to improving its performance. Good organisation of the rules governing competence implies "decentralising administrative justice as much as possible, but preventing it from fragmenting by unifying the rules governing competence as far as humanly possible[54]. In the specific case of distributing jurisdiction in the first instance, proper administration of justice requires provision

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adopted by ministers as a result of a compulsory opinion of the Council of State and administrative decisions by collective organisations with national jurisdiction. Regardless of the type of proceedings, the Council of State also has direct jurisdiction over disputes about the individual situation of civil servants appointed by decree by the President of the Republic, appeals against acts with a scope extending beyond the jurisdiction of a single administrative court and disputes arising outside of the territories under the jurisdiction of the administrative courts.

[51] Some temporary proceedings before courts enjoying full jurisdiction have disappeared in the meantime, e.g. compensation of auctioneers for damages resulting from the removal of their monopoly in certain types of sale (law of 10 July 2000) and compensation of shipbrokers following the withdrawal of some of their rights (law of 16 January 2001). Also worthy of note are the occasional proceedings relating to the referendum scheduled to take place in Corsica by the law of 10 Janaury 2003 and held on 6 July 2003.

Although the Council of State lost direct jurisdiction over some matters, it gained direct jurisdiction over others, such as appeals against penalties imposed by the director of the National Film Centre (decree of 29 October 2002). Other areas have also been added, like actions for damages brought by litigants who have suffered due to excessively long proceedings in the administrative court system (decree of 28 July 2005). Case law has also contributed to this expansion, such as by giving the Council of State direct jurisdiction (for reasons of appropriateness) over orders by ministers with a view to nominating members of their staff or advisers.

[52] Articles L 311-1 and R 311-1 of the Administrative Justice Code. See also: R. Chapus, *La lecture du Code de Justice administrative*, in RFDA, 2000, pp. 929 et seq.

[53] R. Chapus, *Georges Vedel et l'actualité d'une « notion fonctionnelle » : l'intérêt d'une bonne administration de la justice*, in Revue du droit public, 2003, p. 944.

[54] J. M. Favret, *La bonne administration de la justice administrative*, in Revue Française de Droit Administratif, 2004, p. 943.

to be made for derogations to Article R 312-1, which sets out principles on the jurisdiction of administrative courts[55]. As regards the Council of State and its power to rule in the first instance, the Council of State itself made explicit reference to the need for "proper administration of justice"[56]. In fact, the concepts of 'proper administration of administrative justice', 'proper justice' and 'proper running of public justice bodies' are all equivalent[57].

B. The Council of State's direct jurisdiction redefined by the decree of 22 February 2010

The Administrative Justice Code – and especially its statutory section – has been amended many times since its adoption, which is why the decree of 22 February 2010 on the jurisdiction and functioning of the administrative court system changed the way power to rule in the first instance was distributed, reducing the Council of State's jurisdiction and increasing that of the administrative courts[58].

1. Reasons for the reform

No major modifications had been made to derogations from the jurisdiction of the administrative courts, which became the courts competent for matters of ordinary law in administrative proceedings upon their creation in 1953, since they were established. Given that cases of this type featured so prominently in the work of the Council of State, there was an urgent need to examine whether certain derogations should be retained.
Disputes falling under the Council of State's direct jurisdiction accounted for an annual total of 20 to 25% of cases brought, as shown in the table below, which is based on annual public reports and refers to the last ten years[59].

The Council of State's power to rule in the first instance

[55] Rationalistion in the interests of proper administration of justice is visible as far as 'connecting links' is concerned. Under Article R 341-1, when the administrative courts have power to rule in the first instance on an application relating to a particular case and the Council of State has power to rule in the first instance on another application relating to the same case, the need for proper administration of justice precludes the two 'connected' applications being ruled on separately, so the Council of State hears both applications.
[56] CofS, 25 April 2001, Association Choisir la Vie: finding that placing medicinal products on the market constituted an administrative act with a scope of application extending beyond the jurisdiction of a single administrative court, the Council of State decided that it should retain direct jurisdiction in the matter "in the interests of proper administration of justice", both for appeals against authorisation to place a medicinal product on the market and appeals against the refusal of such authorisation.
[57] In a judgment handed down on 12 July 2002, Mr and Mrs Leniau, the Council of State mentions "the interests of proper justice".
[58] The first of this decree's eight sections deals with this redistribution, but the decree also touches on compositions in the Council of State, composition of the bench in administrative courts and administrative courts of appeal, the Administrative Court Inspection Team, administrative and budgetary management of administrative courts, administrative proceedings, records and expertise. The decree aims to limit the Council of State's direct jurisdiction and boost the efficiency of investigations and and investigation methods in the administrative court system.
[59] Public reports of the Council of State (judicial and advisory activities of the administrative court system), 2001 to 2010, La Documentation Française.

Year	Number of cases	Percentage of the total number of cases brought
2000	3,292	26.8%
2001	2,738	21.7%
2002	2,434	21.6%
2003	2,052	20.7%
2004	2,242	19%
2005	2,758	25%
2006	2,251	22%
2007	2,219	23%
2008	2,605	25%
2009	3,044	31%

Of all the cases falling under the Council of State's direct jurisdiction on the eve of the reform, the largest categories of dispute were[60]:

- disputes about the individual situation of government officials appointed by decree (a little more than 15% of the total);
- appeals against visa refusals (almost 20% of the total);
- appeals against decisions by collective organisations with national jurisdiction (30% of the total, of which almost 10% were appeals against decisions by national judging panels exams and competitions).

The ever-increasing number of appeals meant that it was necessary to re-evaluate working methods and make some procedural adjustments. Besides, the administrative court system had already been undergoing a cycle of reforms for a few years, which Jean-Marc Sauvé, Vice-President of the Council of State, viewed as "an abiding feature and a necessity"[61]. Thus it was the right time to try to further enhance the speed and quality of administrative justice by reorganising first-instance jurisdiction and to bring the supreme court's focus back to its role as a court of cassation and the examination – ruling on the merits of the case – of appeals whose nature truly justifies bringing them directly before the Council of State.
The reform, which was passed by decree, was prepared by several working groups made up of members of the Council of State, the Administrative Courts of Appeal and the Administrative Courts[62]. The main reform introduced by the decree redistributes powers between the Council of State and the Administrative Courts: it reduces the former's jurisdiction in the first instance and transfers jurisdiction over several types of dispute the latter, which will rule on cases on the relevant matters in future[63]. Article R 311-1 of the Code (which deals with the Council of State's direct jurisdiction) was amended and additions were made to the provisions on the territorial jurisdiction of the administrative courts to take account of the courts' new powers (Articles R 312-1 and R 312-5).
Nevertheless, the Council of State's direct jurisdiction over certain matters remains justified by three factors: the subject of the disputes in question, the need to settle the disputes quickly and the need for the greatest possible consistenct in the interpretation of the law and the settlement of disputes[64].

[60] From D. Chauvaux and J. Courtial, *Le décret du 22 février 2010, relatif aux compétences et au fonctionnement des juridictions administrations*, in AJDA, 2010, p 605.
[61] Conference on current reforms within the administrative court system, organised by Université Paris-2's Administrative Law Research Centre on 18 May 2009 (Council of State website and B. Defoort, in Gazette du Palais, issue 82, 23 March 2010).
[62] See J. Arrighi de Casanova and J. H. Stahl, *Le décret N° 2010 – 164 du 22 février 2010 relatif aux compétences et au fonctionnement des juridictions administratives*, in RFDA, 2010, p 388.
[63] The new provisions apply to appeals lodged after 1 April 2010.
[64] See the ministry response regarding the decree of 22 February 2010 to bring the Council of State's focus back to cases whose significance and character justify derogation from the jurisdiction of the court of ordinary law,

2. Reduction of direct jurisdiction based on the subject of the dispute

In the past, the Council of State had direct jurisdiction over "appeals against ministers' statutory instruments and ministerial acts that could only be adopted following an opinion from the Council of State" (Article R 311-1(2)). Now, the Council of State no longer has direct jurisdiction over ministerial acts adopted following an opinion from the Council of State. Power to rule in such disputes has been transferred to the administrative court with territorial jurisdiction, i.e. the Paris Administrative Court, given that the ministers are based in Paris[65].

The new wording of Article R 311-1(2) gives the supreme court power to rule on "appeals against statutory instruments of ministers and other authorities with national jurisdiction, and appeals against circulars and directions with general application issued by these bodies"[66]. The situation has not changed as far as circulars and ministerial directsions are concerned: they still fall under the direct jurisdiction of the Council of State, despite not being statutory in nature[67].

The Council of State's direct jurisdiction has been greatly reduced as regards disputes concerning the individual situation of civil servants and military officers appointed by decree by the President of the Republic by virtue of Article 13(3) of the constitution and Articles 1 and 2 of organic ordinance no. 58-1136 of 28 November 1958. Although it still has direct jurisdiction over the same government officials[68], it may now only rule on disputes concerning recruitment and discipline[69]. Other individual disputes are now ruled on by the administrative court that has territorial jurisdiction over the place where the civil servant or officer performs his or her duties[70].

It is particularly important to note that the Council of State no longer has direct jurisdiction over all collective organisations with national jurisdiction. The decree of 30 July 1963 had expanded the Council of State's jurisdiction to cover acts by the collective organisations with national jurisdiction of all professional associations, by generalising the solution that the decree of 4 March 1953 had created for the national medical association. The Council of State was given direct jurisdiction over the collective organisations with national jurisdiction of all professional bodies in a bid to facilitate quick settlement of disputes. However, it turned out that there is not always a correlation between the fact

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the usual court of first instance, and the two tiers of judicial authority, in Dalloz-Actualité, 2 March 2010, observations by de Montecler.

[65] Within the meaning of Article R 312-1, unless the decision in question falls under the exceptions mentioned in Articles R 312-6 to R 312-17.

[66] The addition concerning appeals against the statutory instruments "of other national authorities" counterbalances, from a jurisdictional viewpoint, the practice of delegating a statutory power applied at national level to another, usually collective, authority.

[67] This takes account of recent case law (CofS, 18 December 2002, Ms Duvigneres), which finds that a circular can cause damage, and can therefore be contested, if it is compulsory. This decision put an end to previous practice, according to which an appeal against a circular was only admissible if the circular was statutory (and therefore illegal) in nature, which meant that admissibility depended on the substantive assessment. The decree aimed to clarify the distinction between jurisdiction and the admissibility of appeals.

[68] The government officials in question are as follows: members of the Council of State and the Court of Audit; magistrates within the judiciary; lecturers in the higher education system; army, navy and air force officers; members of bodies for which recruitment is usually conducted by the Ecole Nationale d'Administration; prefects; engineers in technical organisations whose recruitment partly depends on their class rank upon graduation from the Ecole Polytechnique.

[69] The Council of State still has direct jurisdiction over appeals against measures adopted by decree by virtue of Article R 311-1(1), which gives the Council of State power to rule over "appeals against ordinances of the President of the Republic and decrees". Furthermore, the concept of disciplinary disputes has been clarified by case law. An appeal is only considered to be about discipline when it is made against a decision that is obviously disciplinary. This is not the case for 'hidden' penalties, since jurisdiction must not be made to depend on a substantive assessment of the application and legality of the decision (CofS, 29 November 2004, Centre hospitalier de Lavaur).

[70] As far as pensions are concerned, the administrative court that rules is the court that has jurisdiction in the place where the pension is to be paid.

that the decisions were made at national level and their actual importance[71]. Since the previous situation was unsatisfactory, questioning this expansion led to the redefinition of the exact areas covered by the Council of State's direct jurisdiction. Article R 311-1(4) was therefore rewritten to reduce the number of bodies whose decisions still come under the direct jurisduction of the Council of State in the first (and last) instance. The solution involved setting out a restrictive list of the independent administrative (or public) authorities that have power in certain areas of the economy and take decisions which should fall under the Council of State's direct jurisdiction as part of their "monitoring or regulatory activities". The Council of State's direct jurisdiction has therefore been reduced, but its retention is still justified by the challenge presented by some cases.

In its former wording, Article R 311-1(4) referred to "appeals against administrative decisions by collective organisations with national jurisduction", whereas it now refers to "appeals against the decisions taken by the bodies of the following authorities as part of their monitoring or regulatory activities"[72]. With this wording, the decree limits the number of authorities in question to thirteen[73]. Furthermore, the Council of State only has direct jurisdiction over acts adopted by the authorities as part of their monitoring or regulatory activities. Finally, by making reference to "bodies", the decree has put an end to the distinction between decisions made collectively and decisions made by the president of the collective organisation. The old version of Article R 311-1(4) was understood as limiting direct jurisdiction to decisions made by the collective organisation itself, but with the new version of the article, decisions taken by the president of such an authority fall under the direct jurisdiction of the Council of State if they are related to the authority's monitoring or regulatory activities[74].

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[71] For instance, with regard to subsidies for community radio stations, the decree of 24 December 2002 transferred decision-making powers from a Commission to an Authority that makes decisions based on the opinion of the Commission. This transferred jurisdiction over disputes in this area from the Council of State to the administrative courts, without any change in the nature or importance of the substance of the dispute. Conversely, the ordinance of 8 December 2003 amending the Electoral Code transferred the power to set the amount of expenditure to be reimbursed to candidates whose accounts are approved from the prefect to the National Commission on Campaign Accounts. This placed disputes on the matter under the direct jurisdiction of the Council of State, even though administrative courts had been settling such (admittedly rare) disputes without incident until that point, sometimes with appeals and the involvement of the Council of State in cassation See J. Arrighi de Casanova and J. H. Stahl, op. cit., p. 389.

[72] The article was worded in this way to prevent broad interpretation and to show that the Council of State's direct jurisdiction should be interpreted restrictively. Nevertheless, **statutory** instruments of collective organisations with national jurisdiction not mentioned on the list still come under the Council of State's direct jurisdiction by virtue of Article R 311-1(2) of the Administrative Justice Code. Consequently, decisions by national judging panels for exams competitions must be contested before the administrative court with territorial jurisdiction, since these decisions are not statutory in nature.

[73] The authorities in question are as follows:

- the French Anti-Doping Agency;
- the Competition Authority;
- the French Securities Regulator;
- the Post Office and Electronic Communications Regulatory Authority;
- the Rail Transport Regulatory Authority;
- the Nuclear Safety Authority;
- the Energy Regulatory Commission;
- the Insurance and Mutual Insurance Fund Supervisory Authority;
- the High Audiovisual Council;
- the National Commission for Information Technology and Freedoms;
- the National Commission for Monitoring Security Breaches;
- the Banking Commission;
- the Committee on Credit Establishments and Investment Companies.

The latter two bodies have been brought together within the Prudential Supervision Authority, which replaced them following the ordinance of 21 January 2010.

D. Chauvaux and J. Courtial note that "this list may change if new authorities are created and if case law shows that an authority was omitted wrongly", op. cit., p. 607.

[74] So the administrative courts only have jurisdiction when it comes to decisions about internal management, whether they were made by the organisation as a whole or just the president.

3. Removals and transfers in the domain of direct jurisdiction in the interests of proper administration of administrative justice

Excluding the removal of the highly specific case of appeals against penalties applied by the general director of the National Film Centre, which the decree of 29 November 2002 placed under the direct jurisdiction of the Council of State[75], the following areas were removed from the Council of State's direct jurisdiction: administrative acts with a scope of application extending beyond the jurisdiction of a single administrative court and disputes arising outside of the territories under the jurisdiction of the administrative courts.

While it does justify some derogations from the jurisdiction of the court ruling on matters of ordinary law in the first instance, proper administration of justice cannot simply mean systematically sending cases to the Council of State when technical difficulties make it impossible to identify the administrative court that has jurisdiction in the matter. Other factors should be taken into account, such as the number of cases of the same type and the nature of these cases.

For this reason, the decree of 22 February 2010 revoked the old provisions that gave the Council of State direct jurisdiction over "appeals against administrative acts with a scope of application extending beyond the jurisdiction of a single administrative court" (Article R 311-1(5)) and administrative disputes arising outside of French territory (Article R 311-1(6)). These provisions have been replaced by three new articles which, taken together, transfer the relevant powers to the administrative courts using the methods outlined below.

For acts with a scope extending beyond the jurisdiction of a single administrative tribunal, which no longer fall under the direct jurisdiction of the Council of State, it is important to ensure that several administrative courts do not all have jurisdiction in the matter. With this in mind, Article R 312-1 provides that for acts with several authors[76], "the administrative court with power to rule shall be the court with territorial jurisdiction over the place where the first of the authorities mentioned is based"[77].

The decree also introduces a new procedure for disputes arising outside of French territory. Two new articles (R. 312-18 and R 312-19) have been added to deal with these disputes. One gives Nantes Administrative Court jurisdiction over disputes with consular authorities about rejected applications for visas to enter French territory. The wording used also gives the same court jurisdiction over actions for compensation aiming to remedy damage that may have been caused by the consular authorities' rejection. Nantes Administrative Court was chosen because the secretariat of the Visa Refusal Appeals Board is based in Nantes[78]. The other new article gives Paris Administrative Court jurisdiction over disputes arising outside France that do not relate to visa refusals (since there are now far more disputes relating to that matter). Residual power to rule on cases that are not within the jurisdiction of any administrative court has therefore been transferred to the Paris Administrative Court (Article R 312-19).

Conclusion: Solving problems relating to jurisdiction within the administrative court system and the Council of State's regulatory role

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[75] Article R. 311-1(10) (former) and Article 13 of the Film Industry Code. .

[76] For example, interprefectural orders covering departments located within the jurisdictions of different administrative courts.

[77] Nevertheless, D. Chauvaux and J. Courtial underline that "this criterion may cause problems if there is a series of orders about the same situation and the prefects concerned are not listed in the same order. For instance, if one order is revoked, the new order issued by the prefects will fall under the jurisdiction of a different administrative court if the first prefect named is not the same as in the original order, as would happen if a new, more senior prefect was appointed. For the same administrative court to be asked to rule, the principle of 'connecting links' must be applied, or reference made to Article R 351-8 (request for a change of court in the interests of proper administration of justice)", op. cit., p. 607.

[78] In the case of appeals against refusals by prefects to grant visas to foreign nationals who are already on French territory and are applying for long-term visas, the administrative court with power to rule remains the court that has jurisdiction in the place where the prefect is based.

It may seem complicated to determine which court has jurisdiction when there is a question as to whether a matter should be brought before the administrative court or the Council of State in the first instance. However, the system has been organised so as to avoid negative consequences for litigants and its complexity is controlled by the internal procedure for settling questions about jurisdiction. Articles R 351-1 and R 351-9 of the Administrative Justice Code "make it possible to correct the often understandable errors made by litigants"[79]. The decrees of 22 February 1972 and 19 April 2002 provided a simple way of correcting mistakes related to directing appeals within the administrative court system[80]. The chosen mechanism, which was based on the principle of directly transferring applications from one court to another, "has the effect of preventing courts from not having jurisdiction over cases brought before them in the administrative court system"[81]. The mechanism greatly simplifies matters for litigants and saves them a lot of time. This illustrates the administrative court system's unwavering interest in responding to society's demand for swift, genuinely efficient court decisions. This reform is the fulfilment of a continual desire to adapt so that administrative courts can play their part in administering justice under the best possible conditions.

Besides, when the Council of State has been given direct jurisdiction, this has always been done for the same reason: namely, to guarantee unity and consistency in administrative law. The reform can also be viewed as the realisation of the Council of State's general power as the court regulating administrative proceedings within the administrative justice system[82]. This role enables it to undertake tasks that could fall to other administrative courts and to meet "justice-related needs that cannot be satisfied by texts[83].

Within the French system, which is based on judicial dualism, the Council of State is a supreme court exercising a degree of authority over all of the country's administrative courts. It has a dual role which consists in ensuring that the written standards and general principles of administrative law are applied uniformly throughout the country and managing and monitoring the lower courts (including providing basic and ongoing training for their members). This situation can be explained by the fact that in France, the administrative court system is structured more closely around the Council of State than the judicial system around the Court of Cassation. The judicial system has a pyramid structure, while the administrative court system "has a circular or concentric structure… because it is built around the Council of State"[84]. This facilitates regulation of the administrative court system, which is good for the consistency of administrative case law and, at the end of the day, for all citizens, since they can be sure that they are equal before the law in their dealings with public authorities and that they will be treated equally by the administrative courts that hear any administrative disputes they may bring.

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[79] D. Chabanol, *La pratique du contentieux administratif*, ed. Litec, 2009, p. 69. Thus "through a simple system of ordinances that cannot be appealed, cases brought before the wrong court are transferred to the court that has jurisdiction, with procedural acts completed properly before the court originally asked to rule relaining valid before the court deemed competent, subject to any regularisations required by the latter court's rules of procedure".

[80] R. d'Haëm, *La réforme de la procédure de règlement des questions de compétence à l'intérieur de la juridiction administrative*, in RFDA, 2003, p. 497. See also R. Chapus, *Droit du Contentieux administratif*, as mentioned above, pp. 277 and 278: "If the Council of State is asked to rule in the first instance when the case actually falls within the jurisdiction of the administrative courts or a specialised administrative court, the president of the Litigation Division shall be asked by the Investigation Sub-Division to identify the court that has power to rule. This latter court cannot refuse to rule on the case." For other courts, this is done by "the presidents of the administrative courts and administrative courts of appeal, who rule through orders without a statement of reasons. These orders do not have the authority of *res judicata* but may not be appealed".

[81] D. Chabanol, op. cit..

[82] P. Delvolvé, *Le Conseil d'Etat régulateur de l'ordre juridictionnel administratif*, in *Mélanges en l'honneur de Daniel Labetoulle*, ed. Dalloz, 2007, p. 259. See also: R. Odent, op. cit., p. 757, and C. Debbasch, *Droit administratif*, Economica, issue 6., 2002, p. 709.

[83] P. Delvolvé, ibid., p. 271.

[84] R. Chapus, *Droit du contentieux administratif*, as mentioned above, p. 65.