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CRIMINAL LAW

Today, all branches of law make varying degrees of use of criminal law. It punishes offences against State security, crimes against the Constitution, offences against public peace, morality, life, honor and property. Penal sanctions can be found in constitutional, administrative, civil, commercial, tax and labor law, and even in public international law (trials of major war criminals).

Today, criminal law is omnipresent in our societies...

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CHAPTER I : concept and characteristics

All laws existing in a given society are supposed to be just and useful. However, they are not all guaranteed by the criminal sanction, and not every criminal offence is punished by every sanction. While the defence of society's fundamental interests alone justifies the application of punishment, a fair balance must always be struck between the need for repression and the protection of the citizen. Reconciling these two opposing requirements is the measure of a civilization.

1. The concept of criminal law :

A. Definition:

Criminal law is defined as the body of legal rules designed to punish behavior considered contrary to social order and public safety.

Thus, of all the branches of law, it is the only one that has the particularity of punishing, according to its own procedure, the violation of certain legal rules in force in society. It should be noted that it does not punish the violation of all the rules in force, but only the most important ones. The extent of its intervention varies according to moral concepts, the requirements of the fight against crime and the role assigned to the State in the city.

B. Areas of criminal law :

In its broadest sense, the law is divided into five main branches:

Criminal law, properly so called, or general criminal law, the object of which is the study of offences, penalties and all the rules applicable to them.

Criminal procedure, which can be defined as all the rules governing the prosecution and trial of offenders before the courts.

Special criminal law, which is the specific study of each of the offences provided for by criminal law, each offence being considered in terms of its constituent elements, its punishment and the methods of repression.

Business criminal law, which is special criminal law applied to business, with the obvious difficulty of delimiting the multiple forms and specificities of this type of delinquency.

International criminal law, which can be defined as the branch of criminal law that deals with all international criminal issues.

C. The place of criminal law in relation to other legal disciplines :

We need to consider the legal nature of criminal law.

Indeed, criminal law could be considered part of public law, since it is public law that organizes relations between the State and individuals. It is up to the public authorities to intervene when an individual disturbs the social order; to ensure order and security, and to dispense justice, all in the general interest. It is no longer up to the victim or his or her relatives to do this, even if they will be entitled to compensation for the damage suffered.

However, criminal law is also akin to private law, which regulates relations between private individuals. Thus, from a formal point of view, judicial tribunals are involved, made up of the same magistrates who can act in both criminal and civil cases.

These same individuals play a role not only in the prosecution of offences, but also in the trial of the most serious offences (crimes), which involve jurors who are citizens (private individuals).

From another point of view, private law also comes into play, since victims wishing to obtain compensation for the civil damage they have suffered as a result of an offence can turn to the criminal courts rather than the civil courts for quicker redress, through what is known as a civil action. The criminal court will therefore be called upon to assess the damage suffered by the victim and award damages, which is traditionally the role of the civil court.

As we can see, criminal law involves an interpenetration of private and public law.

2. The foundations of criminal law :

The basis of punishment, an essential feature of criminal law, is twofold: a moral basis. Behind punishment is often the idea of justice, of atonement for the guilty

party (the function of punishment is retributive). But it also has a social basis. Punishment has a utilitarian basis: its preventive function is to protect society.

A. A moral basis :

The facts, acts or omissions considered to undermine the organizational rules of a given society are rooted in religious and moral precepts. It is accepted that those who kill, steal, rape or abuse the trust of others must be punished. But it is also accepted, with a difference of degree, that those who do not respect parking regulations or who dump their garbage anywhere should be punished too.

But while the aim of criminal law is to maintain order, the aim of morality is the inner perfection of man. More precisely, it is possible to put into perspective the links between criminal law and three types of morality...);

♦ religious morality, which corresponds to the idea of duty towards God, and which in the past gave rise to extremely serious incriminations (blasphemy, heresy, sacrilege).

♦ individual morality inducing duties with oneself, with behaviors that are not incriminated, such as suicide or lying (in the latter case, the latter can be punished in case of false testimony or false oath) ;

♦ social morality too, generating duties towards others (duty of charity, duty of relief, duty of justice, etc...). We can, however, cite the criminally sanctioned duty to come to the aid of a person in danger.

What criminal law and morality have in common is that they are both normative, laying down rules: criminal law lays down what one must or must not do, in order to ensure the maintenance of social peace and public order. Morality, on the other hand, lays down principles that may be similar, but which in this case aim to perfect the individual. In this case, the individual is dealing with his or her conscience, since morality does not enact positively sanctioned constraints. In the other case, the individual has to deal with public authority, with the courts in the event of overstepping.

In certain respects, criminal law is narrower than morality, which represses lying or suicide, but also condemns simple thoughts or bad resolutions (such as committing an anti-social act, an offence).

But criminal law is also, in other respects, broader than morality, since it will punish unintentional acts, acts which in themselves express no intention to harm, such as certain minor contraventions (considered to be real offences when there was no particular intention or fault, like the offence of hunting, for example).

B. A social foundation

The preventive mission of criminal law is to prevent the perpetrator from committing further antisocial acts in the future, by eliminating or at least neutralizing the offender.

The preventive function can take the form of intimidation (intimidation of the individual to prevent recidivism) and deterrence, to prevent other individuals from committing offences in their turn.

3. The characteristics of criminal law :

In terms of its legal nature, criminal law has three major characteristics:

A. Criminal law is a determining law :

Criminal law punishes acts contrary to obligations that have their origin precisely in the law itself. Prescriptions relating to the life of others (respect for their physical integrity, for their property, for their nation, for the public peace) are enacted only by criminal law, and these prescriptions are to be found precisely in the penal code.

In other words, the penal code is a determining law, because it determines its own subject matter.

B. Penal law is also a sanctioning law:

It provides assistance (in the form of penalties) to other legal disciplines, when the specific sanctions of these rights are or appear to be insufficient. In this way, criminal law acts as a subsidiary to other laws when the provisions of the latter

are not respected (labor law, health law, company law, etc.). There are hundreds of criminal law texts outside the scope of the penal code.

C. Criminal law is an autonomous body of law:

Because it obeys its own rules, in that it is sometimes applied without regard to the rules of private law, or even in defiance of these rules. For example, an offender may be held criminally liable even though the victim consented, and even when the victim took part in the offence (as in the case of procuring). This situation is inconceivable in civil matters.

This autonomy is justified by the specific mission of criminal law, which is to defend the interests of society.

CHAPTER II : Offences

The study of offences, i.e. facts punishable and sanctioned by the legislator, known as incriminations, is a major part of the discipline known as criminal law. Determining the conditions under which the perpetrator of any offence is punishable, and laying down the rules applicable to the penalties imposed, are therefore essential elements of criminal law.

An offence is an action or omission prohibited by law under threat of punishment. It is also known as an "offence".

For society to take repressive action, three elements must be present: 1° a prohibition on committing the act in question; 2° the material performance of the act, in contravention of this prohibition; 3° a fault attributable to the perpetrator of the unlawful act. These elements (also known as the constitutive elements of the offence) will be examined in the following three paragraphs, the legal (1), material (2) and moral (3) elements of the offence.

1. The legal element of the offence :

A. The principle of legality :

An omission is only penalized if the law expressly provides for it. It is not up to individuals, the community, the police or the courts to decide directly what to do

or not to do in the event of an offence. This is the role of the legislative power, i.e. Parliament and the executive, in the cases provided for, to lay down penalties for offences, as provided for in our Constitution.

The Algerian Constitution clearly expresses its conception of the legalistic principle, stating that "no one may be held guilty except by virtue of a law duly promulgated prior to the incriminating act" (Art 46 of the Constitution). This principle, concerning the penal sanction itself, is confirmed by article 142 of the fundamental law, which states that "penal sanctions obey the principles of legality and personality".

The Algerian legislator has enshrined this constitutional position by ruling that no one may be punished by a penalty that is not provided for by law. Article 1 of the Penal Code states that "there is no offence, penalty or security measure without law", thus translating (at least in spirit) the Latin adage "Nullum crimen nulla poena sine lege" (no crime, no penalty, without law).

This legalistic principle, enshrined in our Constitution, is fundamental to safeguarding individual freedoms and defending society against arbitrariness, imposing itself on both the executive and the judiciary.

♦ The legality of incrimination:

Incrimination is the description of a punishable act in a text. It is because a text of the penal code (or any other legal or regulatory provision) provides for it and gives its constitutive elements, that theft, rape, hit-and-run (or other offenses) are punishable.

Judges are therefore prohibited from punishing acts that are not criminalized by law or regulation. The same applies to behaviour that is contrary to custom or usage, or even to the law if the criminal law itself does not provide for it or describe it and the penalty attached to it. In such cases, the individual cannot be prosecuted and punished.

♦ The legality of penalties:

Just as there is no offence without a text, there can be no application of a penalty that has not been provided for or determined by law. This is the second element of the Latin adage "Nulla poena sine lege".

The law and regulations, in their respective areas of competence, determine the penalties incurred by those who commit an offence.

Here too, the penalty must be precisely defined. The legislator himself must provide for a specific penalty for each of the incriminations he has created. This is what the Code of Criminal Procedure does.

This principle of the legality of penalties applies not only to the creator of the incrimination (the legislator or the regulatory authority), but also to the judge. The latter can only impose penalties appropriate to the offence before it, and within the limits set by law.

From an individual point of view, the idea that the application of a legal text is pre-existing, and known in advance, is a precious guarantee against the arbitrariness of the executive or judicial powers.

From a more collective point of view, the penalty stipulated in the text provides unambiguous information on the degree of seriousness that society attaches to the offence. And we can assume that public order will be better respected as a result of this prior knowledge.

This principle applies not only to criminal penalties, but also to security measures.

B. Classification of offences according to element :

The legislator has classified offences according to their seriousness: this is known as the tripartite or tripartition classification.

This classification exists in the Penal Code. Article 27 clearly states: "Depending on their degree of seriousness, offences are classified as crimes, délits or contraventions and punishable by criminal, delictual or contraventional penalties".

The classification into crimes, délits and contraventions, revealed by the nature and degree of the penalty incurred, has consequences, both from the point of view of the sources and bodies competent to define these crimes, délits and contraventions (legislative power or regulatory power as the case may be), and from the procedural point of view, since the judicial organization and rules of trial will differ according to whether we are dealing with a crime, délit or contravention.

2. The material element of the offence :

A. The performance of the act :

The material element of the offence is that by which the offence passes from the state of project to that of reality. It is the fact by which the act prohibited by criminal law is carried out (for example, in the case of homicide, it is the fact of causing the death of another).

An act is therefore required. The material element can be considered as the actual execution of the offence, the way in which it takes shape.

This external (visible, tangible) element is necessary, since our criminal law (with a few exceptions) does not incriminate mere intentions or resolutions to commit an offence.

Not all offences are carried out in the same way, and their materiality does not always present the same aspect.

Several types of offence can be distinguished:

- offences that are closely or remotely related to the notion of time: we find the distinction between instantaneous offences (e.g. murder, homicide, theft) and successive offences that take place over time (e.g. handling stolen goods, kidnapping).

- other opposition: occasional offences and habitual offences. The latter are admittedly relatively few in number, and usually include the illegal practice of medicine.

- There is also the distinction between simple and complex offences, with complex offences requiring several separate acts to be committed: this is the case with fraud.

- offences of action and offences of omission, which consist of simple abstention (non-assistance of a person in danger), whereas an offence of action is obviously theft or murder: the act here is quite tangible.

In short, for an offence to exist, there must be a fact or an act, or an abstention, which can be attributed to the perpetrator. But the commission of the offence is not always complete or carried through to completion, and it is not necessary for there to be a result. We therefore need to determine the minimum degree of

completion required to prosecute and punish an offender. This will be the problem of the attempt.

B. Attempt:

Although a material act is necessary, a harmful result is not always required for the offence to be punishable: this is known as the theory of attempt.

Here again, criminal law differs from civil law, where the notion of attempt does not exist, since in most cases a harmful result is required before an action for liability can be brought.

In criminal law, the material element does not lie in the result of the act. The idea is to punish antisocial behavior, to punish an individual considered harmful to society, even though the social order has not been disturbed, since the offence has not been committed. The attitude here is therefore severe.

Article 30 of the Penal Code provides for an attempt to commit an offence: "Any criminal attempt which has been manifested by a beginning of execution or by unequivocal acts directly tending to commit it, if it has not been suspended or if it has only failed to achieve its effect due to circumstances beyond the control of its perpetrator, even though the desired aim could not be achieved due to a factual circumstance unknown to the perpetrator, shall be considered as the crime itself".

In simple terms, an attempt is simply the fact that when an individual begins to commit an offence, he is interrupted in his action by the occurrence of an external event which prevents him from completing his undertaking.

From a legal point of view, an attempt therefore presupposes two conditions:

- a beginning of execution. This is punishable even if the result is impossible;

- the absence of voluntary withdrawal (if the circumstances are dependent on the agent's will, i.e. freely willed by him, there will be no attempt, and therefore no prosecution).

However, the French Penal Code (art. 31) draws a distinction between attempted felonies (punishable in all cases), attempted misdemeanours (punishable by virtue of an express provision of the law) and attempted contraventions (never punishable).

3. The moral element of the offence :

For an offence to be punishable by law, its perpetrator must be at fault. But the seriousness of this fault varies from one offence to another. Criminal liability differs according to whether the offence is intentional or unintentional.

A. Intentional offences :

In reality, more than moral character, it is the state of mind of the author of the reprehensible act that is important at the time he committed it. It is this element that must be taken into consideration to decide whether or not the offence has been committed. It is therefore a fundamental element.

The idea of intention is the linchpin of this moral element, and intention consists in the will to perform an act, with the awareness that it is forbidden by the penal law, or to refrain from an act with the awareness that it is ordered by this same law.

It should be noted that this intention must not be confused with the motives or motive that led the agent to act in this way. The latter may, however, be taken into account at the time of judgement (for example, if they are deemed honourable, they may lead to a certain degree of leniency, or even a reduction in the sentence).

B. Unintentional offences :

Contrary to what one might think, the moral element is not absent in this type of offence. It is expressed differently in misdemeanours and contraventions, with less severe consequences in terms of punishment than in the case of intentional offences.

Only misdemeanors - which the law expressly provides for - can be committed without intent (homicide, involuntary bodily harm, but also involuntary fire and involuntary pollution), as well as the vast majority of contraventions (acts committed without the deliberate intention of achieving a harmful result).

These faults are most often found in road safety (manslaughter, involuntary injury), labor law, the environment, education and medical liability.

CHAPTER III : Attributability

Under Algerian criminal law, there is no concept of criminal liability without a moral element. A fault, attributable to the accused, is required for him or her to be punished. In certain offences, under certain conditions, responsibility may not be attributable to the perpetrator. The causes of non-liability are related both to the person of the perpetrator, and to the external circumstances in which he or she found himself or herself.

A crime, misdemeanour or contravention may have been committed: the law has not been respected or a prohibition has been breached, and yet the perpetrator will escape punishment. Despite material findings, his or her responsibility is not recognized. The crime, misdemeanor or contravention, even when committed, will not be attributable to its perpetrator, due to certain circumstances.

A number of concepts therefore need to be distinguished here:

- culpability, which is the fact of having committed a fault (it is the moral aspect of the offence that is highlighted here);

- imputability, i.e. linking the fault to the perpetrator's account (presupposes a free will, a free will);

- criminal liability, which requires the existence of a fault, but also that this fault be attributable to the perpetrator;

- criminal irresponsibility concerns cases in which a person is not held responsible, even though an offence has been committed.

This lack of criminal responsibility is based on two main categories of causes:

- objective grounds for excluding a person from liability due to causes external to the perpetrator. These are also known as justifying facts.

- Subjective grounds for excluding liability, i.e. those which are the result of a personal cause on the part of the perpetrator.

1. Objective reasons for non-imputability: justifying facts

The aim is to define the cases in which a reprehensible act is not in itself contrary to the law, but loses its character as an offence objectively and for all concerned. With justificatory facts, the criminal act is legitimized, whatever the psychology

of the offender, as long as the conditions of the justificatory fact required by law are met.

There are three objective causes of non-imputability (justificatory facts): legal authorization, legitimate self-defence, and necessity.

A. Legal authorization :

The authorization of the law (also called order of the law or command of legitimate authority) simply means that, in the interest of society, an offence committed by an individual will not be contrary to the law simply because legislative or regulatory provisions will make it lawful.

This is what article 39 of the French Penal Code provides when it states that "there is no offence when the act was ordered or authorized by law".

Thus, a police officer cannot be prosecuted for arbitrary confinement when he places a suspect in police custody, as long as he obviously complies with the legal conditions. Similarly, a doctor who discloses certain contagious diseases, or who reports abuse or ill-treatment of a minor to the relevant authorities, for example, will not be prosecuted for breach of professional secrecy.

B. Self-defence :

The same article of the Penal Code provides for this second case of criminal irresponsibility. This provision states that there is no offence "when the act was ordered by the actual necessity of self-defense or self-defense of others, or of property belonging to oneself or to others, provided that the defense is proportionate to the seriousness of the aggression".

In a way, self-defence constitutes express permission from the law to commit an offence. But this permission is subject to conditions: the response must be necessary, timely and proportionate.

- the response must be necessary. The act in question must be the only means of defending oneself against the aggression. This question is left to the discretion of the trial judge.

- it must be current; in other words, the aggression and the response must take place at the same time. Too much time must not have elapsed between the two, and it is up to the judge to assess this delay.

- the response must be proportionate. The act of defense must be measured. There is self-defence, unless there is a disproportion between the means of defence used and the seriousness of the response. It is also up to the trial judge to assess the extent of the response.

It should be noted that the Penal Code does not stop at authorizing self-defense of one's own person, but also that of another (this may be the case of a close relative). The law may also authorize the defense of property (belonging to oneself or to others).

C. State of necessity :

In a state of necessity, the incriminated behavior is legitimized because it was necessary.

This is the case when a danger cannot be averted, or property or a right cannot be safeguarded, except by the performance of an act normally incriminated by criminal law. This act may be performed either in one's own interest (stealing a loaf of bread to avoid starvation, in order to avoid damage to oneself - this is the first situation), or in the interest of others (speeding, for example, to get a seriously injured person to hospital, or damaging the fence to put out a fire).

2. Subjective causes of justification :

A. Insanity :

Article 47 of the French Penal Code states that "a person who was insane at the time of the offence..." is not punishable, making insanity a cause of criminal irresponsibility. It is a subjective cause, because it is linked to the legal subject himself and not to an external cause.

However, the Penal Code sets a condition for this irresponsibility: the disorder must have existed at the time of the acts. On the other hand, if the disorder is temporary and it is established that the perpetrator was sane at the time of the offence, he will be held liable.

B. Duress :

Duress is a situation in which the offender's discernment has not disappeared, but his or her will has been suppressed.

The idea here is that the offender did not have the freedom to act otherwise.

Article 48 of the Penal Code, which states that "a person who has been compelled to commit an offence by a force which he has been unable to resist" is not punishable, exonerating the perpetrator from the penal consequences of his actions, since he did not intend to act in this way, but was compelled to do so by the power of the elements.

Administrative law

Administrative law is the law that governs the organization of the State in the administrative field; it is also the study of decentralized State services, i.e. the status of State bodies placed in local authorities and public establishments that act on behalf of the State. Administrative law is a singular body of law; it is considered, today, in relation to other branches of law.

CHAPTER I : The autonomy of administrative law

1. Administrative law: distinct from private law
2. Explaining the autonomy of administrative law: public service and public establishments
3. Administrative action

CHAPTER II : Deconcentration, decentralization

1. Deconcentration
2. Decentralization

CHAPTER I : The autonomy of administrative law

Administrative law is a special kind of law. Its distinctive feature is that it applies to unbalanced social relationships: on one side a private individual, on the other the administration. Its means of action are said to derogate from ordinary law. From its origins to the present day, this law has never ceased to evolve, passing through stages that are sometimes highly delicate in terms of its legitimacy and very existence. Doctrinal writers are unanimous in their view that it is an autonomous right.

1. Administrative law : distinct from private law

Algerian administrative law is an exception to ordinary law, i.e. it is fundamentally distinct from private and judicial law. It is said to be an autonomous law.

The autonomy of administrative law means that, in many areas, it differs from private law. This difference has been reinforced by the radical separation of administrative and judicial jurisdictions. Article 152 of the Constitution establishes this separation by enshrining dual jurisdiction, through the creation in 1996 of a "Conseil d'Etat, the regulatory body for administrative jurisdictions".

Under this text, administrative functions are distinct and remain separate from judicial functions. Judges may not interfere in any way whatsoever with the operations of administrative bodies, nor may they summon administrators to appear before them on account of their functions.

This absolute distinction between judicial and administrative jurisdictions reinforces the particularity of administrative law, insofar as the same law cannot be applied to the administration and to private individuals.

This singularity is not found in Anglo-Saxon countries in particular, where the same law and the same courts are used to judge individuals and the administration. In the Anglo-Saxon countries, there are indeed specific texts applicable to the administration, but these texts are interpreted and applied by the ordinary courts.

This principle of the autonomy of administrative law was originally enshrined in the case law of the French Conseil d'Etat, in a number of rulings, and in particular in a ruling by the Tribunal des Conflicts on February 8, 1873, concerning administrative liability. In Blanco, France's highest court ruled that "administrative liability cannot be governed by the principles laid down in the Civil Code, but has its own special rules which must be taken into account...".

Thus, while civil law may inspire administrative law, the solutions adopted by the administrative courts (tribunaux administratifs and Conseil d'Etat) will necessarily differ from those of private law, given the particular nature of administrative law.

In its scope, the principle of autonomy is an absolute principle; however, in certain areas, transpositions from private law to administrative law can be observed.

A. Absolute autonomy in certain areas :

These are areas in which the administration has prerogatives of public authority. This is the case in many areas where the administration imposes rules on private individuals. The administration is called upon to issue unilateral acts (decrees or orders, for example) which are binding on citizens. The rules governing these acts have no equivalent in private law.

What's more, certain administrative procedures, such as expropriation, have no equivalent in private law. In the case of expropriation, the administration acquires real estate against the owner's consent, if there is a public interest in acquiring the property. The same applies to administrative requisitions. In certain circumstances, the administration has a right of requisition. This right applies to movable or immovable property where there is an urgent public need for the property.

B. Borrowing to a greater or lesser extent from private law :

In certain fields, the rule of administrative law has its equivalent in private law, but differs from it to a greater or lesser extent, depending on the subject under consideration.

In the case of administrative contracts, as in private law, a written contract is drawn up between the parties, and this contract is binding on them. However, administrative contracts include rules that are much more favorable to the administration than private law contracts. For example, the administration has the

right to unilaterally modify the terms of the contract, whereas private law contracts are governed by the law of the parties (the terms of the contract can only be modified by mutual agreement). This type of contract is likened to a contract of adhesion.

In the field of liability, administrative law solutions sometimes differ from those of private law, but the tendency is to align administrative law with private law solutions. As in private law, administrative liability law is based on the notion of fault. It is up to the plaintiff to prove that the administration is at fault.

C. Borrowing purely and simply from the rules of private law :

In certain cases, it is the rule of private law that is borrowed by the administrative judge.

In administrative law, to satisfy the general interest, the administration has procedures that differ from private law, but the administrative judge is there to limit abuses of power by the administration, forcing it to comply with laws or regulations.

Thus, when the administration is the victim of construction damage caused by a private company, the dispute will have to be brought before the administrative judge, as it is an administrative law contract, but the administrative judge will apply the same liability rules as those in the civil code.

2. An explanation of the autonomy of administrative law - public service and public establishments:

Several theories have been put forward to explain the autonomy of administrative law.

A. The distinction between acts of public authority and acts of management:

Some explain that administrative law is necessarily autonomous from private law, insofar as in many cases the administration acts by way of authority (acts of public power). Such acts cannot be subject to the same law as private individuals. Acts of management, involving the intervention of private law, would be reserved for private individuals. However, this opposition has not been maintained, since it confines the administration to acts of public authority, whereas the administration is often called upon to perform acts of management. In fact, the administration

has assets to manage, and this opposition is not valid. This first explanation has now been abandoned.

B. The notion of public service :

Some legal writers consider that any activity carried out by a public authority in the general interest is a public service, justifying a special right that derogates from ordinary law.

The Blanco ruling of February 8 1873 held that the liability of public services could not be the same as that applicable to private individuals (in another ruling, the French Conseil d'Etat had held that an activity financed by the administration, in this case the capture and destruction of vipers, was a public service activity, since this activity, even carried out by private individuals, met a need in the general interest). This led to the creation of the School of Public Service, which justified the application of an administrative law based on the general interest, and therefore different from private law. This school defined administrative law as the law of public services, the State itself being no more than a collection of public services. This theory dominated administrative law until 1992.

C. Public institutions :

Administrative law is also the study of public establishments. These are organizations with legal personality, their own administrative resources and budget, and a certain degree of autonomy. This autonomy may vary according to the legal texts governing their status (e.g. social insurance funds, which are legal entities under private law entrusted with the management of a public service).

3. Administrative action :

A. Unilateral acts :

The administration takes decisions by means of unilateral administrative acts.

These are legal acts, i.e. expressions of intent to bring about changes in the legal system. These acts are to be distinguished from mere material actions, although a material fact may, in certain cases, reveal or constitute a decision (silence kept by the administration for two months on a request submitted to it is equivalent to an implicit decision of rejection; in certain cases specifically provided for by

legislation, silence for a certain length of time may constitute an implicit decision of acceptance, e.g. building permits).

These administrative acts are then unilateral, i.e. the standards set are addressed to the addressees and not to the author of the act. This means that the unilateral nature of the act is opposed to its contractual nature. It is the act of a single party (a single side) and can therefore be issued by several administrative authorities (interministerial decree, for example).

1. Administrative acts are executory acts that modify the legal order :

- A unilateral administrative act is an enforceable decision.

This is the real distinctive feature of unilateral administrative acts. In fact, when the administrative authority takes a decision by means of this type of act, it benefits from what is known as the privilege of the preliminary (Hauriou), which gives the act the authority of a final decision.

With these formulas, the doctrine intends to show that, unlike in private law, the simple act of adopting the decision creates the right; there is no need to have recourse to a judge to give the executory formula to the unilateral decision.

It is in this sense that these acts are enforceable decisions. This enforceability has been described as a "fundamental rule of public law", and explains why appeals against them are not in principle suspensive.

- A unilateral administrative act modifies the legal system.

The act is said to cause grievance, to be decisive. As such, unilateral administrative acts do not include: information provided by the administration, declarations of intent, wishes, preparatory measures, etc.

There are two main categories of administrative acts: regulatory decisions (standards which, like the law, are impersonal and general, and are intended to apply to a group of individuals designated in the abstract, i.e. not by name) and individual decisions (concerning one or more persons designated by name).

2. Unilateral, non-binding administrative acts :

Certain unilateral administrative acts have no normative effect. These include acts to prepare and implement decisions, internal measures, circulars and directives.

B. Administrative contracts :

Public authorities do not only resort to unilateral administrative acts to satisfy the general interest. Like any private individual, it can also enter into contracts.

Some of these contracts are governed by private law (e.g., the purchase of land out of court, contracts entered into by public industrial and commercial services with their users, etc.).

Others are administrative contracts. It is therefore vital to know the criteria for determining when a contract is administrative or not, particularly as the competent judge will not be the same in the event of a dispute. What's more, the rules governing administrative contracts differ widely from those governing private law contracts.

CHAPTER II : Deconcentration, decentralization

State administration comprises three categories of services: central administration, services with national competence, and territorial administration made up of decentralized services. Within the framework of the Algerian unitary state, local authorities remain subject to control by the central authorities.

1. Deconcentration :

A. Characteristics of deconcentration :

Deconcentration consists in granting a certain amount of decision-making power to State agents throughout the country, who are appointed by the central authorities, subject to their hierarchical authority and accountable to them. Deconcentration in no way diminishes the unitary nature of the State: "it's still the same hammer that strikes, but we've only shortened the handle".

To bring decisions closer to the people, the State must resort to deconcentration. In centralization without deconcentration, decision-making power is concentrated at the top of the hierarchy, with subordinate levels merely transmitting and executing. With deconcentration, the decision is still taken by the State, but through the intermediary of a deconcentrated authority subject to its hierarchical control.

Deconcentration helps to avoid a bottleneck in decision-making at central level. It also responds to a democratic aspiration, while improving the efficiency of administrative faction. On the one hand, deconcentration brings the administration closer to citizens; on the other hand, citizens have local contacts who are better able to take into account their specific needs.

It should also be emphasized that deconcentration is not necessarily opposed to decentralization. Indeed, thanks to deconcentration, local authorities can rely on government officials who are aware of their concerns, and who act, where necessary, as a channel of communication with the central authorities. Nevertheless, decentralized authorities remain first and foremost representatives of the State. As such, they are subject to hierarchical control by the central authorities.

B. Hierarchical control exercised over decentralized authorities :

1. Characteristics of hierarchical power :

The exercise of hierarchical authority is based on a general principle of law: all superiors may exercise hierarchical control over their subordinates, even in the absence of a legal provision to this effect. This power may be exercised for reasons of legality or expediency. In addition, hierarchical authority may be exercised spontaneously, or at the request of a member of the public (hierarchical appeal).

2. Responsibilities arising from hierarchical authority :

The hierarchical authority has the regulatory power to organize the department. It also has the power to manage jobs and careers (appointment, grading, disciplinary authority, etc.).

In addition, the hierarchical superior has the power to give instructions, notably by issuing orders. The inferior authority is bound by a duty of obedience, unless the order is manifestly illegal and of such a nature as to seriously compromise a public interest. Disobedience constitutes misconduct and may justify disciplinary action.

The hierarchical superior also has the power to issue directives (see above).

Finally, the hierarchical superior has the power to annul (with retroactive effect), and the power to re-form, the acts of his or her subordinates.

On the other hand, unless expressly stipulated otherwise, the exercise of hierarchical authority does not enable the superior to take the place of his subordinate. He cannot decide in his place. An important exception concerns the Wali, who may substitute himself for the President of a Communal People's Assembly who has neglected to fulfil his duties as an agent of the State.

C. Deconcentration procedures :

1. State districts :

An administrative district is a part of the territory that has no legal personality, and serves as a framework for the organization of decentralized services. The general administrative divisions are the commune and the wilaya. These two administrative districts are the only two territorial units of the State (article 15 of the Constitution).

The wilaya is the main framework for the territorial administration of the State, where, in principle, national policies are implemented. The commune provides a number of local services, such as civil registration.

2. Deconcentrated services :

The local extensions of the various ministries are responsible for specialized sectors. There are, for example, wilaya directorates for equipment, education and public health.

In addition, the State has a number of multi-skilled officials who represent all the ministries in their respective districts: the wali and the chef de daïra.

The wali is the guardian of the State's authority in the département. He represents the State in legal matters and is responsible for ensuring compliance with the law, as well as administrative control of the legality of acts issued by the President of the Communal People's Assembly.

Responsible for public order in the wilaya (general administrative police), he is also in charge of a number of special polices (foreigners' police, for example).

The wali is also the representative of the Prime Minister and of each minister. Under the authority of each of the ministers concerned, he heads the decentralized services. In this capacity, he is the sole, secondary authorizing officer for the civil administrations of the State in the wilaya.

Walis and daïra chiefs are civil servants. Their selection, promotion and transfer are discretionary decisions taken by the government.

2. Decentralization :

Decentralization consists in entrusting the exercise of certain powers to public bodies which are independent of the State and which, under its control, enjoy genuine management autonomy.

Territorial decentralization applies to local authorities. They are endowed with general powers within a given territory. Local authorities enjoy a certain degree of decision-making autonomy, under the supervision of the State representative. The latter is not a hierarchical superior. He simply verifies the legality of local authority acts. This control is the necessary counterpart to the principle of local self-government.

Technical (or functional) decentralization, on the other hand, concerns specialized institutions that are only competent to manage one or more public services (public establishments in particular).

A. The characteristics of decentralization

Four conditions must be met for decentralization to occur:

1. First, the decentralized institution must have its own affairs, distinct from those of the State; the attribution of legal personality enables it to carry out the exercise of these powers;

2. Secondly, decentralization presupposes that decentralized institutions have their own independent authorities emanating from the community itself. This independence is acquired through elections;

3. The third condition is that decentralized institutions have their own, freely-managed technical, material and financial resources;

4. Finally, decentralization implies the existence of State control to ensure that laws are properly implemented by decentralized authorities.

The principle of decentralization implies, in particular, that local authorities should be freely administered by elected councils, and that they should have effective powers. They must also enjoy freedom of contract and local regulatory powers. Financially, they must have sufficient resources.

Within the framework of the Algerian unitary state, local authorities remain subject to control by the central authorities. This control may be exercised over elected representatives and local bodies, as well as over the acts of local authorities.

B. State control over elected representatives and local bodies :

On the whole, State control in this area (guardianship over individuals) is greater for communes than for wilayas. For example, the President of the Communal Assembly and his deputies can be suspended or even dismissed. This is because the President of the Communal Assembly and his deputies are also public officials.

For example, falsification of documents or financial irregularities may justify a sanction.

C. Control over local authority acts :

Control of legality

The wali exercises control over the acts of local authorities. The most important local authority acts must be forwarded to the wali. These include deliberations by local assemblies, regulatory acts issued by local authorities, police decrees, major contracts (public procurement contracts, etc.) and decisive individual decisions concerning the careers of local staff (appointments, sanctions, etc.). Unless they are forwarded to the wali, these acts cannot come into force.

For all acts, the wali exercises a posteriori control. He may annul an act on the grounds of illegality or appropriateness.

Lexicon

Criminal law ..... قانون جنائي

Penalties ..... عقوبة

Offence ..... جريمة

Offence ..... جنحة

Victim ..... ضحية

Criminal court ..... المحكمة الجنائية

Civil action ..... دعوى مدنية

Public action ..... دعوى عمومية

False testimony ..... شهادة زور

Suicide ..... انتحار

Public order ..... النظام العام

Recidivism ..... العود

Penal Code ..... قانون العقوبات

Infringement of personal freedom ..... انتهاك الحريات الفردية

Offender ..... مجرم

Hit and run ..... جنحة الفرار

Police judiciaire ..... الشرطة

Legality ..... الشرعية القضائية

Personality of penalties ..... شخصية العقوبة

Incrimination ..... تجريم

Criminal proceedings ..... اجراءات جزائية

Security measures ..... تدابير الأمن

Felony ..... جناية

Contravention ..... مخالفة

Homicide ..... قتل

Murder ..... اغتيال

Theft ..... سرقة

Recel ..... اخفاء أشياء مسروقة

Sequestration ..... حجز أشخاص

Attempted ..... شروع في الجريمة

Beginning of execution ..... شروع في التنفيذ

Criminal intent ..... قصد جنائي

Motive ..... سبب

Guilt ..... حالة اجرام

Justifying fact ..... فعل مبرر

Self-defense ..... دفاع شرعي

Information ..... ابلاغ السلطات

Necessity ..... حالة الضرورة

Insanity ..... جنون

Duress ..... اكراه

Autonomy ..... استقلالية

Administration ..... إدارة

Case law ..... الاجتهاد القضائي

Expropriation ..... نزع الملكية

Public officer ..... الموظف العمومي

Public service ..... مصلحة عمومية

Public establishment ..... مؤسسة عمومية

Company status..... القانون الأساسي للشركة

Circular ..... منشور

Administrative contract ..... عقد اداري

Deconcentration..... لا مركزية

Centralisation ..... مركزية

Local authority ..... سلطة محلية

Central authority ..... سلطة مركزية

Hierarchical power ..... سلطة تدريجية

Administrative districts .....,..... مقاطعة إدارية

Decentralisation ..... لا مركزية

Delegation of authority ..... تفويض السلطة

Delegation of signature ..... تفويض الامضاء

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